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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: TECHNOLOGY PROPERTIES LIMITED, LLC, Debtor.	Case No: 13-51589 SLJ Chapter 11 Date: February 11, 2015 Time: 10:00 a.m. Place: Courtroom 3099

U.S. TRUSTEE'S OBJECTIONS TO JOINT PLAN REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (1/8/15)

The United States Trustee for Region 17, Tracy Hope Davis (the "UST"), hereby objects to the Joint Plan of Reorganization ("Joint Plan") filed herein on January 8, 2015 by the Official Committee of Unsecured Creditors ("Committee") and Technology Properties Limited, LLC ("Debtor") *[Docket # 637]*. The UST objects on the grounds that the Joint Plan contains release and exculpation provisions that are overbroad, violate applicable law and are not permitted or exceed the limits set by the Bankruptcy Code. Unless these provisions are removed or changed to meet the requirements of the Bankruptcy Code, the Joint Plan should not be confirmed.

FACTS

A. Case Background

Debtor filed a voluntary petition under Chapter 11 on March 20, 2013.

Debtor is a California limited liability company whose sole member is Daniel Leckrone ("Mr. Leckrone"). Debtor is in the business of acquiring rights to products, technologies and patent portfolios for the purpose of commercializing these assets. *Joint Disclosure Statement, p. 4 [Docket #638]*. The main products which it commercializes are the MMP Portfolio (named after its inventor, Mr. Moore), and the Fast Logic and CORE Flash Portfolios. *Id.* Its commercialization activities are primarily geared to identifying companies whose products utilize the technology protected by the patents and then either license the right to use the technology to those companies, and if licensing efforts are unsuccessful, prosecute litigation against those allegedly infringing companies. *Id., pp. 5-6.*

The Debtor and the Committee have had an adversarial relationship during the course of the case, but have reached agreement on the Joint Disclosure Statement and accompanying Joint Plan. Mr. Moore also filed his own plan and disclosure statement; the Court denied approval of the Moore disclosure statement on 12/3/14. *[Docket #624]*. The Court also denied Mr. Moore's motion to appoint a chapter 11 trustee on 12/3/14. *[Docket #623]*.

The Debtor's bankruptcy schedules list personal property assets of $4,429,183 – much of this consists of accounts receivable. The Debtor also lists a number of litigation claims and license rights with a value of "Unknown." Debtor lists liabilities consisting of secured claims ($9,700,896), priority wage claims (including unsecured portion, $8,972,456) and unsecured claims ($49,936,736). *Schedules B, D, E and F, Docket #37*. Debtor's latest monthly operating report (for October 2014) reports a cash balance of $1,354,304. Debtor has not filed its MORs for November and December 2014, which are past due.

B. The Joint Plan.

The initial joint plan was filed on 9/3/14 (*Docket #524*); a joint disclosure statement and an amended joint plan were filed on 9/7/14 (*Docket #538 and #539*). Objections to the disclosure statement were filed by various parties. Following a hearing on 10/2/14, the Debtor and the Committee filed an amended joint plan and joint disclosure statement on 10/29/14 (*Docket # 586 and #587*). Following a further hearing on 11/12/14, the Court took the joint disclosure statement under submission. On 12/3/14, the Court issued its Order denying approval of the Moore disclosure statement and setting a further hearing on the joint disclosure statement for 12/19/14.

A new amended joint plan and joint disclosure statement were filed on 12/15/14, and following the 12/19/14 hearing, the current versions of the Joint Plan and Joint Disclosure Statement were filed on 1/8/15 [Docket #637 and #638]. The Court then approved the Joint Disclosure Statement by Order filed 1/9/15 and set a confirmation hearing on 2/11/15.

The Joint Plan provides for the continuation of the Debtor's business, but through new management consisting of a new CEO (not Mr. Leckrone) and a board comprised of members of the Committee. The Joint Plan proposes to pay its unsecured creditors 100% of their claims, and subordinates a number of insider claims of those insiders who accept the plan, in exchange for a release. The Joint Plan also contains an overbroad exculpation clause which limits the liability of a number of persons regarding actions taken with respect to the bankruptcy case.

DISCUSSION

A. <u>The release of claims is improper and violates Ninth Circuit law</u>.

<u>The release language</u>. The term "Released Claims" at page 14 is broadly defined to mean "any claims or causes of action against the Released Parties by the Debtor, the estate, and all persons and entities that vote to accept the plan and execute the Release [Exhibit E], and any

claims or cause of action against the Reorganized Company except as provided herein." The "Released Parties" include a number of insiders, including Mr. Leckrone and his affiliates, including "any and all entities wholly-owned or partially owned by Leckrone." This could conceivably include any companies in which Mr. Leckrone owns a single share of stock.

At pages 21-22, the Joint Plan states that "By voting in favor of the Plan, Leckrone consents to the subordination of his payments and shall receive a release of all claims and causes of action against the Leckrone Claim, including any claims to challenge the extent, validity and priority, or to seek further subordination of such Claim." The Joint Plan further states that if the case is converted to chapter 7, then the release and the concurrent subordination of claims are automatically undone; there is also a one year tolling agreement that Mr. Leckrone is required to sign.

And at page 55, the Joint Plan states; "Confirmation of the Plan shall constitute and effect a full release of all Avoidance Actions, causes of action and claims for relief against the Released Parties who vote to accept the Plan which, among other things, provides for subordination of the claims of the Released Parties, whether or not any of the Released Parties execute the Release except that, as to Daniel E. Leckrone if the Bankruptcy Case is converted to Chapter 7 after Confirmation, the release of claims shall be undone automatically, as shall any subordination of Claims or liens held by Leckrone, without further order of the Bankruptcy Court. Confirmation also effects a mutual release of the Released Claims of the estate and Reorganized Company as to all parties who execute the Release in substantially the form attached hereto as Exhibit "E."

Exhibit E. As the UST reads it, the Release [Exhibit E] is designed as a voluntary release between the Non-Insider 13%ers, on the one hand, and the TPL Insiders, on the other hand – the Debtor and the estate are not a party to that Release [Exhibit E]. Accordingly, the

language at page 55 that refers to a release by the estate and the Reorganized Debtor should be deleted.

In addition, Exhibit E appears to be overbroad, and fails to identify all the parties who are being released. The TPL Insiders (as defined in Exhibit E) include "any and all entities wholly-owned or partially owned by Leckrone, the Leckrone Family Trust and [other specific entity names to be inserted] . . . ." In the first instance, the "partially owned" language could conceivably include any company in which Mr. Leckrone owns a single share of stock, completely unrelated to TPL. This is vague and should be clarified. Secondly, the parties releasing the TPL Insiders do not know the identity of the "[other specific entity names to be inserted]" – before parties sign a release agreement, these entities should be disclosed.

The Leckrone release. The UST understands that the Leckrone release is designed as a compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019 – i.e., a release in exchange for the subordination of his claims. *See page 55*. In the event the case is subsequently converted to chapter 7, both the release and the subordination are automatically undone. Plus, Mr. Leckrone will execute a tolling agreement *(see page 22)*. Under the circumstances, and assuming the Court finds this to be a reasonable compromise, the UST does not oppose the Leckrone release.

The release of the other Released Parties. On the other hand, the release given to the other Released Parties (per the definition found at page 14) who vote to accept the plan does not get undone upon a conversion to chapter 7. Again, the UST understands that the release is a compromise of controversy, with the consideration for the release being the subordination of the Released Parties' claims. But if the case converts to chapter 7, do these Released Parties get the benefit of the release, but their claims are no longer subordinated? If that is the case, the UST objects on the grounds that the release violates applicable Ninth Circuit law. *See infra, p. 6.*

Further, the Released Parties include "any and all entities wholly-owned or partially owned by Leckrone, the Daniel Leckrone Survivor's Trust U/D/T dated February 4, 2006, including HSM, MCM, VNS Portfolio LLC, and any predecessor or successor thereto but excluding Patriot Scientific." *Joint Plan, p. 14*. This is vague, and should be clarified. Like Exhibit E, it could include any company in which Mr. Leckrone owns a single share.

Exhibit F of the Joint Disclosure Statement indicates that Mr. Leckrone, his family members, his business associates and the entities that he owns (including Alliacense) are getting released and exonerated under the Joint Plan, unless the case converts to Chapter 7, in which case the releases are deemed void; Exhibit F also refers to a tolling of the statute of limitations. This is not what the Joint Plan says, however. There is no mention in Exhibit F about the release only applying to those insiders who vote affirmatively for the plan, nor is there a mention that the release is intended as a compromise of controversy and that the released persons have agreed to subordinate their claims. The description of the release contained in Exhibit F is not the same as the release provisions contained in the Joint Plan. Indeed, the only person whose release is voided as a result of a conversion is Mr. Leckrone – not anyone else.

Releases of third parties pursuant to a plan violate longstanding Ninth Circuit precedent against third party releases. *See, e.g., In re Lowenschuss*, 67 F.3d 1394, 1401-02 (9th Cir. 1995) ("this court has repeatedly held, without exception, that Section 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."); *In re American Hardwoods, Inc*., 885 F.2d 621, 626 (9th Cir. 1989); *Underhill v. Royal*, 769 F2d. 1426, 1432 (9th Cir. 1985). Unless the Court finds that the releases are reasonable, are a compromise of claims, and are given in consideration for an absolute and permanent subordination of claims, the Court should not grant these releases, and they should be deleted from the Joint Plan.

B. <u>The exculpation provisions are overbroad and exceed the scope of section 1125(e)</u>.

The exculpation clause at pages 54-55 states that the exculpation is provided to "the fullest extent permitted under applicable law" – this is a change from a prior version (the joint plan filed 10/29/14), which confined the exculpation to the fullest extent provided in Bankruptcy Code section 1125(e). *See Docket #586*. The UST asserts that the scope of the exculpation should be confined to that permitted by section 1125(e) – to wit, persons that solicit acceptances of a plan in good faith and in compliance with the Bankruptcy Code shall not be liable on account of such solicitation for violating applicable laws governing solicitation of acceptance of plans. But the exculpation section in the Joint Plan goes far beyond that. The affected parties are exculpated for "any act or omission in connection with, relating to, or arising out of, the Bankruptcy Case, the negotiation and pursuit of confirmation of the Plan, the confirmation of the Plan, the consummation of the Plan, or the administration of the Plan . . ." – this would include future acts of these persons. Also, although there is a carve-out for acts or omissions constituting willful misconduct, gross negligence, fraud or bad faith, the exculpated persons are not going to be held liable for their own negligence. This is wrong. The exculpation provision should be limited to those matters covered by section 1125(e) and any extraneous language should be deleted.

C. <u>The Debtor is delinquent in filing its MORs</u>.

The last monthly operating report filed by the Debtor is the October 2014 MOR. At this time, both the November and December 2014 MORs are delinquent. Since the Debtor has not complied with its obligation to timely file MORs (per B.L.R. 2015-2), the Court should not confirm the Joint Plan.

CONCLUSION

For the foregoing reasons, the UST objects to confirmation of the Joint Plan.

Dated: San Jose, California
February 4, 2015

Respectfully submitted,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

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In re: Technology Properties Limited LLC
Case no: 13-51589 SLJ

CERTIFICATE OF SERVICE VIA 1st CLASS MAIL, ELECTRONIC TRANSMISSION OR ECF NOTIFICATION

I, the undersigned, state that I am employed in the City of San Jose, County of Santa Clara, State of California, in the Office of the United States Trustee, at whose direction the service was made; that I am over the age of eighteen years and not a party to the within action; that my business address is 280 South First Street, Suite 268, San Jose, California 95113, that on the date set out below, I served a copy of the attached:

U.S. TRUSTEE'S OBJECTIONS TO JOINT PLAN REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (1/8/15)

Upon each party listed below, by placing such a copy, enclosed in a sealed envelope with prepaid postage thereon, in the United States mail at San Jose, California to:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Jose, California, on February 4, 2015.

By: */s/ Patricia M. Vargas*
Patricia M. Vargas
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