

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Jointly Administered under
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court File Nos.:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One, LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**OBJECTION TO CLAIMS OF RITCHIE CAPITAL STRUCTURE
ARBITRAGE TRADINGS, LTD., YORKVILLE INVESTMENT I, LLC,
RHONE HOLDINGS II, LTD., AND RITCHIE SPECIAL CREDIT
INVESTMENTS, LTD., FOR VOTING PURPOSES UNDER
11 U.S.C. § 1104(b)(1) AND § 702(a)**

The Official Committee of Unsecured Creditors of Petters Company, Inc. *et al.*, Case No. 08-45257 (GFK) (“Committee”), hereby files this Objection to the Claims of Ritchie Capital Structure Arbitrage Tradings, Ltd., Yorkville Investment I, LLC, Rhone Holdings II, Ltd., and Ritchie Special Credit Investments, Ltd. (collectively, “Ritchie”), For Voting Purposes Under 11 U.S.C. §§ 1104(b)(1) and 702(a).¹

¹ The Committee files this objection to Ritchie’s claims for the purpose of determining Ritchie’s eligibility to vote at the meeting of creditors scheduled for April 22, 2009, for the purpose of electing

PROCEDURAL HISTORY

1. On December 10, 2008, Petters Group Worldwide, LLC (“PGW”) filed its bankruptcy schedules in these cases. On Schedule D, PGW listed Ritchie Capital Structure Arbitrage Tradings, Ltd., Yorkville Investment I, LLC, Rhone Holdings II, Ltd., and Ritchie Special Credit Investments, Ltd. (collectively, “Ritchie”) as holding a disputed secured claim in the total amount of \$225,256,470.07. With respect to Ritchie’s claims, PGW’s Schedule D states: “Grant of security interest in trademarks of Polaroid on 9/19/08 and Financing Statement filed. Original principal was wired directly to bank account of Petters Company, Inc., not to the Debtor.”

2. On February 10, 2009, PGW’s subsidiary, Polaroid Corporation (“Polaroid”), filed its bankruptcy schedules. Schedule D of Polaroid’s bankruptcy schedules lists various inter-company secured claims against Polaroid held by Petters Company, Inc. (“PCI”), Petters Capital, LLC, and PAC Funding, LLC in the total amount of \$62,842,082. Schedule F further states that Polaroid owes Petters Capital, LLC—a subsidiary of PGW—\$164,474,668 as a general unsecured claim.

3. Polaroid’s Schedule D lists Ritchie as holding a disputed secured claim dated September 19, 2008, in an “unknown” amount. Schedule D says “Debtor received no funds from Ritchie Capital Management. Nonetheless, Debtor purportedly granted [a] Security Interest in favor of Ritchie Capital Management, LLC in certain trademarks.”

4. Also on February 10, 2009, an affiliate of Polaroid, Polaroid Consumer Electronics, LLC (“PCE”), filed bankruptcy schedules. PCE’s Schedule F lists \$43.6 million in

a Chapter 11 trustee for PGW. The Committee reserves the right to file additional objections to Ritchie’s claims under 11 U.S.C. § 502 at a later date if appropriate.

unsecured non-priority claims against PCE. Of these, \$11.2 million represents an inter-company claim by PCI under a demand note dated March 31, 2005.

5. On February 12, 2009, Polaroid commenced an adversary proceeding against Ritchie, Adv. P. No. 09-04032. In the adversary proceeding, among other things, Polaroid disputed the validity of Ritchie's alleged secured claims.

6. On February 18, 2009, Ritchie filed proof of claim No. 31-1 against Polaroid in the amount of \$250,000,000, asserting that its claim is secured by "substantially all of [Polaroid's] assets, including trademarks." On that same day, Ritchie filed proof of claim No. 6-1 against PCE in the amount of \$250,000,000, asserting that its claim is secured by "substantially all of [PCE's] assets, including trademarks."

7. On April 17, 2009, the Court approved the sale of substantially all of the assets of Polaroid and PCE to PLR Acquisition, LLC. Based on the substantial claims that PGW and PCI have against Polaroid and PCE, the Committee believes that the PGW and PCI estates represent in excess of 50% of the total unsecured claims against Polaroid and PCE.

8. On April 21, 2009, Rhone Holdings II, Ltd., Ritchie Special Credit Investments, Ltd., Ritchie Capital Structure Arbitrage Tradings, Ltd., and Yorkville Investment I, LLC, filed Proof of Claim Nos. 31-1, 32-1, 33-1, and 34-1, respectively, in the PGW bankruptcy case, in the total aggregate amount of \$209,400,314.20.

9. On April 22, 2009, at 10 a.m., the United States Trustee will convene a meeting of unsecured creditors for purposes of electing a Chapter 11 trustee for PGW under 11 U.S.C. § 1104(b). To the extent that Ritchie seeks to vote in that election, the Committee objects to Ritchie's claims for voting purposes under 11 U.S.C. § 702(a).

ARGUMENT

I. A CREDITOR HOLDING A MATERIALLY ADVERSE INTEREST TO THE INTERESTS OF UNSECURED CREDITORS MAY NOT VOTE IN A TRUSTEE ELECTION

Section 1104(b)(1) of the Bankruptcy Code provides:

[O]n the request of a party in interest made no later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. **The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.**

11 U.S.C. § 1104(b)(1) (emphasis added).

Section 702(a) provides:

- (a) A creditor may vote for a candidate for trustee **only** if such creditor—
 - (1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;
 - (2) **does not have an interest materially adverse**, other than an equity interest that is not substantial in relation to such creditor’s interest as a creditor, **to the interest of creditors** entitled to such a distribution; and
 - (3) is not an insider.

Id. § 702(a) (emphasis added).

To be eligible to vote in an election, a creditor must hold an allowable, general unsecured claim; secured creditors and priority creditors cannot vote. *In re Michelex Ltd.*, 195 B.R. 993, 1007 (Bankr. W.D. Mich. 1996). Similarly, holders of disputed claims also cannot vote. *In re USA Capital, LLC*, 251 B.R. 883 (Bankr. D. Colo. 2000). Finally, § 702(a)(2) disqualifies a creditor from voting at a trustee election if the creditor has an “interest materially adverse” to the

interests of creditors. 11 U.S.C. § 702(a)(2). See *In re Amherst Technologies, LLC*, 335 B.R. 502 (Bankr. D. N.H. 2006); *In re Williams*, 277 B.R. 114 (Bankr. C.D. Cal. 2002).

Neither the Bankruptcy Code nor the Bankruptcy Rules provide a definition of the phrase “interest materially adverse” used in § 702(a)(2). The legislative history, however, indicates that a court is required to balance the competing factors in any specific instance to make its determination. *In re Michelex Ltd.*, 195 B.R. 993, 1008-09 (Bankr. W.D. Mich. 1996); *In re New York Produce Am. & Korean Auction Corp.*, 106 B.R. 42, 47 (Bankr. S.D.N.Y. 1989); *In re NNLC Corp.*, 96 B.R. 7, 9-10 (Bankr. S.D.N.Y. 1989). Whether a creditor holds a “materially adverse” interest is determined on a case-by-case basis taking into consideration various factors, such as the nature, size, and degree of the adverse interest. 2 Nancy C. Dreher & Joan N. Feeney, *Bankruptcy Law Manual* § 10:11, at 10-27 to 10-28 (5th ed. 2008).

II. RITCHIE HOLDS A MATERIALLY ADVERSE INTEREST TO THE PGW AND PCI ESTATES BECAUSE OF ITS ALLEGED SECURED CLAIMS AGAINST POLAROID AND PCE

As described above, based on the substantial claims that PGW and PCI possess against Polaroid and PCE, the Committee believes that the PGW and PCI estates represent in excess of 50% of the total unsecured claims against Polaroid and PCE. Now that Polaroid’s and PCE’s assets have been sold, a primary goal of the PGW and PCI creditors is to share equally in the distribution of the Polaroid and PCE sale proceeds on a pro rata basis.

Ritchie, however, has filed secured proofs of claim against Polaroid and PCE in an amount in excess of \$250,000,000, asserting that its claims are secured by “substantially all of [Polaroid’s and PCE’s] assets, including trademarks.” This clearly puts Ritchie’s interests at odds with the interests of the PGW and PCI creditors who seek to share in Polaroid’s and PCE’s assets as much as possible. It is well established that a secured creditor is not allowed to vote in an election for a trustee because its interests are adverse to the interests of general unsecured

creditors. As described in *In re Jotan, Inc.*, 236 B.R. 79 (Bankr. M.D. Fla. 1999), the interest of a secured creditor is directly at odds with the interests of unsecured creditors, causing the secured creditor to be disqualified from voting under § 702(a):

The Court after looking at the totality of the circumstances and balancing various factors, such as the nature and size of [the secured creditor] Paribas' adverse interest, and the degree to which it is adverse, finds that Paribas has an interest materially adverse to the interests of other creditors. The evidence before the Court strongly suggests that Paribas is primarily concerned for their secured claims, a potential super-priority claim, and with protecting such claims with regards to all of the Debtor's assets. Paribas will receive all of the assets to which Paribas is secured, but only a fraction of assets to which Paribas is deemed unsecured. This inherently creates a conflict with general unsecured creditors. Paribas would rather be secured in all of the Debtor's assets . . . while general unsecured creditors would prefer Paribas be unsecured so unsecured creditors may receive some distribution.

Jotan, 236 B.R. at 84.

In this case, Ritchie's interests as a disputed secured creditor of Polaroid and PCE are directly contrary to the interests of PGW's and PCI's unsecured creditors. Based on this clear conflict of interest, Ritchie holds a materially adverse interest to the estate and should be disqualified from voting for a trustee under § 702(a)(2).

III. RITCHIE HOLDS A MATERIALLY ADVERSE INTEREST TO THE PGW ESTATE BECAUSE ITS CLAIM IS AVOIDABLE AS A FRAUDULENT TRANSFER

In addition to the above, where a creditor has received an avoidable transfer in a dollar amount which is more than minimal, the creditor holds an interest materially adverse to that of other creditors and is disqualified from voting. *See In re Amherst Technologies, LLC*, 335 B.R. 502 (Bankr. D. N.H. 2006); *In re Williams*, 277 B.R. 114, 118 (Bankr. C.D. Cal. 2002); *In re NNLC Corp.*, 96 B.R. 7 (Bankr. D. Conn. 1989); *In re Blesi*, 43 B.R. 45, 47 (Bankr. D. Minn. 1984). Under § 702(a)(2), a creditor who received an avoidable transfers from the bankruptcy

estate holds an interest adverse to the estate and cannot vote. The courts reason that, where a creditor has received an avoidable transfer, allowing the creditor to participate in electing a trustee who is responsible for investigating and litigating avoidance actions would constitute an impermissible conflict of interest:

There are strong policy reasons for careful enforcement of § 702(a)(2). The trustee is the representative of the estate and has the duty to make sure that all similarly situated creditors are treated alike. For that reason, the Bankruptcy Code arms the trustee with powers to set aside preferences and fraudulent transfers and to object to claims, among other responsibilities. . . . Because of this, the creditor who holds a potential preference [or other avoidable transfer] and is allowed to select the trustee has a strong self-interest in electing someone who will not challenge [its] claim. Similarly, any creditor with a disputed claim would love to select [its] future opponent. It is this conflict of interest which § 702(a)(2) seeks to prevent.

Williams, 277 B.R. at 118.

In this case, as evidenced by: (1) the Affidavit of Theodore F. Martens from PricewaterhouseCoopers, attached hereto as Exhibit 1, and (2) the Trustee's verified Response to Ritchie's Objection to the Appointment of Douglas A. Kelley as Trustee dated January 21, 2009 (Doc. No. 132), attached hereto as Exhibit 2 ("Trustee's Response"), it is apparent that Ritchie's claims against PGW are avoidable as fraudulent transfers. As discussed in the attached exhibits, Ritchie's claims against PGW are based on promissory notes for moneys purportedly loaned to PGW, as borrower, during the year prior to PGW's bankruptcy. The Trustee's forensic investigation, however, revealed that every dollar Ritchie advanced under its promissory notes was wired directly to PCI's bank account with M&I Bank, and not to PGW. *See* Martens Aff., ¶¶ 3-4; Trustee's Response, at 5-7. The Trustee's Response further includes an Exhibit D-1 that specifically details the timing and dollar amounts of each of Ritchie's wire transfers to PCI. Based on this evidence, it is apparent that, while PGW is the named borrower under Ritchie's

notes, Ritchie's advances were made to PCI, not PGW, and that PGW received no benefit from Ritchie's promissory notes. Accordingly, Ritchie's claims against PGW are textbook fraudulent transfers under § 548(a)(1) that are avoidable by the Trustee. In light of this fact, Ritchie is the obvious recipient of an avoidable fraudulent transfer under § 548(a)(1), and is not entitled to vote under § 702(a)(2).

CONCLUSION

As described above, Ritchie is a secured creditor and also a recipient of a fraudulent transfer, whose interests are directly contrary to the interests of the PGW and PCI unsecured creditors. In light of Ritchie's materially adverse interest to the estate, Ritchie is disqualified from voting in the upcoming trustee election and the Committee hereby objects to Ritchie's claims for voting purposes.

April 21, 2009

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