ENTERED

DEC 29 2008

K.R.W.

FILED

at ____ O'clock & ____ min

DEC 29 2008

United States Bankruptcy Court
Columbia, South Carolina

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 08-01499-JW
	Chapter 11
The Fripp Group, Inc.,	**JUDGMENT**
Debtor(s).	

Based on the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the Objection to Confirmation filed by Billy D. Peel and Samatha Peel is overruled. Confirmation of Debtor's chapter 11 plan, as amended, shall be addressed by separate order.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 29, 2008

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FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

The Fripp Group, Inc.,

Debtor(s).

C/A No. 08-01499-JW

Chapter 11

ORDER

This matter comes before the Court on confirmation of the chapter 11 plan filed by The Fripp Group, Inc. ("Debtor"). Creditors, Billy D. Peel and Samantha Peel (the "Peels"), filed an objection to confirmation. This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L), and (O). Pursuant to Fed. R. Civ. P. 52, which is made applicable to this proceeding by Fed. R. Bankr. P. 7052 and Fed. R. Bankr. P. 9014(c), the Court makes the following Findings of Fact and Conclusions of Law.[1]

FINDINGS OF FACT

1. Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on March 11, 2008.

2. Debtor is a South Carolina corporation that owns an 85% interest in Springtide Village at Fripp, LLC ("Springtide"). Debtor manages and operates Springtide and Fripp Island Broadcasting, LLC, an affiliate of Debtor.[2] Debtor's assets consist primarily of its ownership interests in Springtide.

3. On April 21, 2008, the Peels filed a proof of claim in Debtor's bankruptcy case, which asserts an unliquidated shareholder claim in the amount of $0 and attaches a

[1] To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such; and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

[2] Fripp Island Broadcasting, LLC was erroneously listed in Debtor's schedules as an asset owned by Debtor, but appears to be an affiliated company owned primarily by the principals of Debtor.

copy of an Amended Summons and Complaint for a shareholder action in which the Peels' seek, among other things, the dissolution of the corporate Debtor. The shareholder action, which lists Debtor as a defendant, was filed in the Court of Common Pleas for the State of South Carolina on August 3, 2005, Case Number 2005-CP-07-426 ("State Court Action"). The Peels are not listed as creditors in Debtor's bankruptcy schedules. However, Billy D. Peel is listed as an equity security holder.

4. On May 5, 2008, the Peels filed a Motion for Dismissal of Case for Cause Pursuant to 11 U.S.C. § 1112(b) or in the Alternative for Abstention or Suspension Pursuant to 11 U.S.C. § 305(a), or in the Alternative for Relief from Stay ("Peel Motions"). The Peels asserted that this case was filed in bad faith because it was filed for the purpose of avoiding an adverse judgment against the corporate Debtor in the State Court Action. The Peels sought dismissal of the case, abstention, or relief from stay so as to allow for the continuance and completion of the State Court Action. Debtor filed objections to the Peel Motions. The Court held a hearing on the Peel Motions on June 17, 2008, during which the parties announced they had reached a consensual resolution.

5. On June 25, 2008, the Court entered a Consent Order resolving the Peel Motions. Paragraph 4 of the Consent Order provides that:

> The Movants agree to withdraw all of the remedies and relief sought in [the Peel Motions] and to dismiss all counts of all complaints in which the defendant corporation is a party with prejudice, and agrees not to initiate future suits against the Debtor or any of the related corporate entities. The automatic stay is modified, insofar as such modification is necessary pursuant to this court's prior decision in In re Greenwood Supply Company, 295 B.R. 787 (Bankr. D.S.C. 2002), to allow suits by and between various individuals against each other to continue to their conclusion.

The Consent Order was signed by counsel for Debtor, counsel for the Peels, and counsel for Haynsworth Sinkler Boyd, which had also filed an objection to the Motions.

6. On September 8, 2008, Debtor filed a chapter 11 plan ("Plan") and disclosure statement. The Plan includes the Peels' claim in Class 6, which consists of claims characterized as disallowed litigation claims. This class is listed as an impaired class. The Plan provides that "[p]ursuant to the Consent Order, Billy D. Peel and Samantha S. Peel have withdrawn any and all claims against the Debtor corporation, with prejudice. As such, any and all claims of Billy D. Peel and Samantha S. Peel against the Debtor corporation shall be extinguished and disallowed." As an equity holder, Billy D. Peel is also included within Class 7 of the Plan, which is listed as an unimpaired class. The Plan proposes that the current equity holders retain their equity interests in the Debtor.

7. On October 20, 2008, the Peels filed an Objection to the disclosure statement, asserting that their claims should not be extinguished as the Debtor has proposed in the Plan. The Peels further disputed Debtor's assertions in the Plan and disclosure statement that an agreement existed between Debtor and Darby Bank in regard to the debt Darby Bank is owed by Springtide. The Disclosure Statement was subsequently amended by Debtor by Addendums filed on October 27, 2008 and October 29, 2008, which were intended to address the Peels' Objection.

8. On November 4, 2008, the Court entered an order approving the disclosure statement, fixing the last day for filing ballots and written objections to confirmation, and setting the hearing date for confirmation of the Plan.

9. On December 2, 2008, the Peels filed a timely objection to confirmation of the Plan, arguing, among other things, that confirmation of the Plan should be denied because the Plan lacks feasibility and improperly seeks to disallow their claims and to classify their claims as disallowed claims.

10. On December 8, 2008, Debtor filed an amendment to the Plan, which provides further details of Springtide's treatment of the Darby Bank debt and reflects Springtide's consent to the Plan and Darby Bank's consent to the proposed sale.

CONCLUSIONS OF LAW

Debtor argues that the Peels lack standing to object to confirmation based on the language of the June 25, 2008 Consent Order and their status as unimpaired equity shareholders pursuant to 11 U.S.C. § 1126(f). Debtor asserts that, by way of the Consent Order, the Peels have withdrawn any and all claims against Debtor with prejudice and have agreed not to initiate further claims against Debtor or any of the related corporate entities. The Peels argue that they agreed simply not to proceed in State court with State court litigation against Debtor. The Peels contend that they are allowed to assert any and all claims that they have against the Debtor in the Bankruptcy Court.

Since the Consent Order was negotiated by the parties, it has many of the attributes of an ordinary contract and should be construed basically as a contract. In re Blanton, 78 B.R. 442 (D.S.C. 1987). "Generally, if the terms of a contract are clear and unambiguous, [a court] must enforce the contract according to its terms regardless of its wisdom or folly." Georgetown Steel Co., LLC v. Capital City Ins. Co., Inc., 318 B.R. 313, 321 (Bankr. D.S.C. 2004) (citing Southern Atlantic Fin. Serv., Inc. v. Middleton, 356 S.C. 444, 448, 590 S.E.2d 27, 29 (2003)). However, ambiguous language should be

construed liberally and interpreted strongly in favor of the non-drafting party. Southern Atlantic Fin. Serv., Inc. v. Middleton, 356 S.C. at 448, 590 S.E.2d at 29. "A contract is considered 'ambiguous' only when it may fairly and reasonably understood in more ways than one." Georgetown Steel Co., LLC v. Capital City Ins. Co., Inc., 318 B.R. at 321. When determining whether a contract is ambiguous, all of its provisions should be considered and ambiguities may not be created by pointing out a single sentence or clause. Id.

The Court has reviewed the language of the Consent Order and finds that its terms are not ambiguous. The Consent Order plainly provides that the Peels agreed to withdraw all of the remedies and relief sought in their Motion for Dismissal of Case for Cause Pursuant to 11 U.S.C. § 1112(b) or in the Alternative for Abstention or Suspension Pursuant to 11 U.S.C. § 305(a), or in the Alternative for Relief from Stay and to dismiss all counts of all complaints in which the Debtor is a party with prejudice. Furthermore, the Peels' agreed not to initiate future suits against Debtor or any of the related corporate entities. Based on the unambiguous language of the Consent Order, the Peels' agreement to dismiss with prejudice *all counts of all complaints in which Debtor is a party* would appear to include the complaint filed in the State Court Action on which their proof of claim is based. Since the State Court Action apparently serves as the sole basis for the Peels' proof of claim in this Bankruptcy Case and the Peels subsequently agreed to dismiss all counts of this complaint that are asserted against Debtor with prejudice, it appears that, as a practical matter, this claim has been withdrawn, waived, or released. Therefore, it appears that the Peels lack standing to object to the Plan based on this claim.

No other proof of claim has been filed by the Peels since the entry of the Consent Order and the bar date for filing claims has passed.

The Peels also argue that they have standing to object based on their status as equity holders.[3] The Plan proposes that equity holders retain their equity interest in Debtor without alteration; therefore, equity holders appear to be an unimpaired class. The Peels do not appear to be contesting the equity holders' classification as unimpaired. Since Billy D. Peel's claim as an equity holder is unimpaired, Debtor argues that 11 U.S.C. § 1126(f) deems him to have accepted the Plan. Section 1126(f) provides:

> Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

The Court finds that 11 U.S.C. § 1126(f) would permit confirmation of the plan despite the Peels' objection. See In re Combustion Engineering, 391 F.3d 190, 216 n. 24 (3rd. Cir. 2004)("Only a class of creditors that are 'impaired' by the plan are entitled to vote.") This is further supported by 11 U.S.C. § 1129(a)(8), which does not require unimpaired classes to accept the plan in order for confirmation of such plan to take place.

Even if the Peels' objection was entitled to consideration, the Court finds that their objection should be overruled. The Peels first assert that confirmation should be denied because Debtor seeks confirmation based on a material, false statement, in that the Debtor has asserted, and after challenge reasserted, the existence of a necessary agreement with Darby Bank, when in fact there was not such an agreement. At the hearing, Debtor presented testimony that there was a longstanding oral agreement with

[3] It appears that only Billy D. Peel is an equity holder in Debtor. Shannon Peel does not appear to have an equity interest in Debtor.

Darby Bank and offered documentary evidence indicating that an agreement with Darby Bank existed at least as of December 5, 2008. While the precise timing of the agreement is not entirely clear, this is not critical to the Court's determination. The existence of this agreement also negates the Peel's second argument that without an agreement with Darby Bank, the Plan is not feasible.

The Peels further assert that the Plan is not feasible and is proposed for an improper purpose on the grounds that Debtor has no income and conducts no business, but rather operates through a non-debtor subsidiary. This argument is not persuasive. Debtor has a controlling interest in Springtide, which owns the property that is proposed to be sold under the terms of the Plan.

Finally, the Peels argue that the Plan improperly seeks to disallow their claims and to classify their claims as disallowed claims, when there has been no objection to such claims pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007. For the reasons set forth above, the Court finds that, as a result of the Consent Order, the Peels' claim was effectively withdrawn, waived, or released and therefore this argument is also overruled.

Based on the foregoing, the Objection to Confirmation filed by Billy D. Peel and Samatha Peel is overruled. Confirmation of Debtor's chapter 11 plan, as amended, shall be addressed by separate order.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 29, 2008