

UNITED STATES DISTRICT BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

www.flsb.uscourts.gov

In re:
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *et al.*,

Plaintiffs,

v.

TENNENBAUM MULTI-STRATEGY MASTER
FUND, *et al.*,

Defendants.

Chapter 11 cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 10-02242

**AGREED MOTION FOR ORDER ADOPTING STIPULATION
BETWEEN THE COMMITTEE AND FALL CREEK CLO LTD.**

The Official Committee of Unsecured Creditors of TOUSA, Inc. moves for an Order adopting the Stipulation between the Committee and defendant Fall Creek CLO Ltd. (“Fall Creek”), and states:

1. In July 2008, the Committee filed a Complaint against a number of financial entities alleging that they engaged in a fraudulent conveyance in connection with a July 31, 2007 transaction involving the debtors. (See Adv. Pro. No. 08-1435-JKO)
2. Fall Creek, which asserts that it was not properly served with the Complaint, did not appear in this adversary proceeding.
3. Fall Creek is a “Transeastern Lender” as defined in the Adversary Complaint.

4. Following a trial, this Court entered Findings of Fact and Conclusions of Law (D.E. 658), Final Judgment (DE 659), Amended Findings of Fact and Conclusions of Law (D.E. 722), Amended Final Judgment (DE 721), and Order on Motions for Stay Pending Appeal (the “Bond Order”) (DE 723), and the District Court’s Order Granting in Part Motions for Stay & Closing Cases (the “Stay Order”) in Case No. 09-23425 D.E. 20 (the foregoing Findings and Conclusions, Judgments, and Orders are hereafter referred to collectively as the “Prior Orders and Judgments”).

5. In January 2010, the Committee filed the instant action against Fall Creek.

6. The Committee and Fall Creek have now entered into an agreement set forth in the Stipulation between the Committee and Fall Creek CLO Ltd., a copy of which is Exhibit 1 hereto.

7. In brief summary, the Stipulation provides that

- Fall Creek is bound by and is deemed a party to the Prior Orders and Judgments, and shall be bound by and deemed a party to the outcome of any appeal from the Prior Orders and Judgments as if it had appeared in the adversary proceeding and in any such appeal.
- The Committee shall not seek to execute on the Final Judgment as amended against Fall Creek unless Fall Creek fails to file a supersedeas bond that complies with the Bond Order and the Stay Order by 14 days of the adoption of the Stipulation by the Court.
- The Committee shall file this Agreed Motion asking the Court to adopt the Stipulation as its Order.

WHEREFORE, the Committee requests that the Court adopt, as its Order, the Stipulation between the Committee and Defendant Fall Creek CLO Ltd.,.

Respectfully submitted,

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

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EXHIBIT 1

UNITED STATES DISTRICT BANKRUPTCY COURT
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TOUSA, INC., *et al.*,

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TENNENBAUM MULTI-STRATEGY MASTER
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Defendants.

Chapter 11 cases

Case No. 08-10928-JKO

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Adv. Pro. No. 10-02242

**STIPULATION BETWEEN THE COMMITTEE AND
DEFENDANT FALL CREEK CLO LTD.**

The Official Committee of Unsecured Creditors of TOUSA, Inc. and Fall Creek CLO Ltd., one of the Transeastern Lenders,¹ stipulate as follows.

WHEREAS on July 14, 2008, the Committee filed a Complaint (DE 1), which was amended three times before trial, alleging a fraudulent conveyance; and

WHEREAS Fall Creek asserts that it was not properly served with the Complaint; and

WHEREAS Fall Creek did not appear in the adversary proceeding; and

WHEREAS on October 13, 2009, following the trial of the adversary proceeding, the Court entered Findings of Fact and Conclusions of Law (D.E. 658) and Final Judgment (DE

¹ As defined in the Adversary Complaint.

659), and on October 30, 2009, the Court entered Amended Findings of Fact and Conclusions of Law (D.E. 722) and Amended Final Judgment (DE 721); and

WHEREAS on October 30, 2009, the Bankruptcy Court entered an Order on Motions for Stay Pending Appeal (the "Bond Order") (DE 723); and

WHEREAS on November 24, 2009, in Case No. 09-23425 D.E. 20, the United States District Court, Southern District of Florida entered an Order Granting in Part Motions for Stay & Closing Cases (the "Stay Order"), which modified, in part, the Bond Order; and

WHEREAS in January 2010, the Committee filed the instant action against Fall Creek.

IT IS STIPULATED AND AGREED:

1. Other than as expressly set forth in Paragraph 2 below, Fall Creek is bound by and shall be deemed to be a party to the Findings of Fact and Conclusions of Law, the Final Judgment, the Amended Findings of Fact and Conclusions of Law, the Amended Final Judgment, the Bond Order, and the Stay Order, and shall be bound by, deemed to be a party to, and enjoy the benefit or suffer the detriment of the outcome of any appeal from the above orders and judgments to the same extent as if it had appeared and defended the adversary proceeding and participated in such appeal. Under these Orders, Fall Creek shall disgorge \$1,007,244.00 , plus prejudgment interest from July 31, 2007 through the date of this Order into an escrow account established by the Debtors.

2. To obtain a stay of execution and enforcement proceedings pending appeal, Fall Creek must post a supersedeas bond that complies with the requirements of the Bond Order as modified by the Stay Order, except that it shall not be required to post such bond by December 22, 2009 but rather by the date set in accordance with paragraph 3 below. The bond shall be in the amount of \$1,327,619.80. The Committee shall not execute on or enforce the Final

Judgment as amended against Fall Creek unless Fall Creek fails to file a supersedeas bond that complies with the Bond Order and the Stay Order by 14 days from the adoption of this Stipulation by the Court.

3. Promptly after this Stipulation is signed by the parties, the Committee shall file and serve an agreed motion substantially in the form of Exhibit A asking the Bankruptcy Court to adopt this Stipulation as its Order.

[Signatures on next page.]

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., ET AL.**

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