

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

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In re:

TOUSA, INC., *et al.*,

Debtors.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

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

Plaintiffs,

-against-

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

Defendants.

Adv. Pro. No. 10-2242-JKO

**AGREED MOTION FOR ORDER ADOPTING STIPULATION BETWEEN
THE COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., ET AL.
AND GOLDMAN SACHS LENDING PARTNERS LLC**

This Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the "Committee") moves for an Order adopting the Stipulation between the Committee and defendant Goldman Sachs Lending Partners LLC ("GSLP"), and states:

1. On July 14, 2008, the Committee filed a complaint (the "Complaint") instituting an adversary proceeding (Adv. Pro. No. 08-1435-JKO, the "Adversary Proceeding") against a number of financial entities alleging that they engaged in a fraudulent conveyance in connection with July 31, 2007 transactions involving the debtors, including a first lien term loan (the "First Lien Term Loan").

2. GSLP was a lender under the First Lien Term Loan.
3. The Committee did not name GSLP in the Adversary Proceeding, and GSLP did not appear as a party or otherwise participate in the Adversary Proceeding.
4. Following the trial of the Adversary Proceeding, the Court entered Findings of Fact and Conclusions of Law (D.E. #658), Final Judgment (D.E. #659), Amended Findings of Fact and Conclusions of Law (D.E. #722), Amended Final Judgment (D.E. #721), Order on Motions for Stay Pending Appeal (D.E. #723), and Order Granting Motion to Modify Order for Stay Pending Appeal (D.E. #837), and the United States District Court for the Southern District of Florida entered the Order Granting in Part Motions for Stay 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. The first lien lender defendants in the Adversary Proceeding filed Notices of Appeal of the Findings and Conclusions and Judgments set forth above, and such appeal is currently before the United States District Court for the Southern District of Florida, Case No. 10-60019-CIV-JORDAN (the "First Lien Appeal").
6. In January 2010, the Committee filed the instant action against GSLP.
7. The Committee and GSLP have now entered into an agreement set forth in the Stipulation between the Committee and GSLP, a copy of which is Exhibit 1 hereto.
8. In summary, the Stipulation provides that
 - GSLP is bound by and shall be deemed a party to the Prior Orders and Judgments.
 - The Committee and GSLP shall each be bound by the outcome of the First Lien Appeal, including with respect to the judgment entered

herein, to the same extent as if GSLP had appeared and defended the Adversary Proceeding and participated in the First Lien Appeal.

- The Court shall enter judgment in the current proceeding against GSLP in the amount of \$130,396 (the "Judgment").
- Provided GSLP posts a supersedeas bond or cash in the amount of \$143,435 within 30 days of the Court's entry of an order adopting this Stipulation, the Committee shall not seek to enforce or execute on the Judgment until a Final Order (as defined in the attached Stipulation) is entered in the Adversary Proceeding.
- Following a Final Order in the Adversary Proceeding, the supersedeas bond or cash posted by GSLP shall be distributed in accordance with such Final Order.
- 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 GSLP.

DATED: June 30, 2010.

Respectfully submitted,

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**

By: /s/ Patricia A. Redmond
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* 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).

-and-

**ROBBINS, RUSSELL, ENGLERT, ORSECK,
UNTEREINER & SAUBER LLP**

We hereby certify that the undersigned attorneys are appearing *pro hac vice* in this matter pursuant to court order dated July 10, 2008 [D.E. 1360, 1362, 1363 in Ch. 11 No. 08-10928]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 30, 2010, I caused a true and correct copy of the foregoing Agreed Motion For Order Adopting Stipulation to be served by notice of electronic filing or by e-mail on the parties named on the attached service list.

/s/ Patricia A. Redmond

Patricia A. Redmond

UNITED STATES BANKRUPTCY COURT
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In re:

TOUSA, INC., *et al.*,

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

Plaintiffs,

-against-

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

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO
Jointly Administered

Adv. Pro. No. 10-2242-JKO

STIPULATION

This Stipulation is made between Goldman Sachs Lending Partners LLC ("GSLP") and The Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the "Committee") (collectively, the "Parties").

WHEREAS, GSLP was a lender under the First Lien Term Loan; and

WHEREAS, the Committee instituted the adversary proceeding, *Official Committee of Unsecured Creditors of TOUSA, Inc. v. Citicorp North America, Inc.*, Adv. Pro. No. 08-01435-JKO, by Adversary Complaint filed on July 14, 2008 (D.E. #1) (the "Adversary Proceeding"); and¹

¹ Unless otherwise noted, all Docket Entries refer to the docket for the Adversary Proceeding, and all capitalized terms have the same meanings as used in the Amended Findings and Judgment.

WHEREAS, the Committee did not name GSLP in the Adversary Proceeding, and GSLP did not appear as a party or otherwise participate in the Adversary Proceeding, and

WHEREAS, following the trial of the Adversary Proceeding, the Court entered Findings of Fact and Conclusions of Law (D.E. #658) and Final Judgment (D.E. #659) on October 13, 2009 (collectively, the “Original Findings and Judgment”), and entered Amended Findings of Fact and Conclusions of Law (D.E. #722) and Amended Final Judgment (D.E. #721) on October 30, 2009 (collectively, the “Amended Findings and Judgment”); and

WHEREAS, Citicorp North America, Inc., as administrative agent for the First Lien Term Loan, and the First Lien Term Loan lender defendants appearing in the adversary proceeding at the time of the Original Findings and Judgment (collectively, the “Appearing First Lien Defendants”) filed a timely Notice of Appeal of the Original Findings and Judgment on October 20, 2009 (D.E. #668) and of the Amended Findings and Judgment on November 9, 2009 (D.E. #748) (collectively, the “Appearing First Lien Defendants’ Appeals”); and

WHEREAS, following the Appearing First Lien Defendants’ Notices of Appeal, the Appearing First Lien Defendants obtained an Order on Motions for Stay Pending Appeal from the Court on October 30, 2009 (the “Bond Order) (D.E. #723); and

WHEREAS, the Bond Order was modified by the Order Granting in Part Motions for Stay & Closing Cases entered by the United States District Court for the Southern District of Florida on November 24, 2009, Case No. 09-23425 D.E. #20, and the Order Granting Motion to Modify Order for Stay Pending Appeal entered by the Bankruptcy Court on December 30, 2009 (D.E. #837) (collectively, the “Stay Orders”); and

WHEREAS, the Stay Orders provided the Appearing First Lien Lenders with a stay of enforcement of the monetary portion of the Amended Final Judgment conditioned upon the posting of bonds or cash in the amount of 110% of the interest, principal and/or adequate protection payments made to the Appearing First Lien Defendants under the First Lien Term Loan, as set forth in the Original Findings and Judgment and Amended Findings and Judgment; and

WHEREAS, the Committee has commenced the current adversary proceeding against GSLP (the “Subsequent Adversary Proceeding”) asserting the claims and causes of action asserted in the Adversary Proceeding; and

WHEREAS, GSLP has appeared in the Subsequent Adversary Proceeding;

IT IS HEREBY STIPULATED AND AGREED:

1. The aforementioned “Whereas” recitals are incorporated by reference herein.
2. Other than as expressly set forth in paragraph 3 below, GSLP 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 as if it had been a party to all prior proceedings herein. GSLP and the Committee shall each 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, including with respect to the judgment described in paragraph 5 below, to the same extent as if GSLP had appeared and defended the Adversary Proceeding and participated in such appeal, and the outcome of such appeal shall likewise be binding as to the Committee in respect of GSLP.
3. To obtain a stay of execution and enforcement proceedings pending appeal, GSLP must post a supersedeas bond or cash 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 or cash by December 22, 2009 but rather by the date set in accordance with paragraph 4 below. GSLP’s bond or cash shall be set at the sum of \$143,435. The Committee shall not execute on or enforce the Amended Final Judgment or the judgment in the Subsequent Adversary Proceeding unless GSLP fails to file a supersedeas bond or cash that complies with the Bond Order and the Stay Order by the date in accordance with paragraph 4 below.
4. Promptly after this Stipulation is signed by the parties, the Committee shall file and serve an agreed motion in a form jointly approved by the Parties asking the Bankruptcy Court to adopt this Stipulation as its Order. GSLP shall post its supersedeas bond or cash within

30 days of entry by the Court of the Order adopting this Stipulation, in order to obtain a stay of execution.

5. Upon the filing of the parties' agreed motion to adopt this Stipulation, the Court shall enter judgment against GSLP in the Subsequent Adversary Proceeding in the amount of \$130,396, subject to the conditions set forth in paragraph 2 above. Subject to GSLP's filing of a supersedeas bond or cash in accordance with paragraph 4 above, a stay of execution and enforcement proceedings regarding the judgment shall be in effect and shall continue until 20 days after the Amended Judgment becomes a Final Order² (the "Stay of Execution"). The Committee shall not execute or enforce the judgment in the Subsequent Adversary Proceeding during the Stay of Execution.

6. Within 20 days of the Amended Final Judgment becoming a Final Order, the parties will confer in good faith to jointly submit a proposed order to the Court regarding the disposition of the security referenced in paragraph 3 above in accordance with the Final Order. In the event the parties are unable to agree on the disposition of security required by the Final Order, each party, within 45 days of the Final Order, will submit papers requesting that the Court determine the disposition of the security.

7. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, employees, heirs, successors, assigns, administrators, receivers and

² As used in this Stipulation, the term "Final Order" shall mean an order entered by the United States Bankruptcy Court for the Southern District of Florida, the United States District Court for the Southern District of Florida, the United States Court of Appeals for the Eleventh Circuit or any other court of competent jurisdiction as to which (a) the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending; or (b) in the event that an appeal, writ of *certiorari*, reargument, or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or *certiorari* has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for *certiorari* or move for reargument or rehearing shall have expired.

legal representatives, whether a signatory hereto or not, including, but not limited to a Chapter 11 or Chapter 7 trustee.

8. Nothing herein shall be deemed or construed as an admission of liability by any Party to this Stipulation.

9. This Stipulation contains the entire agreement between the Parties and no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the Parties or their counsel that are not included herein shall be of any force or effect.

10. Each party signing this Stipulation as an agent or representative of any Party hereby covenants and warrants to the other Parties that he or she is fully authorized to sign this Stipulation on behalf of the Party he or she represents and is fully authorized to bind the party to all of the terms of this Stipulation.

11. This Stipulation may be executed in multiple counterparts and a facsimile or PDF copy of a signature on this Stipulation shall be acceptable as an original.

12. To the fullest extent permitted by applicable law, each of the parties hereto hereby irrevocably and expressly waives all right to a trial by jury in any action, proceeding or counter-claim (whether based upon contract, tort or otherwise) arising out of or relating to this Agreement.

[CONTINUED NEXT PAGE]

Stipulated and Agreed To:

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

STEARNS WEAVER MILLER WESSLER,
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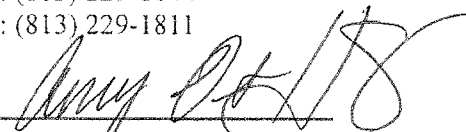
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PROPOSED ORDER

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

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. 10-2242-JKO

**ORDER GRANTING AGREED MOTION TO ADOPT STIPULATION
BETWEEN THE COMMITTEE AND GOLDMAN SACHS LENDING PARTNERS, LLC
AND DIRECTING THE ENTRY OF FINAL JUDGMENT**

THIS MATTER came before the Court upon the Agreed Motion by the Official Committee of Unsecured Creditors of TOUSA, Inc., *et. al.* (“Committee”) and Goldman Sachs Lending Partners, LLC (“GSLP”) for an Order Adopting the Stipulation between The Committee and GSLP (DE ___). The Court has reviewed the Motion and the Stipulation, and is fully advised in the premises. Good cause appearing, it is

ORDERED AND ADJUDGED:

1. The Agreed Motion is **GRANTED**.
2. The Stipulation between the Committee and GSLP (DE 28) is approved.
3. As of the date of this Order, GSLP is bound by and shall be deemed 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 Order¹ as if it had been a party to all prior proceedings herein (the “Subsequent Adversary Proceeding”) and in Adversary Proceeding No. 08-01435-JKO (the “Adversary Proceeding”).
4. The Committee and GSLP are each bound by and deemed to be parties to, and enjoy the benefit or suffer the detriment of the outcome of, the appeal by the first lien lender defendants from the above orders and judgments (the “First Lien Appeal”), including with respect to the final judgment to be entered in this Subsequent Adversary Proceeding, to the same extent as if GSLP had appeared in and defended the Adversary Proceeding and participated in the First Lien Appeal.
5. The Clerk is directed to enter Final Judgment against GSLP in this Subsequent Adversary Proceeding in the amount of \$130,396.

¹ Unless noted otherwise, Capitalized Terms have the same meaning as in the Amended Final Judgment.

6. To obtain a stay of execution and enforcement proceedings pending appeal, GSLP must post a supersedeas bond or cash that complies with the requirements of the Bond Order as modified by the Stay Order, in the amount of \$143,435, within 30 days of entry of this Order. If GSLP files such a supersedeas bond or cash, execution and enforcement proceedings regarding the Final Judgment against GSLP IN THIS Subsequent Adversary Proceeding shall be stayed until a Final Order is entered in the Adversary Proceeding.

7. The supersedeas bond or cash posted by GSLP shall be distributed in accordance with the Final Order in the Adversary Proceeding.

IT IS SO ORDERED.

###

Submitted by:

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(Attorney Redmond is directed to serve a conformed copy of this order upon all interested parties and to file a certificate of service.)