

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
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In re:	)	Chapter 11 Cases
	)	Case No. 08-10928 (JKO)
TOUSA, Inc., <u>et al.</u> ,	)	Jointly Administered
	)	
Debtors.	)	
_____	)	

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF TOUSA, INC., *ET AL.* FOR MODIFICATION OF THE CLAIMS  
OBJECTION PROCEDURE**

The Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc., et al. (collectively, the “Debtors”) hereby submits this motion (the “Motion”) for entry of an order modifying the claims objections procedure to allow the Committee to file a consolidated objection to thousands of claims filed in these bankruptcy cases arising from the Court’s resolution of the adversary proceeding challenging a series of transactions executed on or about July 31, 2007 as fraudulent conveyances (Adv. Pro. No. 08-1435) (the “Fraudulent Conveyance Action”). In support of the Motion, the Committee respectfully states as follows:

**BRIEF STATEMENT OF RELIEF REQUESTED**

1. This Motion seeks entry of an order modifying the procedure for objections to claims set forth in Rule 3007(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1(C) of the Local Rules for the United States Bankruptcy Court for the Southern District of Florida (the “Local Rules”). Specifically, the Committee seeks authority to file a single pleading containing its objections to more than 2400 similar (and in many cases,

nearly identical) proofs of claim filed by lenders to the failed Transeastern joint venture (the “Transeastern Lenders”) against the vast majority of the Debtors.<sup>1</sup>

### **JURISDICTION AND VENUE**

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought in this Motion are section 502(a) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 3007 and Local Rule 3007-1(C).

### **RELEVANT BACKGROUND**

3. On January 29, 2008, each of the Debtors filed a petition with this Court under Chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been procedurally consolidated and are being jointly administered under the case of TOUSA, Inc., Case No. 08-10928.

4. On May 28, 2008, the Bankruptcy Court authorized the Committee to proceed with the Fraudulent Conveyance Action, on the Debtors’ behalf. [ECF No. 1092]. In the Fraudulent Conveyance Action, the Committee, among other things, sought to set aside the Debtors’ repayment of more than \$400 million in prepetition transfers to the Transeastern Lenders.

5. On October 13, 2009, the Bankruptcy Court entered Findings of Fact and Conclusions of Law and a Final Judgment (together, as amended on October 30, 2009, the “Fraudulent Conveyance Judgment”). [ECF Nos. 658, 659, 721, 722] Pursuant to the Fraudulent Conveyance Judgment, the Transeastern Lenders were, among other things, ordered

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<sup>1</sup> The Transeastern Lenders are identified in the Joint Pretrial Stipulation, filed in the Adv. Pro. No. 08-1435, in Exhibit B. [ECF No. 542].

to disgorge \$403 million of the amount they were paid by the Debtors on July 31, 2007. The Transeastern Lenders subsequently appealed, obtained a stay of their disgorgement obligations, and, in some cases, posted a bond.

6. On November 13, 2009, the deadline set for the filing of claims in the Fraudulent Conveyance Judgment, the Transeastern Lenders filed more than 2400 proofs of claim, each seeking the payment of funds, directly or indirectly, as a result of the Fraudulent Conveyance Judgment. Based on the Committee's examination of these proofs of claim, it appears that each Transeastern Lender has filed a separate claim against each Debtor that was a plaintiff in the Fraudulent Conveyance Action, as well as against TOUSA, Inc. and TOUSA Homes, L.P. It appears that the Transeastern Lenders assert four generic types of claims: (1) claims against the Debtors who were known as the Conveying Subsidiaries in the Fraudulent Conveyance Action;<sup>2</sup> (2) claims against TOUSA Homes Florida, L.P.;<sup>3</sup> (3) claims against TOUSA Homes, L.P., and (4) claims against TOUSA, Inc. The proofs of claim are very similar in substance: each claim is made pursuant to section 502(h) of the Bankruptcy Code and seeks, *inter alia*, "the amount the Claimant is actually called upon to disgorge." In fact, many of the claims include identical language, and vary only in that the names of different Claimants and Debtors have been inserted into the appropriate boxes.

#### **RELIEF REQUESTED AND THE BASIS THEREFOR**

7. Bankruptcy Rule 3007(c) provides that "[u]nless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single

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<sup>2</sup> The Conveying Subsidiaries are identified in the Joint Pretrial Stipulation, filed in the Adv. Pro. No. 08-1435, in Exhibit A. [ECF No. 542].

<sup>3</sup> The Transeastern Lenders assert secured claims against TOUSA Homes Florida, L.P.

objection.” Local Rule 3007-1(C) provides that “[n]otwithstanding the requirements of Bankruptcy Rule 3007, up to five objections to claims may be included in one pleading.”

8. The Committee may decide to file objections to the Transeastern Lenders’ claims.

9. The nature of the Committee’s potential objections to those claims lend themselves to consolidated objections because they involve common and overlapping issues. Indeed, the more than 2400 similar (and, in many cases, nearly identical) claims filed by the Transeastern Lenders involve many of the same questions—whether the Transeastern Lenders’ claims should be disallowed because, among other things, they are contingent, unliquidated, premature, fail because of the absence of a condition precedent, lack an underlying basis, and/or are barred, in whole or in part, because of the Court’s finding (in the Fraudulent Conveyance Judgment) that the Transeastern Lenders were not good faith transferees.

10. Rather than filing thousands of separate claim objections, the Committee requests an order allowing it to file a single pleading containing its objections to the Transeastern Lenders’ claims.

11. Permitting the Committee to file consolidated objections will promote efficiency and reduce the amount of time and money that is expended on objecting to similar – or in some cases virtually identical – claims. If the Court grants the Motion, the Committee will not need to spend the time associated with preparing redundant and duplicative pleadings, which should reduce the burden on the Debtors’ estates.

12. The Court has the authority to grant the requested relief by virtue of the “unless otherwise ordered by the court” language of Bankruptcy Rule 3007(c).

13. In order to ensure that appropriate notice of the Committee's objections is provided, the Committee is prepared to serve a copy of the consolidated claim objections on each claimant whose claim is disputed.

14. Under these circumstances, the Committee requests that the Court relieve it of the obligation to file single objections to each of the Transeastern Lenders' claims.

**NOTICE AND PRIOR MOTIONS**

15. Notice of this Motion will be served on (i) the Office of the United States Trustee for the Southern District of Florida; (ii) the Debtors and their counsel; (iii) counsel to the agent for the Debtors' prepetition first lien facilities; (iv) counsel to the agent for the Debtors' prepetition second lien facility; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) the indenture trustee for each of the Debtors' senior bond issuances; (viii) counsel for the Transeastern Lenders; (ix) all entities that have filed a request for service of filings pursuant to Bankruptcy Rule 2002; and (x) the notice parties identified on the thousands of claims at issue.

16. No prior application for the relief requested herein has been made by the Committee to this or any other court.

**WHEREFORE**, the Committee respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A, approving the request to file consolidated claim objections, and grant the Committee such other and further relief as is just, proper and equitable.

Dated: November 19, 2010

Respectfully submitted,

I HEREBY CERTIFY that the undersigned attorneys are appearing *pro hac vice* in this matter pursuant to court orders dated July 10, 2008 and August 13, 2008 [D.E. 1360, 1362, 1363 in Ch. 11 No. 08-10928]

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**EXHIBIT A**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
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_____	)	
In re:	)	Chapter 11 Cases
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Debtors.	)	
_____	)	

**ORDER APPROVING MODIFICATION OF THE CLAIMS OBJECTION PROCEDURE FOR CERTAIN CLAIMS OBJECTIONS TO BE FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., *ET AL.***

Upon the motion of the Official Committee of Unsecured Creditors (the “Committee”) of TOUSA, Inc., et al. (collectively, the “Debtors”) for entry of an order approving modification of the claims objection procedure, dated November 19, 2010 (the “Motion”);<sup>1</sup> and upon the record of the \_\_\_\_\_, 2010 hearing (the “Hearing”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that proper and adequate notice of the Motion has been given and that no other or

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Motion.

further notice is necessary; and this Court being satisfied, based on the representations made in the Motion and the record of the Hearing that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties-in-interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is GRANTED.
2. The modification to the claims objection procedure described in the Motion is approved. The Committee is authorized to file a single pleading containing its claim objections to thousands of proofs of claim filed by various Transeastern Lenders against various Debtors.
3. The Committee shall serve a copy of the consolidated claim objections on each claimant whose claim is contested by virtue of the filing of the consolidated pleadings.
4. The limitations in Bankruptcy Rule 3007(c) and Local Rule 3007-1(C) are hereby waived and the Committee shall not be required to comply with the terms and requirements thereof.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

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