UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CITRUS TOWER BOULEVARD IMAGING CENTER, LLC, Debtor.	CHAPTER 11 Case No. 11-70284-mgd
CITRUS TOWER BOULEVARD IMAGING CENTER, LLC, Plaintiff, v. KEY EQUIPMENT FINANCE, INC., Defendant.	Adversary Proceeding No. _____

COMPLAINT AND OBJECTION TO CLAIM

NOW COMES Plaintiff Citrus Tower Boulevard Imaging Center, LLC (hereinafter referred to as the "Plaintiff") and files this Complaint and Objection to Claim against Defendant Key Equipment Finance, Inc. (hereinafter referred to as "Defendant"), respectfully showing this honorable Court the following:

I. PARTIES, JURISDICTION AND VENUE

1.

Plaintiff is a debtor and debtor-in-possession in the above-referenced Chapter 11 case, Case No. 11-70284-mgd.

2.

Defendant is a corporation organized under the laws of the State of Michigan and has its principal place of business at 1000 South McCaslin Boulevard, Superior, Colorado, 80027. Defendant may be served through its registered agent, via U.S. Certified First Class Mail, Key Equipment Finance, Inc., c/o Corporation Service Company, its Registered Agent, 1560

Broadway, Suite 2090, Denver, Colorado, 80202. A courtesy copy of this Complaint is also being served on Defendant's counsel of record in Plaintiff's Chapter 11 case: John F. Isbell, Esq., and Garrett A. Nail, Esq., Thompson Hine LLP, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326.

3.

On May 1, 2012, Defendant filed a proof of claim in Plaintiff's Chapter 11 case, Claim No. 8, asserting an unsecured debt owed to Defendant by Plaintiff in the amount of $5,558,420.66, pursuant to an alleged lease of certain equipment and leasehold improvements.

4.

This adversary proceeding arises out of and is related to the above referenced bankruptcy case currently pending before this Court. As such, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5.

This adversary proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157.

6.

Venue of this adversary proceeding in the Northern District of Georgia is proper pursuant to 28 U.S.C. § 1409.

II. ALLEGATIONS

General Background

7.

Pre-petition, Franklin B. Trell ("Trell") developed the business model for a building that would house an imaging center for lease by participating physicians.

8.

Plaintiff was formed as the entity that would develop and manage the imaging center and lease space, furniture, and equipment to participating physicians in Clermont, Florida (the "Project").

9.

Plaintiff's Managing Member, George D. Overend ("Overend") was originally only a passive member of Plaintiff.

10.

Trell was responsible for the formation of Plaintiff and ran the everyday business of Plaintiff from its inception in 2008 until Overend became the Managing Member of Plaintiff in March of 2011.

11.

Trell utilized another person, Cynthia Vinson ("Vinson"), a business associate and bookkeeper, to assist him in his business dealings, including his work related to Plaintiff.

Financing of the Project by Defendant & Terms of the Agreement Between the Parties

12.

Plaintiff needed financing for the development, build-out, and furnishing of the Project.

13.

Defendant agreed to provide financing through an alleged leasing arrangement.

14.

On or around January 6, 2010, Plaintiff, through Trell, executed a Master Lease Agreement and a Progress Payment Loan and Security Agreement (the "PPL Agreement") with Defendant.

15.

The PPL Agreement, among other things, provided for how and when Defendant would make loan disbursements.

16.

While Defendant styled the financing arrangement as a "lease," it was a disguised loan and security agreement whereby Plaintiff would engage in the construction build-out (through a contractor), and obtain the furniture, fixtures and equipment (from third-party suppliers), then seek a progress payment loan disbursement from Defendant to fund those purchases, related to which Defendant would retain a security interest, while Plaintiff paid back the amount of the loan over time, with interest.

17.

Accordingly, the PPL Agreement, which facilitates a project-type financing, was necessary for Defendant to disburse funds.

18.

Paragraph 3 of the PPL Agreement provides, in relevant part, as follows:

> 3) ***PROGRESS PAYMENTS***
>
> a) ***The Progress Payments.*** … , KEF hereby agrees to make the Progress Payments to the Suppliers upon Borrower's request at the times and in the amounts set forth in the Purchase Documentation.[1] . . .
>
> c) ***Express Condition to Progress Payments.*** … , KEF shall have no obligation to make any Progress Payment hereunder unless:…
>
> > ii) KEF shall have received the following documents duly executed and delivered by the parties thereto:…

[1] "Purchase Documentation" is defined as "purchase agreements and/or purchase orders with various third party vendors (the 'Suppliers') pursuant to which Borrower has agreed to purchase certain equipment from such suppliers (the 'Equipment')."

> (D) an original invoice, acceptable to KEF, from the supplier to whom payment is requested, countersigned by Borrower, …;
>
> (F) with respect to payments to Borrower to reimburse it for payments previously made to Suppliers, either (1) copies of canceled checks (front and back) or (2) if funds were wired, a copy of a wire confirmation receipt, *plus* copies of invoices marked "paid in full," *plus* for confirmation purposes, the name and telephone number of such Supplier; …

19.

The documentation required under Section 3 of the PPL Agreement before Defendant made a Progress Payment loan disbursement is collectively referred to hereinafter as the "Supporting Documentation."

20.

Defendant was required to exercise reasonable diligence before disbursing loan funds under the PPL Agreement in order to protect the assets and collateral consistent with the provisions of Section 3 thereof and consistent with Regulatory Lending Standards[2] and anit-money laundering laws.

Defendant's Failure to Comply with PPL Agreement and Applicable Law/Regulations

21.

During 2010, Overend was aware that Defendant was lending money to Plaintiff for the purchase of the furniture, equipment, and construction of the Project, which, in large part, was to be utilized as a magnetic resonance imaging ("MRI") center.

[2] As used herein, "Regulatory Lending Standards" refers to and includes the guidance and regulations provided in the following: (1) the Office of the Comptroller of the Currency's ("OCC's) Handbook (the "Handbook"); (2) 12 CFR part 30 (OCC); and (3) 12 CFR part 34, subpart D (OCC).

22.

Overend was also aware that Defendant had disbursed a large amount of money to Plaintiff during 2010, but Overend was not involved in any of the draw down requests and was not aware that Defendant would make loan disbursements without complying with Regulatory Lending Standards, anti-money laundering laws, or Section 3 of the PPL Agreement.

23.

With the exception of two actual invoices from Hitachi Medical Systems for MRI equipment,[3] Defendant disbursed approximately $3.89 million in loan funds without first obtaining Supporting Documentation or otherwise verifying that Plaintiff actually received the services, materials, furniture, or equipment.

24.

Purportedly on behalf of Plaintiff, Trell and/or Vinson submitted a draw down request to Defendant for the purchase of a C-Arm in the amount of $32,950.00, with no back up documentation or invoice. However, Dr. Owens, one of the two physicians which signed leases with Plaintiff, owns the C-Arm and has testified in other proceedings that Trell required Dr. Owens to purchase the C-Arm.

25.

Purportedly also on behalf of Plaintiff, Trell and/or Vinson submitted a draw down request to Defendant for the purchase of an X-Ray machine, with no back up documentation or invoice. However, Dr. Ray, one of the two physicians which signed leases with Plaintiff, has asserted that he was required to purchase the X-Ray machine utilized in the MRI center.

[3] The two payments to Hitachi Medical Systems (totaling $1,432,000.00) are the only disbursements that are compliant with the PPL Agreement, the Regulatory Lending Standards and anti-money laundering laws.

26.

Funds disbursed by Defendant went directly to entities that were not legally formed in Georgia, Florida, or Delaware.

27.

Defendant disbursed millions of dollars, related to the financing of the Project, to entities named "MD Office Solutions, LLC" and "Medical Development Group, LLC" with no invoices or back-up documentation other than single page requests typed up on said entities' letterhead and/or letterhead for Plaintiff.

28.

Defendant's Progress Payments Tracking Sheet (the "Tracking Sheet") shows the purported disbursement of funds from Defendant to Plaintiff related to the Project. However, the Tracking Sheet reflects payments of $1,237,862.15 to "MD Office Solutions, LLC," wired to a SunTrust Bank account, and $1,110,974.50 to "Medical Development Group, LLC," wired to a SunTrust Bank account, account number ending in 9805, both of which are owned and/or controlled by Trell and/or Vinson (collectively, the "Trell LLCs").

29.

The SunTrust Bank statements for "MD Office Solutions, LLC," indicate that all $1,237,862.15 of the progress payments were deposited to the "MD Office Solutions, LLC," SunTrust Bank account, account number ending in 4588 (the "MDOS SunTrust Account").

30.

Further, during the same time period that the progress payments were deposited in the MDOS SunTrust Account, an equal amount of money was withdrawn from the same account by wire transfers and OTM Transfers.

31.

The first deposit in the amount of $300,000.00, from Defendant to "MD Office Solutions, LLC," was deposited into the MDOS SunTrust Account on January 29, 2010.

32.

Three days later on February 1, 2010, $299,500.00 was withdrawn by Miscellaneous Debit from the MDOS SunTrust Account.

33.

A Deposit Account Debit Statement shows that the destination of the funds withdrawn from the MDOS SunTrust Account on February 1, 2010, was a SunTrust Bank account, account number ending in 3840, an account held by Trell in the name of the Trell Family Limited Partnership.

34.

All other withdrawals from the MDOS SunTrust Account during the time period were by OTM Transfer, an indication that the funds were transferred to related accounts.

35.

Five (5) of the outgoing money transfers for progress payments listed on the Tracking Sheet were transferred to "Medical Development Group, LLC," to a SunTrust Bank account, account number ending in 9805 (the "MDG Account").

36.

Vinson had previously directed Overend to direct funds to be invested to the MDG Account number but in a different name – "Medical Facility Development Group, LLC."

37.

"MD Office Solutions, LLC," and "Medical Facility Development Group, LLC," are not legally formed entities in Georgia, Florida, or Delaware.

38.

There is no evidence that "MD Office Solutions, LLC," or "Medical Development Group, LLC," actually provided any services, material, furniture, or equipment to Plaintiff for the Project.

39.

Defendant did nothing to investigate either entity before making these disbursements.

40.

Defendant also disbursed approximately $1,544,296.00 to Roger B. Kennedy, Inc. ("Kennedy"), the Project's general contractor, without a copy of the contract, without a single invoice or application for payment from Kennedy, without any inspections of the work and without obtaining lien waivers.

41.

Kennedy ultimately recorded a lien on the Project and Overend loaned money to Plaintiff to satisfy and release the lien.

42.

The disbursements by Defendant referenced in this Complaint were made by Defendant in breach of the terms of the PPL Agreement, as well as in violation of the Regulatory Lending Standards and anti-money laundering laws.

43.

Pursuant to the PPL Agreement, Defendant represented (consistent with common sense and lending industry standards) that it would not make loan disbursements without first obtaining the Supporting Documentation that would serve to insure that loan funds were properly applied to assets and collateral of the Project.

44.

The Office of the Comptroller of the Currency ("OCC"), as primary regulator of nationally chartered member banks, is charged with the enforcement of Regulatory Lending Standards, and the loan to Plaintiff was a real estate construction loan for regulatory purposes.

45.

In addition, Defendant, pursuant to the Bank Secrecy Act and the Patriot Act, should have policies to reduce the likelihood that it will become a victim of, or unknowingly participate in, any illegal activity.

46.

Section 3 of the PPL Agreement reflects Defendant's contractual right and responsibility to act in a fashion that is consistent with Regulatory Lending Standards, anti-money laundering laws, and (presumably) its own policies.

47.

Section 3 embodies the risk mitigation features that protect Defendant and others from loss due to inadequate operational controls.

48.

Defendant's advances to Kennedy of $1,544,296.56 did not comply with Section 3 of the PPL Agreement because Defendant failed to require and obtain Supporting Documentation for the disbursements.

49.

Defendant's advances to Kennedy also did not comply with Regulatory Lending Standards because Defendant failed to follow minimum loan administration procedures for documentation, disbursement, collateral inspection and monitoring of a real estate construction loan.

50.

Defendant's advances to the Trell LLCs (the "LLC Advances") totaling $2,348,836.65 did not comply with Section 3 of the PPL Agreement because Defendant failed to require and obtain Supporting Documentation for the disbursements.

51.

The LLC Advances are also non-compliant with Regulatory Lending Standards because Defendant failed to follow minimum loan administration procedures for documentation, disbursement, collateral inspection and monitoring of a real estate construction loan.

Forbearance Agreement

52.

Eventually, due to the events which are described above, as well as the failure of Plaintiff's tenants to make payments to Plaintiff, Plaintiff was unable to make payments to its various creditors including Defendant.

53.

On April 27, 2011, Defendant and Plaintiff entered into a Forbearance Agreement, which required Plaintiff to make certain "catch-up" payments to Defendant and included a release of claims against Defendant by Plaintiff (the "Release").

Plaintiff's Chapter 11 Case

54.

Despite Plaintiff's best efforts to resolve its financial and legal issues in the state courts of Florida and Georgia, Plaintiff was forced to file the above-captioned Chapter 11 bankruptcy case in this Court on July 12, 2011 (the "Petition Date"); thereafter, Plaintiff acted and continues to act as Debtor-in-Possession of the bankruptcy estate of Citrus Tower Boulevard Imaging Center, LLC (the "Estate").

55.

Despite Plaintiff's best efforts to reorganize its operations, Plaintiff was forced to shut down the MRI center and liquidate its assets.

56.

Plaintiff sold the MRIs back to Hitachi Medical Systems for a total of $727,397.00, which was paid by Hitachi Medical Systems directly to Defendant.

57.

Due to ownership disputes related to the other medical equipment and a low realizable value of other (non-medical equipment) physical personal property, Plaintiff abandoned and surrendered its rights in the balance of its physical personal property to Defendant for an agreed upon $1,000.00.

58.

Defendant has failed to amend its claim to reduce it by the amounts received as referenced above.

COUNT I – EQUITABLE DISALLOWANCE/REDUCTION

59.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

60.

Defendant willfully breached the PPL Agreement with Plaintiff by failing to: 1) comply with the terms of the PPL Agreement; 2) comply with the Regulatory Lending Standards; 3) comply with anti-money laundering laws; 4) comply with its own policies and procedures; and 5) deal with Plaintiff in a fair manner and in good faith.

61.

Through these actions, Defendant engaged in misconduct which eventually led to Plaintiff's bankruptcy case.

62.

The foregoing misconduct of Defendant has irreparably harmed Plaintiff, made it less likely that Plaintiff's other creditors will collect on their debts, and caused substantial and continuing financial harm to Plaintiff.

63.

Accordingly, this Court should disallow Defendant's claim in its entirety on account of Defendant's misconduct.

64.

In the alternative, this Court should reduce Defendant's claim on account of its misconduct, to the amount of the funds paid to Hitachi Medical Systems, totaling $1,432,000.00, less: 1) $727,397.00 received by Defendant from the sale of the MRIs; and 2) the credit of $1,000.00 related to other physical personal property; and determine that Defendant's claim is limited to $703,603.00, or such other amount as established at trial.

COUNT II – EQUITABLE SUBORDINATION

65.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

66.

Defendant willfully breached the PPL Agreement with Plaintiff by failing to: 1) comply with the terms of the PPL Agreement; 2) comply with the Regulatory Lending Standards; 3) comply with anti-money laundering laws; 4) comply with its own policies and procedures; and 5) deal with Plaintiff in a fair manner and in good faith.

67.

Through these actions, Defendant engaged in misconduct which eventually led to Plaintiff's bankruptcy case.

68.

The foregoing misconduct of Defendant has irreparably harmed Plaintiff, made it less likely that Plaintiff's other creditors will collect on their debts, and caused substantial and continuing financial harm to Plaintiff.

69.

Subordinating Defendant's claim on the basis of the foregoing facts is consistent with 11 U.S.C. § 510.

70.

Accordingly, should this Court not disallow Defendant's claim in its entirety, this Court, pursuant to 11 U.S.C. § 510(c), should equitably reduce Defendant's claim to $703,603.00, or such other amount as established at trial, and/or subordinate the claim to those of Overend and all other creditors of Plaintiff, except Sky Top Enterprises, LLC ("Sky Top"), which is a defendant in Adversary Proceeding No. 12-5346-mgd, related to which Plaintiff is likewise asking the Court to equitably disallow or subordinate Sky Top's claim.

COUNT III - BREACH OF CONTRACT

71.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

72.

Defendant breached the PPL Agreement with Plaintiff by failing to: 1) comply with the terms of the PPL Agreement; 2) comply with the Regulatory Lending Standards; 3) comply with anti-money laundering laws; 4) comply with its own policies and procedures; and 5) deal with Plaintiff in a fair manner and in good faith.

73.

Defendant's breach has damaged Plaintiff in an amount not less than $4,126,420.00.

74.

Accordingly, Plaintiff demands judgment against Defendant in an amount not less than $4,126,420.00, plus interest and all costs and fees as may be allowed by law or under the terms of the Master Lease Agreement and/or the PPL Agreement, and allow Plaintiff to recoup the same by reducing Defendant's claim in Plaintiff's Chapter 11 case by the same amount, as well as further reducing Defendant's claim to give credit for the sale of the MRIs in the amount of $727,397.00, and the $1,000.00 credit, as discussed in Paragraphs 56 and 57 of this Complaint.

75.

Furthermore, for these reasons, in addition to those more specifically set forth herein, Plaintiff objects to Defendant's claim and seeks to have the same equitably disallowed or equitably reduced, and, if not equitably disallowed, equitably subordinated to those of Overend and all other creditors of Plaintiff, other than Sky Top, pursuant to 11 U.S.C. § 510.

COUNT IV – NEGLIGENCE

76.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

77.

Defendant had a duty to Plaintiff to perform its duties related to the Project in compliance with the Regulatory Lending Standards, anti-money laundering laws, and with its own policies and procedures.

78.

Defendant breached its duty to Plaintiff by failing to comply with the Regulatory Lending Standards, anti-money laundering laws, and with its own policies and procedures, as it relates to Defendant's actions related to the financing for the Project.

79.

Plaintiff has been damaged by Defendant's breach of its duty to Plaintiff.

80.

Accordingly, Plaintiff demands judgment against Defendant in an amount to be shown at trial, plus interest and all costs and fees as may be allowed by law or under the terms of the Master Lease Agreement and/or the PPL Agreement, and allow Plaintiff to recoup the same by reducing Defendant's claim in Plaintiff's Chapter 11 case by the same amount, as well as further reducing Defendant's claim to give credit for the sale of the MRIs, in the amount of $727,397.00, and the $1,000.00 credit, as discussed in Paragraphs 56 and 57 of this Complaint.

81.

Furthermore, for these reasons, in addition to those more specifically set forth herein, Plaintiff objects to Defendant's claim and seeks to have the same equitably disallowed or equitably reduced, and, if not equitably disallowed, equitably subordinated to those of Overend and all other creditors of Plaintiff, other than Sky Top, pursuant to 11 U.S.C. § 510.

COUNT V – GROSS NEGLIGENCE

82.

The allegations contained in Paragraphs 1 through 58, and 76 through 81, are incorporated herein as if set forth verbatim.

83.

Defendant acted in a grossly negligent manner, willfully and wantonly with a conscious indifference, or with a reckless indifference, to the consequences to its actions, causing damage to Plaintiff by its actions and omissions.

84.

Accordingly, Plaintiff demands judgment against Defendant in an amount to be shown at trial, plus interest and all costs and fees as may be allowed by law or under the terms of the Master Lease Agreement and/or the PPL Agreement, and allow Plaintiff to recoup the same by reducing Defendant's claim in Plaintiff's Chapter 11 case by the same amount, as well as further reducing Defendant's claim to give credit for the sale of the MRIs, in the amount of $727,397.00, and the $1,000.00, as discussed in Paragraphs 56 and 57 of this Complaint.

85.

Furthermore, for these reasons, in addition to those more specifically set forth herein, Plaintiff objects to Defendant's claim and seeks to have the same equitably disallowed or equitably reduced, and, if not equitably disallowed, equitably subordinated to those of Overend and all other creditors of Plaintiff, other than Sky Top, pursuant to 11 U.S.C. § 510.

COUNT VI – LENDER LIABILITY

86.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

87.

Defendant had a duty to Plaintiff to perform its duties related to the Project in compliance with the PPL Agreement, the Regulatory Lending Standards, anti-money laundering laws, and with its own policies and procedures.

88.

Defendant breached its duty to Plaintiff by failing to comply with the PPL Agreement, the Regulatory Lending Standards, anti-money laundering laws, and with its own policies and procedures, as it relates to Defendant's actions related to the financing for the Project.

89.

Plaintiff has been damaged by Defendant's breach of its duty to Plaintiff.

90.

Accordingly, Plaintiff demands judgment against Defendant in an amount to be shown at trial, plus interest and all costs and fees as may be allowed by law or under the terms of the Master Lease Agreement and/or the PPL Agreement, and allow Plaintiff to recoup the same by reducing Defendant's claim in Plaintiff's Chapter 11 case by the same amount, as well as further reducing Defendant's claim to give credit for the sale of the MRIs, in the amount of $727,397.00, and the $1,000.00, as discussed in Paragraphs 56 and 57 of this Complaint.

91.

Furthermore, for these reasons, in addition to those more specifically set forth herein, Plaintiff objects to Defendant's claim and seeks to have the same equitably disallowed or equitably reduced, and, if not equitably disallowed, equitably subordinated to those of Overend and all other creditors of Plaintiff, other than Sky Top, pursuant to 11 U.S.C. § 510.

COUNT VII - OBJECTION TO PROOF OF CLAIM

92.

The allegations contained in Paragraphs 1 through 91 are incorporated herein as if set forth verbatim.

93.

Defendant has improperly characterized its claim as a claim related to a true lease and, therefore, has incorrectly calculated the total amount due under the agreements between the parties.

94.

Prior to and during the pendency of Plaintiff's Chapter 11 case, Plaintiff made payments to Defendant; however, Defendant has failed to give Plaintiff credit for any of the payments.

95.

Further, equipment and other personal property subject to the agreements between the parties were sold by Plaintiff and/or Defendant and the sales proceeds were paid to Defendant and/or credit was given to Plaintiff related to the same; however, Defendant has failed to amend its claim to reflect the same.

96.

Additionally, Defendant attempts to reserve its right to claim an amount due for attorneys' fees and costs; however, Defendant is not entitled to the same as part of its claim.

97.

To the extent not disallowed, this Court should reduce Defendant's claim accordingly, to $703,603.00, or such other amount as established at trial.

98.

Furthermore, for these reasons, in addition to those more specifically set forth herein, Plaintiff objects to Defendant's claim and seeks to have the same equitably disallowed or equitably reduced, and, if not equitably disallowed, equitably subordinated to those of Overend and all other creditors of Plaintiff, other than Sky Top, pursuant to 11 U.S.C. § 510.

COUNT VIII – AVOIDANCE AND RECOVERY OF PREFERENCE

99.

The allegations contained in Paragraphs 1 through 58 are incorporated herein as if set forth verbatim.

100.

In exchange for Defendant's agreement to forbear its rights under the agreements between the parties, Plaintiff made certain payments to Defendant and agreed to the Release (the "Transfer").

101.

The Transfer benefited Defendant, in that it purported to release all claims held by Plaintiff against Defendant, including potentially the claims asserted in this Complaint, which would have been property of Plaintiff's bankruptcy estate, but for the Transfer.

102.

The Transfer occurred as a direct result of Defendant's actions to collect from Plaintiff related to the agreements between the parties and, as a result, the Transfer was made on account of an antecedent indebtedness owed by Plaintiff to Defendant prior to the Transfer being made.

103.

The Transfer occurred while Plaintiff was insolvent.

104.

The Transfer occurred within 90 days of the Petition Date.

105.

The Transfer expanded the scope of Defendant's interest in Plaintiff's property, in that the Release could prevent Plaintiff from reducing Defendant's claim as asserted in this Complaint, and, as a result, the Transfer enables Defendant to receive more than it would have if the case were a case under Chapter 7 of the U.S. Bankruptcy Code, if the Transfer had not occurred, and if Defendant received payment of such indebtedness to the extent allowed under the U.S. Bankruptcy Code.

106.

Because Defendant is the initial transferee of the Transfer, Plaintiff can recover the claims against Defendant released in the Release for the benefit of the Estate.

107.

The Debtor, as Debtor-in-Possession, is entitled to avoid the Transfer and recover the same for the benefit of the Estate pursuant 11 U.S.C. §§ 547, 550, 551, and 1107.

WHEREFORE, Plaintiff respectfully requests that the Court:

(a) award Plaintiff damages in an amount to be shown at trial;

(b) disallow Defendant's claim;

(c) to the extent Defendant's claim is not disallowed, reduce Defendant's claim in an amount to be shown at trial and subordinate Defendant's claim to all other claims asserted against Plaintiff, other than Sky Top; and

(d) avoid the Transfer and allow Plaintiff to recover the same for the benefit of the Estate; and

(e) order any further relief that this Court deems necessary and proper.

This the 7th day of April 2014.

Cohen Pollock Merlin & Small, P.C.
Proposed Counsel for Citrus Tower Boulevard Imaging Center, LLC

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