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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: 04-16410  
KOLLEL MATEH EFRAIN, LLC, One Bowling Green  
Debtor. New York, New York  
April 17, 2008

-----X  
ROBERT GELTZER, 04-04545  
Plaintiff,  
v.

HELEN-MAY HOLDINGS LLC and IRENE  
GRIFFIN,  
Defendants.

-----X  
TRANSCRIPT OF SETTLEMENT  
BEFORE THE HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:  
For the Plaintiff: ROBERT L. GELTZER, ESQ.  
Law Offices of Robert L. Geltzer  
1556 Third Avenue  
New York, New York 10128  
ROBERT A. WOLF, ESQ.  
MICHELLE MCMAHON, ESQ.  
Bryan Cave, LLP  
1290 Avenue of the Americas  
New York, New York 10104  
For the Defendants: DAVID CARLEBACH, ESQ.  
Law Offices of David Carlebach  
40 Exchange Place  
New York, New York 10005

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APPEARANCES CONTINUED:  
For Mr. & Mrs. Griffin: DANIEL J. SCHER, ESQ.  
Scher & Scher, P.C.  
111 Great Neck Road  
Great Neck, New York 11021  
Court Transcriber: CARLA NUTTER

1 (Audio starts as follows)

2 THE COURT: What are you going to do about that last  
3 issue?

4 MR. CARLEBACH: Your Honor, we're okay with  
5 subordinated claims of the Trustee's admin claims. We would  
6 just like it to be clear that we're not waiting the secured  
7 status. It's only subordinate to the Chapter 7 admin claims  
8 but in terms of the Chapter 11 admin claims it remains a  
9 secured claim.

10 THE COURT: All right. Unless, I guess, somebody can  
11 object? The Trustee is not going to object but somebody can  
12 object.

13 MR. CARLEBACH: Okay. As long as the Trustee is  
14 willing to go along with that, that's fine.

15 THE COURT: All right. Is that acceptable?

16 MR. WOLF: Well, Your Honor, I'm not sure I understand  
17 where Mr. Carlebach is going now because if he has that then  
18 the amount of the admin claim being allowed under Paragraph 4  
19 of the term sheet has to be reduced.

20 THE COURT: Well, it's going to be deducted to the  
21 extent that --

22 MR. CARLEBACH: Well, that we agreed from the outset  
23 that we're not going to double dip. That's adequate protection  
24 claim and U&O claims. So that's in any event going to be  
25 reduced by that but we're not waiving it as a secured claim

1 except as to the Trustee, not as to other Chapter 11 admin  
2 creditors.

3 THE COURT: So the amounts collected by you on your  
4 secured claim will be deducted from your admin claim.

5 MR. CARLEBACH: Correct.

6 THE COURT: All right. Based upon the discussions in  
7 chambers the following are the terms of the settlement between  
8 the Trustee and Helen-May Holdings in satisfaction of the  
9 estate's claim under the contract of sale dated April 29, 2004:

10 Helen-May will be responsible for selling the property  
11 but the Trustee will reasonably cooperate with those efforts.

12 The outstanding mortgage and real estate tax liens  
13 will be satisfied first from the sale proceeds and those two  
14 sums deducted from the gross proceeds will be the net proceeds.  
15 No other deductions. With respect to the first \$600,000.00 of  
16 net proceeds, the Trustee gets the first \$150,000.00, Helen-May  
17 gets the rest. With respect to any excess above the  
18 \$600,000.00, the Trustee gets 16 percent of the excess above  
19 \$600,000.00, Helen-May gets 84 percent above the \$600,000.00.  
20 Helen-May will have an allowed administrative claim in the  
21 minimum amount computed by multiplying \$1,500.00 per day by the  
22 number of days from September 28, 2004 through October 29, 2007  
23 which is estimated to be \$1,642,500.00 give or take \$1,500.00,  
24 depending on what the number of actual days are.

25 This administrative claim includes the adequate

1 protection judgment entered by the Court in the approximate sum  
2 of \$240,000.00 -- is that right?

3 MR. CARLEBACH: \$245,000.00.

4 THE COURT: All right.

5 Helen-May filed that in Sullivan County so that  
6 judgment is arguably a judgment lien on two parcels owned by the  
7 estate. Helen-May agrees to subordinate its judgment lien to the  
8 payment of the Chapter 7 administrative expenses in this case  
9 and any amounts collected on that secured claim will go to  
10 reduce the administrative claim that Helen-May has asserted.  
11 Helen-May can file an administrative claim in excess of the  
12 amount that we've mentioned but the Trustee reserves the right  
13 to object to the excess.

14 At the closing of the sale of the real estate, Helen-  
15 May will pay the estate the amounts due under the formula we  
16 discussed. The Trustee will reject the contract and Helen-May  
17 will not assert a rejection damage claim.

18 The parties will exchange mutual releases except for  
19 the rights granted under the settlement.

20 All of the foregoing is contingent upon a closing of  
21 the real estate sale by August 31, 2008 unless extended in  
22 writing by the parties.

23 Is that acceptable to Helen-May?

24 MR. CARLEBACH: Yes, Your Honor, with two provisos.  
25 Firstly, when we talk about the real estate taxes, I don't know

1 if they have been tortured to liens as we speak. They, first,  
2 become taxes and at some point they become a lien. We'd like  
3 it to be closing whether they have been tortured to a lien or  
4 not. So I'd like to --

5 THE COURT: Any objection to that?

6 MR. GELTZER: No, Your Honor.

7 MR. WOLF: No, Your Honor.

8 THE COURT: All right.

9 MR. CARLEBACH: And the other thing is the settlement  
10 we're putting on the record today will be embodied in a formal  
11 order. It's going to be extremely important for us in terms of  
12 telling the world that we have the authority to sell the  
13 property - -

14 THE COURT: Well, this is going to have to be under  
15 9019 because there may be parties, particularly Chapter 11  
16 administrative creditors who may have something to say. I  
17 think -- you know, we can put it on the record that you could  
18 clear that whatever tax -- but they obviously have to be paid at  
19 just attach the transfer to the motion. If you start to sit  
20 down and draft it's just going to be a further delay.

21 MR. WOLF: I agree with Your Honor.

22 MR. CARLEBACH: You're talking about drafting an  
23 order? In other words, you're saying --

24 THE COURT: What you'll do is there will be a notice  
25 -- a 9019 -- and you can attach this transcript or redo it so

1 it's in one spot -- you can attach this transcript to the  
2 motion and say you're seeking approval.

3 MR. WOLF: And then if it's approved you'll just  
4 so order --

5 THE COURT: I'll so order the -- you can provide an  
6 order so ordering the deal.

7 MR. CARLEBACH: So there won't be another formal order  
8 which is --

9 THE COURT: There will be an order approving this  
10 settlement. Right now this is a settlement but this is a  
11 bankruptcy case and the creditors have the right to be heard as  
12 to whether or not they think it's fair.

13 MR. CARLEBACH: Okay.

14 THE COURT: In the meantime, I think you can go ahead  
15 and sell your real estate if you can do it.

16 MR. CARLEBACH: Okay.

17 THE COURT: This shouldn't hold up -- the process of  
18 approval shouldn't hold up anything you're going to do.

19 MR. CARLEBACH: Okay.

20 THE COURT: That's my own advice.

21 MR. WOLF: Your Honor, I have one thing to be added.  
22 We did -- the Trustee did indicate at the closing that we would  
23 execute and deliver a notice of cancellation of the lis pendens  
24 that is on record with regard to what we have called the  
25 removed adversary proceeding that has an '07 adversary

1 proceeding number --

2 THE COURT: Okay.

3 MR. WOLF: -- and we would enter into stipulations of  
4 dismissal --

5 THE COURT: I realized that that there should be --

6 MR. WOLF: -- of that adversary proceeding and of the  
7 2004 adversary proceeding and that also relates to the  
8 contract.

9 THE COURT: What are the two adversary numbers?

10 MS. MCMAHON: 04-4545.

11 THE COURT: What's that? What's the 2004 adversary?

12 MS. MCMAHON: 04-4545.

13 THE COURT: And the 2007?

14 MS. MCMAHON: That one I don't have off the top of my  
15 head.

16 THE COURT: That's the one that's been removed from  
17 state court?

18 MR. GRIFFIN: 1937. That's 07-1937.

19 THE COURT: What is it?

20 MR. GRIFFIN: I believe it's 07-01937.

21 THE COURT: 1937. All right. But it's the removed  
22 action?

23 MR. WOLF: That's correct, Your Honor.

24 THE COURT: Anything else?

25 MR. GELTZER: Judge, do you want to permit this on

1 short notice under --

2 THE COURT: You say the bar date is today? I think  
3 the only people you really have to give notice to are the  
4 administrative creditors. I don't think there's going -- well,  
5 I shouldn't say that, maybe you'll hit a homerun with your  
6 lawsuit. There aren't that many creditors in the case.

7 MR. GELTZER: No.

8 THE COURT: Why don't you do it on ten day's notice.

9 MR. GELTZER: Ten day's notice?

10 THE COURT: Yes. Serve everybody on ten day's notice.

11 MR. GELTZER: That's fine.

12 MR. CARLEBACH: Your Honor, I would just like to make  
13 my point. Let's assume we get an objection from an  
14 administrative creditor to the administrative allowance portion  
15 of the deal, we should want to reserve the right to go forward  
16 with the -- I realize it's not in the Trustee's -- the Trustee  
17 can say that from the Trustee's point of view it won't object  
18 --

19 THE COURT: But that's part of the deal. You're going  
20 to get, in other words, a minimum allowed claim.

21 MR. CARLEBACH: But, again, from the Trustee's point  
22 of view any party can object to a claim. I don't think the  
23 Trustee has the power to resolve an objection by a third party.

24 THE COURT: No, you're getting an allowed minimum  
25 claim. Anybody who doesn't like that has an opportunity to

1 object now to the settlement. Once you get an allowed claim  
2 your claim is allowed just as if the Trustee had litigated it.  
3 In other words, if you had a dispute over a claim that was  
4 filed and you and the Trustee are litigating and you reach a  
5 settlement which allows a claim somebody else can object to the  
6 settlement but once the settlement is approved they can't come  
7 in and object to the claim.

8 MR. CARLEBACH: Okay. I mean what I was trying to  
9 preserve was if for some reason a third party were to object on  
10 the administrative claim portion of the settlement and that  
11 could not be resolved --

12 THE COURT: But that's a collateral attack on the  
13 order approving the settlement.

14 MR. CARLEBACH: No, if they came in today on a timely  
15 basis and objected and we couldn't get resolution on the  
16 administration claim portion of the settlement, we could sever  
17 that out and still go forward with the sale. I just want to  
18 cover it because --

19 THE COURT: So what's your concern?

20 MR. CARLEBACH: My concern is that if somebody comes  
21 in and objects -- the only objection that we could see here  
22 coming in is if somebody who has an interest in the  
23 administrative -- let's say the Backenroth firm --

24 THE COURT: Well, what's the objection is going to be?

25 MR. CARLEBACH: That they think that our claim should

1 be smaller.

2 THE COURT: But you have a contractual -- well --

3 MR. CARLEBACH: I'm just trying to --

4 THE COURT: So what would you like?

5 MR. CARLEBACH: I just wanted to reserve the right  
6 that this -- a lot of these settlements -- it says if one  
7 portion of the settlement is no good the whole thing falls  
8 away and what I'm reserving the right for us is that we  
9 should be able to go -- if the Trustee can't --

10 THE COURT: I don't think he cares. It would be your  
11 fight.

12 MR. CARLEBACH: No, the Trustee shouldn't care. It  
13 would be our -- we should have the right to go -- because we  
14 want to sell the property now, we don't want anything to hold  
15 that --

16 THE COURT: All right. So if somebody objects to your  
17 claim prior to the settlement hearing you want the right to go  
18 forward with the settlement anyway?

19 MR. CARLEBACH: To carve that portion out for a later  
20 date if necessary and go forward with the sale. In other  
21 words, we're the ones who would be sort of --

22 THE COURT: I'm sure that's fine with the Trustee.

23 MR. CARLEBACH: Right. We're running the risk so-to-  
24 speak of -- the Trustee has given us everything it could give  
25 us vis-a-vis the claim so I'm not going to hold that against

1 the Trustee if a third party comes in and holds that portion  
2 up.

3 THE COURT: All right. Why don't we do this. You'll  
4 tell the Trustee -- within five days of the objection you'll  
5 send him a letter so there's no question that you want to go  
6 forward. Write him a letter saying, we want to go forward with  
7 the transaction.

8 MR. CARLEBACH: Okay.

9 THE COURT: All right. Is there anything else?

10 (No response)

11 THE COURT: All right. I'm going to start over  
12 because what I want is a very short transcript which sets forth  
13 the terms of the settlement and has the parties acknowledging  
14 it and you can attach that to the proposed motion and not spend  
15 time starting to draft it because that's just going to delay  
16 it.

17 This is an agreement between Helen-May and the Trustee  
18 to settle the estate's claim under the contract of sale entered  
19 into in April 2004 regarding the sale of Helen-May's property.

20 Helen-May will be responsible for selling the property  
21 but the Trustee will reasonably cooperate with those efforts.  
22 From the sale proceeds the outstanding mortgage and any real  
23 estate tax obligations will, first, be satisfied. There will  
24 be no other deductions from the gross proceeds and what's left  
25 will be the net proceeds. Of the first \$600,000.00 of net

1 proceeds, the Trustee will get the first \$150,000.00, Helen-  
2 May will get the balance. With respect to any proceeds in  
3 excess of the \$600,000.00, the Trustee will get 16 percent,  
4 Helen-May will get 84 percent.

5 The Trustee agrees that Helen-May will have an allowed  
6 administrative claim in an amount to be computed by multiplying  
7 \$1,500.00 per day for the number of days from September 28,  
8 2004 through October 29, 2007 which is estimated to be  
9 \$1,642,500.00. If somebody objects to that claim -- someone  
10 other than the Trustee, obviously -- between now and a hearing  
11 to approve this settlement, Helen-May reserves the right to go  
12 forward with the settlement anyway and they will let the Trustee  
13 know within five days of the date of the objection -- date of  
14 service of the objection.

15 Helen-May's administrative claim will include the  
16 adequate protection judgment in the approximate amount of  
17 \$245,000.00 entered by this Court. That judgment purports to be a  
18 lien on two parcels owned by the estate. Helen-May agrees to  
19 subordinate its lien to the payment of the Chapter 7 administrative  
20 expenses. Any amounts collected by Helen-May on its secured claim  
21 will be deducted from Helen-May's administrative claim. Helen-May  
22 may file an administrative claim in excess of the amount that we've  
23 said but the Trustee reserves the right to object to the excess.

24 At the closing of the sale of the real estate Helen-May  
25 will pay the estate the amounts due under the formula set forth in

1 the settlement. The Trustee will reject the contract and Helen-May  
2 will not assert a rejection damage claim. The parties will  
3 exchange mutual releases except for the rights granted under the  
4 settlement. The Trustee will cancel the lis pendens. The parties  
5 will stipulate to dismiss the two adversary proceeding Nos. 04-4545  
6 and what we believe is 07-1937, but that second one is intended to  
7 refer to the action that was removed from state court up in  
8 Sullivan County.

9 All of the foregoing is contingent on the closing of the  
10 real estate by August 31, 2008 unless extended in writing by the  
11 parties.

12 MR. WOLF: And the receipt by the Trustee, Your Honor,  
13 of the amounts provided --

14 THE COURT: That's part of the closing.

15 Is that agreeable to Helen-May?

16 MR. CARLEBACH: I just want it to be clear that -- it's  
17 agreeable -- the subordination is to the Chapter 7 --

18 THE COURT: I said Chapter 7 administrative --

19 MR. CARLEBACH: -- Trustee administrative expenses.

20 THE COURT: -- well, it's the Chapter 7 administrative  
21 expenses. Okay.

22 I'll ask Mr. and Mrs. Griffin to tell me whether they  
23 agree to the terms of that settlement.

24 MR. GRIFFIN: Yes, we do, Your Honor.

25 THE COURT: All right. That was Mr. Griffin. Mrs.

1 Griffin?

2 MRS. GRIFFIN: Thank you, Your Honor. Yes.

3 THE COURT: Okay. Does the Trustee's counsel and the  
4 Trustee agree to the terms of the settlement?

5 MR. GELTZER: Yes, Your Honor.

6 MR. WOLF: Yes, Your Honor.

7 THE COURT: All right. Then this matter is settled. I  
8 would suggest that you get the portion of the transcript which sets  
9 forth the terms of the settlement.

10 You can do the motion, I guess, on notice of presentment  
11 with a short application of some sort which just highlights what  
12 the terms of the settlement are and you can do it on ten day's  
13 notice.

14 Okay?

15 ALL ATTORNEYS: Thank you, Your Honor.

16 THE COURT: Thank you.

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I certify that the foregoing is a transcript from an electronic sound recording of the proceedings in the above-entitled matter taken on April 17, 2008, except where, as indicated, the Court has modified the transcript.

Carla Nutter ©

4/22/08

Carla Nutter

Date