

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
DG LIQUIDATION CORP., <i>et al.</i> , ¹)	Case No. 08-10601 (CSS)
)	
Debtors.)	Re: Docket No. 537
)	
)	Hearing Date: October 30, 2008, at 10:00 a.m. (EST)
)	
)	Objection Deadline: October 24, 2008
)	

**LIMITED OBJECTION OF BELRON US INC. TO DEBTORS' MOTION,
PURSUANT TO BANKRUPTCY RULE 9019, FOR APPROVAL OF
SETTLEMENT BETWEEN DEBTORS AND KENNETH LEVINE**

Belron US Inc. ("Belron"), by its undersigned co-counsel, hereby submits its limited objection (the "Objection") to "Debtors' Motion, Pursuant to Bankruptcy Rule 9019, for Approval of Settlement Between Debtors and Kenneth Levine" (the "Settlement Motion") [Docket No. 537] filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"). In support of the Objection, Belron respectfully represents as follows:

Overview of Objection

1. Belron purchased the business assets of the Debtors pursuant to an order of this Court and has employed a substantial number of the Debtors' former employees. Belron believed that Kenneth Levine, the Debtors' former president and chief executive officer ("Levine"), had taken inappropriate actions in seeking to establish a competing business. Although after a mediation Belron has reached an agreement with Levine regarding the terms pursuant to which the parties will settle their issues (the "Mediation Document"), including the

¹ The Debtors in these proceedings are: DG Liquidation Corp., f/k/a Diamond Glass, Inc. (Tax ID No. XX-XXX8853), and DT Subsidiary Corp., a wholly owned subsidiary of DG Corp. (Tax ID No. XX-XXX3494), each with a mailing address of 220 Division Street, Kingston, PA 18704.

terms on which Levine may operate a competing business, among other things, such agreement contemplates additional definitive documentation to implement the terms of such agreement. The parties are currently working on such documentation, which will elaborate upon certain provisions in the Mediation Document and contain general mutual releases of liability, but to date nothing has been finalized or executed. The Settlement Agreement and Release between the Debtors and Levine (the "Settlement Agreement"), attached to the Settlement Motion at Exhibit A, contains general releases in favor of Levine. If Belron's settlement with Levine is not finalized, the releases the Debtors' estates propose to give Levine could interfere with rights Belron has under the asset purchase agreement previously approved by this Court, whereby the Debtors agreed to enforce the terms of any non-competition or similar agreement not otherwise enforceable by Belron. Accordingly, the Settlement Agreement (like the Debtors' Plan of Liquidation) should be modified to provide that it does not impair Belron's rights under the asset purchase agreement.

General Background

2. On April 1, 2008 (the "Petition Date"), the Debtors filed for relief under Chapter 11 of Title 11 of the United States Code, commencing the instant bankruptcy cases.

3. On the Petition Date, the Debtors filed the Debtors' Motion for Entry of Order, Pursuant to 11 U.S.C. §§ 105(a), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014, (A) Approving Bid Procedures for Sale of Substantially All of the Debtors' Assets; (B) Scheduling a Hearing to Consider the Sale and Approving the Form and Manner of Notices; (C) Establishing Procedures for Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; (D) Authorizing Payment of Expense Reimbursement; and (E) Granting Related Relief" [Docket No. 14].

4. On April 25, 2008, the Bankruptcy Court entered an Order (the “Bid Procedures Order”) [Docket No. 198] authorizing the Debtors to conduct an auction (the “Auction”) for the sale of substantially all of the Debtors’ assets and establishing a date for the Auction, and approving, among other things, (i) the terms and conditions of the bid procedures set forth in the Bid Procedures Order (the “Bid Procedures”); (ii) the use of the Bid Procedures in connection with the Auction; (iii) the form and manner of notice of the Bid Procedures; and (iv) procedures relating to the potential assumption of certain executory contracts and unexpired leases through the Auction process, including notice of proposed cure amounts.

5. On June 20, 2008, the Bankruptcy Court entered a Order Pursuant to 11 U.S.C. §§ 105(A), 363, and 365 and Federal Bankruptcy Rules 2002, 6004, and 9014, (A) Approving Asset Purchase Agreement and Authorizing the Sale of Assets of Debtors Outside the Ordinary Course of Business; (B) Authorizing the Sale of Assets Free and Clear of all Liens, Claims, Interests and Encumbrances; (C) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Procedures for the Assumption and Assignment of Unexpired Leases; and (D) Granting Related Relief (the “Sale Order”) [Docket No. 345], by which the Bankruptcy Court, *inter alia*, approved the Asset Purchase Agreement (the “Belron APA”), dated as of June 20, 2008, by and between the Debtors and Belron. The sale transaction closed shortly thereafter.

6. On October 3, 2008, the Debtors filed the Settlement Motion, seeking to settle certain subrogation claims made against the Debtors’ estates by Levine.

The Settlement Agreement Releases

7. The Settlement Agreement contains broad releases in favor of Levine. In particular, Section 5 provides as follows:

The Debtors, on behalf of themselves and any and all representatives of their estates, and on behalf of anyone acting or asserting a claim derivatively on behalf of the estates (whether or not such person purports to be acting derivatively on behalf of the estates), hereby release, acquit and forever discharge Levine from any and all claims that the Debtors or their estates may hold against Levine, whether known or unknown, asserted or unasserted, contingent or unliquidated, including but not limited to allegations of recharacterization, equitable subordination, breach of fiduciary duty, deepening insolvency, fraudulent transfer, preference, aiding and abetting or other Damages Claims, provided, however, that the foregoing shall not release any claim of the Debtors or their estates related, in any way, to the Other Claims, including but not limited to counterclaims, cross claims, affirmative defenses or equitable or legal defenses.

8. If Belron's settlement with Levine is not implemented, Belron may request that the Debtors comply with Section 7.2(b) of the Belron APA, which provides as follows:

At Purchaser's request and expense, to the fullest extent permitted by law and not otherwise enforceable by Purchaser, Sellers agree to use commercially reasonable efforts to enforce the terms of any non-competition, non-solicitation or similar agreement between Sellers and their current and former employees, whether or not set forth on the list of Designated Contracts.

9. Moreover, paragraph 40 of the Sale Order provides that "[n]othing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the chapter 11 case, or in any subsequent or converted case of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order."

10. Belron is concerned that, if the parties do not reach agreement on the further documentation contemplated by the Mediation Document, Levine may claim that the Settlement Agreement's release provision precludes claims against him by Belron or the Debtors. Belron has requested that the Settlement Agreement be modified to clarify that the releases do not apply to Belron's invocation of Section 7.2(b) of the Belron APA, but the Debtors have been unwilling to provide such clarification. The Debtors' failure to accommodate Belron's request is inexplicable, especially given the terms of the Debtors' Second Amended Chapter 11 Plan of

Liquidation, dated September 22, 2008 (the "Liquidating Plan"), which provides at Section 13.23 as follows:

Purchaser Claims and Obligations. Notwithstanding anything to the contrary in this Plan or Plan Supplement, including, but not limited to, Sections 13.8, 13.9 and 13.10 of this Plan: (i) the Debtors shall not be released from, and the Debtors and the Plan Administrator will continue to be obligated under, all of the agreements entered into with the Purchaser in connection with the Purchaser's acquisition of the Purchased Assets (as defined in the APA), including, but not limited to, the APA and the Closing and Transition Agreement, dated as of June 30, 2008, by and among the Purchaser and the Debtors, and (ii) the Debtors shall not release, or be deemed to have released, any current or former employee of the Debtors with respect to any non-competition, non-solicitation, or similar agreement with the Debtors, whether or not such agreements were set forth on the list of Designated Contracts (as defined in the APA).

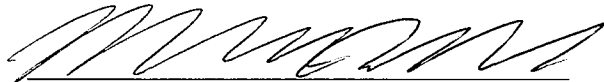
11. If this Court were to enter an order approving the Settlement Agreement without Belron's requested clarification concerning the releases proposed to be given to Levine, such an order would conflict with and be in derogation of the provisions of the Belron APA, the Sale Order and the Liquidating Plan. There is no justification for the impairment of Belron's specifically bargained for contractual rights prior to the finalization and execution of the relevant definitive documentation contemplated by the Mediation Document.

[SIGNATURE PAGE FOLLOWS]

WHEREFORE, Belron respectfully requests that the Court enter an order denying the Settlement Motion unless the Settlement Agreement is modified as set forth herein, and granting such other relief as the Court deems just and proper.

Dated: October 24, 2008

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