

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re :  
: Chapter 11  
:  
**ADI LIQUIDATION, INC.** :  
**(f/k/a/AWI Delaware, Inc.),<sup>1</sup>** :  
: Case No. 14-12092 (KJC)  
Debtors :  
:  
: Re: D.I. 1365, 1817

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**MEMORANDUM ORDER DENYING MOTIONS**  
**OF WESTERN FAMILY FOODS, INC.**

Currently before the Court are the following motions: (i) Motion Of Western Family Foods, Inc. For Relief From the Automatic Stay In Order To Exercise Asserted Setoff Rights (D.I. 1365) (the “Setoff Motion”); and (ii) Motion Of Western Family Foods, Inc. Under 11 U.S.C. §363(b) And (e ) For Order Prohibiting Debtors’ Attempted Exercise Of Setoff Rights Or Conditioning Use Of Property As Is Necessary To Provide Adequate Protection (D.I. 1817) (the “Adequate Protection Motion”).

The Debtors and the Official Committee of Unsecured Creditors (the “Committee”) filed a joint objection to the Setoff Motion, and C&S Wholesale Grocers, Inc. (“C&S”) filed a

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<sup>1</sup>The Debtors are as follows: ADI Liquidation, Inc. (f/k/a AWI Delaware, Inc.); AW Liquidation, Inc. (f/k/a Associated Wholesalers, Inc.); NK Liquidation, Inc. (f/k/a Nell’s Inc.); Co-Op Agency Inc.; AL Liquidation, Inc. (f/k/a Associated Logistics, Inc.); WR Liquidation, Inc. (f/k/a White Rose, Inc.); RT Liquidation Corp. (f/k/a Rose Trucking Corp.); WRSC Liquidation Corp. (f/k/a WR Service Corp.); WRSC II Liquidation Corp. (f/k/a WR Service II Corp.); WRSC V Liquidation Corp. (f/k/a WR Service V Corp.); and White Rose Puerto Rico, LLC.

Reservation of Rights and Response to the Setoff Motion. The Debtors and the Committee filed objections to the Adequate Protection Motion.

A hearing to consider the Setoff Motion and the Adequate Protection Motion was held on April 30, 2015.

1. The Setoff Motion

In the Setoff Motion, Western Family Foods, Inc. (“WFFI”) seeks relief from the automatic stay of Bankruptcy Code §362 to allow it to exercise its setoff rights against its general unsecured claims against the Debtors. The Debtors, however, assert that they also hold certain setoff rights, and have asked for Court approval of the exercise of their setoff rights against claimants who, like WFFI, have asserted administrative priority claims under Bankruptcy Code §503(b)(9).<sup>2</sup>

Bankruptcy Code §362(d) provides that, “[o]n the request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under [§362(a)] . . . for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. §362(d). When determining whether “cause” exists to grant relief from the stay, courts should balance the competing interests of the debtor and the movant by considering (i) whether great prejudice to either the bankruptcy estate or the debtor will result by granting relief from the stay, and (ii) whether the hardship to the non-bankruptcy party by maintenance of the stay

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<sup>2</sup> The Debtors and the Committee filed the Joint Motion of the Debtors and the Official Committee of Unsecured Creditors for an Order (I) Authorizing the Debtors to Offset Trade Credits, Vendor Overpayments, and/or Other Amounts Owed to the Debtors First Against the Administrative or Secured Portion of Creditors’ Claims; and (II) Disallowing Claims for Post-Petition Interest in Connection with Claims Asserted Under 11 U.S.C. §503(b)(9) (D.I. 1821) (the “Joint Motion”). By Memorandum and Order dated May 5, 2015 (D.I.s 2052, 2053), I granted the relief sought in the Joint Motion (the “Joint Motion Decision”).

considerably outweighs the hardship to the debtor. *See In re Rexene Products Corp.*, 141 B.R. 574, 576 (Bankr.D.Del. 1992).<sup>3</sup>

I conclude that the Debtors and the bankruptcy estate would be prejudiced if WFFI were granted relief from the stay to exercise its setoff rights. WFFI argues, however, that the hardship it will suffer if it is not permitted to apply its setoff rights outweighs the hardship the Debtors will suffer if relief from the stay is granted. At its core, the dispute between the parties is a race to determine which party can exercise its setoff rights first, which, in turn, determines whether the competing setoff rights are applied to WFFI's §503(b)(9) claim or WFFI's general unsecured claim.

As discussed in more detail in the Joint Motion Decision, there is no basis in the Bankruptcy Code or applicable case law to conclude that a claimant's setoff rights should trump a debtor's setoff rights.

The Court, in evaluating setoff, should favor an application that is most likely to result in equal distributions to the Debtors' creditors as a whole. *See In re Colonial Realty Co.*, 229 B.R. 567, 575 (Bankr. D.Conn. 1999) (holding that the right to setoff is not absolute and must be balanced against the debtor's duty to maximize assets of the bankruptcy estate and equitable treatment of other creditors.)

*In re Circuit City Stores, Inc.*, 2009 WL 4755253, \*4 (Bankr. E.D. Va. Dec. 3, 2009). The Bankruptcy Code does not treat a debtor's and creditor's right to setoff equally. *Compare* 11 U.S.C. §558 *with* 11 U.S.C. §553. Allowing the Debtors to offset postpetition claims, while restricting a creditor's setoff rights, is consistent with the plain language of the Code and furthers the goals and objectives of the Code.

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<sup>3</sup> Although the Court in *Rexene* considered whether to grant relief from the stay to permit a claimant to continue pursuing a lawsuit pending against the debtor in a non-bankruptcy forum, I conclude that the standard, with slight modifications, is apt here.

For the foregoing reasons, and for the reasons set forth in the Joint Motion Decision, I conclude that the prejudice to the Debtors in granting relief from the stay outweighs the hardship to WFFI in maintaining the stay. Moreover, based upon a review of applicable Bankruptcy Code provisions and the policies underlying the Bankruptcy Code, I also conclude that the Debtors' right to offset the §503(b)(9) claim takes precedence over WFFI's right to offset the general unsecured claim. The Setoff Motion will be denied.

2. The Adequate Protection Motion

The Adequate Protection Motion, at bottom, seeks the same relief as the Setoff Motion. The Adequate Protection Motion seeks to prevent the Debtors from exercising their setoff rights without providing adequate protection to WFFI.<sup>4</sup> As discussed in the Joint Motion Decision, I have reservations about whether adequate protection is available to WFFI under these circumstances. However, to the extent that adequate protection would be appropriate, I agree with the *Circuit City* Court:

Permitting the Debtor to offset prepetition Receivables against the Claimants' postpetition Administrative Expenses does not in any way destroy a Claimant's security interest by virtue of § 553 and §506. Satisfying creditor claims by extinguishing debt that a creditor otherwise owes to the Debtor does not erode the value of the claims alleged by the creditor. The Claimant gets the benefit of the extinguishment of the debt it owes to the Debtors dollar for dollar. Therefore, the Claimants are not harmed by the Debtors' exercise of the Debtors' § 558 setoff rights. Rather, the Claimants are complaining that they are not receiving the windfall that they were perhaps hoping to receive to the detriment of creditors as a whole.

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<sup>4</sup> In the Joint Motion Decision, I concluded that the Bankruptcy Code, case law and the policies underlying the Bankruptcy Code support acknowledging the Debtors' discretion to apply its setoff rights against secured claims, administrative claims (including §503(b)(9) claims) or general unsecured claims. To the extent the Debtors have already, in their discretion, exercised their setoff rights against WFFI's §503(b)(9) claim, the setoff will not be reversed. Any dispute regarding the amount of the claims or the Debtors' setoff rights should be resolved pursuant to the Procedures Order dated February 20, 2015 (D.I. 1781).

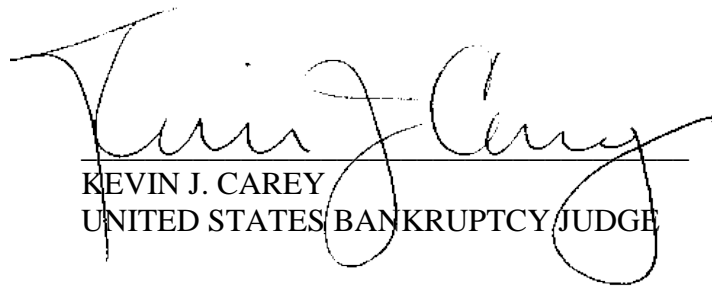
*Circuit City*, 2009 WL 4755253 at \*4.

For the reasons set forth herein and in the Joint Motion Decision, the Adequate Protection Motion will be denied.

**AND NOW**, this 6<sup>th</sup> day of May, 2015, upon consideration of the Setoff Motion and the Adequate Protection Motion, and the objections and responses thereto, and after a hearing, and for the reasons set forth above, it is hereby **ORDERED** that:

1. The Setoff Motion is **DENIED**; and
2. The Adequate Motion is **DENIED**.

BY THE COURT:



KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

cc: Mark Minuti, Esquire<sup>5</sup>

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<sup>5</sup> Counsel shall serve a copy of this Memorandum Order upon all interested parties and file a Certificate of Service with the Court.