

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

In re:	:	Chapter 11
	:	
OPEN ROAD FILMS, LLC, a	:	Case No. 18-12012
Delaware limited liability company, et al.,	:	
	:	(Jointly Administered)
Debtor.	:	
_____	:	Re: Docket No. 644

**MEMORANDUM AND ORDER CLARIFYING SALE ORDER**

The matter before me is the motion (“Motion for Clarification”)<sup>1</sup> of Bank Leumi USA seeking clarification of the sale order entered in this case by which Debtors sold substantially all of their assets to OR Acquisition Co., LLC (“Purchaser”). An objection was filed by Entertainment One UK Limited (“eOneUK”), Entertainment One Benelux BV, Entertainment One Canada, Inc. and Promise Acquisition, LLC, as assignee of Promise Distribution, LLC (collectively, “Objectors”).

On May 16, 2019, I admitted documentary evidence,<sup>2</sup> heard argument and took the matter under advisement. For the reasons set forth below, I will grant the Clarification Motion and clarify the Sale Order to mean that Bank Leumi’s rights under the Picture NOA (as defined below) were not affected by the Sale Order, and specifically were not deemed inoperative or ineffective by virtue of the closing of the sale to Purchaser.

---

<sup>1</sup> Motion of Bank Leumi USA for an Order Clarifying Sale Order Pursuant to Federal Rule of Civil Procedure 60(b), Federal Rule of Bankruptcy Procedure 9024, and 11 U.S.C. § 105(a), D.I. 644.

<sup>2</sup> Without objection, I admitted for purposes of this hearing only, Bank Leumi USA exhibits 1–9 (hereinafter “Movant Ex. \_\_\_”) and Objectors exhibits 1–7 (hereinafter “Objectors Ex. \_\_\_”). I say for purposes of this hearing only because the parties are engaged in an arbitration proceeding involving substantive disputes arising from certain documents admitted into evidence. Nothing in this Memorandum and Order is intended to determine whether a document is admissible in the arbitration proceeding.

## Background

Open Roads Films, LLC and certain affiliated entities, including Open Roads International LLC (“ORI”) commenced voluntary bankruptcy cases on September 6, 2018. Debtors comprised an independent distributor of motion pictures in the United States and they also licensed motion pictures in ancillary markets. Prepetition, Debtors owed approximately \$90 million to its secured lenders under a credit agreement, represented in the bankruptcy cases by the administrative agent, Bank of America, N.A. (“Agent”).

### *A. The Operative Documents*

The Motion for Clarification revolves around one motion picture, *City of Lies f/k/a Labyrinth*. The relevant prepetition documents creating obligations and/or rights with respect to the *City of Lies*, are:

1. Output Agreement dated 1 April 2015 with effect from February 3, 2015 between Open Road International LLC and Entertainment One UK Limited.<sup>3</sup>

In simple terms,<sup>4</sup> the Output Agreement provides for ORI to offer to eOneUK a license to all distribution rights within a given territory for all Qualifying Pictures<sup>5</sup> during the Output Term. The Output Term is a period of three years. eOneUK is required to license the first four Qualifying Pictures in each Output Year. The Output Agreement was subsequently amended.<sup>6</sup>

---

<sup>3</sup> Objectors Ex. 1.

<sup>4</sup> The terms of each agreement are described as background to understand the arguments made by the parties here. As the terms of these agreements are not in dispute, this discussion is not meant to be a definitive legal interpretation of the documents and is not meant to bind the arbitrator in the dispute between the parties. See footnotes 2, 16.

<sup>5</sup> Capitalized terms in this paragraph are defined in the Output Agreement.

<sup>6</sup> Output Agreement Amendment dated \_\_\_\_\_ 2016 between Entertainment One UK Limited and Open Road International LLC. Objectors Ex. 2.

2. November 11, 2016 Picture Certificate.<sup>7</sup>

The Picture Certificate confirms that *City of Lies* is a Qualifying Picture under the Output Agreement, names the director and lead cast for the film, establishes a start date and delivery date for the film as well as a production budget.

3. Master Notice of Assignment (the “Master NOA”) entered into as of May \_\_, 2015 between Entertainment One UK Limited (as Distributor), Open Road International, LLC (as Licensor), Film Finances, Inc. (as Completion Guarantor) and Bank of America N.A. in its capacity as administrative agent (“Agent”) for certain lenders from time to time parties to a certain Credit Agreement.<sup>8</sup>

Again, in simple terms, in the Master NOA, ORI acknowledges that it has granted the Agent (for the benefit of the secured lenders) a first priority security interest in all amounts payable by eOneUK under the Output Agreement.<sup>9</sup> Further, ORI acknowledges that it assigned to the Agent the “Distribution Agreement Proceeds,” which includes a right to receive a license fee, labeled a Minimum Guarantee, for each film. The Master NOA effectuates the grant of the security interest and the assignment of the Distribution Agreement Proceeds to the Agent. The Master NOA instructs eOneUK to pay all Distribution Agreement Proceeds (that otherwise would be paid to ORI under the Output Agreement) directly to the Agent by wire transfer to a specified bank account, including all payments of the Minimum Guarantee.

---

<sup>7</sup> Objectors Ex. 3.

<sup>8</sup> Movant Ex. 1, Objectors Ex. 4.

<sup>9</sup> Specifically, the Master NOA acknowledges the grant of a secured interest in all amounts payable under the Distribution Agreement, which is defined as, collectively, the Output Agreement, the Picture Certificate and all other documents executed in connection therewith as the same may be amended.

4. Notice of Assignment and Distributor's Acceptance ("Picture NOA") dated as of November \_\_, 2016 among eOneUK, ORI, the Agent, Film Finances, Inc. and Bank Leumi USA.<sup>10</sup>

The Picture NOA provides replacement instructions for the payment of the Distribution Agreement Proceeds with respect solely to the picture *City of Lies*. Now, eOneUK is to pay the Minimum Payment and 50% of any Overages (as defined therein) to Bank Leumi by wire transfer to a specified account at Bank Leumi, not to the Agent.<sup>11</sup> This change of instructions corresponds to the statement in the Picture NOA that Bank Leumi (and not the lenders represented by the Agent) would be advancing funds for the production of the picture, *City of Lies*.<sup>12</sup>

#### ***B. The Sale Motion and Order***

On the first day of the case, Debtors filed a motion to establish procedures for the marketing and sale of substantially all of their assets under section 363 of the Bankruptcy Code ("Sale Motion").<sup>13</sup> After completion of the court-approved sale process, on November 20, 2019, Debtors sought approval of the sale of certain assets to Purchaser pursuant to an asset purchase agreement (as amended, and finally approved, "APA").<sup>14</sup> The Sale Motion was initially set to be heard on November 9, 2018, but as explained at the

---

<sup>10</sup> Movant Ex. 2; Objectors Ex. 5.

<sup>11</sup> The remaining 50% of any Overages are to be wired to an account at Bank of America. Neither Movant nor Objectors ascribed any relevance to this provision for purposes of the Clarification Motion.

<sup>12</sup> Movant Ex. 2; Objectors Ex. 5.

<sup>13</sup> Debtors' Motion for Orders: (A) (I) Establishing Bid and Sale Procedures Relating to the Sale of Substantially all of the Debtors' Assets, (II) Authorizing the Debtors to Enter into an Asset Purchase Agreement with Stalking Horse Bidder, (III) Establishing and Approving Procedures Relating to the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts and (IV) Scheduling a Hearing to Consider the Proposed Sale and (B)(I) Approving the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, and (III) Granting Certain Related Relief, D.I. 9.

<sup>14</sup> Movant Ex. 4; Objectors Ex. 6.

November 20 hearing, it was continued multiple times to offer Debtors and Purchaser an opportunity to address objections, including which films would be sold to Purchaser as well as cure amounts with respect to executory contracts. The hearing on the Sale Motion concluded on December 13, 2018 at which time I asked various questions about certain provisions of the proposed sale order.<sup>15</sup> Ultimately, as all objections were resolved, I granted the Sale Motion and signed an order approving the sale to Purchaser (the “Sale Order”), which was entered on the docket.<sup>16</sup>

### *C. The Clarification Motion*

The Clarification Motion seeks to resolve the dispute between Bank Leumi and Objectors regarding who is entitled to payment of the Minimum Guarantee for *City of Lies* in the event a Minimum Guarantee payment is owed.<sup>17</sup> Bank Leumi contends that under the operative prepetition documents, and in particular, the Picture NOA, payment of the Minimum Guarantee must be made to it. Objectors contend that by virtue of paragraph 25 of the Sale Order, the Minimum Guarantee, if due, should be paid to Purchaser.

Paragraph 25 of the Sale Order reads as follows (with emphasis added to portions relied on by Objectors):

Following the Closing, no holder of any liens, mortgage, claims, interests, entitlements, or encumbrances on or arising from the Purchased Assets (other than those expressly assumed by the Buyer or permitted to survive under the APA, including the Permitted Liens, or this Order) or other party in interest may interfere

---

<sup>15</sup> Transcript regarding Hearing Held December 13, 2018, D.I. 465; Objectors Ex. 7.

<sup>16</sup> Order (I) Approving Asset Purchase Agreement Among the Debtors and the Buyer, (II) Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 105, 363(B), (F) and (M), (III) Approving Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases Free and Clear of All Liens, Claims, Encumbrances and Other Interests Pursuant to Bankruptcy Code Sections 363 and 365, (IV) Determining the Amounts Necessary to Cure Such Executory Contracts and Unexpired Leases, and (V) Granting Related Relief, D.I. 483; Movant Ex. 3; Objectors Ex. 6.

<sup>17</sup> Whether the Minimum Guarantee payment is due under the Output Agreement is a subject of the arbitration proceeding.

with the Buyer's use and enjoyment of the Purchased Assets based on or related to such liens, claims, interests, entitlements, and encumbrances, or any actions that the Debtors may take in their Chapter 11 Cases, and no party may take any action to prevent, interfere with, or otherwise enjoin consummation of the Sale Transaction. Without limiting the foregoing, *all* Notices of Consent and Irrevocable Assignments, *Notices of Assignment*, Interparty Agreements, payment direction letters, and collection account management agreements *and any similar or analogous documents, instruments or agreements that direct any proceeds of the Purchased Assets to any accounts maintained at Bank of America, N.A., in its capacity as Agent* (as defined below) under the Senior Secured Credit, Agreement (as defined below), *or to any party or person other than the Buyer* or its designees *that are not expressly assumed shall be deemed rejected and all payment instructions, consent rights, approval rights and benefits of any nature arising thereunder in favor of the Agent and/or any such parties or persons (other than Buyer) shall be immediately inoperative and ineffective* immediately and automatically upon the Closing without further notice or consent by any third party. Notwithstanding the foregoing, the rights in favor of the other parties to assumed agreements shall remain in full force and effect. The Agent has not objected to the Buyer's delivery of notice to counterparties to all such agreements and documents to direct proceeds on account of the Purchased Assets to an account designated by Buyer and has agreed to execute and deliver to the relevant account debtors, collection account managers, and other third parties, any notices reasonably requested by Buyer to advise and confirm to such relevant account debtors, collection account managers, and other third parties that all proceeds on account of the Purchased Assets shall be directed to an account designated by Buyer instead of an account maintained by the Agent, in each case upon Buyer's reasonable request and at Buyer's expense. If after any such reasonable request the Agent (at Buyer's expense) fails to execute any such documents or notices or take any such actions, the Buyer is authorized to execute such documents and notices and to take such actions on behalf of the Agent solely so as to document and effectuate the termination of its interests, entitlements to receipt of such proceeds and to redirect such proceeds to an account designated by Buyer. Further, parties to assumed Notices of Consent and Irrevocable Assignments, Notices of Assignment, Interparty Agreements, payment direction letters, collection account management agreements, and any similar or analogous documents, instruments or agreements that reflect or provide for the making of a payment to a counterparty to a rejected contract shall not be permitted to make such payment, provided that such parties have been sent a notice directing payment to an account specified by Buyer and/or directing such parties that such payments arising under such rejected contract are no longer payable to the counterparty.<sup>18</sup>

---

<sup>18</sup> Movant Ex. 3 ¶ 25; Objectors Ex. 6 ¶ 25.

## Discussion

### *A. I will interpret my own Order*<sup>19</sup>

Bank Leumi brings the Clarification Motion under Federal Rule of Civil Procedure 60(b) made applicable by Federal Rule of Bankruptcy Procedure 9024. Objectors contend that relief available under Federal Rule 60(b) is reserved exclusively for extraordinary circumstances.<sup>20</sup> Citing numerous cases, Bank Leumi counters that the standard is less stringent for motions seeking clarifications of previous orders,<sup>21</sup> and that in any event, extraordinary circumstances exist.<sup>22</sup> Further, Bank Leumi contends that regardless of circumstances, a bankruptcy court has power under section 105(a) of the Bankruptcy Code<sup>23</sup> as well as inherent power to interpret its own orders.<sup>24</sup>

I retained jurisdiction and the power to interpret the Sale Order in the Sale Order itself,<sup>25</sup> and I agree with Bank Leumi that I have the inherent power to interpret my own orders. Further, given that I find paragraph 25 of the Sale Order is ambiguous on the dispute before me, I find that a clarification is both appropriate and well within my purview.

---

<sup>19</sup> Jurisdiction exists under 28 U.S.C. § 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(N).

<sup>20</sup> Objection of Entertainment One UK Limited to Motion of Bank Leumi USA for an Order Clarifying Sale Order Pursuant to Federal Rule of Civil Procedures 60(b), Federal Rule of Bankruptcy Procedures 9024, and 11 U.S.C. Section 105(a) (“Objection”) ¶ 15, D.I. 676.

<sup>21</sup> Reply in Further Support of Motion of Bank Leumi USA for an Order Clarifying Sale Order Pursuant to Federal Rule of Civil Procedures 60(b), as Made Applicable by, Federal Rule of Bankruptcy Procedures 9024, and 11 U.S.C. Section 105(a) (“Reply in Further Support”) ¶¶ 5–7, D.I. 679.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> All statutory references to sections of the United States Bankruptcy Code, 11 U.S.C. §101 *et seq.*, will hereinafter be referred to as “§ (section number).”

<sup>24</sup> Reply in Further Support 11, 12.

<sup>25</sup> Movant Ex. 3 ¶ 49; Objectors Ex. 6 ¶ 49.

## *B. Undisputed Facts*

The following facts are not in dispute:

- The Output Agreement was assumed by ORI and assigned to Purchaser.<sup>26</sup>
- The Output Agreement contains the obligation to pay the Minimum Guarantee.
- The Master NOA was not assumed by ORI or assigned to Purchaser.
- The Picture NOA was not assumed by ORI or assigned to Purchaser (assuming the Picture NOA is an executory contract, which Bank Leumi disputes).<sup>27</sup>
- Under the Picture NOA, the Minimum Guarantee payment is to be made to Bank Leumi.
- The film title *City of Lies* is not a Purchased Title under the APA and does not appear on Schedule 1.1(b) of the APA.<sup>28</sup>
- A Schedule of Amended Cures for assumed contracts was amended to delete references to Acquisition Agreements with Good Films Enterprise, LLC regarding *City of Lies*.<sup>29</sup>

Further, Purchaser states that it did not purchase any right, title or interest in *City of Lies*.

Mr. Sherman, Purchaser's counsel, provided a declaration in which he states that he participated in the negotiation of paragraph 25 of the Sale Order and that:

Buyer did not purchase and does not assert or have, any right, title or interest in or to *City of Lies* (formerly known as "*LAabyrinth*") (the "Picture") and does not seek payment from Entertainment One UK Limited ("eOne") in connection with the Picture including, without limitation, any payment under any Notice of Assignment and Distributor's Acceptance executed by eOne.

I, as counsel for Buyer, did not intend for any part of the Sale Order (including Paragraph 25) to adversely affect Bank Leumi's USA's rights with respect to the Picture, Bank Leumi USA's collateral or any proceeds thereof.<sup>30</sup>

---

<sup>26</sup> There is no evidence (and I do not see agreement in the filings) regarding whether the amendment to the Output Agreement was assumed by ORI and assigned to Purchaser.

<sup>27</sup> Objection 11 ("The Master NOA and the [Picture NOA] were not identified as Assumed Contracts in either the Sale Order or the APA.").

<sup>28</sup> Movant Ex. 9.

<sup>29</sup> Movant Ex. 8. Bank Leumi asserts that it made the request that the contracts be removed from the schedule.

<sup>30</sup> Movant Exs. 5; 7 ¶¶ 7-8.

Similarly, Debtors' counsel states that it is Debtors' view that "neither City of Lies nor any interest in or proceeds of it is a 'Purchased Asset'" under the APA and that "the language of Paragraph 25 of the Sale Order regarding 'proceeds of Purchased Assets' was not intended to cover proceeds of the City of Lies."<sup>31</sup>

*C. The Parties' Positions*

Bank Leumi takes the position that the right to receive the Minimum Guarantee under the Picture NOA was not, and could not, have been stripped from it under the Sale Order because *City of Lies* was not a "Purchased Asset" within the meaning of the APA as it was not a "Purchased Title." Bank Leumi also contends that the Picture NOA is not executory and thus could not have been rejected as contemplated in paragraph 25, and that the assignment of the Minimum Guarantee happened prepetition and thus Debtors could not sell (or affect) property they did not own as of the petition date. Finally, Bank Leumi argues that, read in context, the Sale Order, including paragraph 25, is only intended to affect Picture Titles that constitute Purchased Assets.

Objectors make two arguments. First, they argue that because the Output Agreement was assumed by ORI and assigned to the Purchaser, it was a Purchased Asset within the meaning of the APA, and that paragraph 25 unambiguously states that notices of assignments directing proceeds of Purchased Assets are rejected and all payment instructions contained therein are inoperative and ineffective. In Objectors' view, it does not matter that *City of Lies* is not a Purchased Title under the APA. Further, Objectors argue that their reading of the Sale Order will deliver the most equitable result. Objectors point to

---

<sup>31</sup> Movant Ex. 6. Debtors and Purchaser have supplied statements that Movant has used as evidence (Movant Exs. 5-7), but neither Debtors nor Purchaser participated in the prosecution of the Motion for Clarification.

section 3.3 of the Output Agreement and contend that it contains a refund obligation in the event that there is no “Qualifying US Release” such that eOneUK would be able to setoff any Minimum Guarantee payment against the refund obligation. Objectors argue that if that setoff right is eliminated, Bank Leumi obtains a windfall.<sup>32</sup>

### Analysis

As relevant here, the term “Purchased Assets” under the APA means all of Debtors’ right title and interest in, to or under:

- (a) subject to Section 2.8, all of the Seller Parties’ right, title and interest in and to the Title Rights;
- (b) all of the Seller Parties’ rights under the Assumed Contracts;
- (d) all assets of the Seller Parties listed on Schedule 2.1(d).<sup>33</sup>

Title Rights has a lengthy definition, but in essence means all of Debtors’ rights, title and interest in the Purchased Titles and all things related to the Purchased Titles.<sup>34</sup> And, Purchased Titles means “collectively, the motion pictures set forth in Schedule 1.1(b)<sup>35</sup> under the heading ‘Purchased Titles.’”<sup>36</sup>

Under the APA, *City of Lies* is not Purchased Title, thus it is not a Purchased Asset under section 2.1(a), above.<sup>37</sup> But, the Output Agreement, which was assumed by ORI and assigned to Purchaser is a Purchased Asset under section 2.1(b), above. The Sale Order

---

<sup>32</sup> Objection 18. eOneUK also argues that the Clarification Motion should not be decided until the underlying arbitration is concluded because if eOneUK prevails the Minimum Guarantee will not be due. As this is my order, I see no reason to await the outcome of the arbitration proceeding.

<sup>33</sup> Movant Ex. 4 section 2.1 (a), (b), and (d); Objectors Ex. 6 section 2.1 (a), (b), and (d).

<sup>34</sup> *Id.* section 1.1.

<sup>35</sup> Movant Ex. 9.

<sup>36</sup> Movant Ex. 4 section 1.1; Objectors Ex. 6 section 1.1.

<sup>37</sup> Movant Ex. 4 section 2.1(a); Objectors Ex. 6 section 2.1(a). It is also an Excluded Contract under section 1.1.

does not specifically address what happens in this scenario—when an Assumed Contract covers both Purchased Titles and non-Purchased Titles.<sup>38</sup>

Interpreting a sale order is an exercise in contract interpretation: “[w]hen construing an agreed or negotiated form of order, such as the Sale Order in this case, the Court approaches the task as an exercise of contract interpretation rather than the routine enforcement of a prior court order . . . . At bottom, the goal is to determine the rights, duties, and reasonable expectations of the parties, as disclosed to and blessed by the Court. The Third Circuit Court of Appeals has held that ‘[t]he paramount goal of contract interpretation is to determine the intent of the parties’ . . . . ‘The strongest manifestation of that intent is the wording of the agreement itself.’”<sup>39</sup> I am “obliged to construe the Sale Order in its entirety and interpret its provisions in a consistent manner.”<sup>40</sup>

I conclude that paragraph 25 does not eviscerate Bank Leumi’s rights under the Picture NOA. As Bank Leumi observes, paragraph 25 of the Sale Order is designed to ensure that parties do not interfere with Purchaser’s use and enjoyment of the Purchased Assets based on claims against Debtors. In this context, paragraph 25 provides that Notices of Assignment that direct proceeds of “Purchased Assets” to an account at Bank of America or to another party shall be inoperative and ineffective. To effectuate this provision, paragraph 25 further provides that **the Agent** has not objected to Purchaser’s delivery of

---

<sup>38</sup> Neither party argued that the APA resolves this issue.

<sup>39</sup> *In re Trico Marine Servs., Inc.*, 450 B.R. 474, 482 (Bankr. D. Del. 2011).

<sup>40</sup> *Id.* See also *Nash v. Towne*, 72 U.S. 689, 694, 18 L. Ed. 527 (1866) (“Courts, in the construction of contracts, look to the language employed, the subject-matter, and the surrounding circumstances; and may avail themselves of the same light which the parties enjoyed when the contract was executed. They are, accordingly, entitled to place themselves in the same situation as the parties who made the contract, in order that they may view the circumstances as those parties viewed them, and so judge of the meaning of the words and of the correct application of the language to the things described.”).

notice to counterparties to “**all** such agreements and documents” to direct proceeds on account of the Purchased Assets to Purchaser. Further, **the Agent** has agreed to execute and deliver notices to third parties to the effect that “proceeds on account of Purchased Assets should be directed to an account designated by [Purchaser] **instead of an account maintained by the Agent.**” Notwithstanding the reference in paragraph 25 to payment instructions directing payment to any accounts maintained by the Agent “or to any party or person other than [Purchaser] or its designees,” paragraph 25 appears directly aimed at the Agent. It certainly does not name Bank Leumi.

Paragraphs 26 and 27 continue the logistical process of ensuring that payments directed to the Agent are ultimately received by Purchaser. Paragraph 26 directs Debtors to turn over to Purchaser any proceeds of Purchased Assets they may receive after the sale closes, including payments deposited to Debtor bank accounts maintained by the Agent. Noticeably, paragraph 26 excludes from this requirement proceeds that are Excluded Assets. Paragraph 27 protects parties who honor a notice or direction given by Debtors, Purchaser or the Agent to make payment to Purchaser. Neither of these paragraphs specifically name Bank Leumi. And, Objectors have not suggested, much less submitted evidence showing, that eOneUK received a notice from the Agent redirecting its payment to Purchaser.

My interpretation of paragraph 25 is consistent with my previous observation about that paragraph. At the December 13, 2018 hearing, the following colloquy took place:

THE COURT: I want to make sure I understand, is it still paragraph 24, let me see. No, it's paragraph 25.

**This talks about and what I assume its meant to do is make certain that payments that once went to Bank of America after the closing go to the buyer.**

MR. WEISS: That's my understanding, Your Honor. This is something that Raven<sup>41</sup> has raised and it's something that other parties who are making these payments have raised as well. They don't want to be in a position where they're unsure who to pay or they, you know, get asked to pay twice.

THE COURT: Okay. And so, these notices of consent and assignment and these other collection type documents, payment type documents, are going to be rejected, but yet certain rights in favor of other parties are still in effect. Then that's what, I guess, I don't understand. **I just want to make sure everybody does understand what this paragraph means because I think the concept is simple, but I have to confess getting confused in the language.**

MR. WEISS: This is a long paragraph, Your Honor. Let me take a read.

THE COURT: Mr. Tenzer has a view, I take it.

MR. TENZER: Your Honor, Andrew Tenzer of Paul Hastings on behalf of Bank of America. I think that actually it would behoove the parties, including Raven, just to briefly maybe after the hearing as there are going to be other changes to the order to talk about both paragraphs 25 and 26, not that I have conceptual problems with them, but there are issues. For instance, one that jumps out of me and I thought this had been fixed is this paragraph has to be limited to Bank of America in its capacity as agent. Right. If there are other relationships that Bank of America has, right. I think what I'm talking about are technical fixes. You know, we talked about -- I talked briefly with counsel to the debtors about the two-business day period about paragraph 26, and I also had thought these -- any requests that we get from Raven for cooperation, we're happy to cooperate. But, obviously, they have to pay for that which is not referenced in the order either. So, I think there are going to be changes to these paragraphs that we, I thought had discussed. I don't see them in here, but my guess is there will be changes. I'm happy to listen to anything else Your Honor wants to say about these paragraphs. But I just wanted to represent to the court that I don't think that what you see in here will be what you ultimately will be asked to sign.

THE COURT: Okay. **Well, I had just marked these paragraphs actually because I'm -- well, as I said, I think I understand the concept behind these paragraphs, the language is confusing.** And I would assume as between Raven and Bank of America, you all can come up with your language that works. It does talk about rights of other parties to these agreements and I don't know what those rights are or, quite frankly, who

---

<sup>41</sup> Raven is the Purchaser.

those parties are or the impact. So, that's why I had questions about what this was supposed to do, vis-à-vis other parties.

MR. TENZER: I think primarily what this is supposed to do is to make sure -- there are all sorts of documents and agreements that direct the other parties to make **their payments to the bank**.

THE COURT: To pay -- yes.

MR. TENZER: And, obviously, that's not what, you know, buyer wants but we understand that that -- that's fine.

THE COURT: Right.

MR. TENZER: Technically, I don't think it's drafted correctly.

THE COURT: Okay.

MR. HAYNES:<sup>42</sup> Your Honor, Nathan Haynes again. I think that Mr. Tenzer's suggestion is a good one, that let us work together. I think, in concept, from the idea to getting on the page was a little different.<sup>43</sup>

As reflected in this exchange, counsel for the Agent suggests that this is an arrangement to ensure payments are re-directed from the Agent's account to a Purchaser account. No one suggested that paragraph 25 was meant to re-direct payments owed to Bank Leumi.

Further, as the above colloquy shows, I have every reason to conclude that paragraph 25 is ambiguous on this specific point. For this reason, I can look to the evidence submitted by Bank Leumi which supports this interpretation. Both counsel to Debtors and counsel to Purchaser have confirmed that it was not their intention when drafting paragraph 25 to eviscerate Bank Leumi's rights under the Picture NOA. Specifically, "the language of Paragraph 25 of the Sale Order regarding 'proceeds of Purchased Assets' was not intended to cover proceeds of the City of Lies." Objectors presented no contrary evidence.

---

<sup>42</sup> Mr. Haynes represented Purchaser.

<sup>43</sup> Objectors Ex. 7 at 31:11-34:9 (emphasis added).

Finally, it would be inequitable to conclude that paragraph 25 negated Bank Leumi's payment rights. Objectors argue that eOneUK has a refund claim under the Output Agreement that entitles it to a full refund of the Minimum Guarantee in the event that *City of Lies* fails to receive a U.S. Qualifying Release. Objectors further argue that *City of Lies* did not have a U.S. Qualifying Release and so eOneUK is entitled to an immediate refund even if the Minimum Guarantee is owed. It argues that "having the refund obligation reside with the payee assures that eOne[UK] will receive the full benefit of its bargain (and fully preserves any potential right of setoff or recoupment) and avoids a situation where Bank Leumi is obtaining a windfall on account of a film for which eOne[UK] was unable to distribute by virtue of Bank Leumi's own actions in terminating the rights."<sup>44</sup>

This is exactly backwards. Bank Leumi's right to receive the Minimum Guarantee from eOneUK was established prepetition in the Picture NOA to which eOneUK was a party. If the separation of the right to receive the Minimum Guarantee under the Picture NOA from the right to a refund under the Output Agreement creates any inequity, it did so prepetition. Nothing in the Sale Order or my interpretation of it creates any inequity.<sup>45</sup>

---

<sup>44</sup> Objection 12, D.I. 676.

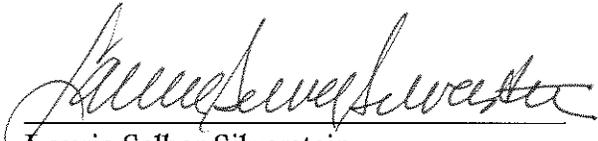
<sup>45</sup> I also note that at argument, Objectors' counsel represented that eOneUK considered objecting to the Sale Motion on the basis that the Picture Certificate for *City of Lies* was excluded from the sale on a "master agreement, can't break these agreements up" type argument. See, e.g., *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir.1996). Objectors recognized "pros and cons" of raising that argument, but chose not to do so, based, in part, on the existence of paragraph 25. Hr'g Tr. 49:12-25, D.I. 696. Thus, while it filed an objection to the Sale Motion and paragraph 29 was added to the Sale Order to resolve Objectors' objection, the resolution did not address the divisibility issue. Having made a strategic decision not to clarify the situation, it is not inequitable to conclude that the instructions in the Picture NOA are still effective. To be clear, I am not making any ruling with respect to the meaning of paragraph 29 of the Sale Order or whether Purchaser is responsible for any refund obligation.

**Conclusion**

For the reasons set forth above, it is hereby **ORDERED** that:

1. The Clarification Motion is **GRANTED**.
2. The Sale Order is clarified as follows:
  - a. The term “Purchased Asset” as used in the Sale Order, and as defined in the APA, does not include *City of Lies*, or any right, title, or interest therein, or any proceeds therefrom due and owing under the Picture NOA; and
  - b. None of paragraph 25 of the Sale Order, any other paragraph of the Sale Order, or any provision of the APA, affects (a) whatever right Bank Leumi has under the Picture NOA to recover any payment from eOneUK relating to *City of Lies* or (b) payment instructions, consent rights, approval rights or benefits of any nature in favor of Bank Leumi under the Picture NOA; and
  - c. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: February 5, 2020

  
Laurie Selber Silverstein  
United States Bankruptcy Judge