

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

In re)	Chapter 7
)	
PALLET COMPANY LLC (f/k/a iGPS)	Case No. 13-11459(KG)
COMPANY LLC),)	
)	
Debtor.)	
<hr/>		Re: Dkt No. 822

MEMORANDUM ORDER

1. The Debtor¹ through its Liquidation Trustee² (the “Liquidation Trustee”) initially (but see ¶ 3, below) and Debtor Affiliates³ (the “Movants” also referred to herein as “Defendants”) have moved to enforce the injunction provisions in the Confirmation Order (the “Injunction Provisions”) which the Court entered on November 14, 2013 (D.I. 678). See Joint Motion of the Debtor and Debtor Affiliates to Enforce the Confirmation Order Injunction Provisions Pursuant to Sections 105, 1141 and 1142 of the Bankruptcy Code Against Creditor Bobby Moore (the “Motion”). D.I.822. The Movants seek to enjoin creditor Bobby L. Moore (“Mr. Moore”) from continuing to prosecute an action he

¹ The Debtor is Pallet Company LLC f/k/a iGPS Company LLC.

² Peter Kravitz of SLTNTRST LLC d/b/a Solution Trust, is serving as the Liquidation Trustee for the Liquidation Trust.

³ The Debtor Affiliates are defendants in the Moore Action. The Defendants are: Pegasus Capital Advisors LLP (“Pegasus Advisors”), Pegasus Partners III (AIV), L.P., Pegasus Investors III, L.P., Pegasus Investors III GP, L.L.C., Pegasus iGPS, LLC, iGPS Co-Investment LLC, iGPS Employee Participation, L.P., iGPS Executive (GP) LLC, PP IV iGPS Holdings, LLC, (collectively “Pegasus Entities”), Kelso & Company, KIA VIII (iGPS), L.P., KIA VIII (iGPS) GP, L.P., KEP VI AIV (iGPS), LLC, Kelso GP VIII, LLC, (collectively “Kelso Entities”), Rich Weinberg (“Weinberg”), Craig Cogut (Cogut”), Frank Nickell (“Nickell”), and Phil Berney (“Berney”).

commenced prior to Debtor's bankruptcy. The litigation is captioned *Moore v. iGPS Company, LLC, et al.*, Adversary No. 14-01011, now pending in the United States Bankruptcy Court for the Southern District of New York (removed from the Supreme Court of New York) (the "Moore Action").

2. In the Moore Action, Mr. Moore has brought suit against two private equity firms, investment firms which they operate and their principals, claiming they violated the Debtor's limited liability operating agreement and that certain of the defendants tortiously interfered with Mr. Moore's employment agreement with Debtor. Mr. Moore originally sued Debtor for claims related to his employment agreement, but has since dismissed the Debtor. Therefore, the remaining claims in the Moore Action are against non-debtors. Two of the non-debtor defendants were members of Debtor's board of managers; and four of the defendants were not officers or managers of Debtor and were unaffiliated to Debtor. Again, to be clear, Debtor is not a defendant in the Moore Action.

3. Mr. Moore and the Liquidation Trustee have entered into a settlement whereby, most pertinent to the present dispute, Mr. Moore agreed to withdraw the proof of claim against Debtor which he filed in the bankruptcy case. In turn, the Liquidation Trustee agreed to withdraw his support for the Motion, thereby leaving only the Debtor Affiliates prosecuting the Motion.

4. The Injunction Provision of the Confirmation Order, which the Debtor Affiliates are seeking to enforce, states that:

Injunctions

29. On the Effective Date and except as otherwise provided in this Confirmation Order and in the Plan, all Persons who have been, are or may be holders of Claims against or Equity Interests in the Debtor shall be permanently enjoined from taking any of the following actions against or affecting the Debtor, its Estate, the Assets or the Liquidation Trustee, or any of their current or former respective members, directors, managers, officers, employees, agents, professionals, successors and assigns or their respective assets and property with respect to such Claims or Equity Interests (except for actions brought to enforce any rights or obligations under the Plan, the Asset Purchase Agreement and/or the Sale Order, including but not limited to Claims held by the Liquidation Trust):

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, all suits, actions and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);

* * *

5. Mr. Moore clearly is a “Person” who held a claim, since withdrawn, against or equity interest in the Debtor.

6. The test for the applicability of the Injunction Provision has two elements, as Mr. Moore points out. First, the action at issue must be against a protected person or entity. Second, it must be an action with respect to a claim or equity interest.

7. Based on its reading of the Amended Complaint in the Moore Action, the Court agrees with Mr. Moore's categorization of the Defendants – or is at least and by necessity without evidence to the contrary, acceding to Mr. Moore's identification. The Defendants can be grouped as follows:

(A) Pegasus Advisors and Cogut were never member officers or managers of Debtor.

(B) Pegasus Entities were members and Rich Weinberg was a Manager.

(C) Kelso and Frank Nickell were never members, officers or managers.

(D) Kelso Investors who were never members, officers or managers and Phil Berney who was a Manager.

8. The defendants in Classes A and C are not covered by the Injunction Provision. In contrast, the defendants in Classes B and D are covered by the Injunction Provision but Moore's claims are limited to the alleged breach of Mr. Moore's employment agreement and are therefore excepted from the Injunction Provision.

9. The Court rejects the Debtor Affiliates' argument that certain professionals are included in the Injunction Provision. It is clear that the "Professionals" referred to in the Injunction Provision are the professionals retained for the bankruptcy and whose retention the authorized.

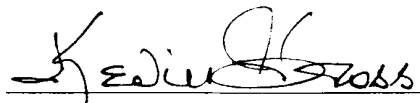
10. The Affiliated Debtors also urge the Court to apply the Injunction Provision because the Debtor has indemnification obligations to the Defendants which would result in

harm to Debtor or the Liquidation Trust. The Court will give short shrift to the possibility of indemnification. The right is speculative and will require the Court's approval on proof. The Court also notes that the Liquidation Trustee has removed support for the application of the Injunction Provision, indicating his lack of concern for indemnification.

11. The Court is satisfied based on the narrow reading of the Injunction Provision, that the Motion must be denied. The Court is required to limit the enforcement of the Injunction Provision, as a post-confirmation injunction that effectively releases non-debtor third parties is problematic. *Official Cmtee. of Equity Security Holders v. Spectrum Jungle Labs Corp.*, 2009 WL 2252255 (W.D. Tex.); *In re Rhonert Park Auto Parts, Inc.*, 113 B.R. 610 (BAP 9th Cir. 1990). The Court's heightened scrutiny of the Defendants' effort to clothe themselves in the Injunction Provision must fail on the facts presented.

Accordingly, IT IS HEREBY ORDERED that the Motion is denied.

Dated: May 20, 2014


KEVIN GROSS, U.S.B.J.