

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

In re:)	Chapter 11
)	
CREATIVE HAIRDRESSERS, INC., <i>et al.</i> ,)	Case Nos. 20-14583, 20-14584 (TJC)
)	(Jointly Administered)
)	
Debtors.)	
)	

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' STATEMENT IN
SUPPORT OF THE DEBTORS' MOTION TO COMPEL HC SALON HOLDINGS INC.
TO COMPLY WITH THE TRANSITION SERVICES AGREEMENT**

Consistent with its representations to counsel for the Official Committee of Unsecured Creditors (the “Committee”) of Creative Hairdressers, Inc. and Ratner Companies, L.C. (collectively, the “Debtors”) and the record of the above captioned chapter 11 cases, HC Salon Holdings, Inc. (“HC Salon”) signed a Transition Services Agreement dated as of June 4, 2020 (the “TSA”) agreeing to, among other things, “reimburse the [Debtors] for any and all of its actual, documented, out-of-pocket costs and other expenses reasonably incurred in connection with the performance of the services hereunder [and/]or any wind down costs of seller, including the allowed fees of Sellers’ professionals employed under one or more orders of the Bankruptcy Court...”. TSA § 5.2. The Committee therefore supports the *Debtors’ Motion to Compel HC Salon Holdings Inc. to Comply with the Transition Services Agreement* [Docket No. 785] (the “Motion”) and requests that the Court enter an Order requiring HC Salon to pay the amounts requested by the Debtors. In support of the Motion, the Committee further states:

I. BACKGROUND

1. On April 23, 2020, the Debtors filed with this Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing these chapter 11 cases (the “Cases”). The

Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

2. On the Petition Date the Debtors filed the *Motion Of the Debtors For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Obtain Postpetition Secured Financing, (II) Authorizing Use Of Cash Collateral, (III) Granting Adequate Protection To Prepetition Secured Parties, (IV) Scheduling A Final Hearing, and (V) Granting Related Relief* [Docket No. 23] (the “DIP Motion”). Under the DIP Motion and its proposed budget, together with subsequent amendments (as approved by the Court), HC Salon loaned the Debtors funds to bridge to a closing on the contemplated sale of substantially all of the Debtors’ assets to HC Salon.

3. On the Petition Date, the Debtors also filed a *Motion for Entry of Orders (I)(A) Establishing Bidding Procedures; (B) Approving Expense Reimbursement; (C) Establishing Procedures Relating to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice pf Proposed Cure Amounts; (D) Approving Form And Manner of Notice; (E) Scheduling a Hearing to Consider any Proposed Sale; and (F) Granting Certain Related Relief; and (II)(A) Approving a Sale; (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting Related Relief* [Docket No. 22] (the “Sale Motion”). Pursuant to the Sale Motion, HC Salon acted as a “Stalking Horse Bidder” for the Debtors’ assets pursuant to the terms of an asset purchase agreement by and between the Debtors and HC Salon.

4. On May 1, 2020, the United States Trustee appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No 128]. The Committee consists of the following members: (i) Regency Centers, L.P., (ii) SITE Centers Corp, (iii) LaDove, Inc., (iv) Global Printing, Inc. d/b/a More Vang, and (v) Nicole Olson.

5. On May 8, 2020, the Committee filed an objection to the DIP Motion [Docket No. 186], which objection was supplemented by an objection filed by the Committee on May 18, 2020 [Docket No. 368] (collectively, the “Committee’s Objections”). By the Committee’s Objections, the Committee raised objections to, inter alia, the terms of the proposed sale to HC Salon, including the bankruptcy estates’ ability to satisfy post-closing administrative expenses.

6. The Committee and its professionals conducted extensive negotiations with the Debtors and HC Salon in an attempt to resolve the Committee’s Objections and better ensure the administrative solvency of these Cases. In response to the Committee’s concerns as to the administrative solvency of these Cases on a go-forward basis, counsel for the Debtors and HC Salon told the Committee’s counsel that the fees and expenses of Debtors’ professionals would be paid by HC Salon outside the estate and pursuant to a transition services agreement that was being prepared.

7. The parties’ negotiations culminated in an agreement whereby HC Salon agreed to, among other things, (i) fund a \$50,000 escrow for payment of priority claims, (ii) provide an extra \$100,000 toward wind down costs, designed primarily for fees of the Committee professionals, and (iii) fund a \$500,000 reserve to satisfy potential administrative claims of landlords whose leases had been rejected.

8. On June 2, 2020, the Court entered an *Order (A) Approving and Authorizing the Sale of Substantially All of Debtors’ Assets Pursuant to the Amended and Restated Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief* [Docket No. 465] (the “Sale Order”), and the sale to HC Salon closed effective June 4, 2020.

9. The Debtors thereafter obtained authority from the Court and the Debtors and HC Salon executed the TSA effective as of June 4, 2020. Consistent with the representations made to the Committee and upon which the Committee relied in resolving the Committee's Objections, HC Salon agreed in the TSA to pay the wind-down costs of these Cases, including the allowed fees of the Debtors' professionals.

II. ARGUMENT

10. There can be no doubt that HC Salon agreed, through the TSA, to be responsible for payment of the wind-down costs of these Cases, including the allowed fees of Debtors' professionals.

11. In its *Objection to Debtors' Motion to Compel HC Salon Holdings Inc. to Comply with Transition Services Agreement* [Docket No. 798] (the "Objection"), HC Salon makes no colorable argument against that fact. Instead, HC Salon's only real argument seems to be that Section 5.3 of the TSA required the Debtors to obtain HC Salon's prior written consent to any expenses and the Debtors allegedly did not do that.¹

12. HC Salon is correct that the TSA states, "that the Seller shall, where possible, inform the Purchaser of the actual or reasonably estimated amount of such expenses before they are incurred and shall not incur any such expenses without the Purchaser's prior written consent." TSA § 5.2. But that is of no effect with respect to the fees of the Debtors' professionals, who had already been approved by the Court and whose fees are subject to notice and objection. It is also of no effect with respect to fees and expenses that were either expressly approved in the TSA or were approved by HC

¹ To be fair, the Objection spends a considerable amount of text pointing out that the asset purchase agreement approved by the Sale Order does not require HC Salon to pay the amounts requested by the Motion. But that is of no effect here. The TSA was executed by HC Salon after the asset purchase agreement and is itself an enforceable contract by and between the Debtors and HC Salon. The fact that an apartment lease does not obligate an individual to also pay student loan obligations does not mean that those student loan obligations are not enforceable.

Salon separately. The Court should therefore find that HC Salon has approved all such fees and expenses as contemplated by the TSA.

13. To the extent HC Salon did not approve fees or expenses sought by the Motion, the Court should nonetheless require HC Salon to reimburse the Debtors for all such reasonable fees and expenses as within the contemplation of the parties at the time of the execution of the TSA. The Court should not allow HC Salon to withhold its consent to such fees and expenses and thereby skirt its obligations under the TSA.

WHEREFORE, the Committee respectfully requests that the Court enter an Order granting the Motion. The Committee asks for all other just and proper relief.

Dated: January 29, 2021

/s/ Jonathan H. Todt

Jonathan H. Todt
FAEGRE DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Washington, DC 20005-1209
Telephone: (202) 230-5823
Facsimile: (202) 842-8465
jonathan.todt@faegredrinker.com
Maryland State Bar No. 07166

Keith N. Costa
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036
Telephone: (212) 248-3246
Facsimile: (212) 248-3141
keith.costa@faegredrinker.com
(admitted pro hac vice)

Patrick A. Jackson
FAEGRE DRINKER BIDDLE & REATH LLP
222 Delaware Ave., Suite 1410
Wilmington, DE 19801
Telephone: (302) 467-4210
Facsimile: (302) 467-4201
patrick.jackson@faegredrinker.com
(admitted pro hac vice)

*Counsel for the Official Committee of Unsecured
Creditors*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of January, 2021, a copy of the *foregoing* was served on the parties listed by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party.

Joel I. Sher, Esquire
Richard M. Goldberg, Esquire
SHAPIRO SHER GUINOT & SANDLER
250 W. Pratt Street, Suite 2000
Baltimore, MD 21201
Counsel to the Debtors and Debtors in Possession

Richard A. Chesley, Esquire
DLA Piper LLP (US)
444 West Lake Street Chicago, IL 60606-0089
Counsel for HC Salon Holdings, Inc.

Jeanette Rice, Assistant United States Trustee Lynn A. Kohen, Esquire
OFFICE OF THE UNITED STATES TRUSTEE
6305 Ivy Lane
Suite 600
Greenbelt, MD 20770

I HEREBY FURTHER CERTIFY that on the 29th day of January, 2021, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *foregoing* will be served electronically by the Court's CM/ECF system on the following:

- **Aaron Solomon Applebaum** aaron.applebaum@saul.com, catherine.santangelo@saul.com
- **Gwynne L Booth** GLB@GDLLAW.COM
- **Steven M Berman** sberman@shumaker.com
- **Alan Betten** abetten@sagallaw.com
- **Peter D Blumberg** heather.williams@fedex.com
- **Joshua D. Bradley** jbradley@rosenbergmartin.com, lfeigh@rosenbergmartin.com

- **Jodie E. Buchman** jbuchman@silvermanthompson.com, efiling@silvermanthompson.com
- **Donald F. Campbell** dcampbell@ghclaw.com
- **Katie Lane Chaverri** kchaverri@tlclawfirm.com, dtayman@tlclawfirm.com
- **Maria Ellena Chavez-Ruark** maria.ruark@saul.com
- **Kevin Davis** kdavis@capdale.com
- **Monique Bair DiSabatino** monique.disabatino@saul.com, robyn.warren@saul.com
- **Alan D. Eisler** aeisler@e-hlegal.com, mcghamilton@gmail.com
- **John T. Farnum** jfarnum@milesstockbridge.com, jfarnumecfnotices@gmail.com
- **William Henry Fisher** hank@cccoateslaw.com
- **Jeremy S. Friedberg** jeremy@friedberg.legal, ecf@friedberg.legal
- **Stanford G. Gann** sgannjr@levingann.com
- **Alan M. Grochal** agrochal@tydingslaw.com, mfink@tydingslaw.com; jmurphy@tydingslaw.com
- **William L. Hallam** WHallam@rosenbergmartin.com, kmartin@rosenbergmartin.com
- **Robert Hanley** rhanley@rmmr.com
- **Catherine Harrington** charrington@bregmanlaw.com
- **Jessica Hepburn-Sadler** sadlerjh@ballardspahr.com, andersonn@ballardspahr.com
- **James M. Hoffman** jhoffman@offitkurman.com, mmargulies@offitkurman.com
- **Patricia B. Jefferson** pjefferson@milesstockbridge.com
- **Ira T Kasdan** kdwbankruptcydepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com
- **Lawrence A. Katz** lkatz@hirschlerlaw.com, lrodriguez@hirschlerlaw.com
- **Patrick J. Kearney** pkearney@sgrwlaw.com, jnam@sgrwlaw.com
- **Nicole C. Kenworthy** bdept@mrrlaw.net
- **C. Kevin Kobbe** kevin.kobbe@dlapiper.com, docketing-baltimore-0421@ecf.pacerpro.com
- **Lynn A. Kohen** lynn.a.kohen@usdoj.gov
- **Leonidas Koutsouftikis** lkouts@magruderpc.com, mcook@magruderpc.com

- **Joyce A. Kuhns** jkuhns@offitkurman.com
- **Jeffrey Kurtzman** kurtzman@kurtzmansteady.com
- **Robert L. LeHane** KDWBankruptcyDepartment@kelleydrye.com
- **Stephen E. Leach** sleach@hirschlerlaw.com,
ndysart@hirschlerlaw.com; kburgers@hirschlerlaw.com; plaura@hf-law.com
- **Richard Edwin Lear** richard.lear@hkclaw.com, kimi.odonnell@hkclaw.com
- **Steven N. Leites** sleites@mdattorney.com, efiling@silvermanthompson.com
- **Michael J. Lichtenstein** mjl@shulmanrogers.com, tlockwood@shulmanrogers.com
- **Marissa K Lilja** mlilja@tydingslaw.com, edondero@tydingslaw.com
- **Keith M. Lusby** klusby@gebsmith.com
- **Kimberly A. Manuelides** kmanuelides@sagallaw.com
- **Michelle McGeogh** mcgeoghm@ballardspahr.com, stammerk@ballardspahr.com;
cromartie@ballardspahr.com; bktdocketeast@ballardspahr.com
- **Stephen A. Metz** smetz@offitkurman.com, mmargulies@offitkurman.com
- **Brittany Mitchell Michael** brittany.michael@stinson.com,
jess.rehbein@stinson.com, jayme.masek@stinson.com
- **Pierce C Murphy** pmurphy@mdattorney.com,
rscaffidi@silvermanthompson.com; e_file@mdattorney.com
- **Michael Stephen Myers** michaelismyerslaw@gmail.com
- **Kevin M. Newman** knewman@barclaydamon.com, kmnbk@barclaydamon.com
- **Tracey Michelle Ohm** tracey.ohm@stinson.com, porsche.barnes@stinson.com
- **Jeffrey M. Orenstein** jorenstein@wolawgroup.com
- **Leo Wesley Ottey** otteyjr@gmail.com
- **Jeffrey Rhodes** jrhodes@blankrome.com, kbryan@blankrome.com
- **L. Jeanette Rice** Jeanette.Rice@usdoj.gov, USTPRegion04.GB.ECF@USDOJ.GOV
- **Bradshaw Rost** brost@tspclaw.com
- **Michael Schlepp** mschlepp@s-d.com
- **Joel I. Sher** jis@shapirosher.com, ejd@shapirosher.com
- **J. Breckenridge Smith** jsmith@foxrothschild.com

- **David Sommer** dsommer@gejlaw.com, ceyler@gejlaw.com; gomara@gejlaw.com
- **Aryeh E. Stein** astein@meridianlawfirm.com, aryehsteinecf@gmail.com; steinar93219@notify.bestcase.com
- **Ashley Elizabeth Strandjord** astrandjord@chasenboscolo.com
- **Matthew S. Sturtz** matt.sturtz@nelsonmullins.com, gary.freedman@nelsonmullins.com
- **Matthew G. Summers** summersm@ballardspahr.com, branchd@ballardspahr.com; heilmanl@ballardspahr.com; mcgeoghm@ballardspahr.com; ambroses@ballardspahr.com; buhrmank@ballardspahr.com; roglennl@ballardspahr.com; zarnighiann@ballardspahr.com; carolod@ballardspahr.com
- **Lisa Bittle Tancredi** ltancredi@gebsmith.com
- **Jonathan Harold Todt** jonathan.todt@faegredrinker.com
- **US Trustee - Greenbelt** USTPRegion04.GB.ECF@USDOJ.GOV
- **Maurice Belmont VerStandig** mac@mbvesq.com, lisa@mbvesq.com
- **Irving Edward Walker** iwalker@coleschotz.com, jdonaghy@coleschotz.com; pratkowiak@coleschotz.com
- **Mitchell Bruce Weitzman** , statum@jackscamp.com; iluaces@jackscamp.com
- **Craig B. Young** craig.young@kutakrock.com, jeremy.williams@kutakrock.com; lynda.wood@kutakrock.com; david.fox@kutakrock.com; pamela.germas@kutakrock.com

/s/ Jonathan H. Todt