IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ADVANTAGE HOLDCO, INC., *et al.*,	Case No. 20-11259 (CTG)
Debtors.[1]	(Jointly Administered)
	Related to Docket No. 895

OBJECTION OF COX AUTOMOTIVE, INC. TO DEBTORS' MOTION FOR ENTRY OF AN ORDER CLARIFYING THE COURT'S VEHICLE SURRENDER ORDERS WITH RESPECT TO CONTINUING LIABILITIES

Cox Automotive, Inc. and its affiliates, including NextGear Capital, Inc. (collectively, "Cox"), by and through its undersigned counsel, hereby submit this objection (the "Objection") to the *Motion for Entry of an Order Clarifying the Court's Vehicle Surrender Orders With Respect to Continuing Liabilities* [Docket No. 895] (the "Motion")[2] filed by the Debtors. In support of the Objection, Cox respectfully submits the following:

Preliminary Statement

1. The Motion should be denied because (i) the *Order Approving Stipulation Between Debtors, Cox Automotive, Inc., and NextGear Capital, Inc.* [Docket No. 449] (the "Stipulation Order") is unambiguous and the Debtors are essentially seeking new relief and (ii) the Court has no ability to grant the relief sought since the Debtors have not met the requirements set forth under Rules 9023 or 9024 of the Federal Rules of Bankruptcy Procedure.

[1] The Debtors (as defined, *infra*) in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Advantage Holdco, Inc. (4832); Advantage Opco, LLC (9101); Advantage Vehicles LLC (6217); E-Z Rent A Car, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors' address is 2003 McCoy Road, Orlando, Florida 32809.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. Cox negotiated the terms of the Stipulation with the Debtors in good faith. The Stipulation Order and Stipulation (as defined below) became final nearly a year ago. Accordingly, it would be inequitable and legally impermissible to disturb the Stipulation Order this far down the road.

Background

3. On May 26, 2020, the Debtors filed the Chapter 11 Cases in the United States Bankruptcy Court for the District of Delaware (the "Court") under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed on June 9, 2020 [Docket No. 140]. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. Cox and one of the Debtors, Advantage OPCO, LLC (the "Debtor Advantage"), were parties to that certain *Demand Promissory Note and Loan and Security Agreement*, dated October 11, 2016 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "OPCO Agreement"), pursuant to which Cox provided inventory financing for the Debtor Advantage for, *inter alia*, certain motor vehicles (the "OPCO Vehicles"). Pursuant to the OPCO Agreement, the Debtor Advantage granted Cox a security interest in, without limitation, the OPCO Vehicles.

5. Cox and one of the Debtors, E-Z Rent A Car, LLC (the "Debtor E-Z"), were parties to that certain *Demand Promissory Note and Loan and Security Agreement*, dated October 11, 2016 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "E-Z Agreement", and together with the OPCO Agreement, the "Agreements"), pursuant to which Cox provided inventory financing for the Debtor E-Z for, *inter alia*, certain motor

vehicles (the "E-Z Vehicles", and together with the OPCO Vehicles, the "Vehicles"). Pursuant to the E-Z Agreement, the Debtor E-Z granted to Cox a security interest in, without limitation, the E-Z Vehicles.

6. On August 17, 2020, the Debtors and Cox entered into the *Stipulation Between Debtors, Cox Automotive, Inc., and NextGear Capital, Inc.* [Docket No. 449-1] (the "Stipulation"). On August 20, 2020, the Court entered the Stipulation Order, approving the Stipulation.

7. The Stipulation, *inter alia*, modified the automatic stay of section 362(a) of the Bankruptcy Code to allow Cox to sell the Vehicles, acknowledging that the Vehicles were relinquished to Cox. Stipulation, ¶ 10. Additionally, pursuant to the Stipulation, Cox agreed to apply the sale proceeds of the Vehicles to the Debtors' indebtedness owing under the Agreements. Stipulation, ¶ 14.

Objection

I. The Stipulation Order is Unambiguous and the Debtors Are Essentially Seeking New Relief.

8. By the Motion, the Debtors are asking the Court for entry of the Proposed Order, which as pertains to Cox, *inter alia*, seeks at first blush to merely clarify the Stipulation Order. However, in substance, the Motion seeking clarification is a thinly veiled attempt to alter or amend the unambiguous Stipulation Order. "'The general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend . . . previous rulings' or to 'make findings of fact.'" *TQ Delta, LLC v. ADTRAN, Inc.*, Civil Action No. 14-954-RGA, 2019 U.S. Dist. LEXIS 171898, at *3 (D. Del. Oct. 3, 2019) (quoting *Resolution Trust Corp. v. KPMG Peat Marwick*, 1993 U.S. Dist. LEXIS 16546, 1993 WL 211555, at *2 (E.D. Pa. June 8, 1993)).

9. The Stipulation Order is not ambiguous and in need of clarification as professed in the Motion. The Stipulation Order approved the Stipulation in its entirety. Essentially, the Stipulation (i) modified the automatic stay to allow Cox to sell the Vehicles, Stipulation ¶ 10; (ii) delineated procedures in which Cox would sell, lease, or otherwise dispose of the Vehicles, Stipulation ¶¶ 12–13; and (iii) allowed Cox to apply all proceeds of the sales of the Vehicles to the Debtors' indebtedness owing under the Agreements, Stipulation ¶ 14. Moreover, the Stipulation memorialized that "[e]ach party has participated in the drafting of this Stipulation. Any claimed ambiguity should not be construed for or against either party on account of such drafting. This Stipulation may not be changed, amended, modified, or altered except by written agreement signed by each of the Parties." Stipulation, ¶ 18.

10. The terms of the Stipulation Order and Stipulation are extensive, comprehensive, and unambiguous.[3] The Debtors do not cite a specific term of the Stipulation Order and/or Stipulation as ambiguous. Further, Cox has not agreed to a modification or alteration of the Stipulation. Accordingly, the requested relief is improper.

11. Instead of clarifying ambiguous terms of an order, which the Debtors purport to be doing, the Motion is a pretext for seeking entirely new relief. For instance, one of the matters raised in the Motion relates to alleged tolls associated with toll transponder devices that the Debtors may have left in the Vehicles. The Motion is therefore nothing more than an attempt to transfer responsibility for the tolls incurred by the Debtors' own failure to Cox. This is not the proper subject of a motion to clarify.

[3] *See Sikirica v. No Respondent (In re Kaib)*, 448 B.R. 373, 375 (Bankr. W.D. Pa. 2011) ("With this order being clear and unambiguous, the Court sees no need to 'clarify' it.").

12. A motion for clarification is inappropriate where a court's order is not incomplete, unclear, ambiguous, or vague. *See Air & Liquid Sys. Corp. v. Allianz Underwriters Ins. Co.*, Civil Action No. 11-247, 2014 U.S. Dist. LEXIS 117827, at *89 (W.D. Pa. Aug. 15, 2014).

13. This attempt to seek new relief where the original Stipulation Order was unambiguous is therefore improper.

II. The Court Cannot Grant the Relief Sought as the Motion is Untimely and Cox has not Consented to the Requested Relief.

14. If the Motion were to be construed as seeking more than a clarification of the Stipulation Order, which Cox submits it does, such as to alter or amend the Stipulation Order, or to seek relief from the Stipulation Order, the Motion would fail under Rules 9023 and 9024 of the Federal Rules of Bankruptcy Procedure (the "FRBP").

15. Pursuant to the Motion, the Debtors are seeking relief in the form of a further order of the Court to clarify, alter, or amend a prior order entered by the Court. Rule 9023 of the FRBP provides, in relevant part, for the precise procedures regarding the relief requested in the Motion:

> Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.

Fed. R. Bankr. P. 9023.

16. Additionally, Rule 60 of the Federal Rules of Civil Procedure (the "FRCP"), as incorporated by Rule 9024 of the FRBP, provides, in relevant part:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons . . . . A motion under Rule 60(b) must be made within a reasonable time.

Fed. R. Civ. P. 60.

17. The Stipulation Order that the Debtors are seeking to clarify, alter, or amend was entered by the Court on August 20, 2020. Accordingly, the Motion was required to have been filed within 14 days of entry of that Stipulation Order (i.e., September 3, 2020) in order for the Court to be able to entertain the Motion and grant the relief requested. Here, the Motion was filed over 11 months after the entry of the Stipulation Order. Over 11 months for the Debtors to request the relief sought in the Motion is past the "reasonable time" as envisioned under Rule 60 of the FRCP, much less the 14-day deadline prescribed in Rule 9023 of the FRBP. Moreover, the Motion does not meet any of the reasons set forth in Rule 60 of the FRCP to allow the Court to relieve the Debtors of the Stipulation Order.

III. The Motion is Premised on False Information.

18. In the Motion, the Debtors improperly attempt to group Cox, a secured lender, with "certain non-affiliated, third-party lessors," referring to all of the foregoing collectively as "Vehicle Vendors." Motion, ¶ 12. The Debtors then continue that inaccurate characterization of Cox by asserting that "certain cars in the Rental Fleet were titled and registered to a Debtor, while the remainder of the cars were titled and registered to one of the Vehicle Vendors." Motion, ¶ 13.

19. As the Debtors are aware, however, none of the Vehicles were owned by or registered to Cox; Cox's interest in the Vehicles was as a secured creditor of the Debtors pursuant to the Agreements.

20. Cox's liquidation of the Vehicles was in that capacity, pursuant to UCC § 9-601 *et seq.*, and as contemplated in the Stipulation. To the extent, if any, that Cox ever held title to any of the Vehicles, it would have done so only in the form of "repossession titles" that might have been obtained for a small number (but certainly not all) of the Vehicles after the entry of the

Stipulation Order, and solely for the purpose of facilitating the liquidation sales of those specific Vehicles.[4]

21. The Debtors claim that they are receiving notices of claims on a daily basis and assert that as grounds for relief. However, the bankruptcy process provides an adequate means of addressing these claims without foisting potential liability on Vehicle Vendors, i.e. through the claims objection process.

22. For these reasons, the relief requested in the Motion should be denied in its entirety.

Conclusion

For the foregoing reasons, Cox respectfully requests that the Court deny the Motion and the relief requested therein, and grant such other and further relief as deemed just and equitable.

Dated: August 25, 2021

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ *Dennis A. Meloro*

Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
Telephone: 302-661-7000
Facsimile: 302-661-7360
Email: melorod@gtlaw.com

and

[4] The Debtors do not specify which Vehicles, if any, they assert as having been transferred into Cox's name by way of repossession titles prior to liquidation by Cox. Cox therefore cannot address whether any of the purported charges complained of by the Debtors relate to any specific Vehicles liquidated by Cox.

John D. Elrod
Terminus 200
3333 Piedmont Road, NE
Suite 2500
Atlanta, GA 30305
Telephone: 678-553-2259
Facsimile: 678-553-2269
Email: elrodj@gtlaw.com

Counsel for Cox Automotive, Inc. and its affiliates, including NextGear Capital, Inc.