

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

CAFE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-05837 (hb)

(Jointly Administered)

Re: Docket No. 527

**DIP AGENT’S LIMITED OBJECTION TO FIRST AND FINAL APPLICATION OF
DUFF & PHELPS SECURITIES, LLC FOR ALLOWANCE OF COMPENSATION FOR
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES AS INVESTMENT
BANKER TO THE DEBTORS FOR THE PERIOD
NOVEMBER 15, 2018 THROUGH FEBRUARY 22, 2019**

Atalaya Administrative LLC, in its capacity as the agent under the Debtors’ postpetition financing facility (in such capacity, the “DIP Agent”) hereby files a limited objection to the *First and Final Application of Duff & Phelps Securities, LLC for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Investment Banker to the Debtors for the Period November 15, 2018 Through February 22, 2019* (the “D&P Application”, Docket No. 527). In support of this objection, the DIP Agent respectfully states as follows.

1. On February 14, 2019, the Court entered a final order (the “Final DIP Order”, Docket No. 440) authorizing the above-captioned debtors (the “Debtors”) to enter into a postpetition financing facility furnished by the DIP Agent and its affiliates (such facility, the “DIP Facility”). Among other things, the Final DIP Order provides that the DIP Agent (and its constituent lenders) maintain a valid, enforceable, perfected lien upon all of the Debtors’ assets, subject only to the Carve-Out (as defined in the DIP Order).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863). The location of the Debtors’ corporate headquarters is 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687.

2. Because all of the Debtors' remaining assets constitute collateral pledged to the DIP Agent and are subject to the DIP Agent's senior liens, and the Debtors have few (if any) assets remaining beyond their existing Carve-Out reserves, the Carve-Out is the only pool of assets available to fund payments to professionals. With respect to professionals of the Debtors, such as Duff and Phelps Securities, LLC ("D&P"), the Final DIP Order limits the "Carve-Out" to budgeted amounts set forth in the Final DIP Order for the payment of the applicable professional.

3. Through the D&P Application, D&P is seeking the allowance and payment of professional fees totaling \$534,937.08. That amount is in excess of the \$425,000 Carve-Out amount for D&P's professional fees set forth in the Final DIP Order.²

4. The DIP Agent objects to the payment to D&P of any amounts in excess of the \$425,000 Carve-Out amount allotted to D&P in the Final DIP Order. Any such payment to D&P in excess of the \$425,000 Carve-Out amount is both inconsistent with, and barred by, both (a) the terms of the Final DIP Order, which limits the amount payable to D&P to the \$425,000 Carve-Out amount; and (b) the order authorizing the Debtors' retention of D&P (Docket No. 329), which expressly provides that any payments to D&P shall be subject to the terms of the Final DIP Order.

WHEREFORE, the DIP Agent respectfully requests that the Court condition approval of the D&P Application upon the payment to D&P of no more than the \$425,000 D&P Carve-Out amount set forth in the Final DIP Order; and (b) grant the DIP Agent such other and further relief as is just and proper.

² Additionally, the DIP Agent received verbal confirmation from D&P representatives that D&P would not seek any payment from the Debtors in excess of the \$425,000 amount set forth in the Final DIP Order.

FOX ROTHSCHILD LLP

May 14, 2019

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- AND -

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Counsel for the DIP Agent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, and served upon all parties receiving notice pursuant to the CM/ECF system on this the 14th day of May, 2019.

/s/ Kevin McCarrell _____
Kevin McCarrell