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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In Re:	Bk. Case No. 08-10152-JMP
	(Jointly Administered)
QUEBECOR WORLD (U.S.A.), INC., et al.,	
	Chapter 11
Debtors.	
	Honorable James M. Peck
	Date: September 25, 2012
	Time: 10:00 a.m.
	Dept.: Courtroom 601

OBJECTION OF CREDITOR BIND-RITE SERVICES, INC. TO REORGANIZED DEBTORS' SIXTEENTH OMNIBUS CONVENIENCE CLAIMS MOTION (SEEKING TO ALLOW CERTAIN ELECTED CONVENIENCE CLASS CLAIMS)

TO THE HONORABLE JAMES M. PECK,

UNITED STATES BANKRUPTCY JUDGE:

Creditor BIND-RITE SERVICES, INC. ("Bind-Rite"), by and through its counsel objects to and opposes the Reorganized Debtors' Sixteenth Omnibus Convenience Claims Motion (Seeking To Allow Certain Elected Convenience Claims), dated August 24, 2012, and responds as follows:

1. One or more of the Debtors, comprised of a number of small and large print shops located throughout the world, were printing subsidiaries of Quebecor World (USA) Inc. In 2010, the Debtors were acquired by and merged into Quad/Graphics, Inc., and continue to be engaged in the printing business.

2. Bind-Rite, a full service bindery and printing facility, has had a long-term business relationship with the Debtors that continues to the present. Bind-Rite provides labor and materials consisting of printing and binding services to the Debtors in exchange for monetary compensation in the ordinary course of each parties' business operations.

3. On September 16, 2008, Bind-Rite timely filed its Proof of Claim asserting an unsecured non-priority claim in the amount of $137,878.49 (Proof of Claim, attached as Exhibit "A"). Bind-Rite's Claim is for pre-petition services sold to the Debtors. As a result, Bind-Rite was classified as a creditor with a Class 4 General Unsecured Claim.

4. Bind-Rite obtained a copy of the Debtors' Third Amended Disclosure Statement. According to the Debtors' projections, Class 4 creditors are estimated to receive between 14% and 20% of their allowed claims (Third Amended Disclosure Statement, p. 7). Based on the Debtors' projections, Bind-Rite believed that it would receive a distribution between $19,303.00 and $27,576.00.

5. On or about May 2009, Bind-Rite received a Class 4 voting package to vote on Debtors' Joint Plan of Reorganization ("Ballot") (Ballot for Accepting or Rejecting Joint Plan of Reorganization of Debtors and Debtors in Possession, attached as Exhibit "B"). The Ballot provides for both an election to accept or reject the Debtors' Joint Plan of Reorganization and an election to accept or reject the option of reducing a creditor's aggregate claim to $2,500.00 and be treated as a Convenience Class Claim in Class 5. The Ballot is filled with confusing legalese.

Placing both options on the same ballot is misleading and deceiving. An unsophisticated creditor who is unfamiliar with the language and form of the Ballot could easily become confused, erroneously believing that one must check both "accept boxes" to successfully vote for acceptance of the plan. There is little wonder that errors in filling out the ballot can and have been made. It is unjust for the Debtors to take advantage of such mistakes.

6. Bind-Rite, relying on the Debtors' projections contained in the Third Amended Disclosure Statement concerning estimated distributions to Class 4 creditors, and believing that it could recover a significant portion of its pre-petition claim, intended to accept the Joint Plan of Reorganization. At no time, however, did Bind-Rite intend to accept a reduction of its claim nor to be treated as a Class 5 creditor.

7. As set forth in their respective declarations, Bind-Rite's bookkeeper, Kathy Waters, filled in the hand-printed portions of the Ballot and provided the Ballot to Bind-Rite's president, Elliot Ward, to sign. Both individuals have highschool educations, but neither is a sophisticated businessperson nor are they knowledgeable concerning bankruptcy matters or law. Neither has any experience with regard to the format or language used in the Ballot. Significantly, at all times relevant, Bind-Rite did not employ nor consult with bankruptcy counsel before receiving, voting and submitting the Ballot. Bankruptcy counsel was not retained until on or about March 2010, after Bind-Rite was sued by the Debtors' Bankruptcy Estate to Avoid and Recover Transfers Pursuant to 11 *U.S.C.* §§547, 548, 549 and 502 and Recover Property Transferred Pursuant to 11 *U.S.C.* §550 in the matter entitled *EUGENE I. DAVIS, LITIGATION TRUSTEE FOR THE QUEBECOR WORLD LITIGATION TRUST v. BIND-RITE SERVICES, INC.*, Adv. Case No. 10-01130-JMP. Bind-Rite agreed to settle that adversarial matter in anticipation that it

would receive a distribution of between $19,303.00 and $27,576.00 in the main bankruptcy proceeding.

8. Upon receipt of the instant Motion, Bind-Rite was shocked to discover that the Ballot indicated that it had agreed to reduce its aggregate claim to $2,500.00. This was an error and not what Bind-Rite intended. The box accepting the Convenience Class Option should not have been checked. Although Ms. Waters did fill in the information concerning Bind-Rite's name, address, phone number and Taxpayer Identification number, she did not check any of the boxes. Mr. Elliot executed the Ballot, but did not check any of the boxes. Nor does Mr. Elliot recall who, acting on behalf of Bind-Rite, did check the boxes. Bind-Rite's claim of $137,878.49 far exceeds the $2500.00 to be allowed as a Convenience Class Claim. There is absolutely no logical or business justification for such an election nor was it in Bind-Rite's best business interest to elect Convenience Class treatment. Mr. Elliot did not, and would not, intentionally agree to this election. Bind-Rite should not be punished by this simple oversight caused by the checking of the wrong box on the Ballot.

9. The Debtors, seizing upon this scrivener's error, is now attempting to reduce Bind-Rite's $137,878.49 claim to $2500.00. It is respectfully requested that the Court, in balancing the equities between Bind-Rite's excusable error and the Debtors' desire to reduce the amounts to be distributed to Bind-Rite, deny the Debtors' Motion.

10. Bankruptcy courts are "courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process." *In re Momentum Mfg. Corp*., 25 F.3d 1132, 1136 (2d Cir.1994). Importantly, 11 *U.S.C.* §105(a) provides bankruptcy courts with the "equitable power to 'issue any order, process, or judgment that is necessary or appropriate to

carry out the provisions of this title.'" *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 91 (2d Cir.2003).

11. A clerical error that may be corrected is one that consists of "blunders in execution." *Harman v. Harper*, 7 F.3d 1455, 1457 (9th Cir.1993). The law of unilateral mistake is based on the premise that assent means informed assent, at least to the basic assumptions made by the mistaken party. In the Restatement (Second) of Contracts formulation, an injured party may void a contract if he made a mistake when contracting concerning a basic assumption on which he made the contract—as long as he does not bear the risk of the mistake—and the result will either be unconscionable, or the other side should have known of the mistake, or was at fault in causing the mistake. *Restatement (Second) of Contracts*. § 153.

12. The election of Convenience Class treatment is same as entering into a stipulation. Such stipulations entered in litigation are considered contracts. "Stipulations of settlement are favored by the courts and not lightly cast aside . . . [However,] where there is cause sufficient to invalidate a contract, such as fraud, collusion, *mistake or accident*, . . . a party [may] be relieved from the consequences of a stipulation made during litigation" *Hallock v State of New York*, 64 NY2d 224, 230 (1984) (citations omitted) (emphasis added).

13. A scrivener's error will furnish a basis for reformation, even where the fault in drafting the contract lies with only one party. *In re Schick*, 232 B.R.589, 598 (Bankr. S.D.N.Y.1999). Questions of negligence, such as the failure to read the contract before executing it, does not necessarily bar reformation. *Tokio Marine & Fire Ins. Co. v. National Union Fire Ins. Co.*, 18 F.Supp. 720, 723 (S.D.N.Y.), aff'd, 91 F.2d 964, (2d Cir.1937). "'Where there is no mistake about the agreement and the only mistake alleged is in the reduction of that agreement to writing, such mistake of the scrivener, or of either party, no matter how it occurred, may be corrected.'"

Harris v. Uhlendorf, 24 NY2d 463, 467 (1969), quoting *Born v. Schrenkeisen*, 110 NY 55, 59 (1888).

14. Based on the representations of the Debtors, Bind-Rite anticipated an eventual recovery of between $19,303.00 and $27,576.00. This is well above the $2,500.00 allowed by participation in the Convenience Class. This is not a situation where one must decide between taking a sure thing, the lesser amount, or taking a gamble on obtaining a higher recovery. There is simply no business justification for electing to take such a unnecessary and huge financial loss. The checking of the box accepting the Convenience Class Option on a confusing and unfamiliar Ballot, cannot be reasonably viewed in any other way. This is a simple case of clerical error, made by an unsophisticated person who lacked a basic understanding with bankruptcy matters and who was not familiar with bankruptcy forms and language used in the Ballot.

15. Bind-Rite's anticipated recovery of between $19,303.00 and $27,576.00 is inconsequential when considered in relation to the total assets available for distribution. According to the Debtors, the estimated enterprise value of the company is between $1.25 billion and $1.5 billion (Disclosure Statement, p. 5). Thus, distribution of Bind-Rite's entire Class 4 claim would not prejudice Debtors or any other creditor.

16. As fully explained in the accompanying declarations of Ms. Waters and Mr. Ward, the Convenience Class option box was erroneously checked. At a minimum, Bind-Rite is entitled to reformation of the Ballot to correct the scrivener's error and to reflect its actual intention of accepting the Plan but declining the Convenience Class Option.

17. Bind-Rite's claim should be treated as it was intended; an unsecured non-priority claim in the sum of $137,878.49.

18. Prior to filing the instant Objection, Bind-Rite's counsel contacted Debtors' counsel in an unsuccessful attempt to resolve the issues raised by the Debtors' Motion and this Objection.

19. For the reasons set forth above, Bind-Rite respectfully requests that the Court deny the Debtors' Motion as it pertains to Bind-Rite, and to grant such other and further relief as the Court determines to be just.

DATED: September 13, 2012

By: */s/ Steven M. Garber*

Primary Counsel

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