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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 12-11076-shl

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In the Matter of:

ARCAPITA BANK B.S.C.(C), et al.,

Debtors.

- - - - - x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

November 7, 2012  
12:30 p.m.

B E F O R E :  
HON SEAN H. LANE  
U.S. BANKRUPTCY JUDGE

1 Motion to Authorize/Debtors' Motion for Entry of an Order  
2 Authorizing the Debtors to Enter into a Financing Commitment  
3 Letter and Incur Related Fees, Expenses and Indemnities

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25 Transcribed by: Sherri L. Breach, CERT\*D-397

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P R O C E E D I N G S

THE COURT: Good afternoon. Please be seated.

All right. We're here this afternoon for Arcapita Bank, so let me get appearances for the record.

MR. WILLIAMS: Good afternoon, Your Honor. Matthew Williams of Gibson, Dunn & Crutcher for the debtors. Also with me is my partner, Emad Khalil and my colleague, Joshua Weisser.

MR. DUNNE: Good afternoon, Your Honor. Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of the official committee of unsecured creditors, and I'm joined today by my partner, Evan Fleck.

MR. GREER: Good afternoon, Your Honor. Brian Greer of Dechert, LLP for Standard Charter.

MR. MORRISSEY: Good afternoon, Your Honor. Richard Morrissey for the U.S. Trustee.

MR. ZIMAN: Your Honor, Ken Ziman, Skadden, Arps, Slate, Meagher & Flom for Fortress Investment Group as proposed DIP lender.

MR. AMBRUOSO: Good afternoon, Your Honor. Andrew Ambruso from White & Case on behalf of Silverpoint Finance.

THE COURT: All right. Anyone else?

All right. So I know we were here -- originally, the genesis of this hearing was a motion that the debtors filed seeking an order authorizing the debtors to enter into

1 a financing commitment letter and incur related fees, which  
2 goes way back to Document 513, and there's been a slew of  
3 developments since then, including a supplement that was  
4 Docket Entry 610. So let me hear from the debtors as to  
5 where things stand.

6 MR. WILLIAMS: Good afternoon, Your Honor. Again,  
7 for the record, Matthew Williams of Gibson, Dunn & Crutcher.

8 I have some good news to report. Not only have we  
9 been able to file an equity -- I'm sorry -- a DIP commitment  
10 letter that, in our view, solves all of the issues that were  
11 raised at the last hearing about a month ago, but we also  
12 have a deal with both the DIP lender and with the official  
13 committee of unsecured creditors on the terms of a  
14 commitment letter that we think all makes sense for the  
15 estate.

16 So, you know, I'm happy, if Your Honor would like,  
17 to go through all of the benefits that this letter has as  
18 opposed to the previous letter. It's in the chart attached  
19 as Annex B, I think, to our motion. I'm happy to walk you  
20 through that chart if you like.

21 THE COURT: Well, I have in the binder that you  
22 gave me a supplement to debtors' motion for entry of an  
23 order, and that's the supplement on page -- I believe it's  
24 4. But in any event it's -- it's paragraph 6, and it talks  
25 about the Fortress commitment letter containing several

1 material advantages over the revised commitment letter that  
2 was filed with the reply. So I have that -- those bullet  
3 points, so I don't -- I don't think I need to -- to belabor  
4 the point on that.

5 The question is whether there's anything else that  
6 -- that needs to be in the record, just sort of further  
7 developments or additional development or changes.

8 MR. WILLIAMS: Yeah. And there are, Your Honor.  
9 Thank you.

10 You know, I -- as -- you know, as we negotiated  
11 with the committee and with the debtor-in-possession lender  
12 over the last couple of days, it became clear to us that it  
13 would be beneficial to the estate if we had additional  
14 financing up front. All right. The commitment letter as  
15 filed had a commitment for \$100 million and could be upsized  
16 to \$150 million upon completion of due diligence.

17 Both the committee and the debtors believed that  
18 it would be beneficial to the estates if we had access to  
19 more liquidity, and as part of a global deal with the  
20 committee, who has been active in this process, Fortress has  
21 agreed to provide its initial commitment of \$125 million as  
22 opposed to \$100 million, which we view as, obviously from  
23 the estate's perspective, as very beneficial.

24 A couple of points I should note, Your Honor. As  
25 part of that -- and these documents are obviously not with

1 the Court, but we'll be filing hopefully revised documents  
2 later this evening or tomorrow morning. As part of that  
3 global deal, there is a couple of things I would like to  
4 note.

5 First and foremost, given the fact that the  
6 commitment is now \$125 million, the two percent commitment  
7 fee would be on the full \$125 million, not the \$100 million,  
8 so it goes up from --

9 THE COURT: All right.

10 MR. WILLIAMS: -- from \$2 million to \$2.5 million.

11 The second point, which I view as a minor point  
12 from the estate's perspective, but probably a major one from  
13 Fortress's perspective is we will pay the reasonable fees  
14 and expenses that they have incurred to date up front in  
15 connection with the entry of the order. I think the order  
16 will provide that the committee has three days to review  
17 those fees and expenses for reasonableness, but assuming the  
18 fees and expenses are reasonable, we would pay those  
19 reasonable fees and expenses.

20 THE COURT: All right.

21 MR. WILLIAMS: The third point would be that we  
22 would provide Fortress with a deposit of \$250,000 for future  
23 fees and expenses that they may incur.

24 And the fourth point is with respect to the  
25 additional \$25 million, the initial commitment letter from



1 Fortress that we filed with the Court last week on the \$100  
2 million provided that there was, in essence, a step down.  
3 Ninety days into the case we had to take the \$100 million  
4 down to \$80 million.

5 How the step down is going to work now is that  
6 \$125 million that we have up front, we've got to reduce that  
7 outstanding commitment to \$100 million within 120 days of  
8 closing of the DIP facility.

9 THE COURT: All right.

10 MR. WILLIAMS: And with those points on the  
11 record, I'm happy to answer any questions Your Honor has or  
12 -- or -- or if the committee would like to state anything on  
13 the record. But I think that's the deal that we've struck.

14 THE COURT: All right. Thank you. That's very  
15 helpful.

16 Let me hear from the committee.

17 MR. DUNNE: Thank you, Your Honor. For the  
18 record, Dennis Dunne from Milbank, Tweed.

19 I just want to put a couple of short comments into  
20 the record because when we came here today we were actually  
21 not supportive of -- of moving forward on the original \$100  
22 million commitment because we thought there was a  
23 significant chance that the company would need more DIP  
24 availability than \$100 million.

25 And so I think that with the negotiations that

1 occurred today in the -- literally in the courthouse, we are  
2 supportive of entry of the order approving the commitment  
3 letter, principally because it was upsized from the \$100  
4 million to \$125 million.

5 And one of the committee's concerns, prior to  
6 today, was that the pricing on that incremental 25, which  
7 may be needed to fund the estate's obligations, would be  
8 more expensive than the pricing on the original 100 million.  
9 It turns out that we have a commitment now where the pricing  
10 is the same from zero dollars up to \$125 million. So we  
11 view that as a -- an extreme positive for the case because  
12 we're more comfortable that we will have the resources to  
13 finance the Chapter 11.

14 And with that the committee supports entry of the  
15 order today, Your Honor.

16 THE COURT: All right. Let me hear from any other  
17 interested party who wants to be heard.

18 MR. AMBRUOSO: Good afternoon, Your Honor. Andrew  
19 Ambruso from White & Case on behalf of Silverpoint Finance.  
20 Just want to make a very brief statement.

21 And notwithstanding all the revisions that have  
22 been made in the courthouse today, just want to make it very  
23 clear that we do not object to Fortress's proposal being  
24 considered today. Rather, simply just want to clarify for  
25 the record a few highlights of Silverpoint's latest

1 proposal, which we believe addressed the Court's and the  
2 company's prior concerns.

3 In Annex 2 of the debtors' supplement to their  
4 motion for approval of the Fortress financing commitment,  
5 the debtors compare Silverpoint's latest filed proposal on  
6 October 9th when, in fact, there was a subsequent proposal  
7 on October 22nd, which we believe addressed various  
8 concerns, most importantly was that Silverpoint's commitment  
9 of the initial \$50 million did not have the due diligence or  
10 credit committee approval conditions.

11 Additionally, Silverpoint's revised proposal also  
12 contained certain other things that I -- I know the Court  
13 and the company were concerned about, first being it  
14 included substantially less restrictive exclusivity  
15 language. It removed the termination fee, and also  
16 clarified what exactly would constitute a material adverse  
17 effect.

18 So having stated that for the record, again, I  
19 wanted to keep it brief and we just wanted to clarify that  
20 we do not object to the financing proposal. We just wanted  
21 to state for the record that there were some changes in our  
22 -- in our subsequent proposal and just wanted the Court to  
23 be aware of that.

24 THE COURT: No. I -- I appreciate that and I -- I  
25 appreciate the efforts of your client to respond to the

1 concerns I had and, obviously, you did. And so the fact  
2 that folks are asking me to approve Fortress is not a  
3 reflection on your efforts to address those concerns and I  
4 appreciate that.

5 MR. AMBRUOSO: I appreciate it. Thank you, Judge.

6 THE COURT: All right. Anyone else that would  
7 like to be heard?

8 All right. I'm happy to approve the request by  
9 the debtors' for financing. This is an issue that has been  
10 of great concern in this case to the estate, to the  
11 committee, and to interested parties for some time now. I  
12 think everyone has participated in -- in good faith and with  
13 -- with a considerable amount of creativity and effort to --  
14 to address the concerns about financing and the best path  
15 going forward.

16 And I -- again, I appreciate the fact that there  
17 are parties who were interested. And while there's one  
18 party that emerged today, that is not a reflection of the  
19 efforts and good faith of everybody to -- everybody else who  
20 was at the table to have those discussions. So there does  
21 reach a point where somebody is the -- is the party that  
22 you're going to the alter with. And just like election  
23 night last night, it's just how it goes.

24 So -- but I do appreciate everybody's efforts on  
25 this. I think it was handled in a very professional way so

1 as to really maximize value which is what this courthouse is  
2 all about. So I appreciate everybody's efforts. It's  
3 really -- I can't think of a better result than what's been  
4 achieved here. So you -- you've made my job very easy  
5 amidst all the weather-related difficulties and other things  
6 that have come in. It's -- it's -- I really do appreciate  
7 it.

8 So timing-wise, it sounds like I should expect to  
9 get some papers probably by tomorrow morning, and if that's  
10 the case I should be in a position, barring another weather-  
11 related emergency, to get the -- that entered tomorrow. So  
12 I would imagine that there's a -- there's a real desire to  
13 get this to bed quickly. So I'm assuming that's the time  
14 frame?

15 MR. WILLIAMS: Yes, Your Honor.

16 THE COURT: All right. I'm told that this  
17 courthouse doesn't normally close unless there's at least  
18 four inches of snow. I look outside the window and see  
19 nothing but white. I have no idea what that means for  
20 tomorrow, but if this courthouse is open, this will get  
21 entered without any need for follow-up.

22 If for some reason this courthouse is closed, you  
23 should nonetheless send it to me and we will go shopping to  
24 see if we can find a person who can enter the order from  
25 wherever -- wherever it is that they can, be that home, some

1 other courthouse or something else. So we'll take it as it  
2 comes. If for some reason it -- there's a real problem,  
3 we'll -- I'll contact -- our chambers will contact debtors'  
4 counsel and we'll figure it out. But I -- I am fairly  
5 comfortable in saying that I think we should have no problem  
6 getting it entered tomorrow. But, you know, I -- I -- they  
7 don't pay me to predict the weather. So -- so we'll see.

8 Anything else that we need to discuss before we  
9 adjourn?

10 MR. WILLIAMS: Again for the record, Matthew  
11 Williams, Gibson, Dunne.

12 Just two brief things, Your Honor, that I just  
13 wanted to give an update to the Court on.

14 The first is in connection with the Eurolog (ph)  
15 IPO. The Eurolog IPO did not launch as previously planned.  
16 As the process went along, Your Honor, it became apparent to  
17 the parties that, you know, certain parties wanted to, in  
18 essence, take advantage of the fact that we're in Chapter 11  
19 and offer us highly discounted pricing for the assets.

20 So after consultation with the underwriters, the  
21 debtors decided to withdraw the IPO for now.

22 THE COURT: All right.

23 MR. WILLIAMS: So that was with respect to the  
24 Eurolog IPO.

25 One other update, Your Honor, is with respect to

1 the new money equity commitments, in connection with the  
2 exclusivity hearing, I guess it was last month, the debtors  
3 had agreed -- you know, the debtors had said that we were  
4 going to pursue at least \$250 million in equity financing by  
5 November 1st, and if such funding was not made available,  
6 that we were going to re-concentrate our efforts on a stand-  
7 alone plan.

8 We got significant traction with the potential  
9 equity investors, but in the end we were unable to obtain  
10 the necessary commitments by the November 1 deadline, in  
11 substantial part because many of the Middle Eastern and  
12 Asian investors were, I guess, unfamiliar with the Chapter  
13 11 process.

14 So in that vein, we promptly notified the UCC, the  
15 JPL, the ad hoc group and SCB, and as we promised, Your  
16 Honor, we indicated that we're prepared to immediately focus  
17 on the stand-alone plan. There have been initial  
18 discussions between the advisors, including by telephone and  
19 in meetings in London yesterday, and we've set aside most of  
20 next week for meetings with the various constituencies in  
21 New York regarding the terms of the stand-alone plan.

22 The debtors will be prepared to file a stand-alone  
23 plan before exclusivity expires, and our strong preference  
24 and goal is to file a plan that has the support of all the  
25 major estate constituencies.

1 THE COURT: All right. Just in thinking about the  
2 calendar for the month of December, do you have any rough  
3 approximation of what a time frame might look like, just so  
4 I can make sure that if you need time I can -- I can block  
5 some off?

6 MR. WILLIAMS: This is in -- with respect to the  
7 DIP or with respect to --

8 THE COURT: Well, I guess the next steps moving  
9 forward. Any -- any -- again, I'm not sure when you would  
10 file the plan, when you might need a disclosure statement  
11 hearing, any -- any of the sort of next milestones in the  
12 case?

13 MR. WILLIAMS: Yeah. If -- if -- I could -- you  
14 know, I've been focused mainly on the DIP commitment motion  
15 for the past couple of weeks, so I'm a little bit --

16 THE COURT: Fair enough.

17 MR. WILLIAMS: -- cabined off from some of the  
18 larger cabin issues.

19 THE COURT: All right.

20 MR. WILLIAMS: So maybe what makes sense is when  
21 we submit the order tomorrow, in the email where we submit  
22 the order we could, you know, just let Your Honor know  
23 generally and we'll copy the committee and the other -- you  
24 know, with, you know, some scheduling ideas, if that would  
25 work.



1 THE COURT: Yeah. That -- that would be helpful.  
2 I asked particularly because in light of things being  
3 postponed because of Hurricane Sandy, December is filling up  
4 fairly quickly and if there's something that's of great  
5 concern, it just helps for us to know and we can begin to  
6 block off some time, even if you don't have a particular  
7 date. But if you can let us know, we expect to need a  
8 hearing on this date or -- or, you know, something else,  
9 whatever it is.

10 MR. WILLIAMS: Certainly with respect to the DIP,  
11 you know, I think we're going to need something, at the  
12 latest, in early December and, you know, we'll put -- again,  
13 we'll put that in the email tomorrow. And with respect to  
14 some of these other issues, you know, we'll talk internally  
15 and let Your Honor know.

16 THE COURT: All right. That's helpful.

17 MR. WILLIAMS: Thank you.

18 THE COURT: Does the committee want to add  
19 something?

20 MR. DUNNE: Yeah. Let me -- Your Honor, if I may  
21 just address those comments quickly.

22 The committee's viewing the failure of the new  
23 money to materialize now as, frankly, providing clarity to  
24 -- to all the parties as to the path forward. We're all  
25 going to focus our efforts on the stand-alone plan,

1 hopefully file a plan with the committee and the debtors  
2 supporting it by December 15th.

3 I think to answer Your Honor's question, I don't  
4 think we'll be looking for a disclosure statement hearing  
5 until January.

6 THE COURT: All right.

7 MR. DUNNE: But there may be other things that we  
8 need to impose upon the Court's time for in December, but  
9 we'll make a collective effort to advise the Court of those  
10 dates and those needs in the near term.

11 THE COURT: All right. That's helpful.

12 MR. DUNNE: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Anything else before we adjourn?

15 All right. Again, thank you very much to  
16 everybody today and over the last couple of weeks. And get  
17 home safe.

18 (A chorus of thank you)

19 (Whereupon these proceedings were concluded at 1:33  
20 p.m.)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT\*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT\*D -397

Veritext

200 Old Country Road

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Date: November 27, 2012