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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

CCA Construction, Inc.,¹

Debtor.

(Hon. Christine M. Gravelle)

Chapter 11

Case No. 24-22548-CMG

Related Dkt. Nos.: 211, 351, 395

**BML PROPERTIES, LTD.'S OBJECTION
TO APPLICATION IN LIEU OF MOTION IN SUPPORT OF ENTRY OF
STIPULATION AND CONSENT ORDER REGARDING BUDGET FOR THE
AUTHORIZED INVESTIGATION OF THE EXAMINER**

¹ The last four digits of CCA's federal tax identification number are 4862. CCA's service address for the purposes of this Chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.



BML Properties, Ltd. (“BMLP”), by and through its undersigned counsel, respectfully submits this objection to the *Application in Lieu of Motion in Support of Entry of Stipulation and Consent Order Regarding Budget for the Authorized Investigation of the Examiner* [Dkt. 395] (the “Application”) filed by the Debtor’s special committee of its board of directors (the “Special Committee”) seeking Court approval of a stipulation (the “Stipulation”)² entered into between the Special Committee and Todd Harrison, in his capacity as Court-appointed examiner (the “Examiner”) in the above-captioned chapter 11 case. For the reasons that follow, BMLP respectfully requests that the Court modify the proposed Stipulation, in accordance with binding Third Circuit law in *FTX Trading*³ and section 1104 of the Bankruptcy Code:

OBJECTION

1. **BMLP firmly and without reservation supports an increased budget for the Examiner—but not as a quid pro quo in return for giving up its independence, as demanded by the Special Committee of the Debtor. The Stipulation is a private agreement between the Special Committee of the Debtor (represented by the same counsel as the Debtor) and the Examiner by which the Debtor leveraged the Examiner’s plea for additional funds needed to do his Court-mandated work to extract concessions that improperly hand-tie the Examiner and this Court.**

2. Indeed, the *quid pro quo* would set a dangerous precedent and cannot be blessed by this Court. If approved, the Stipulation would allow the Debtor to undermine a Court-ordered **independent** investigation by demanding, as a condition of paying the Examiner’s fees, that the Examiner agrees not to “take any action” to expand the existing narrow scope. In practice, this

² Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Examiner Budget Stipulation.

³ *In re FTX Trading, Ltd.*, 91 F.4th 148 (3d Cir. 2024).

would effectively predetermine the outcome of the investigation because the Examiner cannot even tell the Court in its report that an expanded scope is warranted based on what the Special Committee's investigation revealed.

3. Moreover, it cannot be lost upon the Court that the Stipulation limiting the scope and budget is being proposed before the Special Committee has even issued its report, which should be subject to a thorough review and comment by the Examiner, the Office of the United States Trustee ("UST"), and BMLP (as the largest creditor by over \$1.5 billion as compared to the entirety of all other noninsider creditors). By placing these conditions and restrictions on the Examiner, simply so he is able to recoup some of the fees and expenses incurred, the Stipulation compromises the independence of the Examiner, makes a mockery of section 1104 of the Bankruptcy Code and runs afoul of *FTX Trading*.

4. From the start, BMLP has had an obvious interest in preserving and maximizing the Debtor's value and was against the obvious strategy of the Debtor and its parent company: to "borrow" funds that have proven not to be needed in order to run up a large DIP administrative expense owed to the Debtor's parent so that the Debtor's parent can buy off cheap releases of estate claims via credit bid. BMLP firmly believes that the Debtor and Debtor's parent have engaged in conduct that supports thorough and unbiased pursuit of veil-piercing,⁴ fraudulent transfer and fiduciary duty claims of the estate, as confirmed by the evidence already gathered to date and submitted along with BMLP's other briefs in this case. An independent Examiner armed with a fair budget would undermine the Debtor's and Debtor's parent strategy, but because the Third Circuit mandates the appointment of an examiner, the next best option for the Debtor and Debtor's parent is to deprive the Examiner of any means to actually do a fair job.

⁴ For avoidance of doubt, BMLP believes it holds direct veil-piercing claims that cannot be affected by the Debtor's bankruptcy, but BMLP nonetheless supports investigation into estate claims.

5. After hearing argument on May 22, 2025 regarding the Examiner’s initial investigatory scope and budget (the “Scope and Budget Hearing”),⁵ the Court granted only (i) a limited scope that effectively placed the Examiner in the role of “overseer” of the Debtor’s own internal investigation, and (ii) a budget of \$100,000—

The Examiner’s Authorized Investigation shall be limited to an examination of the scope and process of the ongoing investigation (the “Special Committee Investigation”) currently being undertaken by the [Special Committee]. During the Special Committee Investigation, the Examiner may provide (a) recommendation to the Special Committee and its advisors regarding: (i) the process, (ii) methodology, and (iii) breadth of the Special Committee Investigation, and/or (b) input or feedback to the Special Committee and its advisors regarding (i) potential topics of the special Committee Investigation and (ii) potential claims to consider.

See Order Approving Examiner’s Scope and Budget for Investigation [Dkt. 351] (the “Scope & Budget Order”), at ¶¶ 1 (scope), 5 (budget). While the Court limited the Examiner’s scope and budget, it certainly never intended to compromise the Examiner’s independence or signaled that it was within the purview of the Debtor, rather than the Court, to decide whether to extend more funds to investigate the Debtor’s controlling parent company; yet, that is exactly what the proposed Stipulation would do.

6. The Court’s ruling came after several hours of unsuccessful discussion and negotiation between the Debtor and the Examiner, with very little input from BMLP, in an effort to arrive at a mutually-acceptable scope and budget and to resolve the threat of a motion to disqualify the Examiner by the Debtor, who ironically called into question the Examiner’s “independence.” Ultimately, those efforts proved unsuccessful largely because the Debtor insisted on conditions that would have effectively stripped the Examiner of his independence—for

⁵ The Court did not hear from the Examiner or his counsel, apparently accepting the Debtor’s misplaced position that, contrary to the Order appointing the Examiner, the Examiner lacks standing to be heard on the issue as to the appropriate scope and budget necessary to conduct a proper independent investigation.

example, giving up his subpoena powers and ability to conduct his own witness interviews and depositions—which BMLP and the Examiner both rejected. Again, although the Court’s eventual order did set a narrow **initial** scope for the examination (*see* Scope & Budget Order, ¶ 1), nothing in the Scope & Budget Order foreclosed the expansion of the Examiner’s scope at a later date.

7. Now, however, the Debtor, its Special Committee, and the Examiner have agreed—improperly and without consultation with BMLP⁶ or the UST—to do just that. As set forth in paragraph 7 of the Stipulation, **the proposed \$400,000 budget increase⁷ is expressly conditioned on “the Examiner’s agreement not to seek, or take any action in furtherance of, entry of an order providing for . . . an expansion of the Examiner’s Authorized Investigation set forth in Paragraph 1 of the Scope & Budget Order.”** Application, at ¶ 7 (emphasis added). The result, if the Court approves this condition, is certain: the Examiner will be hamstrung in his ability to do what justice requires and to follow the facts wherever they may lead. By its terms, the Stipulation compromises the Examiner’s independence as clearly called for by the Bankruptcy Code. As an obvious example, even if the Examiner believes there are omissions or mistakes in the Special Committee Investigation, the Stipulation would preclude him from recommending, or even indicating a willingness to accept instructions to undertake, further investigation.

8. This is a serious deviation from customary practice, flies in the face of common-sense, and is wholly contrary to the policy of independence for court-appointed examiners. At the First Day Hearing in this chapter 11 case, Debtor’s counsel committed to a transparent process notwithstanding the demonstrated fraud committed against BMLP. Yet, at every turn over the last

⁶ BMLP was advised of the CCA-Examiner agreement in late June (after it was already negotiated) and asked to consent, which BMLP declined to do for the reasons stated herein. The Application was filed thereafter.

⁷ Which, BMLP understands, is still several hundred thousand dollars below the Examiner’s actual fees incurred to date in fulfilling his Court-authorized duties. As such, the proposed increased budget will still not allow a fulsome and proper examination and serves merely as damage control.

six months, the Debtor has fought for the exact opposite. This latest gambit is only the most audacious.

9. Again, while BMLP fully supports the Examiner and his team—and would like to see them be compensated far beyond the \$500,000 being offered⁸—it cannot sign on to the Debtor’s attempted perversion of the examiner statute, public policy and binding precedent. *FTX Trading* is clear: only the Court—not a debtor, special committee or examiner—shall set the Examiner’s scope of investigation. *FTX Trading*, 91 F.4th at 156 (“the court retains broad discretion to direct the examiner’s investigation, including its scope, degree, duration, and costs” and “[b]y setting the investigation’s parameters, the bankruptcy court can ensure....” that the independent investigation is appropriate) (internal quotations omitted).

10. While the Special Committee and the Examiner may “agree[] on additional funding for the Budget” (Scope & Budget Order, ¶ 5), only the Court may determine the scope of the Authorized Investigation. Debtor’s counsel conceded as much during the Scope and Budget Hearing, stating the Examiner’s scope is “in Your Honor’s hands....” Dkt. 340, May 22, 2025 Transcript, at 18:2-3. Through the Stipulation, the Special Committee defies controlling precedent and seeks to impede the Court’s sole authority to establish the scope of the Examiner’s investigation, including by considering a truly independent report. While the Scope and Budget order permits the parties to agree to an increase in budget, it in no way implies that the Debtor, or for that matter the Examiner, have the authority to agree to a cap or conditions that preclude an independent and objective review of the Special Committee investigation which is not yet even completed.

⁸ BMLP respectfully submits that the Court should also modify any order to expressly permit the Examiner to file a fee application seeking amounts beyond the budget, to the extent reasonably incurred in carrying out his Court-appointed duties—any such fees, of course, would remain subject to Court approval.

11. Finally, it bears noting that the DIP budget is more than adequate to support a reasonable and appropriate budget for the Examiner. The DIP Lender—which in many cases could be expected to seek to limit fees—has never taken the position that it opposes or will not agree to payment of the Examiner’s fees, even without conditions that would impact the independence of the investigation.

RESERVATION OF RIGHTS

12. Nothing contained herein shall be construed as an admission or concession that the claims investigated by the Special Committee or the Examiner are property of CCA’s estate, nor shall anything prejudice or limit BMLP’s ability to assert claims directly against CCA, CSCEC Holding or any other entity. BMLP reserves all rights to assert claims directly, whether in this Chapter 11 Case or any other Court.

ORAL ARGUMENT REQUESTED

13. Notwithstanding presentment of the Stipulation to the Court by Application in lieu of motion, BMLP hereby requests oral argument on this matter pursuant to LBR 9013-3(d).

NOTICE

14. Copies of the within Objection have been provided to (a) Debevoise & Plimpton, LLP and Cole Schotz PC, co-counsel to the Debtor; (b) Office of the United States Trustee; (c) McDermott, Will & Emery, counsel to Todd Harrison, Esq., Examiner; (d) Lowenstein Sandler LLP, counsel to CSCEC Holding; (e) Duane Morris LLP, counsel to the Special Committee; and (d) all parties that have formally requested notice in this case electronically via the Court’s CM/ECF system.

CONCLUSION

WHEREFORE, BMLP respectfully requests that this Court modify the proposed Stipulation to ensure the Examiner’s continued independence, consistent with the requirements set forth by the Third Circuit in *FTX Trading*, by excising the condition that requires the Examiner to agree “not to seek, or take any action in furtherance of, entry of an order providing for...an expansion of the Examiner’s Authorized Investigation set forth in Paragraph 1 of the Scope & Budget Order” in order to obtain the budget increase. Any other result is not permissible.

Dated: July 9, 2025
Newark, New Jersey

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