

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
) Case No. 11-13167 (KG)
FRIENDLY ICE CREAM)
CORPORATION, *et al.*,¹) Jointly Administered
)
Debtors.) **Obj. Deadline: Oct. 19, 2011 @ 4 p.m. EST**
) **Hearing Date: Oct. 24, 2011 @ 3 p.m. EST**

**LIMITED OBJECTION TO DEBTORS' MOTION FOR ENTRY
OF AN ORDER APPROVING PROCEDURES FOR THE SALE,
TRANSFER, OR ABANDONMENT OF DE MINIMIS ASSETS (D.I. 120)**

Huntington National Bank ("Huntington"), by and through its undersigned counsel, hereby submits its objection (the "Objection") to *Debtors' Motion for Entry of an Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets* (the "Motion") [D.I. 120]. In support of its objection to the Motion, Huntington respectfully states as follows:

BACKGROUND

1. On October 5, 2011 (the "Petition Date"), the Debtors filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. On October 12, 2011, the Debtors filed their *Motion for Entry of an Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets* [D.I. 120] (the "Motion").

¹ The Debtors in these cases, and their federal tax identification numbers, are as follows: Friendly Ice Cream Corporation (3130); Friendly's Restaurants Franchise, LLC (3693); Friendly's Realty I, LLC (2580); Friendly's Realty II, LLC (2581); and Friendly's Realty III, LLC (2583). The location of the Debtors' corporate headquarters and the Debtors' service address is: 1855 Boston Road, Wilbraham, MA 01095.

3. On October 12, 2011, the Debtors filed their *Motion to Shorten Notice Regarding the Debtors' Motion for Entry of an Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets* [D.I. 121] (the "Motion to Shorten").

4. On October 5, 2011, the Debtors filed their *Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, and (IV) Granting Liens and Superpriority Claim* [D.I. 16] (the "DIP Motion").

5. On October 17, 2011, Huntington filed its *Objection to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, and (IV) Granting Liens and Superpriority Claim* [D.I. 153] (the "DIP Objection").

6. The DIP Objection², incorporated by reference and attached hereto as **Exhibit A** (without exhibits), describes in greater detail Huntington's acquisition of a certain Sky Bank Promissory Note and 4th Day Loan and Huntington's related security interest in various equipment, cash, accounts receivable and other cash collateral believed to be in the Debtors' possession, specifically:

- i. Miamisburg Friendly's Equipment: Huntington has the senior security interest in no less than \$85,370 worth of equipment located at the Miamisburg Friendly's franchise location;
- ii. Miamisburg Cash Collateral: Huntington has the senior security interest in all other cash, accounts receivable and other cash collateral belonging to 4th Day Hospitality, LLC (or its successors, including, without limitation, the Debtors or any Debtor entity) for the Miamisburg Friendly's location; and
- iii. Other 4th Day Business Assets: Huntington has a security interest in all equipment, cash, accounts receivable and other cash collateral belonging to 4th Day Hospitality, LLC (or its successors, including, without

² Defined terms in paragraph 5 have the same meaning ascribed to them in the DIP Objection.

limitation, the Debtors or any Debtor entity) at four of its other Dayton Area Friendly's locations (the Troy Friendly's, the Vandalia Friendly's, the Kettering Friendly's, and the Beaver Creek Friendly's).

OBJECTION

7. The Debtors propose to sell or transfer each of the De Minimis Assets described in the Motion pursuant to certain sale procedures. With regard to assets sold for \$50,000 or less, the Debtors propose to sell such assets without Court order or notice to any party. See Motion, ¶ 7. With regard to assets sold for more than \$50,000 but less than or equal to \$500,000, the Debtors propose to sell such assets without Court order, and with limited notice to certain Notice Parties described in subsection (b)(iii) of the De Minimis Asset Sale Procedures. See Motion, ¶ 7. Huntington is not one of the Notice Parties.

8. Huntington's senior secured interest in the Miamisburg Friendly's Equipment and the Miamisburg Cash Collateral, as well as its secured interest in the other 4th Day Business Assets now or previously located at any of the Dayton Area Friendly's locations, entitles it to adequate protection as described in the DIP Objection. Furthermore, Huntington is entitled to notice of the sale of any *de minimis* assets that are located at any of the Dayton Area Friendly's locations or which Debtors or any of the Debtor entities acquired upon the termination of 4th Day Hospitality, LLC's franchise agreements with the Debtors and/or from 4th Day Hospitality, LLC by foreclosure or sale. Huntington is entitled to such notice regardless of the amount of such proposed sale.

9. Furthermore, the notice provided to Huntington should be made in substantially the same manner as notice is to be provided to the Notice Parties as described in subsection (b)(iv) of the De Minimis Asset Sale Procedures, *i.e.*, "(a) identification of the De Minimis Assets being sold or transferred, (b) identification of the purchaser of the assets, (c) the purchase

price, and (d) the significant terms of the sale or transfer agreement,” Motion, ¶ 7, which the Debtors propose to provide with respect to any assets sold for more than \$50,000 but less than or equal to \$500,000. As described in subsection (b)(vi) of the De Minimis Asset Sale Procedures, such notice would include the opportunity for Huntington to object in writing within seven (7) business days after the date of receipt of such notice. To be clear, Huntington seeks such notice and opportunity to object only for assets constituting the Miamisburg Friendly’s Equipment, the Miamisburg Cash Collateral, and/or the other 4th Day Business Assets now or previously located at any of the Dayton Area Friendly’s locations, but Huntington requests this notice and the opportunity to object for such sales in any amount, even if less than \$50,000.

10. Without such notice, it will be impossible for Huntington to ensure (1) that its various security interests in the equipment and other cash collateral at the Dayton Area Friendly’s locations are being adequately protected and (2) that such equipment and other cash collateral is not being sold at prices which are so unreasonably low that they effectively eliminate or prime the remaining lien rights Huntington has in any such assets. Accordingly, Huntington respectfully objects to the Motion unless it is made a Notice Party with respect to the sale for less than \$500,000 of any of its collateral from the five Dayton Area Friendly’s locations now owned or controlled by the Debtors.

CONCLUSION

WHEREFORE, for the foregoing reasons Huntington respectfully requests that the Motion be denied except to the extent it is modified consistent with this Objection, and for such other relief as is just and proper.

Date: October 19, 2011
Wilmington, DE

SULLIVAN · HAZELTINE · ALLINSON LLC

/s/ William D. Sullivan

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