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January 16, 2006

**VIA ELECTRONIC & REGULAR MAIL**

Honorable Ronald E. Bookbinder  
Burlington County Superior Court  
Old Courthouse  
120 High Street, Chambers 603  
Mount Holly, NJ 08060

Re: *Fleer/Skybox International, LP – Assignment for the Benefit of  
Creditors*  
Docket No. P-2005-1394  
Our File No.: 00553.66065

Dear Judge Bookbinder:

Please accept this letter brief in lieu of a more formal brief in reply to the Objection of Frontline Collectibles, Inc. ("Frontline") to Verified Supplemental Filing Regarding Application for Order (1) Approving Redemption Card Program, (2) Approving Auction Procedures & Scheduling Auction Date and (3) Authorizing Sale of Remaining Trading Cards (the "Objection"). As an initial matter, Frontline has no standing to pursue the Objection. Furthermore, even if the Court determines that Frontline does have standing, it is within the Assignee's discretion to determine the timing and manner of selling estate property. Frontline failed to make a bid by the bid deadline, and the Assignee reached an agreement with another party. That agreement should be honored by the Court as in the best interest of the FleerSkyBox estate, and should not be jeopardized by a disgruntled bidder.

**Relevant Factual Background**

On November 7, 2005, Warren J. Martin Jr. (the "Assignee") filed a Verified Application for Order (1) Approving Redemption Card Program; (2) Approving Auction Procedures and Scheduling Auction Date; and (3) Authorizing Sale of Remaining Trading Cards (the "Motion"). The Motion set forth the details of the redemption card program designed by the Assignee in conjunction with the Burlington County Office of Consumer Affairs (the "Redemption Card Program"), and also proposed two possible alternatives for the sale of the remaining trading card inventory. The first alternative provided that the Assignee's staff would complete the Redemption Card Program, and have an auction sometime in March, 2006 for the remaining trading card inventory. The second alternative, as expressly set forth in the Motion, provided for a sale of the Redemption Card Program along with the entire trading card inventory at the hearing on the Motion. The Motion expressly provides:

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At or prior to the hearing scheduled for this Motion, the Assignee will entertain offers from parties interested in purchasing the redemption card inventory, and completing the Redemption Card Program themselves. Any party interested in purchasing the redemption card inventory must agree to be bound by and complete the Redemption Card Program set forth above, and must make a minimum bid of \$500,000. Any such purchaser must also agree to permit, as requested, a representative of the Burlington County Office of Consumer Affairs to be present with such purchaser at all steps of the fulfillment process. The Assignee will also send a "minder" in to ensure that the Redemption Card Program envisioned by the Assignee is actually complied with by such purchaser. Parties interested in pursuing this option, who wish to conduct a due diligence review of the redemption card inventory may do so by contacting the Assignee's office and **scheduling an appointment prior to the hearing date for the Motion.**

To the extent that multiple parties express an interest in purchasing the Redemption Card Program and inventory, the Assignee will hold an auction at the Courthouse on the return date of this Motion to determine the [winning] bidder.

See the Motion at ¶¶ 55, 56 (emphasis added).

Thus, as set forth in the Motion, it was expressly envisioned that: (1) the Assignee would entertain bids for the entire Redemption Card Program thus eliminating the need for an auction in March, 2006, and (2) any party interested in purchasing the Redemption Card Program was required to contact the Assignee by no later than the hearing date scheduled for the Motion, namely, December 9, 2005 (the "Hearing Date"). Only one party contacted the Assignee prior to the Hearing Date interested in purchasing the Redemption Card Program, and that was Ara Collectibles, Inc. ("Ara Collectibles"). A preliminary agreement was reached with Ara Collectibles on the Hearing Date, and the Court adjourned the hearing on the Motion solely to provide the Assignee and other parties additional time to ensure that Ara Collectibles was an acceptable purchaser. The hearing was not adjourned to give additional time for bidding on the Redemption Card Program.

Frontline did not contact the Assignee until **after** the Hearing Date, and by that time, the Assignee had already reached the preliminary agreement with Ara Collectibles. Although the Assignee considered permitting Frontline to propose a "late" bid on the Redemption Card Program, it became clear that if he did so, he would risk losing the agreement reached with Ara Collectibles. Having consulted with the Burlington County Office of Consumer Affairs, the Assignee determined that consummating the agreement reached with Ara Collectibles was in the best interest of the estate. Accordingly, the Assignee finalized the agreement with Ara Collectibles and advised Frontline that it was too late to bid on the Redemption Card Program.

**Frontline Has No Standing To Object**

As a constitutional matter, standing is a threshold requirement that a party must have in order to appear and be heard in a case. *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 158 (D.N.J. 2005). To analyze whether a party has standing, that court stated:

The doctrine of standing embraces two inquiries of relevance in the context of section 1109(b) [the relevant bankruptcy statute]. First, it considers whether the participation of any particular party comports with the limitations of the case or controversy requirement of Article III of the Constitution. Second, it considers, as a matter 'of self restraint,' whether the interests of a party seeking to participate lie within the 'zone of interests' protected by the particular statute or legal rule implicated in the given proceeding.

*Id.* (citing *Collier on Bankruptcy* P 1109.04[4]). Although *Baron & Budd* was a federal case decided under the Bankruptcy Code, New Jersey Court Rule 4:54 provides that "the practice relating to assignments for the benefit of creditors under N.J.S.A. 2A:19-1 *et seq.* shall conform as nearly as practicable to the procedure relating to insolvent corporations," N.J. R. 4:54; *see also Rosner v. Plaza Hotel Associates, Inc.*, 146 N.J. Super. 447, 455 (App. Div. 1977). Furthermore, New Jersey courts have also held that "our [receivership] statute, insofar as it deals with insolvent corporations, is essentially a bankrupt act and that its provisions should be construed accordingly." *Shields v. John Shields Construction Co.*, 83 N.J. Eq. 21, 23 (1914) (citing *Butler v. Commonwealth Tobacco Co.*, 74 N.J. Eq. 423 (1908)).

In this matter, it is clear that Frontline is not within the "zone of interests" protected by N.J.S.A. 2A:19-1 *et seq.* (the "Assignment for the Benefit of Creditors Statute"). Frontline is not a creditor, but merely a disgruntled bidder. Disgruntled bidders have no standing to object where their interests stem solely from their position as an unsuccessful bidder. *See Camden Plaza Parking v. Camden*, 16 N.J. 150, 158-59 (1954) (holding that an unsuccessful bidder has no standing to object); *Waszen v. Atlantic City*, 1 N.J. 272 (1949) (stating "unsuccessful bidders ... have no standing to challenge the award of the contract to a rival bidder"); *William A. Carey & Co. v. Fair Lawn*, 37 N.J. Super. 159 (App. Div. 1955) (stating that the standing of a disgruntled bidder "rests upon its right to have its bid accepted, not upon alleged derelictions of the municipal authorities in respect to other aspects of the transaction").

Frontline cannot point to a single provision in the Assignment for the Benefit of Creditors Statute that supports its right to be heard in this matter, and the single case cited by Frontline in the Objection provides no support. Frontline cites to *Arnett v. Trimmer*, 43 N.J. Eq. 488 (Ch. 1888) as support for Frontline's asserted "right" to bid on the Redemption Card Program. However, *Trimmer* held that a "secured" creditor has the right to object to the sale of the goods in which it holds a security interest. *Id.* at 489-90. Frontline is not even a creditor, much less a secured creditor. Thus, *Trimmer* is completely inapposite to the issue at hand. Accordingly, because Frontline is, at most, a disgruntled bidder, it has no standing to object to the Assignee's proposed sale of the Redemption Card Program.

### The Assignee Has Broad Discretion To Convey Assets in the Timeframe and Manner He Deems Appropriate

Furthermore, even if one assumed for the sake of argument that Frontline did have standing to pursue the Objection, it is in the Assignee's discretion to decide the timing and manner of conveying assets. As explained in more detail in the Motion, the Assignee has "large discretionary powers" to decide the timing and manner of conveyance. See *Potts v. The New Jersey Arms and Ordnance Co.*, 17 N.J. Eq. 395, 398 (N.J. Ch. 1866); see *Twenty Nassau St. Holding Co. v. Twenty Nassau Street, Inc.*, 112 N.J. Eq. 213 (N.J. 1933) (holding that an "order for sale free and clear will be advised – at public or private sale in the receiver's discretion"); *Fleming v. The Fleming Hotel Company*, 70 N.J. Eq. 509 (N.J. Ch. 1905) (ordering a receivership sale because it was not an abuse of the receiver's discretion to refuse to adjourn the sale at the request of counsel representing 97% of the creditors, and all the stockholders, on the ground that an agreement had been made by a large part of the creditors for an extension of time).

It is indisputable that assignees are the parties who determine the appropriate method to sell assets, not creditors (and certainly not disgruntled "bidders"). Indeed, the Third Circuit has stated that "having power to order the sale of a corporation's property ... [receivers]<sup>1</sup> have power to determine and control the terms of such sales." *Stokes v. Williams*, 226 F. 148 (3rd Cir. 1915). The Third Circuit continued, "[t]he courts of the State of New Jersey, therefore authorize receivers to sell either at public or private sales, ... without notice by advertisement." *Id.* at 154-55 (citing *Rogers v. R.L. Co.*, 62 N.J. Eq. 111(1901). Another case expressly held that "the notice and manner of sale of the personal property are left discretionary with the assignees." *Hays v. Doane*, 11 N.J. Eq. 84, 94 (1855).

In this case, the Assignee was willing to hold a public auction, and invited bids from interested parties. However, only Ara Collectibles made a bid prior to the Hearing Date, and Frontline did not contact the Assignee until after he reached an agreement with Ara Collectibles. The Assignee determined in his discretion that the sale of the Redemption Card Program to Ara Collectibles is in the best interest of the estate, and that decision should be confirmed by the Court absent evidence that the Assignee acted improperly.

Therefore, although the Assignee is required to submit a proposed private sale to the Court for confirmation, there is absolutely **no** requirement that the Assignee hold a public auction in order to sell assets. See N.J.S.A. 2A:19-19. Thus, Frontline's objections to the Assignee's proposed method of sale are completely irrelevant, and should be given absolutely no weight by this Court.

<sup>1</sup> Rule 4:54 provides: "The practice relating to assignments for the benefit of creditors under N.J.S.A. 2A:19-1 *et seq.* shall conform as nearly as practicable to the procedure relating to insolvent corporations." N.J. R. 4:54; see *Rosner v. Plaza Hotel Associates, Inc.*, 146 N.J. Super. 447, 455 (App. Div. 1977).

The applicable receiver statute, N.J.S.A. 14A:14-5, provides in relevant part, "a receiver shall have power to...(c) sell, assign, convey or otherwise dispose of all or any part of the property of the corporation."

**Conclusion**

Frontline has no standing to object to the Assignee's proposed sale of the Redemption Card Program because he is not a creditor of the estate. Even if Frontline did have standing, it is still within the Assignee's discretion to determine the timing and manner of sale. In this instance, the Assignee has entered into a contract to sell the Redemption Card Program to Ara Collectibles, and in order to protect the integrity of the trading cards, that agreement does not permit the Assignee to permit any other parties to inspect the trading cards. Frontline had the same opportunity to inspect the trading card inventory prior to the hearing date as Ara Collectibles did, but failed to take advantage of that opportunity.

Wherefore, the Assignee respectfully requests that the Court approve its sale of the Redemption Card Program to Ara Collectibles.

Respectfully submitted,



Brett S. Moore

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