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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE:

AEROSPACE CONSULTING CORPORATION
(SPAIN) SA, aka AEROSPACE CONSULTING
CORPORATION (SPAIN) SL,
EIN: 20-2872385

No.05-14244-s11

Debtor.

AEROSPACE CONSULTING CORPORATION
(SPAIN) SA, aka AEROSPACE CONSULTING
CORPORATION (SPAIN) SL,
EIN: 20-2872385

Plaintiff,

vs.

Adversary No. 09-01130-s

WINSOME INVESTMENT TRUST, and
ROGER REMY AS PRESIDENT OF
AEROSPACE INNOVATIONS GROUP, INC., and
AEROSPACE INNOVATIONS GROUP, INC.,
Defendants.

**ORDER GRANTING MOTION TO APPROVE SETTLEMENT OF CLAIMS
OF PLAINTIFF AGAINST DEFENDANT WINSOME INVESTMENT TRUST
AND CLAIMS OF RECEIVER FOR WINSOME INVESTMENT TRUST
AGAINST PLAINTIFF AND DISMISSING ADVERSARY PROCEEDING**

THIS MATTER came before the Court on Plaintiff's Motion to Approve Settlement of Claims of Plaintiff Against Defendant Winsome Investment Trust and Claims of Receiver for Winsome Investment Trust Against Plaintiff. Doc. 92. The Court, being sufficiently advised in the premises, FINDS:

1. On 5/15/2007, this Court approved Plaintiff's First Amended Chapter 11 Plan, which provided for the sale of certain intellectual property to Defendant Winsome Investment Trust

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("Defendant"), per a sales agreement entered into with Defendant. USBC No. 05-14244-s11, Doc. 125.

2. The approved sale was never completed, although Defendant paid Plaintiff \$4.2 million toward the purchase price of the intellectual property.

3. On 9/2/2009, Plaintiff filed its Complaint for Breach of Contract, Patent Infringement, Turnover of Property of the Estate, and Request for a Permanent Injunction. USBC No. 09-01130-s, Doc. 1.

4. On 6/16/2010, Defendants filed a Motion to Dismiss for Lack of Jurisdiction and Standing and Supporting Memorandum (the "Motion to Dismiss"). Doc. 59.

5. On 1/24/2011, the U.S. Commodity Futures Trading Commission ("CFTC") filed a complaint against U.S. Ventures, LC and Defendant in the U.S. District Court for the District of Utah in the matter styled *U.S. Commodities Futures Trading Commission v. U.S. Ventures LC, et al*, no. 2:11cv00099 (the "Utah Case"). The Complaint alleged, *inter alia*, that U.S. Ventures ("USV") operated a commodity futures trading pool for which Defendant sold commodity futures contracts. *Id.* at Doc. 1, ¶ 1.

6. On 1/25/2011, the U.S. District Court for the District of Utah entered an Order Granting Plaintiff's *Ex Parte* Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause Re Preliminary Injunction and Other Equitable Relief (the "Utah Stay Order") in the Utah Case. *Id.* at Doc. 15. The Utah Stay Order forbade all persons from "[c]ommencing, prosecuting, litigating or enforcing any suit" against U.S. Ventures, LC and Defendant, and appointed R. Wayne Klein of Klein & Associates, PLLC as receiver (the "Receiver") for USV and Defendant. *Id.* at ¶¶ 26, 30.

7. Litigation in the present matter was stayed as a result of the Utah Stay Order. *See* USBC No. 09-01130-s; Docs. 88 and 90.

8. The Receiver claims that he may have a claim for fraudulent transfer against Plaintiff for the \$4.2 million that Plaintiff received from Defendant.

9. In October and November of 2011, Plaintiff and the Receiver, acting on behalf of Defendant, proposed to enter into a Settlement Agreement and Mutual Release (the "Settlement"), subject to the approval of this Court and the U.S. District Court for the District of Utah. Pursuant to the Settlement, the Receiver agreed to withdraw the Motion to Dismiss, and Plaintiff agreed to dismiss the present adversary proceeding. Additionally, the Receiver agreed not to bring a fraudulent transfer action in the Utah Case against Plaintiff. Further, Plaintiff and the Receiver, acting on behalf of Defendant, agreed to cooperate in the sale of Plaintiff's intellectual property and to allocate the proceeds of such sale equally between the parties, after expenses of the sale to un-related third parties.

10. The Settlement resolves all pending issues in this adversary proceeding, between all parties.

11. On 12/13/2011, the U.S. District Court for the District of Utah approved the Settlement. No. 2:11cv00099, Doc. 89.

12. The Settlement is in the best interests of Plaintiff's estate and creditors because (1) it will eliminate any possibility that Plaintiff is liable to Defendant or interests represented by the Receiver for fraudulent transfer; (2) it is uncertain how Plaintiff's claims against Defendants would be resolved if litigated; (3) litigating Plaintiff's claims against Defendants would further delay and complicate the administration of Plaintiff's estate; and (4) litigating Plaintiff's claims would increase the administrative costs of Plaintiff's bankruptcy.

13. Plaintiff filed its Motion to Approve Settlement of Claims of Plaintiff Against Defendant Winsome Investment Trust and Claims of Receiver for Winsome Investment Trust Against Plaintiff on 12/21/2011. Doc. 92.

14. Notice to all creditors was sent on 12/21/2011. Doc. 93. The Notice required that objections to the Motion to Approve Settlement of Claims of Plaintiff Against Defendant Winsome Investment Trust and Claims of Receiver for Winsome Investment Trust Against Plaintiff be filed with the Court and served on Plaintiff's counsel within twenty-one (21) days of the date of the mailing of the notice or before January 14, 2012, which date includes the additional three days for mailing required by Fed. R. Bankr. P. 9006(f).

15. No objections or other responses were filed with the Court.

16. The Motion to Approve Settlement of Claims of Plaintiff Against Defendant Winsome Investment Trust and Claims of Receiver for Winsome Investment Trust Against Plaintiff should be granted.

IT IS HEREBY ORDERED that the Motion to Approve Settlement of Claims of Plaintiff Against Defendant Winsome Investment Trust and Claims of Receiver for Winsome Investment Trust Against Plaintiff is granted, and the Settlement entered into between Plaintiff and the Receiver is approved and incorporated into this Order.

IT IS FURTHER ORDERED that Plaintiff's Amended Complaint and this adversary proceeding are dismissed with prejudice, and any and all scheduled hearings and procedural deadlines are hereby vacated.



HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Date entered on docket: January 30, 2012