IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*, [1]	Case No. 17-12560 (KJC)
	Jointly Administered
Debtors.	**Re: Docket No. 123**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE APPLICATION OF DEBTORS FOR ORDER (I) AUTHORIZING RETENTION AND EMPLOYMENT OF MOELIS & COMPANY LLC AS INVESTMENT BANKER TO THE DEBTORS *NUNC PRO TUNC* TO DECEMBER 12, 2017 PURSUANT TO SECTIONS 327(A) AND 328(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2014(A) AND (II) WAIVING CERTAIN INFORMATION REQUIREMENTS IMPOSED BY LOCAL RULE 2016-2

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases of Woodbridge Group of Companies, LLC, *et al.* (collectively, the "Debtors") submits this objection ("Objection") to the *Application of Debtors For Order (I) Authorizing Retention and Employment of Moelis & Company LLC as Investment Banker to the Debtors Nunc Pro Tunc to December 12, 2017 Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) and (II) Waiving Certain Information Requirements Imposed by Local Rule 2016-2* (the "Application") [D.I. 123].[2]

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. The complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/WGC.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

PRELIMINARY STATEMENT

1. For over a year, the Securities and Exchange Commission (the "SEC") has been investigating a complex fraud involving, *inter alia*, the issuance of securities orchestrated by Robert Shapiro ("Shapiro") that encompasses the Debtors and a multitude of non-Debtor affiliates. That investigation led to the SEC's commencement, on December 20, 2017, of a proceeding seeking the appointment of a receiver for certain Debtor and non-Debtor assets in the United States District Court for the Southern District of Florida (Case No. 17-24624) (the "Receivership Action"). On December 28, 2017, the Committee filed its *Emergency Motion of the Official Committee of Unsecured Creditors for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104* [D.I. 150] (the "Committee Trustee Motion"). On January 2, 2018, the SEC filed its *Motion by the U.S. Securities and Exchange Commission for Order Directing the Appointment of Chapter 11 Trustee* [D.I. 157] (together with the Committee Trustee Motion, the "Trustee Motions").

2. Although the Committee does not question the credentials of Moelis & Company LLC ("Moelis") as an investment banker, the Committee objects to the retention of ***any*** investment banker while the Receivership Action and Trustee Motions are pending. As set forth in the Committee Trustee Motion, the Committee questions the independence of the Debtors' current management team that was hand-picked on the eve of bankruptcy by Shapiro. Hence, the Application should not be considered until the direction and governance of the Debtors has been decided.

3. Moreover, even if the Committee and the SEC do not prevail on the Trustee Motions, retention of an investment banker is not necessary in order to maximize the value of ultra-luxury custom homes in various stages of development in Southern California. The Debtors have a portfolio of properties, the majority of which are capable of being sold now

through recognized real estate brokerage firms and the balance of which will require the completion of development with the assistance of various professionals and contractors. The best strategy for maximizing the value of these assets is either to: (a) sell them through local brokers that specialize in high-end custom properties, or (b) selectively evaluate those properties presently under construction to continue to develop so that value can be maximized through a future sale. There is no rationale to hire an investment banker to sell or recapitalize this portfolio in bulk and certainly not at the rates that investment bankers such as Moelis would propose to charge these estates.

BACKGROUND

4. On December 4, 2017 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") commencing these cases. The Debtors continue to operate their businesses and manage their assets as "debtors in possession" pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On December 14, 2017, the Office of the United States Trustee appointed the Committee in these cases.

6. On December 20, 2017, the SEC commenced the Receivership Action.

7. On December 28, 2017, the Debtors brought an adversary proceeding seeking to enjoin the Receivership Action (Adv. Proc. 17-51891 (KJC)).

8. On the same day, the Committee filed the Trustee Motion. Pursuant to the Trustee Motion, the Committee asserts that "cause" exists to appoint a chapter 11 trustee, and that such appointment would be in the best interests of creditors, based upon, among other reasons, the prepetition fraud perpetrated by Shapiro and the lack of independence from Shapiro exhibited by the Debtors' current managers.

9. On January 2, 2018, the SEC filed a motion of its own to appoint a chapter 11 trustee.

MOELIS APPLICATION

10. On December 20, 2017, the Debtors filed the Application to employ and engage Moelis as their investment banker.

11. The Debtors seek to retain Moelis pursuant to the terms of an engagement letter dated December 20, 2017 (the "Engagement Letter"). The Engagement Letter defines the scope of Moelis' engagement to include a variety of standard investment banking services that are not particularly helpful to the case at hand.

12. The Debtors seek authority to compensate Moelis as follows:

- A fixed fee of $150,000 per month (the "Monthly Fee") that is not credited against any of the success fees referenced below;
- A fee of $5,500,000 payable upon the closing of a Restructuring (the "Restructuring Fee"), including confirmation of a liquidating plan;
- A fee of 1.25% of the Transaction Value (as defined in Annex A of the Engagement Letter) upon the closing of a Sale Transaction (the "Sale Transaction Fee"); and
- A "Capital Transaction Fee" payable at the closing of a Capital Transaction of: (a) 1.0% of the aggregate gross amount of secured debt obligations and other interests Raised in the Capital Transaction; plus (ii) 2.5% of the aggregate gross amount of unsecured debt obligations and other interests Raised in the Capital Transaction; plus (iii) 4.0% of the aggregate gross amount or face value of capital Raised (as defined below) in the Capital Transaction as equity, equity-linked interests, options, warrants or other rights to acquire equity interests.

13. None of the foregoing success fees require Moelis to have accomplished anything in connection with such transactions. And all of the fees appear duplicative (and on top of a hefty monthly retainer) – for example, a sale of assets pursuant to a plan of reorganization would appear to incur two fees – one for the plan and one for the asset sales (even if done

through realtors) – each in excess of $5 million. There is also a twelve-month tail that applies in the event that a transaction is consummated following Moelis' termination. Further, Moelis is entitled to a deposit of $25,000 for expenses, plus reimbursement of Moelis' own counsel fees.

OBJECTION

A. Retention of an Investment Banker is Premature Given the Pendency of the Receivership Action and Trustee Motions

14. As noted above, the Debtors, Shapiro, and various non-Debtor entities are currently defendants in the Receivership Action, which action seeks the appointment of a receiver over the Debtors' assets. Additionally, the Committee and the SEC have filed the Trustee Motions seeking to displace the Debtors' current management team, which was hand-picked by Shapiro on the eve of bankruptcy and whose independence is in question. While the Receivership Action and Trustee Motions are pending, the Debtors should not be permitted to retain investment bankers, particularly under the onerous cost structure proposed by Moelis. If a chapter 11 trustee is appointed and decides to employ an investment banker, the trustee may then apply to the Bankruptcy Court for approval of the investment banker's employment.

B. Hiring an Investment Banker is Not in the Best Interests of the Debtors' Estates

15. Even if the Court were inclined to consider Moelis' engagement at this time, there is nothing to be gained by retaining an investment banker. In exercising its fiduciary duties, a debtor-in-possession must always act in the best interests of the estate—including all secured and unsecured creditors. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343 (1985). Retention and compensation of professionals, therefore, must also be in the best interest of a debtor's estate. *In re Insilco Techs., Inc.*, 291 B.R. 628, 634 (Bankr. D. Del. 2003).

16. Here, retention of an expensive investment banker is not in the best interests of these estates given the nature of the estate assets, consisting of a portfolio of high-end

luxury real estate in Southern California in various stages of development. Most of these properties are presently saleable through customary residential real estate brokerage channels. A bulk sale or other recapitalization or disposition of these assets through the services of an investment banker is not the way to maximize value. Rather, each property should be individually marketed and sold by local brokers who specialize in these types of properties. Although some of the properties may require further work in order to get them into the best shape for the maximum sale price, an investment banker adds no value to this process, much less under the onerous pricing structure proposed by Moelis.

C. Even if Retention of an Investment Banker was Warranted, the Terms of Moelis' Retention are Excessive

17. Even if it were in the best interests of the Debtors' estates to retain an investment banker, the compensation proposed to be paid to Moelis under the Application and the Engagement Letter is unreasonable under the circumstances here.

18. Because the standard for departing from a fee award in the pre-approved amount under section 328(a) is very difficult to satisfy, the pre-approval of Moelis' fee request in these cases must not be taken lightly. *See Committee of Equity Sec. Holders of Federal-Mogul Corp. v. Official Comm. of Unsecured Creditors (In re Federal Mogul-Global Inc.)*, 348 F.3d 390, 397 (3d Cir. 2003); *In re XO Communications, Inc.*, 323 B.R. 330, 339 (Bankr. S.D.N.Y. 2005) ("Under section 328(a), a court may not revisit its prior determination as to the reasonableness of an agreement previously approved unless it determines that the terms and conditions proved to be improvident at the time approved in light of then-unforeseen circumstances.").

19. This Court, in its duties as gatekeeper, thus "has an obligation to determine the reasonableness of terms and conditions before authorizing the employment of

professionals under § 328(a) and may eliminate, modify, or impose additional terms and conditions to satisfy the requirement of reasonableness." *In re High Voltage Engineering Corp.*, 311 B.R. 320, 333 (Bankr. D. Mass. 2004). As the applicant seeking employment under section 328(a), Moelis "must establish that the terms and conditions of employment are reasonable, and evidence, not conclusory statements, is required to satisfy that burden." *Id*. Here, Moelis has not done so.

1. *Monthly Fee*

20. Pursuant to the Engagement Letter, Moelis is entitled to receive a Monthly Fee of $150,000, not contingent upon the completion of any Restructuring, Sale Transaction, or Capital Transaction. Why should Moelis be entitled to this monthly fee under the circumstances here, particularly when it is not credited against any success fee? No broker of real estate would be entitled to a monthly fee – only compensation upon the successful closing of a sale for which it is the procuring cause.

2. *Restructuring Fee*

21. Pursuant to the Engagement Letter, Moelis will receive the Restructuring Fee, $5.5 million, at the closing of **any** Restructuring.[3] Thus, if the Debtors merely file a liquidating plan (which the Committee believes is the most likely outcome of these cases), even without Moelis' involvement, Moelis will have "earned" $5.5 million. Such result is unreasonable and excessive.

[3] The Engagement Letter broadly defines "Restructuring" as "any restructuring, reorganization, repayment, refinancing, rescheduling or recapitalization of all or any material portion of the liabilities of the Company (or its direct or indirect subsidiaries), however such result is achieved, including, without limitation, through a plan of reorganization or liquidation." *See* Engagement Letter, at p.1.

3. *Sale Transaction Fee*

22. Pursuant to the Engagement Letter, Moelis will receive a 1.25% Sale Transaction Fee upon the occurrence of a Sale Transaction. The Engagement Letter defines a Sale Transaction as either: (a) the sale of a majority of the Debtors' equity; (b) a merger or combination with a third party; (c) the sale of a significant portion of the Debtors' assets, properties, or business; or (d) a third party's acquisition of any business unit, division, or discrete asset. Notably, Moelis will "earn" the Sale Transaction Fee even if it does not materially participate in the Sale Transaction and even if other professionals, such as residential real estate brokers, are paid customary real estate sales commissions in connection with such sales.

4. *Capital Transaction Fee*

23. Along similar lines, the Capital Transaction Fee ranging from 1.0% to 4.0% of the capital raised does not appear to be particularly relevant to the case at hand. The Debtors have a portfolio of high-end properties that need to be sold to generate proceeds to pay creditor claims. The Debtors already have a DIP loan and competing proposals are under consideration. Moelis should not be entitled to a fee under these circumstances.

5. *Other Objections*

24. The Committee also objects to the following provisions of the Application and Engagement Letter as unreasonable:

- The Engagement Letter should not provide for a 12-month tail.
- The Debtors should not be required to provide Moelis with a $25,000 expense deposit, nor should the Debtors be responsible for paying Moelis' counsel's fees
- Jurisdiction for any disputes should be in this Court, not a New York court.

WHEREFORE, for the reasons set forth herein, the Committee respectfully requests that this Court deny the Application, and grant the Committee such other and further relief as is just and proper.

Dated: January 15, 2018

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