

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: _____ : Chapter 7
GRA Liquidation, Inc., *et. al.*, ' : Case No. 09-10170 (KJC)
: Jointly Administered

Debtors.

George L. Miller, Chapter 7 Trustee for
the estates of GRA Liquidation, Inc., *et al.*,
: Adv. Pro. No. 11-
Plaintiff,
v.
Defendant.

**COMPLAINT TO AVOID AND RECOVER
PREFERENTIAL TRANSFERS AND FOR OTHER RELIEF**

George L. Miller, the chapter 7 trustee (the "Plaintiff" or "Trustee") of the estates of the above-captioned debtors (the "Debtors"), by and through his undersigned counsel, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure to, among other things, avoid and recover certain preferential transfers made by one or more of the Debtors to [Defendant] (the "Defendant")._____

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

¹ The Debtors in these cases are GRA Liquidation, Inc. (f/k/a Pecus ARG Holding, Inc.) Tax ID. No. xx-xxx9860; GRA Enterprises Liquidation, Inc. (f/k/a ARG Enterprises, Inc.) Tax ID. No. xx-xxx2296; and PMC Liquidation Corporation (f/k/a ARG Property Management Corporation) Tax ID. No. xx-xxx2425.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
4. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a).

THE PARTIES

5. On January 15, 2009, (the "Petition Date")² the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.³

6. The Debtors' cases were subsequently jointly administered by order entered January 16, 2009 [Docket No. 28].

7. On or about January 15, 2009, the Debtors filed a *Motion to Approve Procedures in Connection With the Sale of the Debtors Assets; (B) Approving Form of Asset Purchase Agreement; (C) Scheduling Auction and Hearing to Consider Approval of Sale; (D) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (E) Approving the Form and Manner of Notice Thereof; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of Such Assets Pursuant to the Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief* (the "Sale Motion") [Docket No. 19].

8. The Debtors sought Court approval of that certain asset purchase agreement (the "APA") by and among Debtors and Pecus ARG Main, LLC and Pecus ARG Parallel, Inc. (collectively, the "Purchasers") and approval of the sale of substantially all of the assets of the Debtors' estates to the Purchasers. The terms of the sale are set forth in detail in the APA.

² The general factual background relating to the Debtors' commencement of the chapter 11 cases is set forth in detail in the Declaration of Lisa M. Poulin, Chief Restructuring Officer, in Support of First Day Motions (the "Poulin Declaration") filed at the commencement of these cases and incorporated herein by reference.

³ Title 11 of the United States Code.

9. On or about January 30, 2009, the Debtor filed schedules to the APA [Docket No. 94].
10. On March 13, 2009, the Court entered an order (the "Sale Order") granting the Sale Motion, authorizing the sale of substantially all of Debtors assets and approving the APA [Docket No. 262]. The sale contemplated by the APA closed effective March 31, 2009.
11. Black Angus Steakhouses LLC, f/k/a Taurian BA, LLC ("BAS") is, upon information and belief, assigned to the Purchaser's rights in and to the APA.
12. In accordance with the Sale Order, the Debtors liquidated substantially all of their assets and wound down their operations leaving Debtors with no business operations or funding.
13. On February 1, 2010, Debtors filed a motion to convert (the "Motion to Convert") the jointly-administered cases under chapter 11 of the Bankruptcy Code to cases under chapter 7 of the Bankruptcy Code. [Docket No. 537].
14. An order was entered on April 6, 2010, approving the Motion to Convert and providing for conversion of the cases from chapter 11 of the Bankruptcy Code to cases under chapter 7 of the Bankruptcy Code upon filing of a notice of conversion (the "Notice of Conversion").
15. The Debtors filed a Notice of Conversion on April 30, 2010 [Docket No. 586] and the case was converted effective April 30, 2010.
16. George L. Miller was appointed as the interim chapter 7 trustee on May 3, 2010 [Docket No. 587].
17. On July 13, 2010, the Trustee conducted a meeting (the "341 Meeting") of creditors pursuant to section 341 of the Bankruptcy Code.
18. The 341 Meeting was conducted and concluded on July 13, 2010.

19. Pursuant to section 702(d) of the Bankruptcy Code, the Trustee's appointment in these cases became final with the conclusion of the 341 Meeting without the election of another trustee.

20. In their ordinary course of business, the Debtors owned and operated the Black Angus Steakhouse chain of casual steakhouse restaurants specializing in 100% all-natural Black Angus steak and prime rib, and seafood entrees. The original Black Angus Steakhouse was opened in Seattle in 1964 and the chain comprised 69 restaurants located in 7 western states as of the Petition Date.

21. The Debtors maintained their corporate headquarters in Los Altos, California.

22. Upon information and belief, the Defendant is a corporation or other legal entity whose state of incorporation or formation presently is unknown to Plaintiff, or the Defendant is an individual. As further alleged herein, Defendant transacted business with, or was an employee of, one or more of the Debtors prior to the Petition Date.

23. Considering the absence of business operations, the limited assets remaining subsequent to the sale to the Purchasers and the inability of the Debtors to fund a plan, payment, if any, to general unsecured creditors under chapter 7 liquidation would be far less than 100 cents on the dollar.

RELATIONSHIPS WITH VENDORS AND THIRD PARTIES

24. Upon information and belief, as owners and operators of chain restaurants the Debtors (i) used the services of, (ii) purchased materials, goods and utilities from or through, and/or (iii) otherwise engaged or received some assistance from companies and individuals necessary to engage in the restaurant business.

25. Vendors, suppliers, subcontractors, employees, professionals, governmental entities, banks, insurance entities and other individuals and entities were all necessary for the restaurant business. Necessary pieces of the restaurant business included: securing property for restaurant locations, financing and insurance; securing utilities; enlisting professional services including but not limited to design services, landscaping services, repair and maintenance services, and cleaning services; obtaining goods and services; protecting and managing the various restaurant properties; and obtaining sales, marketing and other necessary professional services, among other things. Upon information and belief, prior to the Petition Date the Debtors (i) used the services of, (ii) purchased goods, materials and utilities from or through, and/or (iii) otherwise engaged or received some assistance from companies and individuals necessary for the ongoing business operations, including, but not limited to selling, general and administrative functions.

THE PREFERENCE COMPLAINT

26. For each preferential transfer to the Defendant ("Transfer"), Exhibit A provides: (i) the total amount of each Transfer that was sent to the Defendant or the Defendant's representative; (ii) the amount of that Transfer that was applied to invoices due and owing to the Defendant prior to the transfer date (the "Associated Invoice Amount"); (iii) the nature—identified through invoice number (the "Invoice Number")—and amount (the "Associated Invoice Amount") of each antecedent debt satisfied by the Transfer; and (iv) the transferor, and associated vendor (the "Vendor Name") of each Transfer. Exhibit A, and the data contained therein, is incorporated by reference in this complaint as if set forth in full herein.

27. Defendant received the Transfers (as defined below) listed on Exhibit A, either directly or indirectly. Through this Complaint, the Trustee seeks to avoid the Transfers and recover the monetary value of these Transfers from the Defendant.

GENERAL ALLEGATIONS

28. On or within 90 days prior to the Petition Date (the "Preference Period"), the Debtors made one or more transfers of an interest of the Debtors in property to or for the benefit of Defendant, as set forth on Exhibit A hereto.

29. Exhibit A reflects Plaintiff's current knowledge of the Transfers made to Defendant during the Preference Period. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional Transfers made to Defendant during the Preference Period. It is Plaintiff's intention to avoid and recover all such Transfers, whether such transfers presently are reflected on Exhibit A or not. Collectively, all Transfers made by the Debtors of an interest of the Debtors in property to or for the benefit of Defendant during the Preference Period (whether such transfers presently are reflected on Exhibit A hereto or not) are referred to herein as the "Transfers."

COUNT I

(Preferential Transfer Pursuant To 11 U.S.C. § 547(b))

30. Plaintiff restates and realleges the allegations of the preceding paragraphs as if fully set forth herein.

31. The Transfers were made to or for the benefit of Defendant, a creditor of the Debtors.

32. The Transfers were made for or on account of an antecedent debt(s) owed by the Debtors before such Transfers were made.

33. The Transfers were made during the Preference Period.

34. The Transfers were made while the Debtors were insolvent.

35. The Transfers enabled Defendant to receive more than Defendant would have received if: (i) this was a case commenced under chapter 7 of the Bankruptcy Code; (ii) the

Transfers had not been made; and (iii) Defendant received payment on account of the debt paid by the Transfers to the extent provided by the provisions of the Bankruptcy Code. Based on the Poulin Affidavit and summarized hereinabove and considering the value of the Debtors assets, the significant obligation owed to the pre-petition secured lenders, and the amount of unsecured claims against the Debtors, upon information and belief, at no point was it contemplated that the assets of these estates were sufficient to provide a 100% recovery to unsecured creditors.

36. The Transfers enabled the Defendant to receive a full, or substantially full, recovery on account of the antecedent debt(s) that were satisfied through the Transfers.

37. Each of the Transfers constitutes an avoidable preference within the meaning of 11 U.S.C. § 547.

38. Defendant has not returned the Transfers to Plaintiff.

COUNT II
(Recovery of Transfers Pursuant To 11 U.S.C. § 550)

39. Plaintiff restates and realleges the allegations of the preceding paragraphs as if fully set forth herein.

40. Defendant is either the (a) initial transferee of the Transfers, (b) the entity for whose benefit the Transfers were made, or (c) an immediate or mediate transferee of an initial transferee.

41. Plaintiff is entitled to recover the value of each of the Transfers pursuant to **11 U.S.C. § 550(a)**.

COUNT III
(Disallowance of all Claims - 11 U.S.C. § 502(d) and (i))

42. Plaintiff restates and realleges the allegations of the preceding paragraphs as if fully set forth herein.

43. Defendant is an entity from whom property is recoverable under 11 U.S.C. § 550.

44. Defendant is a transferee of the Transfers avoidable under 11 U.S.C. §§ 547.

45. Defendant has not paid the amount of the Transfers, or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

46. Pursuant to 11 U.S.C. § 502(d), any and all claims of Defendant and/or its assignee, against the Debtors' chapter 7 estates or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Transfers, plus interest thereon and costs.

47. Pursuant to 11 U.S.C. § 502(j), any and all claims of Defendant, and/or its assignee, against the Debtors' chapter 7 estates or Plaintiff previously allowed by the Debtors or Plaintiff, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of all the Transfers.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor:

(a) declaring that the Transfers to the Defendant constitute avoidable preferential transfers pursuant to Section 547 of the Bankruptcy Code and awarding Plaintiff at least the sum of the Transfers to be returned pursuant to Section 550 of the Bankruptcy Code;

(b) disallowing, in accordance with 11 U.S.C. § 502(d), any claims held by Defendant and/or its assignee until Defendant satisfies the judgment;

(c) awarding Plaintiff his costs associated with the prosecution of this action; and

(d) granting such other and further relief as is just and proper.

Dated: May 3, 2011

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EXHIBIT A

