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Partners II Liquidating Trust*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
and CASTLE ARCH SMYRNA, LLC;
CASTLE ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY
PARTNERS I, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS II, LLC;

Debtors.

Case Nos. 11-35082, 11-35237, 11-35243,
11-35242 and 11-35246
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240
(Jointly Administered)

(Chapter 11)
The Honorable Joel T. Marker

THIS DOCUMENTS RELATES TO:

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

**MOTION FOR APPROVAL OF COMPROMISE BETWEEN
TRUSTEE AND DAVID AND TAMMY RILL**

D. Ray Strong, trustee (“**Trustee**”) of the Castle Arch Opportunity Partners II Liquidating Trust (the “**Trust**”), by and through his counsel of record, Durham Jones & Pinegar, hereby moves the Court (“**Motion**”) for approval of a compromise between the Trustee and and

David and Tammy Rill (“**Rill**”). This Motion is brought pursuant to Bankruptcy Rule 9019. In support of this motion, the Trustee states as follows:

Background Facts Relating to the Proposed Compromise

1. Castle Arch Opportunity Partners II (“Debtor”) filed a voluntary Chapter 11 petition (the “**Petition**”) on October 20, 2011. A plan of reorganization (“**Plan**”) was confirmed in Debtor’s case was subsequently on June 7, 2013. The Plan became effective on July 22, 2013. Pursuant to the Plan, the Trust was established and created as successor and assignee from the Debtor and D. Ray Strong was appointed as Trustee.
2. David and Tammy Rills are residents of Granite City, Illinois.
3. The Trust owns an Adjustable Rate Note dated January 24, 2007 (the “**Note**”) and an accompany mortgage (the “**Mortgage**”) of like date which Mortgage creates a security interest in the Rill’s residence located at 3532 Lake Drive, Granite City Illinois (the “**Residence**”).
4. The Note and Mortgage were assigned to the Trust from the Castle Arch Opportunity Partner II LLC (“**CAOP II**”), debtor, pursuant to certain assignments including a confirmed chapter 11 plan of reorganization entered by the United States Bankruptcy Court, District of Utah (the Note, Mortgage and all relevant other assignments and documents shall be called the “**Loan Documents**”). CAOP II had obtained the Note and Mortgage prior to the filing of its bankruptcy petition for approximately \$40,000.
5. Rill had defaulted on the note by missing certain payments. With interest and penalties, the Rill’s owe in excess of \$130,000 under the Note.

6. The Trustee extended the Rill's a standstill period under which the Trustee would not foreclose on the Mortgage if Rill was able to obtain a refinance of the Note and payoff the Note in the amount of \$105,000.

7. Rill has obtained through Vinson Mortgage a proposed refinance of the Note which would provide the Trustee with the requested payoff amount.

8. Accordingly, the Trustee requests that the Court approve the Trustee's acceptance of \$105,000 for the payoff of the Note and Trust Deed in connection with the refinancing offered by Vinson Mortgage or a similar lender if necessary.

TRUSTEE'S ANALYSIS OF THE SETTLEMENT

The Trustee believes that the compromise of the Mortgage is in the best interests of the Debtor's estate and creditors. The Court is required to review carefully any proposed settlement. As the Bankruptcy Appellate Panel of the Tenth Circuit has held,

The decision of a bankruptcy court to approve a settlement must be "an informed one based upon an objective evaluation of developed facts." *Reiss v. Hagmann*, 881 Md 890, 892 (10th Cir. 1989). In considering the propriety of the settlement it is appropriate for the court to consider the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.

Kopp v. All American Life Ins. Co. (In re Kopexa Realty Venture Co.), 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997). The four factors are largely derived from *Protective Committee Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25, 88 S.Ct. 1157, 1163 (1968).

The Trustee believes that the proposed compromise returns to the estate a value that is within or greater than the range of what the Trustee would net from any foreclosure of the Residence based on his view of the value of the Residence and costs associated with the Sale.

The Trustee would be required to hire Illinois counsel to pursue any such foreclosure which would increase costs associated with any attempted foreclosure. Furthermore, the Trustee recognizes that he could be significantly delayed in the collection of the Note were Rill to file a bankruptcy petition under chapter 7 or chapter 13. Thus, litigation over the Note is uncertain at best in light of the foregoing risks related to value and bankruptcy.

The Trustee believes that the same argument recited above relates to the difficulties of collection in connection with any foreclosure process.

Finally, the Trustee notes that this compromise will realize a significant return in the investment made pursuant to the Note and Mortgage. Any potential sale alternative would not render a similar return. The Trustee does not believe that he could sell the Note and Mortgage for any more than the estate paid for such Note/Mortgage.

Because of the foregoing, the Trustee believes that the interests of creditors are served by the compromise set forth in the proposed compromise.. The Trustee believes that the compromise from the settlement increases amounts available to creditors in this case without significantly increasing costs. Thus, the settlement is in the interests of creditors.

WHEREFORE, the Trustee requests that the Court approve the proposed compromise described above and allow the Trustee to accept \$105,000 as payoff for the Note and to release the Mortgage as a compromise of claims under 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019(a).

DATED this 6th day of March, 2015.

DURHAM JONES & PINEGAR

By: /s/ Penrod W. Keith
Penrod W. Keith (4860)

*Attorneys for Trustee for Castle Arch Opportunity
Partners II Liquidating Trust*

CERTIFICATE OF SERVICE

By Notice of Electronic Filing (CM/ECF)

I hereby certify that on the 6th day of March, 2015, I electronically filed the foregoing **MOTION FOR APPROVAL OF COMPROMISE BETWEEN TRUSTEE AND DAVID AND TAMMY RILL** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

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By U.S. Mail – Regular first class United States mail, postage fully prepaid

I hereby certify that on the 6th day of March, 2015, I caused to be served a true and correct copy of the foregoing **MOTION FOR APPROVAL OF COMPROMISE BETWEEN TRUSTEE AND DAVID AND TAMMY RILL** on the following parties:

David and Tammy Rill
3532 Lake Drive
Granite City, IL 62040

/s/ Kristin Hughes
DURHAM, JONES & PINEGAR