

This order is SIGNED.

Dated: July 27, 2015



JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted By:

Peggy Hunt (Utah State Bar No. 6060)
Nathan S. Seim (Utah State Bar No. 12654)

DORSEY & WHITNEY LLP

136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1685
Telephone: (801) 933-7360
Email: hunt.peggy@dorsey.com
seim.nathan@dorsey.com

*Attorneys for D. Ray Strong, Liquidating Trustee of
the Consolidated Legacy Debtors Liquidating Trust*

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

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
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

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

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT
AGREEMENT WITH HERNAN CHARRY UNDER FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019**

The matter before the Court is the *Trustee's Motion to Approve Settlement Agreement with Hernan Charry Under Federal Rule of Bankruptcy Procedure 9019* [Docket No. 1100] (the "Motion"), which seeks approval of the Settlement Agreement, attached hereto as Exhibit A (the "Settlement Agreement"), that the Trustee entered into with Hernan Charry. The Motion was served through the Court's CM/ECF system upon all parties that receive electronic notice in this case. In addition, a *Notice of Motion and Notice of Opportunity for Hearing* [Docket No. 1102] (the "Notice") that provided for, among other things, notice of the reserved hearing on the Motion and notice of the deadline of July 23, 2015, for filing responses to the Motion, was properly served on all parties in interest in this case, and no further notice is required. No responses to the Motion have been filed or received by the Trustee or his counsel.

The Court has considered the Motion, the *Declaration of D. Ray Strong in Support of the Motion* [Docket No. 1101], the Notice, the *Certificate of Service* attached to the Notice, and applicable law. Based thereon, and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**; and
2. The Settlement Agreement, attached hereto as Exhibit A, is **APPROVED**.

End of Order

EXHIBIT A

SETTLEMENT AGREEMENT

This settlement agreement (this "Agreement") is entered into this 20th day of May, 2015, by and between (i) Hernan Charry ("Charry"); and (ii) D. Ray Strong, as the post-confirmation estate representative of the Debtors (defined below) and the Liquidating Trustee (the "Trustee") of the Consolidated Legacy Debtors Liquidating Trust (the "Trust"), as appointed in such capacities in the bankruptcy case styled *In re Castle Arch Real Estate Investment Company, LLC et al.*, Case No. 11-35082 (the "Bankruptcy Case"), filed in the United States Bankruptcy Court for the District of Utah (the "Court"). The Trustee and Charry will be referred together as the "Parties."

RECITALS

General

A. On October 17, 2011, Castle Arch Real Estate Investment Company, LLC ("CAREIC") filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the Court, and on October 20, 2011, Debtors CAOP Managers, LLC ("CAOP Managers"), Castle Arch Kingman, LLC ("CAK"), Castle Arch Smyrna, LLC ("CAS"), and Castle Arch Secured Development Fund, LLC ("CASDF") also filed voluntary petitions with the Court under Chapter 11 of the Bankruptcy Code.

B. On May 3, 2012, the Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC, and in that capacity he managed each of the other Debtor entities.

C. On February 8, 2013, the Court entered an Order substantively consolidating CAOP Managers, CAK, CAS, CASDF and non-debtor Castle Arch Star Valley, LLC with CAREIC [Docket No. 590]. These entities, as consolidated, are referred herein as the "Debtors."

D. On June 7, 2013, the Bankruptcy Court entered an *Order Confirming Chapter 11 Trustee's First Amended Plan of Liquidation Dated February 25, 2013 as Modified* [Docket No. 705] which, among other things: (i) confirmed the *Second Amended Chapter 11 Trustee's Plan of Liquidation Dated February 25, 2013* [Docket No. 701]; (ii) appointed the Trustee as the post-confirmation estate representative for each of the Debtors; and (iii) appointed the Trustee as the Liquidating Trustee of the Trust.

Charry's Connection with the Debtors

E. Prior to their respective petition dates, the Debtors made a series of transfers of cash to Charry that the Trustee claims were compensation for soliciting investments in, referring investors to, or raising funds for the Debtors (the "Transfers"), which Charry denies.

F. The Trustee claims the Transfers were made by the Debtors at a time when Charry was not a licensed securities broker or dealer authorized to sell or solicit investments in securities.

The Adversary Proceeding and Good-Faith Negotiations

G. On October 11, 2013, the Trustee commenced an adversary proceeding against Charry in the Bankruptcy Case, styled as *Strong v. Charry*, Adv. Pro. No. 13-02377 (the "Adversary Proceeding"), relating to Charry's receipt of funds from the Debtors that the Trustee claims were for soliciting investments in, referring investors to, or raising funds for the Debtors.

H. Since the filing of the Adversary Proceeding, the Parties have exchanged information and entered into arms'-length and good-faith negotiations to avoid the costs, expenses and uncertainty of litigation and collection, and without admitting liability or wrong doing by any Party, the Parties have agreed to resolve and compromise the claims and disputes which may exist between them, whether known or unknown, pursuant to the terms and conditions more fully set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Bankruptcy Court Approval; Best Efforts.** This Agreement is conditioned on, and is subject to, the Court's entry of an Order in the Bankruptcy Case approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019. The Trustee will file a motion seeking Court approval of this Agreement, and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable law. The date that the Court enters an Order approving this Agreement shall be referred to herein as the "Entry Date." In the event the Court does not issue an Order approving this Agreement, or if such Order is appealed and reversed, then: (a) this Agreement shall be null, void and of no force or effect; (b) nothing contained in this Agreement or in any motion or proceeding (including any hearing before the Court) by the Trustee seeking approval of this Agreement can be used in any manner or in any proceeding (including courts or claims in arbitration) by any of the Parties; and (c) to the degree possible, while acknowledging that time may render appeals moot, the Parties shall be in the same position they were in as though this Agreement had never been executed.

2. **Settlement Payment.** Within five (5) business days of the Court's entry of an Order approving this Agreement, Charry will pay the Trustee, for the benefit of the Trust, the amount of \$3,500.00 (the "Settlement Payment").

3. **Dismissal of Adversary Proceeding.** Within five (5) business days of the Trustee's receipt of the Settlement Payment, the Trustee will file in the Adversary Proceeding a Stipulated Notice of Dismissal, dismissing the Adversary Proceeding with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1), made applicable to the Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7041.

4. **Release of Claims Against Charry.** Effective upon the Trustee's receipt of the Settlement Payment, the Debtors and the Trust release and forever discharge Charry from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent, that the Trustee, the Debtors or the Trust may have, or may acquire from any other party against Charry from the beginning of time to the date hereof, or which may hereafter accrue against Charry based upon any claims, acts or omissions occurring prior to the date of this Agreement, or which may hereafter accrue against Charry based upon any claims, acts or omissions occurring prior to the date of this Agreement, including but not limited to all claims asserted against Charry in the Adversary Proceeding; *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising under or resulting from a default or breach of this Agreement.

5. **Release of Claims Against the Trust, the Debtors and the Trustee.** Effective on the Entry Date, Charry releases and forever discharges the Debtors, the post-confirmation estates of the Debtors, the Trust, and the Trustee, as well as the Trustee's agents, attorneys and representatives, and any predecessors, successors and assigns thereof (collectively, the "Trustee Release Parties") from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, expenses, set off, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent, that Charry may have against the Trustee Release Parties from the beginning of time to the date of this Agreement, or which may hereafter accrue against the Trustee Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement; *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising under or resulting from a default or breach of this Agreement.

6. **Representations and Warranties.** Charry represents and warrants that: (a) he has full power and authority to enter into this Agreement; (b) there has been no assignment or other transfer of a claim, cause of action or other liability which might affect or impair the releases set forth in this Agreement; (c) he has not filed any proofs of claim or asserted any claims against any of the Debtors or the Trust; and (d) the information that he has provided to the Trustee is true and correct.

7. **Trustee Representation.** The Trustee represents that as the Court-authorized representative of the Debtors and the Trust, he has full power and authority to enter into this Agreement, subject to Court approval as provided for above.

8. **Denial of Liability.** The Parties deny any liability to one another and state that they are entering into this Agreement to resolve issues between them without litigation and the expenses related thereto.

9. **Default.** Charry agrees that he will be in material default of this Agreement if: (a) he files or causes any other party to file a claim against any of the Debtors or any successor of

the Debtors, including the Trust, or otherwise takes any action to assert an interest in assets of any of the Debtors or the Trust; (b) he fails to make the Settlement Payment as set forth above; or (c) any of the representations and warranties set forth above are materially false or misleading. The Trustee will be entitled to interest, any and all costs and fees, including but not limited to attorneys' fees, incurred by the Debtors or Trust in enforcing this Agreement or collecting amounts due hereunder.

10. **Attorneys' Fees and Costs.** The Parties agree that they will bear their own respective attorneys' fees and costs incurred in connection with entering into, obtaining Court approval of, and implementing this Agreement.

11. **Effectuation of Agreement.** The Parties agree to perform any other or further acts, and execute and deliver any other or further documents, as may be necessary or appropriate to implement this Agreement, including without limitation any documents necessary to obtain approval of this Agreement from the Court. Except as specifically required by any Order entered by the Court, the Trustee may execute any documents necessary to effectuate this Agreement without further notice and hearing.

12. **Binding Effect.** This Agreement shall be binding upon each of the Parties and their respective successors-in-interest, assigns, executors, affiliates, administrators, personal representatives, estates and to all persons or entities claiming by, through or under them, including but not limited to any successor to the Trustee, the Debtors or their bankruptcy estates and including any representative or other liquidating agent that may be appointed for the Debtors by Order of the Court or pursuant to any plan of reorganization confirmed by the Court. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

13. **Bankruptcy Court Jurisdiction.** Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to the interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby consent to the jurisdiction, venue and process of the Court.

14. **Governing Law.** This Agreement is made pursuant to, and shall be governed by, the laws of the State of Utah and, where applicable, federal bankruptcy law.

15. **Construction of Agreement.** This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the Parties (or their respective counsel), and the language of the Agreement shall not be construed for or against any particular Party.

16. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel (or, if not represented, such Parties had the opportunity to engage counsel to review the Agreement); the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such Party is

under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

17. **Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for the same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

18. **Severability.** To the extent that any portion of this Agreement is held unenforceable by a court, tribunal or arbiter of competent jurisdiction, the remainder of this Agreement shall remain binding and enforceable, provided that the primary purposes of the Agreement are not frustrated.

19. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original, with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

HERNAN CHARRY



D. RAY STRONG, AS ESTATE REPRESENTATIVE OF THE DEBTORS
AND LIQUIDATING TRUSTEE OF THE TRUST



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DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH HERNAN CHARRY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019** (the "Order") shall be served to the parties in the manner designated below:

By Electronic Service: I certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served notice of entry of the Order through the CM/ECF system:

- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com,
debbie@princeyeates.com;docket@princeyeates.com
- John T. Anderson janderson@aklawfirm.com, aolson@aklawfirm.com
- Troy J. Aramburu taramburu@swlaw.com,
rmaxwell@swlaw.com;docket_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com,
long.candy@dorsey.com;ventrello.ashley@dorsey.com
- J. Thomas Beckett tbeckett@parsonsbehle.com,
ecf@parsonsbehle.com;brothschild@parsonsbehle.com;kstankevitz@parsonsbehle.com
- Julie A. Bryan julie@crslaw.com, joshua@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com,
ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Schuyler G. Carroll scarroll@perkinscoie.com, DOlsky-efile@perkinscoie.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- William H. Christensen wchristensen@larsenrico.com,
ogappmayer@larsenrico.com;fileclerk@larsenrico.com
- Andrew B. Clawson andrew@abclawutah.com, kylie@pearsonbutler.com
- T. Edward Cundick tec@princeyeates.com,
docket@princeyeates.com;pam@princeyeates.com
- Robert T. Denny rtd@scmlaw.com, hae@scmlaw.com
- Anna W. Drake annadrake@att.net
- Jodi Knobel Feuerhelm jfeuerhelm@perkinscoie.com,
blumm@perkinscoie.com;docketPHX@perkinscoie.com
- Jennie B. Garner garner.jennie@dorsey.com
- Eric D Goldberg egoldberg@gordonsilver.com
- Eric D Goldberg egoldberg@stutman.com
- Sarah Goldberg goldberg.sarah@dorsey.com
- David R. Hague dhague@fabianlaw.com
- Michael Leo Hall mhall@burr.com, mivey@burr.com;mmayes@burr.com
- George B. Hofmann ghofmann@cohnekinghorn.com,
dhaney@cohnekinghorn.com;jthorsen@cohnekinghorn.com
- David W. Houston dhouston@burr.com

- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com
- Jennifer A. James jaj@clydesnow.com, mcarter@clydesnow.com
- Lon A. Jenkins jenkins.lon@dorsey.com,
lalor.carol@dorsey.com;posada.monica@dorsey.com
- Neil A. Kaplan nak@clydesnow.com, mcarter@clydesnow.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Peter J. Kuhn tr Peter.J.Kuhn@usdoj.gov,
James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Michael L. Labertew michael@labertewlaw.com
- Mark A. Larsen mlarsen@larsenrico.com,
wchristensen@larsenrico.com;ogappmayer@larsenrico.com
- Ralph R. Mabey rmabey@kmclaw.com
- Christopher J Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley amaudsley@kmclaw.com, squilter@kmclaw.com
- Lance E. Miller lancemiller@americanapparel.net
- John T. Morgan tr john.t.morgan@usdoj.gov,
James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Jeffrey P. Mortimer jeff@rulontburton.com
- Oliver K. Myers myersok@msn.com
- Darren B. Neilson dneilson@kmclaw.com, tsanders@kmclaw.com
- David Olsky dolsky@perkinscoie.com
- Rick Poster Rick@posterlaw.com
- Jon A Reed jreed@larsenrico.com
- Knute A. Rife KARife@RifeLegal.com
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com
- Lee Rudd leerudd@ruddlaw.com,
leerudd@gmail.com;G5697@notify.cincompass.com
- Nathan Seim seim.nathan@dorsey.com, ventrello.ashley@dorsey.com
- Nathan Seim seim.nathan@dorsey.com, ventrello.ashley@dorsey.com
- Jeremy C. Sink jsink@mbt-law.com
- Eric J. Snyder esnyder@wilkauslander.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- Stephen G. Stoker sgstoker@stokerswinton.com, sgstokerlc@gmail.com
- D. Ray Strong tr rstrong@s3advisory.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Russell S. Walker rwalker@wklawpc.com, ckirk@wklawpc.com
- Kim R. Wilson bankruptcy_krw@scmlaw.com
- Brock N. Worthen bworthen@swlaw.com
- Richard L. Wynne rlwynne@jonesday.com

By U.S. Mail – In addition to the parties receiving notice of the Order through the CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b):

Poster Law Firm, PLLC
c/o Rick Poster
11024 North 28th Drive, Suite 200
Phoenix, AZ 85029

/s/ Nathan S. Seim