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Of LandAmerica Financial Group, Inc.*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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In re:	:	Chapter 11
	:	
LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	
Millard Refrigerated Services, Inc.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	AP No. 08-03147
	:	
LandAmerica 1031 Exchange Services, Inc.,	:	
	:	
Defendant.	:	
-----	X	

**JOINT OBJECTION OF THE DEBTOR,
THE LES COMMITTEE, AND THE LFG COMMITTEE
TO PLAINTIFF'S NOTICE OF APPEAL
AND/OR MOTION FOR LEAVE TO APPEAL**

LandAmerica 1031 Exchange Services, Inc. (“the **Debtor**”), the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the “**LES Committee**”), and the Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc. (the “**LFG Committee**” and together with the LES Committee, the “**Committees**”), by counsel, pursuant to Rule 8003(a) and (c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), submit this Objection to the Notice of Appeal and/or Motion for Leave to Appeal filed by Plaintiff, Millard Refrigerated Services, Inc. (the “**Objection**”).

BACKGROUND

1. On November 26, 2008, LandAmerica Financial Group, Inc. (“**LFG**”) and LandAmerica Exchange Services, Inc. (“**LES**” collectively, with LFG, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are continuing in possession of their property and have continued to operate and maintain their businesses as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

2. On December 1, 2008, the Plaintiff, Millard Refrigerated Services, Inc. (“**Millard**”), filed its complaint initiating the above-captioned adversary proceeding and asserting claims for: (1) declaratory relief under section 541 of the Bankruptcy Code, (2) injunctive relief under section 105(a) of the Bankruptcy Code, (3) breach of contract, (4) conversion, and (5) intentional interference with contract.

3. On December 3, 2008, the United States Trustee for the Eastern District of Virginia appointed the LFG Committee and the LES Committee.

4. On January 16, 2009, the Court entered an Order Establishing Scheduling Protocol For Adversary Proceedings (the “**Protocol Order**”), approving procedures for the expedited litigation of select adversary proceedings (the “**Lead Cases**”), including the adversary proceeding filed by Millard.

5. On February 10, 2009, the Court entered an Order Granting Joint Motion of Frontier Pepper’s Ferry, LLC and Howard Finkelstein to Bifurcate Trials (the “**Bifurcation Order**”), bifurcating the trials of the Lead Cases. The Bifurcation Order limited the initial phase of the trials to the tracing of the Exchange Funds, contractual interpretation of the Exchange Agreements, the existence of an express trust between LES and the Lead Case plaintiffs, and the existence of a resulting trust between LES and the Lead Case plaintiffs. Bifurcation Order ¶ 3.

6. On or around March 3, 2009, Millard and both Committees filed cross motions for partial summary judgment on the claims at issue in the first phase under the Bifurcation Order in the Millard adversary proceeding. The Debtors joined in the Committees’ motions for partial summary judgment.

7. On April 15, 2009, the Court entered an Order granting the Committees’ motions for partial summary judgment and denying Millard’s motion for partial summary judgment (the “**Summary Judgment Order**”).

8. On April 27, 2009, Millard filed its Notice of Appeal of the Court’s April 15th Order and Memorandum Opinion and filed a Motion for Certification for Direct Appeal to the United States Court of Appeals for the Fourth Circuit.

ARGUMENT

9. An appeal as of right may be taken only from “final judgments, orders, and decrees.” 28 U.S.C. § 158(a)(1); Fed. Bankr. R. P. 8001(a).

10. The Summary Judgment Order is not a final order because it did not adjudicate all of the claims in Millard’s Complaint.

11. Alternatively, pursuant to Bankruptcy Rule 7054, incorporating Federal Rule of Civil Procedure 54(b):

[T]he court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is not just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

12. Here, there has been no express determination by the Court that “there is no just reason for delay.”

13. The order, therefore, is an interlocutory order. The appeal of such an interlocutory order is governed by Bankruptcy Rules 8001 and 8003.

14. In order to take an appeal from an interlocutory order, a notice of appeal must be accompanied by a motion for leave to appeal prepared in accordance with Bankruptcy Rule 8003. Fed. R. Bankr. P. 8001(b). Thus, Millard’s Notice of Appeal was improper.

15. “If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel *may* grant leave to appeal or direct that a motion for leave to appeal be filed.” Fed. R. Bankr. P. 8003(c) (emphasis added).

16. If the Court considers Millard’s Notice of Appeal as a motion for leave to appeal, the Debtor and the Committees file this Objection pursuant to Bankruptcy Rule 8003(a). The Debtor and the Committees state that Millard has not met, and cannot meet, the three requirements generally applied for an appeal of an interlocutory order. *See Atlantic Textile Group, Inc. v. Neal*, 191 B.R. 652, 653 (Bankr. E.D. Va. 1996) (explaining that courts generally grant leave to appeal an interlocutory order “only when 1) the order involves a controlling question of law, 2) as to which there is a substantial ground for a difference of opinion, and 3) immediate appeal would materially advance the termination of the litigation.”).

17. Legal authority supporting the relief requested by the Objection has been cited herein and additional authority will be provided by the Debtor and the Committees in their Memoranda in Opposition to Millard’s Motion for Certification for Direct Appeal, to be filed on or before May 12, 2009. Therefore, the Debtor and the Committees respectfully request that the Court waive the requirement in Rule 9013-1(H)(2) of Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia that a response in opposition be accompanied by a memorandum of law.

18. Additionally, the Debtor and the Committees request that the Court not transmit Millard’s Notice of Appeal and any answers thereto to the district court before the hearing on Millard’s Motion for Certification for Direct Appeal.

CONCLUSION

WHEREFORE, for the reasons stated above, LandAmerica 1031 Exchange Services, Inc., the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc., and the Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc. respectfully request that the Court:

1. Deny Millard Refrigerated Services, Inc. leave to appeal the Summary Judgment Order;
2. Not transmit Millard's Notice of Appeal and any answers thereto to the district court before the hearing on Millard's Motion for Certification for Direct Appeal; and
3. Grant such other relief as is appropriate.

Dated: Richmond, Virginia
May 6, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May 2009, a true and correct copy of the foregoing Joint Objection of the Debtor, the LES Committee, and the LFG Committee to the Plaintiff's Notice of Appeal and/or Motion for Leave to Appeal was served by email to the following parties:

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