IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OSMAR SYLVANIA, INC., Appellant, v. SLI, INC., CHICAGO MINIATURE OPTOELECTRONIC TECHNOLOGIES, INC., ELECTRO-MAG INTERNATIONAL, INC., CHICAGO-MINIATURE LAMP-SYLVANIA LIGHTING INTERNATIONAL, INC., SLI LIGHTING PRODUCTS, INC., SLI LIGHTING COMPANY, SLI LIGHTING SOLUTIONS, INC., and CML AIR, INC., Appellees.	)	Civil Action No. 03-729-KAJ
In re: SLI, INC., CHICAGO MINIATURE OPTOELECTRONIC TECHNOLOGIES, INC., ELECTRO-MAG INTERNATIONAL, INC., CHICAGO-MINIATURE LAMP-SYLVANIA LIGHTING INTERNATIONAL, INC., SLI LIGHTING PRODUCTS, INC., SLI LIGHTING COMPANY, SLI LIGHTING SOLUTIONS, INC., and CML AIR, INC., Reorganized Debtors.	)	Chapter 11 Case No. 02-12608 (MFW) Jointly Administered

MEMORANDUM ORDER

Presently before the Court is an appeal by Osram Sylvania, Inc. ("OSI") from the June 19, 2003 Order of the Bankruptcy Court (the "Order") confirming the Second Amended Joint Chapter 11 Plan of Reorganization of the Debtors-in-Possession and

the Official Committee of Unsecured Creditors (the "Creditors' Committee") (the "Plan"). For the reasons that follow, the Order is affirmed.

I. Background

On September 9, 2002, SLI Holdings International, LLC et. al., ("SLI" or "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § § 101 *et. seq.*[1] (Docket Item ["D.I."] 1 at 1.) On May 15, 2003, Debtor filed a plan of reorganization (the "Plan") and related disclosure statement. (*Id*.) On the same day, the Bankruptcy Court approved the disclosure statement and fixed June 19, 2003 as the date to consider confirmation of the Plan. (*Id*.) On June 19, 2003, the Bankruptcy Court held a confirmation hearing and approved the Plan. (*Id*.)

The Plan, *inter alia*, provided that the Debtor releases its officers, directors, Chapter 11 professionals and funder of the Plan from claims arising from postpetition conduct. (D.I. 4 at 22.) The releases do not extend to

> (i) claims arising out of willful misconduct, gross negligence, fraud or self-dealing, (ii) claims for which there would exist no right to indemnification, contribution or reimbursement fro the Debtor, and (iii) claims arising under or which may be asserted pursuant to Bankruptcy Code sections 544, 547, 548 or 550...."

(D.I. 4 at R-0854.) The Plan further provided for limited releases of potential claims by the Debtor against M Capital and certain of its affiliates (the "M Capital Parties") related to sales between the two. Finally, the Plan provided that

> Neither the Debtors, the Reorganized Debtor, the Creditor's Committee the Investors [or their affiliates] ... shall have or

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[1]Hereinafter, unless otherwise indicated, all references to "§ ___" are to a section of the Bankruptcy Code as codified at 11 U.S.C. § 101 *et. seq.*

> incur any liability ... for any post-Petition Date act or Omission ... except for actions or omissions that (w) are the result of fraud, self-dealing, gross negligence, or willful misconduct, (x) constitute claims or causes of action covered by applicable insurance, but only to the extent of such instances, or (y) constitute claims of causes of action for which such persons would not be entitled to indemnity, contribution or reimbursement from the Debtors ...

(D.I. 18 at R-001588.)

At the confirmation hearing, objections to the scope of the releases, injunctions, and exculpation and limitation of liability provisions were made by OSI. (D.I. 15 at 4.) Despite OSI's objections, the Bankruptcy Court approved the Plan on June 19, 2003. (D.I. 1.)

Soon after the approval of the Plan participants who elected to take part invested $26 million in equity in the Reorganized SLI. (D.I. 21 at 7.) The Reorganized SLI entered into a term loan agreement and received $20 million. (*Id*.) The sum of $20 million was paid to the DIP loan provider and all liens securing the DIP loan were discharged. (*Id*.) The stock of SLI was cancelled and delisted and the Reorganized Debtor was incorporated. (*Id*.) All of the interests in the Reorganized Debtor were distributed to Plan participants. (*Id*.) A litigation trust was formed and the sum of $1,475,000 was transferred to the trust. (*Id*.) The sum of $2,370,451 was paid under the key employee retention plan in exchange for releases from the Plan. (*Id*.)

II. Standard of Review

This court has jurisdiction over appeals from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). On appeal, the court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to its legal conclusions. *See*

Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). When reviewing mixed questions of law and fact, the court will accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but [will] exercise plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts." *Mellon Bank, N.A. v. Metro Communications, Inc.*, 945 F.2d 635, 642 (3d Cir. 1991) (internal quotes omitted).

III. Discussion

Under the doctrine of equitable mootness, an appeal should be dismissed, even if the court has jurisdiction and could fashion relief, if the implementation of that relief would be inequitable. *See In re Continental Airlines,* 91 F.3d 553, 559 (3d Cir.1996) (*Continental I.)*. The Third Circuit has held that there are five factors to consider when evaluating equitable mootness:

> (1) whether the plan has been substantially consummated;
> (2) whether a stay has been obtained;
> (3) whether the relief requested would affect the rights of parties not before the Court;
> (4) whether the relief requested would affect the success of the plan; and
> (5) the public policy of affording finality to bankruptcy judgments.

Nordhoff Investments, Inc. v. Zenith Electronics Corp. (In re Zenith Electronics, Corp.), 258 F.3d 185 (3d Cir. 2001).

A. Substantial Consummation

The Plan has been substantially consummated. The substantial consummation factor is the "foremost consideration" in an equitable mootness analysis. *(Id.)* The Bankruptcy Code defines “substantial consummation” to mean:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
> (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
> (C) commencement of distribution under the plan.

11 U.S..C. § 1101(2).

“The requirements of subparagraph (A) have been met when all transfers that were to be made at or near the time of confirmation have been completed.” *In re Eddington Thread Mfg. Co.*, 189 B.R. 898, 904 (D. Pa., 1995).

All transfers that were to be made at the time of confirmation have been completed. (D.I. 22 at 2-6.) Appellant argues that because some assets were transferred to accounts and not transferred to the ultimate recipient there has not been a substantial consummation of the Plan. (D.I. 28 at 3.) Appellant cites *In re Gene Dunavant & Son Dairy*, 75 B.R. 328 (D. Tenn., 1987). That case, however, is distinguishable from the case at bar, as in that case the debtor continued to have legal title of the property placed in escrow. *Id*. at 332-33. In the instant case, all assets have been transferred according to the Plan. The fact that some of the transfers were to escrow accounts is immaterial in this case. *See*, *In re Eddington Thread Mfg. Co.*, 189 B.R. 898, 904 (D. Pa., 1995). Consequently, there has been substantial consummation of the Plan.

B. Obtaining of a Stay

OSI conceded that they failed to obtain a stay of the sale pending appeal. (D.I. 28 at 4.) Consequently, this factor weighs in favor of a finding of equitable mootness.

C. Reliance of Third Parties Not Before the Court

Bank of America has entered into various lending arrangements with the Reorganized Debtor. (D.I. 22 at 5.) The granting of OSI's appeal would unjustly affect those actions taken in reliance of the Plan.[2]

D. Success of the Plan

The relief OSI seeks would derail the Plan. OSI maintains that the Plan should be reversed, (D.I. at 15 at 33) which would obviously affect the success of the Plan. In its Reply Brief, Appellant, however, maintains that relief, short of reversing the Plan, can be furnished by the court that will not affect the success of the Plan. (D.I. 28 at 5.) However, the release of potential claims against Creditors, and the Debtor's related companies by the Debtor and the exculpation provision with regard to the Creditors' Investors are consideration for an investment of $20 million and a conversion of $325 million in claims to equity. Removing those provisions would clearly affect the success of the Plan.

[2] Appellant argues that Bank of America is a sophisticated entity and assumed the risk that this appeal would be successful and the Plan reversed. (D.I. 28 at 5.) Appellant's argument runs counter to the underlying premise of equitable mootness, namely bankruptcy orders should be given finality so that post-bankruptcy entities can enter into meaningful business arrangements.

E. Public Policy

Reversal of the Plan would compel the Debtor to restart negotiations and consequently, would necessitate the need to hire additional professionals as well as return $20 million in new equity. This would be contrary to a "strong public policy in favor of maximizing debtor's estates and facilitating successful reorganization, reflected in the code itself, [which] clearly weighs in favor of encouraging such reliance." *Zenith* 258 F.3d at 190.

Accordingly, modification or reversal of the Bankruptcy Court's Order would inequitably affect the validity of the Plan and is impermissible under the Doctrine of Equitable Mootness.

IV. Conclusion

Therefore, IT IS HEREBY ORDERED that:

The Committee's Motion to Dismiss the appeal (D.I. 20) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

DATE: October 5, 2004
Wilmington, Delaware