

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

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 11-13603 (CSS)

Jointly Administered

THE BLITZ LIQUIDATING TRUST,

Plaintiff,

v.

ENTEC POLYMERS, LLC

Defendant.

Adv. Proc. No. 16-____ (CSS)

**COMPLAINT FOR TURNOVER AND RECOVERY OF
PROPERTY OF THE ESTATE UNDER 11 U.S.C. § 542, OR
UNJUST ENRICHMENT**

The Blitz Liquidating Trustee (the “Liquidating Trustee”), on behalf of the Blitz Liquidating Trust (the “Trust”), by and through his undersigned counsel, and based upon knowledge, information, and belief, alleges as follows:

NATURE OF ACTION²

1. The Trust seeks return of \$71,156.79 (the “F3 Initial Distribution”) inadvertently paid by the Trust to Entec Polymers, LLC (“Entec”).
2. On December 26, 2014, the Trust made an initial distribution (the “Initial Distribution”) of 15% to creditors in the bankruptcy cases of the above-captioned

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 309 North Main Street, Miami, OK 74354.

² Capitalized terms not defined herein shall have the meanings ascribed to them below.



debtors and debtors-in-possession (the “Debtors”). Two payments of the Initial Distribution were made to Entec pursuant to two claims Entec held in the Debtors’ bankruptcy cases of Blitz U.S.A., Inc. and F3 Brands, LLC. Subsequently, the Trust learned that the Entec claim held in the F3 Brands, LLC case had been previously satisfied. Accordingly, the Trust made at least two demands to Entec for return of the F3 Distribution with no response.

3. The Trust files this Complaint seeking an order from the Court for return of the F3 Initial Distribution in the amount of \$71,156.79 as such funds are property of the Debtors’ estates.

JURISDICTION AND VENUE

4. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and (e). Further, pursuant to Plan and Confirmation Order (as defined herein), this Court has jurisdiction over this matter. See Plan § XIII; see also Confirmation Order ¶ 35.

6. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PARTIES

8. The Trust was formed and became effective on March 20, 2014 to effectuate the terms of the Plan.

9. Defendant Entec Polymers, LLC is a corporation organized under the laws of the state of Delaware, with Corporation Service Company, located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808, as its registered agent.

FACTUAL BACKGROUND

The Debtors and the Chapter 11 Cases

10. On November 9, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).

11. Additional background facts concerning the Chapter 11 Cases, including an overview of the Debtors’ businesses, the Debtors’ corporate structure and information on events leading up to the filing of the Chapter 11 Cases, is contained in the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “Flick Declaration”) [Docket No. 13] filed in the Chapter 11 Cases, and incorporated herein by reference.

12. On November 12, 2013, the Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation [Docket No. 1921] (as amended, the “Plan”) and the accompanying Disclosure Statement [Docket No. 1922] (as amended, the “Disclosure Statement”) were filed.

13. On December 18, 2013, this Court entered an order approving the adequacy of the Disclosure Statement and the procedures for solicitation of the Plan [Docket No. 2005]. The First Amended Plan and Disclosure Statement were filed on

December 19, 2013 [Docket Nos. 2007 and 2008, respectively] and the solicitation process was immediately commenced.

14. On January 30, 2014, the Plan was confirmed by entry of the Court's *Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [Docket No. 2152] (the "Confirmation Order").

15. Pursuant to the Plan, the Effective Date occurred on March 20, 2014 (the "Effective Date"). *See* Confirmation Order at ¶ 47. A Notice of Effective Date was filed March 20, 2014 [Docket No. 2224].

16. The Plan established the Liquidating Trust and the Trust was vested with, among other things, all of the assets remaining in the USA Debtors' Estates (as such term is defined therein) on the Effective Date. *See* Blitz Liquidating Trust Agreement at 2 [Docket No. 2152].

The Defendant and the Distribution

17. Entec is the holder of two scheduled claims in these Chapter 11 Cases. The first claim was against the debtor Blitz U.S.A., Inc. in the amount of \$33,720.00 (the "Blitz Claim"). The second claim was against the debtor F3 Brands, LLC in the amount of \$474,378.60 (the "F3 Claim"). The Trust made an Initial Distribution to Entec on account of both the Blitz Claim (the "Blitz Initial Distribution") and the F3 Claim (the "F3 Initial Distribution").

18. Thereafter, the Trust learned that the F3 Claim had been satisfied prior to the Effective Date. Accordingly, the F3 Initial Distribution was made in error.

19. After learning that the F3 Claim was previously satisfied and did not require the F3 Initial Distribution, on March 17, 2015, the Trust sent a letter to Entec, having previously attempted contact by telephone, seeking return of the F3 Initial Distribution (the “First Demand”). The Trust received no response. On August 18, 2015, the Trust sent a second and final demand seeking return of the F3 Initial Distribution (the “Final Demand”). Again, the Trust received no response.

20. The Trust files this Complaint to recover the F3 Initial Distribution, which is property of the estate.

COUNT I
Turnover of the F3 Initial Distribution (11 U.S.C. § 542(b))

21. Plaintiff realleges and incorporates by reference each and every allegation set forth in the above paragraphs as though fully set forth herein.

22. The Defendant presently owes the Trust \$71,156.79 for the wrongly distributed F3 Initial Distribution.

23. The Trust was vested with the remaining property of the Debtors’ estates.

24. The F3 Initial Distribution is property of the estate of F3 Brands, LLC pursuant to 11 U.S.C. § 541 and property that the Trust may use pursuant to 11 U.S.C. § 363.

25. The Defendant remains in possession of the F3 Initial Distribution.

26. Pursuant to section 11 U.S.C. § 542(a), an entity in possession of the property the trustee may use “shall deliver” such property to the trustee.

27. The F3 Initial Distribution is not of inconsequential value to the Trust.

28. Based on the foregoing, the Plaintiff is entitled to an order and judgment against the Defendant under 11 U.S.C. § 542(b), directing the Defendant to pay the full \$71,156.79 amount of the F3 Initial Distribution immediately to the Plaintiff, together with an award of pre and post-judgment interest to the fullest extent allowed by applicable law.

COUNT II
Unjust Enrichment

29. Plaintiff realleges and incorporates by reference each and every allegation set forth in the above paragraphs as though fully set forth herein.

30. In the alternative, Plaintiff seeks recovery of the F3 Initial Distribution from Defendant based on a claim of unjust enrichment.

31. The Defendant has been enriched by receipt of the F3 Initial Distribution, which it had no right to receive because F3 did not owe Defendant any debt on the Petition Date.

32. As a consequence, the Trust and its beneficiaries have been impoverished in an amount equal to the amount of the F3 Initial Distribution.

33. Defendant's enrichment and the impoverishment of the Trust and its beneficiaries are related because, but for the F3 Initial Distribution, Defendant would not have been enriched and the Trust and its beneficiaries impoverished.

34. Because F3 did not owe Defendant any debt on the Petition Date, there is no justification to retain the F3 Initial Distribution.

35. Should the Court determine that the Plaintiff may not avoid and recover the F3 Initial Distribution under Bankruptcy Code sections 542 and 550, Plaintiff lacks any remedy at law.

36. Based on the foregoing, Defendant must be ordered to pay to Plaintiff the amount of the F3 Initial Distribution, which is \$71,156.79.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, the Trust requests that the Court enter judgment for the Trust, as follows:

- (1) Against the Defendant awarding turnover of the \$71,156.79;
- (3) For costs of suit incurred herein, including without limitation, attorneys' fees, to the extent permitted by law; and
- (4) For such other and further relief as the Court may deem just and proper.

Dated: April 13, 2016
Wilmington, Delaware

**WOMBLE CARLYLE SANDRIDGE
& RICE, LLP**

By: /s/ Kevin Mangan

Kevin J. Mangan, Esq. (No. 3810)
Morgan L. Patterson (No. 5388)
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: 302-252-4320
Facsimile: 302-252-4330

-and-

LOWENSTEIN SANDLER PC

Jeffrey D. Prol, Esq.

Mary E. Seymour, Esq.

65 Livingston Avenue

Roseland, New Jersey 07068

(973) 597-2500 (Telephone)

(973) 597-2400 (Facsimile)

*Counsel to the Blitz Liquidating Trustee on
behalf of the Blitz Liquidating Trust*