

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	)	Case No. 10-50494
)	
FAIR FINANCE COMPANY	)	Chapter 7
)	
Debtor.	)	Chief Judge Pat E. Morgenstern-Clarren
)	

**MOTION OF TRUSTEE TO APPROVE COMPROMISE
WITH FORTRESS CREDIT CORP.**

Brian A. Bash (the “**Trustee**”), the duly appointed Chapter 7 Trustee for Fair Finance Company (the “**Debtor**” or “**Fair Finance**”) in the above-captioned case, hereby moves for entry of an order, in substantially the form attached hereto as **Exhibit A**, approving the compromise of claims between the Trustee and Fortress Credit Corp. (“**Fortress**”) for the reasons set forth in the attached memorandum of law. A proposed Order is attached as **Exhibit A**. A copy of the proposed Settlement Agreement is attached as **Exhibit B**.

Dated: May 11, 2015

Respectfully submitted,

/s/ Michael A. VanNiel

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**UNITED STATES BANKRUPTCY COURT
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FAIR FINANCE COMPANY)	Chapter 7
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**MEMORANDUM IN SUPPORT OF MOTION OF TRUSTEE TO APPROVE
COMPROMISE WITH FORTRESS CREDIT CORP.**

In support of the Motion of Trustee to Approve Compromise with Fortress Credit Corp. (the “**Motion**”),¹ the Trustee states as follows:

PRELIMINARY STATEMENT

1. In February 2012, the Trustee commenced the action against Fortress. The action has been fiercely contested at every turn. The parties have engaged in extensive briefing regarding the legal and factual issues associated with the Trustee’s asserted claims and Fortress’s asserted defenses, have deposed over 40 witnesses, and have exchanged millions of pages of documents over the past three years.

2. On April 23, 2015, United States District Judge Patricia A. Gaughan conducted a settlement conference in the Fortress action. At the conclusion of that settlement conference, Fortress agreed to pay **\$35,000,000.00** to settle the Fortress litigation, and the parties agreed to exchange broad mutual releases. The settlement is conditioned upon this Court’s approval.

3. The settlement, if approved, will allow the Trustee to reconcile creditors’ claims and, thereafter, make every effort to carry out a first interim distribution to unsecured creditors of the Fair Finance estate by the end of the 2015 calendar year. For these reasons, and the

¹ Terms capitalized but not defined herein shall have the meanings ascribed to them in the Motion.

additional reasons described below, the Trustee respectfully submits that the proposed settlement falls well within the range of a reasonable settlement, is in the best interests of the Fair Finance estate and its beneficiaries, and should be approved.

JURISDICTION

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 9019 of the Federal Rules of Bankruptcy Procedure. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

A. The Bankruptcy Case.

5. On February 8, 2010 (the “**Petition Date**”), creditor-investors (the “**Petitioning Creditors**”) filed a petition for involuntary bankruptcy against the Debtor.

6. On the Petition Date, the Petitioning Creditors also filed an “Emergency Motion to Appoint Interim Trustee” (Bky. Dkt. No. 2)² alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts, including failing to redeem matured certificates and failing to pay interest on unmatured certificates; (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009; (iii) the Debtor has not been open to the public since the raid; and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

7. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee (Bky. Dkt. No. 25). On February 24, 2010, the Debtor filed

² References to “Bky. Dkt. No. ____” shall be to materials appearing on the docket of the Fair Finance bankruptcy case.

notice that it consented to the entry of an order for relief in this proceeding (Bky. Dkt. No. 35). On March 2, 2010, the Court entered an Order granting the relief sought by the Petitioning Creditors nunc pro tunc as of February 24, 2010 (Bky. Dkt. No. 40). On March 2, 2010, the United States Trustee filed the Notice of Appointment of Interim Chapter 7 Trustee effective February 24, 2010 (Bky. Dkt. No. 41). The Trustee is the duly appointed, qualified and acting Trustee in the within proceedings.

B. The Fortress Litigation.

8. On February 7, 2012, the Trustee filed a complaint in the adversary proceeding captioned, *Bash v. Textron Financial Corp., Fortress Credit Corp. and Fair Facility I, LLC*, Adv. Pro. No. 12-05101 (the “**Adversary Proceeding**”).

9. On February 24, 2012, the Trustee filed an amended complaint in the Adversary Proceeding against Textron Financial Corp. (“**Textron**”), Fortress and Fair Facility I, LLC (the “**Fair Facility**”). The original complaint and amended complaint asserted numerous bankruptcy avoidance claims and common law claims against each of Textron, Fortress and Fair Facility.

10. On April 20, 2012, the United States District Court for the Northern District of Ohio entered an Order (the “**District Court**”) withdrawing the reference as to the Adversary Proceeding. Thereafter, the Adversary Proceeding proceeded in the District Court in the case captioned *Bash v. Textron Financial Corp., Fortress Credit Corp. and Fair Facility I, LLC*, Case No. 5:12-cv-00987 (Judge Patricia A. Gaughan) (the “**District Court Proceeding**” and, together with the Adversary Proceeding, the “**Litigation**”). The District Court referred certain pre-trial matters to the Bankruptcy Court by Order, dated May 1, 2012 (Dist. Crt. Dkt. No. 29).³

11. Textron and Fortress each filed extensive motions to dismiss the Litigation (Dist.

³ References to “Dist. Crt. Dkt. No. ____” shall be to materials appearing on the docket of the District Court Proceeding.

Crt. Dkt. Nos. 20, 22, 42, 45).⁴ The Trustee opposed those motions (Dist. Crt. Dkt. No. 36).

12. On July 31, 2012, the Bankruptcy Court issued its Report and Recommendation to deny Fortress' Motion to Dismiss (Dist. Crt. Dkt. No. 60) and a separate Report and Recommendation to Deny Textron's Motion to Dismiss (Dist. Crt. Dkt. No. 61). Fortress and Textron objected to the R&R's recommending that each of their respective motions to dismiss be denied (Dist. Crt. Dkt. Nos. 70, 75, 82, 84, 99). The Trustee argued that each Report and Recommendation should be adopted by the District Court (Dist. Crt. Dkt. Nos. 79, 80, 98).

13. On November 9, 2012, the District Court issued its Memorandum Opinion and Order regarding both the Textron Report and Recommendation and the Fortress Report and Recommendation (Dist. Crt. Dkt. No. 122 – the “**Dismissal Opinion**”). With the Dismissal Opinion, the District Court dismissed the Trustee's claims against Textron. With the Dismissal Opinion, the District Court dismissed the Trustee's common law claims against Fortress, but refused to dismiss (i) the Trustee's fraudulent transfer, preferential transfer and unauthorized post-petition transfer avoidance claims against Fortress, totaling approximately \$72 million, and (ii) the Trustee's claims to equitably subordinate and disallow any claims Fortress might assert against the estate.

14. On January 7, 2013, the Trustee filed a Motion for Leave to File a Second Amended Complaint (the “**Motion to Amend**” – Dist. Crt. Dkt. No. 135). With his Motion to Amend, the trustee sought to add claims for punitive damages. Fortress opposed the Trustee's Motion to Amend (Dist. Crt. Dkt. Nos. 138, 142, 159, 165).

15. On July 22, 2013, the District Court issued its Memorandum Opinion and Order

⁴ Fair Facility I, LLC has never appeared in the Litigation. If the Court approves the proposed settlement with Fortress, the Trustee intends to file a Rule 41 notice of voluntary dismissal of all claims against Fair Facility.

regarding the Motion to Amend (the “**Motion to Amend Opinion**” – Dist. Ct. Dkt. No. 166). With the Motion to Amend Opinion, the District Court denied the Trustee’s Motion to Amend.

16. From approximately November 2012 through October 2013, the Trustee and Fortress conducted fact discovery in the Litigation. That discovery was extensive by any definition, and included around 40 fact depositions and the exchange of tens of millions of pages of documents, as well as written discovery. From approximately August 2013 through July 2014, the Trustee and Fortress conducted expert discovery in the Litigation, including the preparation and exchange of multiple initial and rebuttal expert reports, and expert depositions.

17. On October 1 and 2, 2013, the Trustee and Fortress mediated the case before a private mediator. The matter did not settle at that mediation. Therefore, on November 12, 2013, the Trustee and Fortress filed their respective cross-motions for summary judgment, together with thousands of pages of legal briefing and supporting materials (Dist. Ct. Dkt. Nos. 173-191). Thereafter, the Trustee and Fortress filed substantial additional legal briefs and supporting materials in support of their respective motions, and in opposition to the other party’s motion (Dist. Ct. Dkt. Nos. 195-229).

18. On May 20, 2014, the District Court re-referred the Fortress Litigation to the Bankruptcy Court (Judge Arthur Harris) for consideration of the parties’ pending summary judgment motions (Dist. Ct. Dkt. No. 232). On July 30, 2014, Judge Harris issued a Report and Recommendation recommending that the District Court should (i) deny Fortress’s summary judgment motion in its entirety, and (ii) grant the Trustee’s summary judgment, in part, and deny the Trustee’s summary judgment motion, in part (Adv. Pro. Dkt. No. 74).⁵

19. On August 20, 2014, the Trustee and Fortress each filed objections to the

⁵ References to “Adv. Pro. Dkt. No. ____” shall be to materials appearing on the docket of the Adversary Proceeding.

Bankruptcy Court's Report and Recommendation regarding the parties' cross-motions for summary judgment, together with supporting materials (Dist. Ct. Dkt. Nos. 235-242). On September 10, 2014, the Trustee and Fortress filed their respective responses to the other party's objections to the Bankruptcy Court's Report and Recommendation regarding the parties' cross-motions for summary judgment, along with supporting and related materials (Dist. Ct. Dkt. Nos. 243-252).

20. On January 15, 2015, the District Court issued its Memorandum of Opinion and Order regarding Judge Harris' Report and Recommendation, and the parties' cross-motions for summary judgment (Dist. Ct. Dkt. No. 253 – the “**Summary Judgment Opinion**”). With its Summary Judgment Opinion, the District Court (i) granted, in part, and denied, in part, the Trustee's motion for summary judgment, and (ii) granted, in part, and denied, in part, Fortress's motion for summary judgment.

C. The Fortress Settlement.

21. On April 23, 2015, the District Court conducted a settlement conference in the Fortress Litigation. At the conclusion of that settlement conference, and with the assistance of District Judge Patricia A. Gaughan, the parties agreed to settle the Fortress litigation. Shortly thereafter, the parties entered into the Settlement Agreement attached hereto as Exhibit B. In summary, the proposed settlement is as follows:⁶

- (i) Fortress will pay \$35,000,000.00 to the Trustee in full settlement of all claims against it;
- (ii) Fortress and the Trustee will enter into broad mutual releases, including, without limitation a release of any claim Fortress might have under 11 U.S.C. § 502(h);

⁶ This summary of settlement terms set forth herein is intended for the convenience of the Court and interested parties. Nothing contained herein shall be deemed or construed to alter or amend the terms set forth in the Settlement Agreement. In the event of a conflict between the summary set forth in this Motion and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

and

(iii) the parties' settlement is expressly subject to this Court's approval.

For the reasons that follow, the Trustee submits that this proposed compromise is fair, reasonable, and in the best interests of the estate.

LAW & ARGUMENT

A. The Applicable Standard under Rule 9019.

22. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

23. Compromises are favored in bankruptcy cases. *In re Leeway Holding Co.*, 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990); *Magill v. Springfield Marine Bank (In re Heissinger Resources, Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986). The decision to approve a settlement or compromise lies within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry, Inc.)*, 390 U.S. 414, 424-25 (1968); *International Distrib. Centers, Inc. v. Talcott, Inc. (In re International Distribution Centers, Inc.)*, 103 B.R. 420, 422 (S.D.N.Y. 1989); *In re Texaco*, 84 B.R. 893, 901 (Bankr. S.D.N.Y. 1988), *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. Sep 28, 1988); *In re Albert-Harris, Inc.*, 313 F.2d 447, 449 (6th Cir. 1963); *In re Parkview Hospital-Osteopathic Medical Center*, 211 B.R. 603 (Bankr. N.D. Ohio 1996); *In re Victoria Alloys, Inc.*, 261 B.R. 918, 920 (Bankr. N.D. Ohio 2001); *In re SIS Corp.*, 108 B.R. 608, 612 (Bankr. N.D. Ohio 1989).

24. In determining whether a settlement is reasonable, a court should consider the following factors:

- a. The probability of success in litigation;
- b. The difficulty in collecting any judgment which may be obtained;
- c. The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attendant to it; and
- d. The interests of creditors and equity holders and a proper deference to their reasonable views of the settlement.

See In re Martin, 91 F.3d 389, 393 (3d Cir. 1996); *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993); *TMT Trailer*, 390 U.S. at 424-25; *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied*, 479 U.S. 854 (1986); *In re Swallen's, Inc.*, 210 B.R. 128 (Bankr. S.D. Ohio 1997); *In re McLean Indus., Inc.*, 84 B.R. 340, 344 (Bankr. S.D.N.Y. 1988); *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1985), *aff'd*, 50 B.R. 764 (S. D. N. Y. 1985).

25. Bankruptcy courts should approve a proposed settlement, after an independent review and evaluation of the applicable principles of bankruptcy law, unless it “fall[s] below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983) (citations omitted) (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert. denied*, 409 U.S. 1039 (1972)); *see also In re Tennol Energy Co.*, 127 B.R. 820 (Bankr. E.D. Tenn. 1991); *In the Matter of Energy Coop., Inc.*, 886 F.2d 921 (7th Cir. 1989); *In re Dow Corning Corp.*, 198 B.R. 214 (Bankr. E.D. Mich. 1996). Under *TMT Trailer*, courts should seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement. The Court is not required to conduct a “mini-trial” on the merits of the underlying causes of action being settled. *In re Blair*, 538 F.2d 849 (9th Cir. 1976); *see also In re Walsh Construction, Inc.*, 669 F.2d 1325 (9th Cir. 1982).

26. Accordingly, courts generally give considerable deference and weight to a trustee's recommendation of a proposed compromise and settlement. *See Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 604 (5th Cir. 1980) (affirming district court's reliance on trustee's evaluation of merits of claim); *In re Blair*, 538 F.2d at 851, n.1 (affirming district court's reliance on trustee's conclusory statements in recommending settlement); *see Internat'l Distrib. Centers, Inc.*, 103 B.R. at 423; and *In re Carla Leather, Inc.*, 44 B.R. at 465.

B. The Proposed Compromise Satisfies the Rule 9019 Standard.

27. The Trustee respectfully submits that the compromise to be achieved by the proposed Settlement Agreement satisfies the standards for approval and, therefore, should be approved under Rule 9019.

28. The Trustee has always believed that there was strong merit to his claims against Fortress. As a result, the Trustee has ardently pursued the Fortress Litigation at every stage, and has committed extensive estate resources to it. However, the Trustee refers the Court to the many thousands of pages of briefs, supporting evidentiary documents and testimony, and related materials, available to the Court in the public record of this bankruptcy case, the Adversary Proceeding and the District Court Proceeding. The Fortress Litigation is complex. Fortress has vigorously contested liability, both factually and legally. Fortress has also contended that, even if the Trustee were to establish Fortress's liability, the Trustee's recovery should be capped at approximately \$5.7 million. There are substantial risks to the estate if the proposed settlement is not approved.

29. Moreover, further litigation against Fortress would involve a significant investment of fees and costs which the Trustee believes would, at a minimum, continue into the next two (if not three) calendar years in light of likely potential appeals following a potentially

lengthy trial against Fortress. Consequently, the Trustee believes the uncertainties and risks inherent in taking these matters to trial, the complexity of the Fortress Litigation, and the expenses, inconvenience and delay necessarily attending further litigation with Fortress, all militate in favor of the proposed settlement.

30. The last prong of the inquiry – the paramount interests of creditors – also counsels in favor of the proposed settlement. The proposed settlement, along with other recent substantial settlements the Trustee has reached, provides sufficient funds for the Trustee to reconcile claims and, thereafter upon further motion to and order of the Court, to commence an interim distribution to unsecured creditors. The victims of Tim Durham's fraud hold approximately \$205 million of claims. They have waited over five (5) years for any distribution from the estate. The Trustee is in the process of evaluating claims and determining how much he is able to distribute to unsecured creditors in accordance with the Bankruptcy Code. However, if the settlement is approved, the Trustee intends to make every effort to carry out an interim distribution to unsecured creditors some time in calendar year 2015.

31. In sum, the proposed settlement was reached (i) following a lengthy settlement conference with Judge Gaughan, the District Judge presiding over the Fortress Litigation, (ii) following several years of hard fought litigation between the Trustee and Fortress, and (iii) following good faith arms' length bargaining. The Trustee submits that the proposed compromise is reasonable and in the best interests of the estate and creditors. In his capacity as the appointed representative of the Fair Finance bankruptcy estate, the Trustee recommends and requests approval of the compromise on the terms set forth in the Settlement Agreement.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an Order, in substantially the form attached hereto as **Exhibit A**, (i) granting the Motion; (ii) approving the compromise on the terms set forth in the Settlement Agreement; and (iii) authorizing and directing the parties to take all actions necessary or incidental to performance under the Settlement Agreement.

Dated: May 11, 2015

Respectfully submitted,

/s/ Michael A. VanNiel

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Counsel for the Trustee

EXHIBIT A
Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	)	Case No. 10-50494
)	
FAIR FINANCE COMPANY	)	Chapter 7
)	
Debtor.	)	Chief Judge Pat E. Morgenstern-Clarren
)	

**ORDER APPROVING COMPROMISE OF CLAIMS BY
THE TRUSTEE AGAINST FORTRESS CREDIT CORP.**

This matter having come before the Court upon the Motion of Trustee to Approve Compromise With Fortress Credit Corp. (the “**Motion**”), and upon the Memorandum in Support of the Motion; and the Court having considered the Motion and all materials referenced in or attached to any of the foregoing, and it appearing that the compromise is in the best interest of the Debtor’s estate and creditors, and after due deliberation and consideration of the facts and circumstances therein, it is hereby

FOUND AND CONCLUDED THAT:

A. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and Memorandum in Support of the Motion.

B. The Court is not required to conduct a mini-trial regarding the Fortress Litigation or the Motion. Based on its consideration of the materials of record relating to the Fortress

Litigation, of which the Court may and hereby does take judicial notice pursuant to Fed. R. Evid. 201, the Court has assessed the potential value of the claims being settled, has balanced that value against the value of the proposed settlement and compromise with Fortress to the Fair Finance estate, and taken into account that the law favors compromise.

C. The Trustee has represented the proposed settlement with Fortress was reached following a settlement conference before Judge Patricia A. Gaughan, the United States District Judge presiding over the Fortress Litigation, and that the proposed settlement was reached following lengthy, good faith, arms' length non-collusive negotiations between the Trustee and Fortress. There is no probative evidence in the record before the Court to the contrary.

D. In light of (1) the probability of success in the Fortress Litigation, (2) the complexity of the Fortress Litigation, including the expense, inconvenience and delay necessarily attending the Fortress Litigation, and (3) the paramount interests of the Fair Finance estate's creditors, the settlement and compromise of the Fortress Litigation pursuant to the terms of the Settlement Agreement, as set forth in this Order, does not fall below the lowest point of reasonableness, and is in the best interests of the Fair Finance estate, its creditors and all parties-in-interest. The proposed settlement and compromise with Fortress therefore satisfies the applicable standards for approval under Fed. R. Bankr. P. 9019.

E. Notice of the Motion and of the relief requested therein was good and sufficient in all respects, and complied with all applicable orders of this Court, the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code and all applicable Local Rules of this Court. A reasonable opportunity to object or be heard regarding the Motion and the relief requested therein has been afforded to all parties and entities entitled to notice of the Motion.

F. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is **GRANTED** in its entirety.
2. The settlement and compromise with Fortress, and the terms and conditions set forth in the Settlement Agreement attached to the Motion as Exhibit B, are hereby approved.
3. The parties are hereby authorized and directed, without further order of this Court, to take all actions necessary or incidental to performance under the Settlement Agreement, implement and carry out all transactions contemplated by the Settlement Agreement, and to implement and effectuate this Order.

IT IS SO ORDERED.

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Submitted by:

/s/ Michael A. VanNiel
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EXHIBIT B
Settlement Agreement and Release

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Settlement Agreement**") is made and entered into this 11th day of May, 2015, by and between Brian A. Bash, in his capacity as the Chapter 7 Trustee (the "**Trustee**") for Fair Finance Company ("**Fair Finance**") and Fortress Credit Corp., 1345 Avenue of the Americas, New York, NY 10105 ("**Fortress**" or "**Defendant**").

WHEREAS, Fair Finance is the debtor in the Chapter 7 bankruptcy case captioned *In re Fair Finance Company*, Bankruptcy Case No. 10-50494 (the "**Bankruptcy Case**"), pending in the United States Bankruptcy Court for the Northern District of Ohio (the "**Bankruptcy Court**"); and

WHEREAS, on February 7, 2012, the Trustee filed a complaint in the adversary proceeding captioned *Bash v. Textron Financial Corporation, Fortress Credit Corp. and Fair Facility I, LLC*, Adv. Pro. No. 12-05101 in the Bankruptcy Court ("**Adversary Proceeding**"); and

WHEREAS, on February 24, 2012, the Trustee filed an amended complaint against Textron Financial Corporation, Fortress and Fair Facility I, LLC in the Adversary Proceeding; and

WHEREAS, with the complaint and amended complaint, the Trustee asserted certain claims against Fortress in the Adversary Proceeding (collectively, the "**Fortress Claims**"), to which Fortress filed an Answer and asserted multiple defenses (the "**Fortress Defenses**"); and

WHEREAS, on April 20, 2012, the United States District Court for the Northern District of Ohio (the "**District Court**") entered an Order withdrawing the order of reference with respect to the Adversary Proceeding; and

WHEREAS, the Adversary Proceeding has proceeded in the District Court in the case captioned *Bash v. Textron Financial Corporation, Fortress Credit Corp. and Fair Facility I, LLC*, Case No. 5:12-cv-00987 (Judge Patricia A. Gaughan) (the "**District Court Proceeding**" and, together with the Adversary Proceeding, the "**Litigation**"); and

WHEREAS, Fortress and the Trustee agreed to a Stipulated Protective Order in the District Court Proceeding, which was entered by the District Court on January 25, 2013 [Doc. # 136] (the "**Protective Order**");

WHEREAS, Fortress and the Trustee agreed to and filed in the District Court Proceeding a Stipulation by and Between Plaintiff Brian A. Bash, Chapter 7 Trustee, Defendant Fortress Credit Corp. and Certain Related Entities, which was entered by the District Court on February 17, 2015 [Doc. # 255] (the "**Entity Stipulation**"), and in connection therewith Drawbridge Special Opportunities Fund L.P. executed and delivered a guaranty of payment (the "**Guaranty**"); and

WHEREAS, on April 23, 2015, the District Court conducted a settlement conference in the Litigation at which the parties hereto agreed to resolve all claims between them as set forth below.

NOW, THEREFORE, in consideration of the covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Settlement Payment.** Within the later of forty five (45) days after the date of this Settlement Agreement or thirty (30) days after the Approval Order (as defined below) becomes Final and Non-Appealable as set forth in Section 2 below, Fortress shall pay to the Trustee the total sum of thirty-five million dollars and zero cents (\$35,000,000.00) (the “**Settlement Payment**”) by wire transfer in accordance with the Trustee’s written instructions.
2. **Effectiveness of Settlement Agreement.** This Settlement Agreement is subject to and conditioned upon approval by the Bankruptcy Court. This Settlement Agreement shall become effective on the date on which any order by the Bankruptcy Court approving this Settlement Agreement and the express terms hereof (the “**Approval Order**”) becomes Final and Non-appealable. For purposes of this Settlement Agreement, the term “**Final and Non-Appealable**” shall mean either (i) the time in which to appeal the Approval Order expires without any appeal having been taken within the time period required by applicable rules, or (ii) if an appeal is taken, the dismissal of the appeal for any reason, or affirmance of the Approval Order on appeal, and the expiration of the time in which to seek further review of the Approval Order through an appeal, petition for writ of certiorari, or otherwise, without further review having been sought.
3. **Mutual Releases.**
 - (a) **Release by the Trustee:** Except for the right to enforce the terms of this Settlement Agreement, the Trustee, on behalf of himself, the Debtor and its estate, and Fair Facility I, LLC (the “**Trustee Releasing Parties**”), hereby fully, finally and forever releases, acquits and discharges Fortress and each of its past or present affiliates, related entities, parents, subsidiaries, funds, all parties referenced in the Entity Stipulation and all Fortress Entities as defined in the Entity Stipulation, and collectively, each of all of their past or present owners, shareholders, officers, directors, employees, partners, agents, attorneys, representatives, professionals, experts, assigns, successors and predecessors (the “**Fortress Released Parties**”) from any and all claims, demands, obligations, judgments, actions, causes of action and/or liabilities which the Trustee Releasing Parties ever had, now have, or may have against the Fortress Released Parties arising from or relating to the Litigation, the Fortress Loan (as defined below) or any other matter relating to Fair Finance and any of its affiliates or otherwise mentioned or referred to, or which could have been mentioned or referred to, in the Trustee’s First Amended Complaint filed in the Adversary Proceeding on February 24, 2012 [Doc. # 8] (the “**First Amended Complaint**”) and the Answer. The term “**Fortress Loan**” means all transactions arising out of or relating in any way to that certain “Revolving Credit Agreement, dated as of February 12, 2008, by and among Fair Finance Company, as Originator, Guarantor and Servicer, Fair Facility I, LLC, as Borrower, Timothy Durham and James Cochran, as Guarantors, Fortress, as Administrative Agent and Lender,

U.S. Bank National Association, as Collateral Custodian, and Lyon Financial Services, Inc., as Back Up Servicer,” as amended, and any and all ancillary or related transactions, documents or agreements, including, but not limited to, any exhibits or schedules thereto, and any sale agreements, securities account control agreements, notes, joinder supplements, deposit account control agreements, UCC financing statements or any other documents, transactions or agreements necessary or incidental to any of the foregoing.

- (b) Release by Fortress: Except for the right to enforce the terms of this Settlement Agreement, Fortress, on behalf of itself and the Fortress Entities (the “**Fortress Releasing Parties**”), hereby fully, finally and forever releases, acquits and discharges Brian A. Bash, individually, and his heirs, successors and assigns, the Trustee, the Trustee’s heirs, successors, assigns, agents, representatives, attorneys, professionals and employees, the Debtor, the Debtor’s past or present affiliates, related entities, parents, subsidiaries, including Fair Facility I, LLC, owners, shareholders, officers, directors, employees, partners, agents, attorneys, representatives, professionals, experts, assigns, successors and predecessors, and the Debtor’s bankruptcy estate and its successors and assigns (the “**Trustee Released Parties**”) from any and all claims, demands, obligations, judgments, actions, causes of action and/or liabilities which the Fortress Releasing Parties ever had, now have, or may have against the Trustee Released Parties arising from or relating to the Litigation, the Fortress Loan or any other matter relating to Fair Finance and any of its affiliates or otherwise mentioned or referred to, or which could have been mentioned or referred to, in the First Amended Complaint and the Answer. For avoidance of doubt, this release includes, without limitation, any claims that the Fortress Releasing Parties may have pursuant to 11 U.S.C. § 502(h) arising from payment of the amounts set forth in Paragraph 1 of this Settlement Agreement.
4. Dismissal of the Litigation Against Fortress With Prejudice. Upon the Approval Order becoming Final and Non-Appealable, the Trustee shall execute and deliver to counsel for Fortress the Stipulation and Notice of Dismissal With Prejudice attached hereto as Exhibit A (the “**Stipulation**”). Fortress will be authorized to file the Stipulation in the Litigation after the Trustee’s receipt of the Settlement Payment.
5. No Admission of Liability. This Settlement Agreement is entered into in conjunction with the settlement of contested claims and defenses. The promises and covenants contained herein are not, and should not be construed as, admissions or acknowledgments by either party of any liability, non-liability or merit in connection with any allegations made by either party in the Litigation.
6. Public Statements. Each of the parties to this Settlement Agreement agrees that it will not make any statement, whether public or private, whether oral or in writing, regarding the Litigation, the merits of the Fortress Claims or the Fortress Defenses, or the terms and conditions of this Settlement Agreement, that is not reflected in the Approval Motion, any Order regarding the Approval Motion, this Settlement Agreement, or already in the public record of the Litigation or the Bankruptcy Case; provided, that the

parties can make such disclosure as is required by any Court, law (including, without limitation, subpoena), regulation or governmental authority; and provided, further, that Fortress can disclose to its investors, accountants and other outside advisors the financial impact of the settlement on Fortress and any Fortress Entity.

7. **Acknowledgment and Authority.** The parties to this Settlement Agreement acknowledge that each has read this Settlement Agreement and that the execution hereof is not induced by any representation other than as expressly contained herein, that the person executing this Settlement Agreement on behalf of the respective party has been duly authorized to execute and deliver this Settlement Agreement and that this Settlement Agreement is the legally binding obligation of such party.
8. **Choice of Law and Venue.** This Settlement Agreement shall be governed by the laws of the State of Ohio, without regard to conflict of law principles. The parties further agree that the District Court has jurisdiction over any disputes arising out of this Settlement Agreement, including, without limitation, disputes regarding its enforcement, construction and interpretation.
9. **Integration.** This Settlement Agreement constitutes the entire agreement of the parties with respect to the subject matter of this agreement and supersedes and extinguishes any and all prior oral or written agreements between the parties concerning the subject matter of this agreement.
10. **Guaranty.** Upon the filing of the Stipulation with the District Court, the Guaranty will be terminated and of no further force or effect.
11. **Protective Order.** Notwithstanding any provision of this Settlement Agreement, both parties recognize their obligations with regards to the handling of Confidential Material pursuant to the Protective Order, which remains in effect after this Settlement Agreement becomes effective. All documents filed under seal in this Action shall remain under seal.
12. **Written Modifications Only.** This Settlement Agreement may only be modified or amended through a written document signed by both parties.
13. **Construction.** No provision of this Settlement Agreement shall be interpreted or construed against any party hereto because such party or its legal representative drafted such provision. The terms of this Settlement Agreement are contractual and are not mere recitals.
14. **Survivability.** If any provision of this Settlement Agreement is determined to be unlawful, invalid or unenforceable for any reason, the remaining provisions shall continue to be binding upon all the parties.
15. **Successors, Heirs and Assigns.** This Settlement Agreement is binding on the successors, heirs and assigns of the parties to this Agreement.

16. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute one and the same document.

IN WITNESS THEREOF, the parties have executed this Settlement Agreement as of the date set forth above.

**FORTRESS CREDIT CORP., ON BEHALF
OF ITSELF AND THE FORTRESS
ENTITIES**

By:  _____

**BRIAN A. BASH, AS TRUSTEE OF THE
FAIR FINANCE COMPANY AND ON
BEHALF OF FAIR FACILITY I, LLC**

By:  _____

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
	)	Chapter 7
FAIR FINANCE COMPANY,)	
	)	Bankruptcy Case No. 10-50494
Debtor.	)	Chief Judge Pat E. Morgenstern-Clarren
<hr style="width: 40%; margin-left: 0;"/>)	
Brian A. Bash, Chapter 7 Trustee,	)	Case No. 5:12-cv-00987
	)	Judge Patricia A. Gaughan
Plaintiff,)	
	)	Adversary Proceeding No. 12-05101
vs.	)	Judge Arthur I. Harris
)	
Textron Financial Corporation, <i>et al.</i> ,)	
)	
Defendants.)	

**STIPULATION OF DISMISSAL OF DEFENDANT
FORTRESS CREDIT CORP. WITH PREJUDICE**

Pursuant to the Settlement Agreement and Release entered into by Plaintiff, Brian A. Bash, Chapter 7 Trustee of Fair Finance Company (the “**Trustee**”), and Defendant Fortress Credit Corp. (“**Fortress**”) (each a “Party,” and collectively, the “Parties”), by and through counsel, the Parties hereby stipulate that all of the Trustee’s claims against Fortress in the above-captioned action are settled and shall be dismissed with prejudice pursuant to the attached Notice of Dismissal, with each Party to pay its own court costs and attorneys’ fees. The Parties further stipulate that the Protective Order signed by the parties and entered by this Court (Doc. #136) shall remain in effect after the dismissal of the claims against Fortress Credit Corp. and that the Clerk shall keep under seal all documents filed under seal.

IT IS SO STIPULATED:

[signatures appear on the following page]

Dated: _____, 2015

Respectfully submitted,

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Joseph F. Hutchinson, Jr. (0018210)
Michael A. VanNiel (0073948)
David F. Proaño (0078838)
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Counsel for Fortress Credit Corp.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRIAN A. BASH, CHAPTER 7 TRUSTEE,)	
	)	Case No. 5:12-cv-00987
Plaintiff,	)	Judge Patricia A. Gaughan
)	
vs.)	
)	
)	
TEXTRON FINANCIAL CORPORATION,	)	Bankr. Adv. No. 12-05101
FORTRESS CREDIT CORP., and FAIR	)	Bankr. Case No. 10-50494
FACILITY I, LLC,	)	Judge Arthur I. Harris
)	
Defendants.)	
)	

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to the Stipulation of Dismissal with Prejudice entered into by the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Trustee's claims against Fortress Credit Corp. are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the Protective Order signed by the parties and entered by this Court (Doc. #136) shall remain in effect after the dismissal of the claims against Fortress Credit Corp. and that the Clerk shall keep under seal all documents filed under seal.

Each party shall bear its own costs.

IT IS SO ORDERED.

Dated:

Patricia A. Gaughan
United States District Court Judge

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular U.S. Mail, on May 11, 2015,
on the attached service list.

/s/ Michael A. VanNiel

Michael A. VanNiel (0073948)

Counsel for the Trustee

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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