

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION, *et al.*²,
Debtors.

PITTSBURGH ATHLETIC ASSOCIATION, *et al.*,
Movants,
v.
YVONNE L. ROSE,
Respondent.

Jointly Administered at:
Bankruptcy No. 17-22222-JAD

Bankruptcy Nos:
17-22222-JAD, and
17-22223-JAD

Chapter 11

Doc. No. 410

ORDER OF COURT

AND NOW, this 16th day of Janus, 2018, upon consideration of the Expedited Motion to Approve Settlement Agreement and Release (the "Motion"), it is hereby ORDERED ADJUDGED and DECREED that the Motion is **GRANTED** and that the Settlement Agreement attached to the Motion as Exhibit "A" is **APPROVED**.

Chief Judge Jeffery A. Deller
United States Bankruptcy Court

CASE ADMINISTRATOR SHALL SERVE:

Thomas J. Michael, Esquire
Jillian Nolan Snider, Esquire
John M. Steiner, Esquire
Jordan S. Blask, Esquire
David W. Lampl Esquire

FILED
1/16/18 11:06 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA

² The Debtors have the following cases pending Pittsburgh Athletic Association, Bankruptcy No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Bankruptcy No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

Exhibit “A”

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement"), dated as of this ___ day of _____, 2017 is by and among Pittsburgh Athletic Association (the "PAA"), Pittsburgh Athletic Association Land Company (the "PAA-LC", together with PAA, the "Landlord") and Yvonne Rose (the "Tenant").

RECITALS

1. PAA-LC is the record owner of the property located at 4215 Fifth Avenue, Pittsburgh, PA 15213 (the "Premises").
2. Tenant is an adult individual that currently resides at the Premises
3. On May 30, 2017, Landlord filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Pennsylvania under Case Nos. 17-22222 and 17-22223.
4. On June 2, 2017, the Bankruptcy Court entered an Order rejecting the lease between the Landlord and Tenant as of May 31, 2017.
5. On July 20, 2017, PAA filed a complaint before the Magisterial District Court, No. 05-2-27, captioned *Pittsburgh Athletic Association v. Yvonne Rose*, Case No. LT-0000253-2017 (the "MDC Action"), seeking possession of the Premises and for monetary damages.
6. On August 8, 2017, the Magisterial District Judge entered judgment (the "MDJ Decision") against the Tenant and in favor of PAA.
7. On August 17, 2017, the Tenant appealed the MDJ Decision to the Court of Common Pleas of Allegheny County under Case No. LT-17-000979 (the "LT Appeal", together with the MDC Action, the "LT Action").
8. On September 6, 2017, the Landlord filed its Complaint in Civil Action in the LT Appeal.
9. On October 16, 2017, Tenant filed Defendant's Answer, New Matter and Counterclaim in the LT Appeal asserting a counterclaim (the "Counterclaim") in an amount less than the arbitration limits for Allegheny County, Pennsylvania.
10. On October 17, 2017, an arbitration award (the "Arbitration Award") was entered in the LT Appeal in favor of the Landlord and against the Tenant.
11. On November 15, 2017, the Tenant filed a notice of appeal (the "Notice of Appeal") from the Arbitration Award.
12. On November 16, 2017, Tenant filed a proof of claim (Claim No. 49; hereinafter, the "Proof of Claim") in Bankruptcy Case No. 17-22222 asserting a claim of \$35,000.00 against the PAA.
13. The parties seek to avoid the costs, burdens, uncertainties of further litigation of this matter among themselves and to settle all claims made, or which could be made, by any of them by executing this Agreement.

AGREEMENT

The parties, in consideration of the presents herein contained the adequacy of which is hereby acknowledged, intending to be legally bound hereby, agree as follows:

1. RECITALS. The Recitals set forth above are true and correct and are incorporated herein by reference.

2. SETTLEMENT OF THE LT ACTION.

(a) Tenant grants possession of the Premises to the Landlord on Monday December 11, 2017 and will vacate and remove all possessions on or before the next business day following the entry of Order of the Bankruptcy Court approving this Settlement Agreement or December 11, 2017 whichever comes first;

(b) Tenant consents to Landlord shutting off the water to the Premises on December 8, 2017 ;

(c) Tenant and Landlord agree to take necessary steps to settle and discontinue the LT Action on the next business day following the entry of Order of the Bankruptcy Court approving this Settlement Agreement at a closing to take place at the law office of Tucker Arensberg, P.C. 1500 One PPG Place, Pittsburgh PA 15222;

(d) Tenant and Landlord agree that any and all funds placed in escrow in the LT Action shall be released to the Tenant; and

(e) Landlord agrees to pay Tenant the sum of \$15,000 payable on the next business day following the entry of the Order of the Bankruptcy Court approving this Agreement at a closing to take place at the law office of Tucker Arensberg, P.C. 1500 One PPG Place, Pittsburgh PA 15222.

3. WITHDRAWAL OF PROOF CLAIM AND BANKRUPTCY COURT APPROVAL.

(a) Tenant agrees to withdraw the Proof of Claim within 3 days of entry of the Order of the Bankruptcy Court approving this Agreement.

(b) Tenant consents to the filing of a Bankruptcy Rule 9019 motion and certification of counsel prepared by the Landlord requesting the Bankruptcy Court's approval of this Agreement

4. RELEASES

(a) Effective upon satisfaction of the Conditions Precedent set forth below and the withdrawal of the Notice of Appeal and Counterclaim, in consideration for the agreements as provided herein, and for other good and valuable consideration the receipt of

which is hereby acknowledged, Landlord on behalf of itself and all of its respective predecessors, successors, assigns, heirs, affiliates, subsidiaries, parent companies, officers, directors, representatives, partners, members, managers, joint venturers, attorneys, shareholders, employees and agents do hereby remise, release, acquit, waive, satisfy, and forever discharge, fully and unconditionally, the Tenant, and each of their respective predecessors, successors, assigns, affiliates, subsidiaries, trustees, servicers, parent companies, officers, directors, representatives, partners, servicers, members, managers, joint venturers, attorneys, shareholders, employees and agents from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, execution, objections, defenses, setoffs, actions, claims, demands, and causes of action of any nature whatsoever, whether at law or in equity, whether known or unknown, either now accrued or hereafter maturing, which the Parties now have or hereafter can, shall, or may have relating to the LT Action or any prior lease between the parties, from the beginning of the world to and including the date hereof.

(b) In consideration for the agreements as provided herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, Tenant, on behalf of herself and all of her respective predecessors, successors, assigns, heirs, affiliates, subsidiaries, parent companies, officers, directors, representatives, partners, members, managers, joint venturers, attorneys, shareholders, employees and agents does hereby immediately remise, release, acquit, waive, satisfy, and forever discharge, fully and unconditionally, Landlord, and each of its respective predecessors, successors, assigns, affiliates, subsidiaries, trustees, servicers, parent companies, officers, directors, representatives, partners, servicers, members, managers, joint venturers, attorneys, shareholders, employees and agents from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, execution, objections, defenses, setoffs, actions, claims, demands, and causes of action of any nature whatsoever, whether at law or in equity, whether known or unknown, either now accrued or hereafter maturing, which the Parties now have or hereafter can, shall, or may have relating to the LT Action or any prior lease between the parties, from the beginning of the world to and including the date hereof.

5. CONDITIONS PRECEDENT TO EFFECTIVENESS. This Agreement shall be effective in its entirety upon the satisfaction of all of the following conditions precedent:

- (a) execution and delivery to Landlord of satisfactorily executed original signature pages to this Agreement from Tenant;
- (b) Tenant vacating the Premises by December 8, 2017; and
- (c) entry by the Bankruptcy Court of an Order approving this Agreement.

6. ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES. Each of the Parties acknowledges, represents, warrants, affirms and confirms the following:

- (a) It has read this Agreement, understands the effect and scope of this Agreement and has had the assistance of separate legal counsel of its choice in carefully

reviewing, discussing and considering all terms of this Agreement or has elected to enter into this Agreement without consulting legal counsel.

(b) Its execution and delivery of this Agreement is not based upon reliance upon any representation, understanding or agreement not expressly set forth herein. Neither the Parties nor any subsidiary, affiliate, parent, officer, director, employee, agent, attorney, successor or assign have made any representations to any other party (or such party's agent) not expressly set forth herein.

(c) It does execute and deliver this Agreement as its free and voluntary act, without any duress, coercion or undue influence exerted by or on behalf of any other party.

(d) It and the person executing this Agreement on its behalf has full and complete authorization and power to execute this Agreement in the capacity herein stated. This Agreement is a valid, binding and enforceable obligation and does not violate any law, rule or regulation, or any contract or agreement to which it is a party.

7. **SEVERABILITY.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement is, and shall be deemed to be, the product of joint drafting by the Parties hereto and shall not be construed against any of them as the drafter hereof.

8. **RULES OF CONSTRUCTION.** In this Agreement (except as otherwise expressly provided or unless the context otherwise requires) (i) terms defined in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified, (ii) any pronoun used shall be deemed to cover all genders, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provisions of this Agreement, and (iv) all references to particular Articles and Sections are references to Articles and Sections of this Agreement.

9. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the principles thereof regarding conflict of laws, excepting applicable federal law and except only to the extent precluded by the mandatory application of the law of another jurisdiction.

9. **COUNTERPARTS.** This Agreement may be executed in multiple identical counterparts, each of which when duly executed shall be deemed an original, and all of which shall be construed together as one agreement. This Agreement will not be binding on or constitute evidence of a contract between the parties hereto until such time as a counterpart has been executed by such party and a copy thereof is delivered to each other party to this Agreement. Signature pages transmitted electronically in "PDF" format or by facsimile shall be given the same legal effect as originals for all purposes.

10. **NO MODIFICATION OR WAIVER.** None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except by an instrument in writing executed by the party against whom or which enforcement of the change, waiver,

modification, discharge or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

11. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding on the Parties and their respective successors and assigns.

12. WAIVER OF JURY TRIAL. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE OR HEREAFTER HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE UNDERLYING TRANSACTIONS.

13. CONFIDENTIALITY

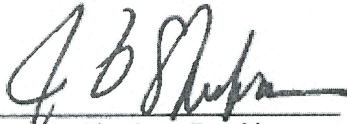
(a) The parties to this Agreement agree that, at all times, the terms and conditions of this Agreement will be kept secret and confidential and will not be disclosed to any third party, except: (i) to the extent required by law; (ii) in connection with any Claim to enforce, interpret or determine the scope, meaning or effect of this Agreement, (iii) to any director, officer, member, attorney, or consultant of Landlord; or (iv) to obtain confidential legal, tax or financial advice.

(b) The parties understand that in order for this Agreement to be approved by the Bankruptcy Court, this document must be attached to the court filing which will be a matter of public record. Landlord agrees that it will not oppose a Motion by Tenant to have the Court seal the document subject to further order of court. If the Court does not approve the Tenant's request to seal the document then section 13 (a) shall not be applicable.


WITNESS the due execution of this Agreement the day and the year first above written intending to be legally bound hereby.

PITTSBURGH ATHLETIC ASSOCIATION
and PITTSBURGH ATHLETIC
ASSOCIATION LAND COMPANY

YVONNE LYNN ROSE



By: James A. Sheehan, President


By: Yvonne Lynn Rose

LIT:632535-1 032280-181002

Notice Recipients

District/Off: 0315-2

User: dkam

Date Created: 1/16/2018

Case: 17-22222-JAD

Form ID: pdf900

Total: 5

Recipients of Notice of Electronic Filing:

aty	David W. Lampl	bankruptcy@leehtishman.com
aty	Jillian Nolan Snider	jsnider@tuckerlaw.com
aty	John M. Steiner	jsteiner@leehtishman.com
aty	Jordan S. Blask	jblask@tuckerlaw.com
aty	Thomas J. Michael	tmichael@tjmandassociates.com

TOTAL: 5