

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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US BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In RE: Syntax-Brilliant Corporation, et al.

Bankruptcy Case No. 08-11407

**Motion to grant relief from Order accepting into evidence the Rayburn Declaration**

Filed by Pro Se Movant

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Hearing Date: April 20, 2016

Objection date: April 4, 2016

**Motion to grant relief from Order accepting into evidence the Rayburn Declaration**

Alan Levine, representing himself Pro SE moves the Court from relief of a court order accepting into evidence the Rayburn Declaration.

Jurisdiction is proper because this motion is filed for relief from an order entered in this jurisdiction.

Venue is proper because this motion is filed for relief from an order entered in this venue.

The movant has the status to challenge evidence that was entered in this jurisdiction that adversely impacted his pecuniary interests in the estate. Under Rule 607 of the Federal Rules of Evidence, any party, including the party that called the witness, may attack the witness's credibility. Denial of the right leaves the party at the mercy of the witness and the adversary.

**Background**

The movant assumes the Court's familiarity with the pre-petition history of the Syntax-Brilliant Ponzi scam involving the forgery of \$400 million dollars of sales invoices that were used to inflate the sales of Syntax-Brilliant and distort its balance and income statements. Based on the forged sales invoices, Syntax-Brilliant filed seven grossly misleading quarterly reports with the Securities and Exchange Commission. The last quarterly report filed was for the quarter ending September 30, 2007 which was publicly released on November 14, 2007. After the release of that last quarterly statement, the company went dark and failed to release any other financial information to the public.

On July 8, 2008, Syntax-Brilliant filed for bankruptcy and the instant bankruptcy proceedings were initiated by the debtors. The petition filed included an affidavit by Gregory Rayburn, the interim CEO of Syntax-Brilliant (See exhibit A – Declaration of Gregory F Rayburn in Support of the Debtors' Chapter 11 Petition – Docket 3 "The Rayburn Affidavit").

On July 9, 2008, this Court presided over the First Day's Hearing (See Exhibit B – Transcript of First Day's Hearing before the Honorable Brendan Shannon – Docket 69). During the course of the hearing the Court entered an order accepting the Rayburn Affidavit into evidence. On page 18 of the transcript of the First Day's Hearing, the Court issued a ruling from the bench stating that "I'm satisfied with one, the background and two, the affidavit. So, in the absence of objection, I'll accept it into evidence."

In accepting the Rayburn Affidavit into evidence, the Court accepted the following assertions by Gregory Rayburn. "43) In or about the fall of 2007, approximately 26,000 custom, large screen HDTVs originally sold to SCHOT and OFE were in turn sold to the Chinese government for future installation in the Olympic Village. The Chinese government intended to mount large

screen televisions in the Olympic venues and in the Olympic Village to maximize viewership in the Olympic locales. The Debtors manufactured the custom HDTVs through. The custom HDTVs were delivered to the Chinese government in or about the fall of 2007. The Chinese government then allegedly refused to pay for the HDTVs until ultimate installation which was significantly delayed. SCHOT, OFE and Kolin entered into an agreement to take back the units. They were retrieved by Kolin. 44) The Debtors and Kolin undertook to determine whether the returned units could be (a) sold in the Asian-Pacific market with the existing components built to Chinese government standards, and given the custom, large size of the televisions, (b) held for later delivery to the Chinese government or (c) re-tooled for sale in the United States markets (Chinese tuners would have to be removed and replaced to comply with United States import regulations). SCHOT apparently purchased some of this inventory but then sought to return it. 45) Upon the Chinese government's refusal to accept the HDTVs, SBC receivable, anticipated to be approximately \$63 million, became uncollectable. 46) As a result of the refusal of the Olympics merchandise, including non-payment of the receivables due from SCHOT and OFE, the default under the Credit Agreement, and other events, by the first quarter of 2008, the Debtors and their suppliers faced a serious liquidity crisis, The Debtors, as borrower under the Credit agreement, found their borrowing ability exhausted and Pre-petition lenders exerting pressure. Moreover, the Beijing Olympics problem affected Kolin, SCHOT and other key players in the Debtors' supply chain. All involved found themselves with no program to adequately recoup the loss." (Pages 14-15, the Rayburn Affidavit)

The Rayburn Affidavit also made the following assertions: 60) The Debtors attempted to develop a model for an internal restructuring including a re-negotiation of the secured debt. However, due to the high costs of goods sold and costs associated with research and development and given that the Debtors have no control over the research and development entity, which is necessary to a stand-alone business model, a suitable business model could not be developed. The Debtors created financial models assuming lower sales and administration expenses and sales to higher volume and higher profit customers."

During the First Day's Hearing, Nancy Mitchell was introduced to the Court as the Chair of Greenberg Traurig's New York bankruptcy group who would give an overview of the debtors. In testimony before the Court, Ms. Nancy Mitchell made the following assertions. "I have proposed to give background on the debtors and on the cases to give you a sense of where we're going and then I think we will proffer briefly Mr. Rayburn's background and then move his declaration into evidence. Ms. Nancy Mitchell then went on to make the following assertions 1) the business has been a good business 2) In the fall of 2007, the debtors borrowed \$250 million in financing from the pre-petition lender, Silver Point and Citibank and, pretty much virtually immediately after the loan was put in place, there were a series of things that happened that really hurt the debtors' business. The biggest was, they had contracted to supply televisions to the Olympics and the Chinese government elected to take those televisions, leaving the debtor with a \$60 million receivable that was in the borrowing base that was not collectible and 20 some thousand televisions that were outfitted for the China marketplace that could then not be resold in the United States without being refitted. 3) We know where the televisions are, at least the ones that haven't been sold, they're at Kolin. We're in a dispute with Kolin and therefore can't get them back. They're not saleable in the US Market anyway because they're not fitted for the US market. 4) The debtors basically their business model doesn't work as currently constituted. The cost of goods is too high and they don't control their technology."

**New Evidence since the Bankruptcy Filing**

On February 8, 2016, The Honorable Brendan Shannon entered an opinion in AD. No. 10513389 (BLS) SB Liquidation Trust Vs Preferred Bank (Exhibit C). The opinion includes the well plead allegations by the Liquidation Trustee that Syntax-Brilliant and its Asian suppliers (“the Kolin faction” generated 100 fake “credit memos” that represented various credits Kolin gave the debtors to record over \$400 million in fake sales to SCHOT and the creation of fake invoices from Kolin to SBC from Kolin’s fictitious purchase of tooling for Plastic molds. And the opinion also notes that the Court accepts as true all of these allegations. The Court also notes that several of the debtors’ officers and directors were officers, directors and shareholders of Kolin. James Li was on SBC’s Board of Directors and was also at relevant times its President, Chief Operating Officer and Chief Executive officer. Thomas Chow was also at relevant times Director of SBC and its Chief financial officer and Chief Procurement Officer.

As a preliminary matter, I would like the Court to take into consideration that James Li was the CEO of Syntax-Brilliant until a few weeks before the filing of this illicit bankruptcy petition and was on the Board of Directors that approved the filing of this illicit bankruptcy petition.

**Argument**

The New Evidence is sufficient to state a claim based on Rule 60 (b) as grounds for Relief from a judgment or Order. Movant seeks relief from the Court order admitting into evidence the Rayburn Affidavit and Nancy Mitchell’s testimony in the First Day’s Hearing. I will also ask the court to consider this motion on the basis of 28 U.S.C. §1655 and to take into consideration the fraud on the court in the instant proceedings. The New Evidence impeaches the Rayburn Affidavit for the simple reason that there were no sales to the Chinese Government and the whole narrative in the Rayburn Declaration is concocted and based on misrepresentation of what the Court now knows to be non-existent sales in Asia.

The Rayburn Affidavit was included in the Disclosure statement the debtors sent out to the movant and other similarly situated shareholders. The Rayburn Affidavit was also incorporated into the plan approved by the court. The Rayburn affidavit was also the evidentiary basis upon which the Court entered orders to deprive swindled shareholders of representation by a shareholder committee. The Rayburn Affidavit continues to be the evidentiary basis for these entire illicit bankruptcy proceedings. On the basis of the Rayburn Affidavit, the movant’s claim was denied. The Court repeatedly denied status to pro se litigants who attempted to intervene in the case based on the veracity of the Rayburn Affidavit.

The issue of massive forgery is now before the Court. The Court has not referred the forgery to the US Attorney or the Bankruptcy Fraud Task Force or the FBI or the Secret Service. The chain of custody of these forged documents has landed them in the hands of the Liquidation Trustee and I assume they also remain in the custody of the Court and the United States Trustee. It is incredible that forged documents have been left in the hands of one party to these adversarial proceedings. This is especially distressing because shareholders have residual rights in these proceedings which, at a minimum, must include a transparent evidentiary record that adheres to the Federal Rules of Evidence.

Even by the standards of the most primitive judicial system, an adversary should not be denied access to evidence. The movant has never been noticed on the fabricated and totally discredited evidence in the Rayburn Affidavit. The movant has only received the evidence in the Disclosure Statement and the Plan— both of which depend on the evidence presented to the Court in the Rayburn Affidavit. Since the discovery of the new evidence, the Liquidation Trustee, who is now in possession of the forged invoices, has failed to notice this movant or any of the other victims of this massive forgery of the new developments in the case. The movant and other pro se litigants have repeatedly urged the Liquidation Trustee to place the forged documentation in the hands of a responsible third party. I and other movants have repeatedly suggested to the Liquidation Trustee the absolute necessity of reporting these forgeries and transferring custody to the Clerk of the Court or the FBI or the Secret Service. All our attempts have been rebuffed.

It has also come to the attention of the movant that a number of shareholders, including Mr. Ahmed Amr, have managed to secure consideration for their claims. Syntax-Brilliant issued only one single class of shares. It does appear that Mr. Ahmed Amr secured partial satisfaction for their claims based on their knowledge that Syntax-Brilliant was a Ponzi scam fueled by \$400 million in fake sales. As an equitable matter, these proceedings appear to have favored shareholders who had knowledge of the massive pre-petition fraud. I have contacted Mr. Amr and prevailed on him to voluntarily appear as a witness at his own expense. I also intend to call as a witness Mr. Berman, the Liquidation Trust Trustee.

Whereby, I move for relief from the Court's order accepting into evidence the Rayburn Affidavit and I move for relief from the Court's order accepting into evidence Nancy Mitchell's testimony in the First Day's hearing and I move for relief from any Court order based on the Rayburn Affidavit and the testimony of Nancy Mitchell in the First Day's hearing including the order approving the Disclosure Statement, the Order approving the Plan and I move the Court to vacate the exculpation provisions of the plan. I also move the Court to impeach Gregory Rayburn and Nancy Mitchell and their affidavit and testimony. I also move the Court to vacate the order denying my claim and I move the Court to grant monetary relief and any other relief the court deems to be just.

I would suggest to the Court that, given the extraordinary circumstances, that the cleanest option for the Court at this stage that the best option going forward is to convert the case to a Chapter 7, appoint a Chapter 7 Trustee and a shareholder committee to make certain that shareholders can have meaningful input into the proceedings going forward.

Respectfully,



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March 10, 2016

**Appendix – Applicable laws and rules**

**Rule 60. Relief from a Judgment or Order**

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

## Rule 607. Who May Impeach a Witness - Federal Rules of Evidence

Any party, including the party that called the witness, may attack the witness's credibility. Denial of the right leaves the party at the mercy of the witness and the adversary.

### **Pertinent Local Rules – United States Bankruptcy Court Delaware**

Rule 1017-1 Petition Deficiencies. A debtor filing a petition under chapter 7, chapter 12 or chapter 13 of the Code without all the documents required by the Fed. R. Bankr. P., the Code, these Local Rules and the Clerk's Office Procedures will receive a deficiency notice specifying time limits for the filing of the required documents. If the required documents are not filed by the deadline specified in such notice, and the debtor has neither sought nor obtained an extension of such deadline from the Court, the petition may be dismissed.

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