

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

In re:)	Chapter 11
)	
TLC VISION (USA) CORPORATION, et al.,)	Case No. 09-14473(KG)
)	(Jointly Administered)
Debtors.)	
<hr/>		Re Dkt Nos. 302 and 303

ORDER DENYING APPOINTMENT OF AN EQUITY COMMITTEE

1. Strategic Turnaround Opportunity Fund, L.P., Strategic Turnaround Equity Partners, L.P. (Cayman), Rixon Galloway Capital Growth, LLC, Trinad Capital Master Fund Ltd., Red Oak Fund, L.P., Pinnacle Fund, LLP., Bruce Galloway Rollover IRA, Sara Galloway Rollover IRA, Gary Herman IRA, Inventron, Ltd. (Energy), Lorraine Herman and Larry Hopfensinger (the “Shareholders”), filed a motion (the “Motion”) (D.I. 302) for the appointment of an official committee of equity security holders in the chapter 11 cases of TLC Vision (USA) Corporation and affiliates (the “Debtors”). The Shareholders request the appointment of an official equity committee for the stated purpose of securing independent representation for 700 public shareholders. The premise for the Motion is 11 U.S.C. § 1102(a)(2).

2. On December 21, 2009, the Debtors filed petitions for relief under chapter 11 of the Bankruptcy Code, commencing these cases [Docket No.1].

3. On December 30, 2010, the Shareholders submitted a letter to the Office of the United States Trustee (the “UST”) requesting the appointment of an official equity committee. The UST did not issue a formal response.

4. On February 22, 2010, the Moving Shareholders again submitted a letter to the UST requesting the appointment of an official committee of equity holders.

5. On March 1, 2010, without awaiting a response from the UST to their renewed request, the Shareholders filed the Motion.

6. The Bankruptcy Code provides the Court with discretion to order the appointment of an equity committee pursuant to section 1102(a)(2), which states:

On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States Trustee shall appoint any such committee.

11 U.S.C. §1102(a)(2). The statute makes it clear that the Court “may,” not “shall,” order the appointment.

7. Courts have applied the following factors in determining whether to appoint an equity committee under section 1102(a)(2): (i) whether debtors are likely to prove solvent; (ii) whether equity is adequately represented by stakeholders already at the table; (iii) the complexity of the debtors’ cases; and (iv) the likely cost to debtor’s estates of an equity committee. *See, e.g., In re Pilgrim’s Pride Corp.*, 407 B.R. 211 (Bankr. N.D. Tex. 2009); *In re Kalvar Microfilm*, 195 B.R. 599 (Bankr. D. Del. 1996); *In re Wang Lab., Inc.*, 149 B.R. 1 (Bankr. D. Mass. 1992).

8. Furthermore, courts generally should deny a motion for appointment of an equity committee unless the proponents show by a preponderance of the evidence that “there is a substantial likelihood that they will receive meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests without an official committee.” See *Exide Tech. v. State of Wisconsin Investment Board*, 2002 WL 32332000*1 (D. Del. Dec. 23 2002).

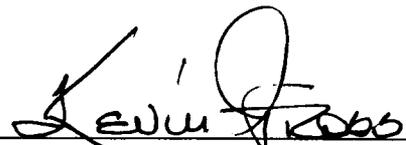
9. The burden of proof falls upon the Shareholders. *Victor v. Edison Bros. Stores*, 1996 WL 534853, *4 (D. Del. Sept. 17 1996). This is a heavy burden because appointing an equity committee is “extraordinary relief” that should be the “rare exception.” *In re Spansion, Inc.*, *6 (Case No. 09-10690 (KJC)) (Dec. 18 2009) (citing *In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); *Exide Tech.*, 2002 WL 32332000*1.

10. The Shareholders, as the moving party, are charged with the burden of proving a likelihood of solvency. The Shareholders provided no evidence to support their claim of insolvency. Mere speculation without evidence as to the enterprise value of the Debtors’ ongoing operations fails to carry the burden of proof. The Shareholders are not “clearly in the money.”

11. The Court is also satisfied that the Shareholders are adequately represented in these cases. The Debtors have been open to obtaining the best “deal” for the estates and the Creditors Committee has proven to be a particularly capable and effective advocate.

12. The Court also notes that the cost to Debtors' estate of appointing an equity committee is enormous – particularly when the Shareholders waited approximately two months before raising the matter with the Court. The cases have been active and have now reached the stage that adding an equity committee to the negotiations would be counter-productive.

Accordingly, IT IS ORDERED this 23rd day of March, 2010, that the Motion is DENIED.



KEVIN GROSS, U.S.B.J.