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And Heather Sealy Lineberry

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

In re:

GLEN MARVIN LINEBERRY and
HEATHER SEALY LINEBERRY,

Debtors.

In Proceedings Under Chapter 11
Case No.: 2:10-bk-20559-RTB

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER CONFIRMING
THE PLAN OF REORGANIZATION OF
DEBTORS GLEN MARVIN
LINEBERRY AND HEATHER SEALY
LINEBERRY DATED OCTOBER 4,
2012**

(Related Docket Entry No. 174)

This matter came before the Court for a confirmation hearing on November 27, 2012 (“Confirmation Hearing”) for the Plan of Reorganization of Debtors Glen Marvin Lineberry and Heather Sealy Lineberry Dated October 4, 2012 (the “Plan”) at Docket Entry No. 174, which is proposed for the resolution of all creditors’ claims against Glen Marvin Lineberry and Heather Sealy Lineberry (collectively,

SO ORDERED.

Dated: February 13, 2013



Redfield T. Baum, Bankruptcy Judge



1 the “Debtors”), the debtors and debtors-in-possession in the above-captioned
2 Chapter 11 case. After hearing arguments at the Confirmation Hearing, and
3 based upon the record on this case and the findings and conclusions set forth
4 herein, this Court will approve confirmation of the Plan.

5 **I. BACKGROUND**

6 1. Glen Marvin Lineberry and Heather Sealy Lineberry, Debtors herein
7 (the “Debtors”) filed the Disclosure Statement for The Plan of Reorganization of
8 Debtors Glen Marvin Lineberry and Heather Sealy Lineberry Dated October 9,
9 2012 (the “Disclosure Statement”) at Docket Entry No. 175.

10 2. The Debtors also filed a Motion to Approve Settlement Agreement (1)
11 Between Debtors, Bentley Gallery, Inc. and Bentley Calverley, and (2) Between
12 DeConcini McDonald Yetwin & Lacy, P.C. Bentley Gallery, Inc. and Bentley
13 Calverley (the “Settlement Motion”) at Docket Entry No. 176.

14 3. Additionally, the Debtors filed a Motion for an Order Conditionally
15 Approving Debtor’s Disclosure Statement and Consolidating Hearings on Approval
16 of Disclosure Statement and Approval of Settlement Agreement with Plan
17 Confirmation Hearing (the “Consolidated Hearing Motion”) at Docket Entry No.
18 178.

19 4. The Court heard the Consolidated Hearing Motion on October 18,
20 2012 and, thereafter, entered an order conditionally approving the Disclosure
21 Statement and setting a combined hearing for the final consideration of the
22 Disclosure Statement, the confirmation of the Plan, and the approval of the
23 Settlement Motion in the Order: (a) Conditionally Approving Disclosure Statement;
24 (b) Setting Consolidated Hearing on Approval of the Settlement Agreement, Final
25 Approval of the Disclosure Statement and Confirmation of the Plan; (c) Fixing
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1 Time for Filing Objections to the Disclosure Statement; (d) Fixing Time for Filing
2 Objections to the Chapter 11 Plan; (e) Fixing Time for Filing Objections to the
3 Settlement Agreement; and Fixing Time for Returning Ballots Accepting or
4 Rejecting the Chapter 11 Plan. And Notice Thereof (the “Confirmation Hearing
5 Notice”) found at Docket Entry No. 186.

6 5. The Debtors (1) provided copies of the solicitation package, (2)
7 provided proper, timely, adequate and sufficient notice of the confirmation hearing
8 to all the parties required to receive notice under the Federal Rules of Bankruptcy
9 Procedure, and (3) properly solicited votes on the Plan in compliance with the
10 Confirmation Hearing Notice.

11 6. Voting on the Plan concluded on November 19, 2012, and pursuant to
12 Local Bankruptcy Rule 3018, on November 21, 2012 the Debtors filed the Ballot
13 Report for the Plan of Reorganization of Debtors Glen Marvin Lineberry and
14 Heather Sealy Lineberry Dated October 4, 2012 (the “Ballot Report”) at Docket
15 Entry No. 188. The Ballot Report indicates that:

16 Class 1: Priority Non-Tax Claims. There were no claims under this Class
17 and it is deleted from the Plan.

18 Class 2: Secured Tax Claims. Class 2 claims were paid in full and did not
19 vote.

20 Class 3: Maricopa County Claim for Taxes Owed by Lomo One. This class
21 is impaired under the Plan and did not vote.

22 Class 4: National City Mortgage Claim. This class is impaired under the
23 Plan and did not vote.

24 Class 5: U.S. Bank National Association Claim. This class is impaired under
25 the Plan and did not vote.
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Class 6: BGI Adversary Claim. This class is impaired under the Plan and voted to accept the Plan.

Class 7: Bentley Calverley Claim. This class is not impaired under the Plan and voted to accept the Plan.

Class 8: General Unsecured Claims. This class is impaired under the Plan and voted to accept the Plan.

7. On November 27, 2012 at 9:00 a.m. the Court held a hearing on the confirmation of the Plan, and after reviewing the record and considering the arguments presented, the Court conditionally approved the Plan, and ordered that the holders of Claims classified under the Plan as Classes 3, 4 and 5 be given the additional opportunity to object to the Plan within twenty (20) days' notice.

8. The Debtors provided the additional notice to Plan Classes 3, 4 and 5 pursuant to the Notice of Conditional Approval of Chapter 11 Plan and of Deadline to Object (the "Additional Notice") filed with the Court on November 30, 2012 at Docket Entry No. 195.

9. The Plan will be accomplished through, among other things:

(1) The Debtors shall liquidate any remaining amounts in the Glen Lineberry Wells Fargo IRA Account (having an approximate balance of \$122,629), and the Charles Schwab IRA Account (having an approximate balance of \$8,999.00) (collectively, the "IRAs"), the 529 plan in the name of Isabel Lineberry (having an approximate balance of \$162,212), and the Wells Fargo Savings Account (having an approximate balance of \$50,593) and distribute such funds as provided in this Paragraph (1). From this liquidated amount, \$89,547 ("Tax Withholding") shall be allocated to Federal and State taxes and penalties in accordance with the calculations performed by Wanda Tang, P.C. as set forth on Exhibit A to the BGI Settlement (as defined in the Plan), said Tax Withholding shall be retained by the Debtors for such purpose only. In addition, there shall be deducted from the liquidated amount:

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- a. The sum of \$80,000 (representing the negotiated balance of the Homestead exemption) which sum shall be distributed to and retained by Heather Lineberry.
- b. All other proceeds from the IRAs, the 529 plan, and the Wells Fargo Savings Account shall be delivered immediately to BGI and credited against the BGI Non-Dischargeable Judgment (as defined in the Plan).

(2) Within 30 days of entry of the this Order of Confirmation, the Debtors' residence will be deeded to Bentley Gallery Inc. ("BGI"), free and clear of liens and the Homestead exemption (except the BGI Non-Dischargeable Judgment lien) and the amount of \$495,000 shall be credited against the BGI Non-Dischargeable Judgment.

(3) The Plan will be funded by the payment of 25% of Glen Lineberry's regular earnings (meaning compensation paid for employment, and not amounts which are reimbursed to Glen Lineberry) net of standard withholdings (i.e., federal, state, FICA, medicare, OASI, Arizona retirement, disability, health insurance and vision insurance) for a 60 month period following the entry of the Order of Confirmation. Such payment shall be made by Glen Lineberry on or before the 10th day of each month (such payment based upon the prior month's compensation). During the Plan and as long as such plan contributions are made by Glen Lineberry, BGI shall be precluded from pursuing garnishment of Glen Lineberry's salary. To the extent Glen Lineberry has other non-exempt assets, BGI may proceed with other collection efforts. After completion of the Plan payments, BGI shall be entitled to pursue all remedies for the remaining balance of the BGI Non-Dischargeable Judgment.

(4) All funds paid to BGI shall be credited against the BGI Non-Dischargeable Judgment.

(5) Upon Heather Lineberry's performance of the obligation to make payments and transfer property under Class 6 of the Plan, Heather Lineberry shall be entitled to a discharge of all obligations under the Plan, and any and all other obligations and liabilities. In furtherance of the foregoing, BGI and Bentley Calverley agree not to pursue any further action against Heather Lineberry following the Effective Date, subject to delivery of all required items as provided herein. Notwithstanding the foregoing, BGI and Bentley Calverley may pursue action on rights provided under the Plan.

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2 (6) Under the Settlement Motion, which was approved by the Court
3 in its Order dated December 7, 2012 (DE 197), the Administrative Claims
4 of DeConcini McDonald Yetwin & Lacy, P.C. ("DMYL") were resolved.
5 Pursuant to the terms of that agreement, the fee applications filed by
6 DMYL were approved on a final basis, subject to turnover of the sum of
7 \$75,000 to BGI within thirty (30) days after the Effective Date. DMYL
8 agreed not to seek further compensation from the Chapter 11 estate and
9 all claims held by BGI, Bentley Calverley, and any other entity or
10 individual associated with them, including their heirs, successors and
11 assigns against DMYL were discharged and released.

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19 **III. FINDINGS OF FACT AND CONCLUSION OF LAW.**

20 10. The Court has considered the Plan and Disclosure Statement and the
21 Declarations of Glen Marvin Lineberry and Heather Sealy Lineberry as well as the
22 terms of the Settlement Motion which was approved by this Court. The Court
23 further considered all arguments and statements made of record by counsel for
24 the Debtor and other parties in interest at the Plan Confirmation Hearing.

25 11. Based on the foregoing, and the entire record before the Court, the
26 Court makes the following findings of fact and conclusions law, and issues this
Order for the reasons stated in this Order and for any other reasons stated by the
Court on the record at the Plan Confirmation Hearing:

A. Jurisdiction and Venue.

12. This is a "core" proceeding within the meaning of 28 U.S.C.
§ 157(b)(2). This matter arises under the Bankruptcy Code, and jurisdiction is
vested in this Court to enter a final order by virtue of 28 U.S.C. § 1334(a) and (b),
and 28 U.S.C. §§ 151, 157(a) and (b)(1). Venue in this Court is proper under 28
U.S.C. §§ 1408 and 1409. The Court's findings of fact and conclusions of law are
being entered under Rules 7052 and 9014 of the Federal Rules of Bankruptcy
Procedure (the "Bankruptcy Rules").

1 13. The Court's retention of jurisdiction as set forth in Article VIII of the
2 Plan comports with 28 U.S.C. § 157. Among other things, the Court shall retain
3 jurisdiction to enter the Constructive Trust Judgment contemplated by the Plan.

4 **B. Satisfaction of Relevant Legal Standards.**

5 14. The Plan was proposed in good faith, and not by any means
6 forbidden by law.

7 15. As set forth below, the Plan fully satisfies all applicable requirements
8 of 11 U.S.C. §1129.

9 16. The Plan complies with all applicable provisions of the United States
10 Bankruptcy Code.

11 17. The Debtors, as proponents of the Plan, have complied with all
12 applicable provisions of the United States Bankruptcy Code.

13 18. In accordance with Bankruptcy Code §1123(a), the Plan:
14 (a) designates classes of Claims and Equity Interests, other than claims of a kind
15 specified in Bankruptcy Code §§507(a)(1), 507(a)(2) and 507(a)(8)(excluding
16 Secured Tax Claims), and the classification complies with Bankruptcy Code
17 Section 1122; (b) specifies Classes of Claims and Interests that are impaired
18 under the Plan; (c) specifies the treatment of Classes of Claims and Interests that
19 are impaired under the Plan; (d) provides the same treatment for each Claim or
20 Interest of a particular Class, unless the holder of a particular Claim or Interest
21 agrees to less favorable treatment of the particular Claim or Interest; (e) provides
22 for adequate means for the Plan's implementation and (f) contains only provisions
23 that are consistent with the interests of creditors and equity security holders and
24 with public policy.

25 19. As permitted by Bankruptcy Code Section 1123(b), the Plan:
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1 (a) impairs or leaves unimpaired Classes of Claims and Interests; (b) provides for
2 the assumption, rejection, or assumption and assignment of the Debtor's
3 executory contracts and unexpired leases; and (c) includes other appropriate
4 provisions not inconsistent with the applicable provisions of the Bankruptcy Code.

5 20. In accordance with Bankruptcy Rule 2002, the Court finds and
6 concludes that adequate notice of the time for filing objections to confirmation of
7 the Plan and adequate notice of the Plan Confirmation Hearing were provided to
8 parties in interest. No additional notice of the Plan Confirmation Hearing or the
9 opportunity to be heard with respect to confirmation of the Plan is required or
10 appropriate under applicable Bankruptcy Rules. The Debtors and their counsel
11 solicited votes to accept or reject the Plan in good faith and in compliance with the
12 applicable provisions of the Bankruptcy Code.

13 21. The Debtors are authorized to assume all executory contracts and
14 unexpired leases not rejected (or not requested to be rejected on or before the
15 Plan Confirmation Hearing), as a reasonable exercise of the Debtors' business
16 judgment and in the best interests of the Debtors and the Estate. Claims arising
17 from the Debtors' rejection of an executory contract or unexpired lease that
18 occurred prior to the Claim Bar Date were due on or before the Claim Bar Date.

19 22. Pursuant to §1146 of the Bankruptcy Code, (a) the issuance, transfer
20 or exchange of any securities, instruments, or documents, (b) the creation of any
21 lien, mortgage, deed of trust or other security interest, (c) the making or
22 assignment of any lease or sublease or the making or delivery of any deed or
23 other instrument of transfer under, pursuant to, in furtherance of, or in connection
24 with the Plan, including, without limitation, any deeds, bills of sale or assignments
25 executed in connection with any of the transactions contemplated under the Plan
26 or the reinvesting, transfer or sale of any real or personal property of Debtors

1 pursuant to, in implementation of, or as contemplated in the Plan and (d) the
2 issuance, renewal, modification or securing of indebtedness by such means, and
3 the making, delivery or recording of any deed or other instrument of transfer
4 under, in furtherance of, or in connection with, the Plan, including, without
5 limitation, the Confirmation Order, shall not be subject to any document recording
6 tax, stamp tax, conveyance fee or other similar tax, mortgage recording tax or
7 other similar tax or governmental assessment. Consistent with the foregoing,
8 each recorder of deeds or similar official for any county, city or governmental unit
9 in which any instrument hereunder is to be recorded shall, pursuant to this
10 Confirmation Order, be ordered and directed to accept such instrument without
11 requiring the payment of any filing fees, documentary stamp tax, deed stamps,
12 stamp tax, transfer tax, intangible tax or similar tax.

13 23. Any payments made, or to be made, under the Plan, for services or
14 for costs and expenses incurred in connection with the Debtors' bankruptcy or the
15 Plan, or incident to either, have been approved by, or are subject to the approval
16 of the Court as reasonable.

17 24. The provisions of 11 U.S.C. §1129(a)(5) are not applicable to the Plan
18 because the Debtors are individuals.

19 25. The Debtors are individuals and the requirements of 11 U.S.C.
20 §1129(a)(6) are not applicable to the Plan.

21 26. Each holder of a claim or interest included in a class that is impaired
22 under the Plan has either accepted the Plan, or will receive or retain under the
23 Plan, an account of such claim or interest, property of a value, as of the effective
24 date of the Plan, that is not less than the amount that such holder would so
25 receive or retain if the Debtors' estate was liquidated under Chapter 7 of the
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1 Bankruptcy Code.

2 27. Although not all impaired classes voted to accept the Plan, as set
3 forth below, the Plan complies with the provisions of 11 U.S.C. §1129(b) with
4 respect to each such class.

5 28. In accordance with Bankruptcy Code § 1129(a)(9)(A), the Plan
6 provides that each holder of an Allowed Administrative Claim will be paid, in full
7 satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the
8 Claim on the Effective Date; (b) payment in the ordinary course of business as
9 said Claim matures; or (c) payment upon such other less favorable terms as may
10 be agreed upon in writing by the holder of such Claim and the Debtor, or as
11 ordered by the Bankruptcy Court.

12 29. In accordance with Bankruptcy Code §§ 1129(a)(9)(C) and (D), the
13 Plan provides that taxes incurred after the Petition Date, which encumber property
14 in which Glen Lineberry has an interest through Lomo One, L.L.C. ("Lomo One"),
15 shall be paid by Lomo One in the ordinary course of business with Maricopa
16 County possessing any and all available rights under applicable state law if such
17 taxes are not timely paid, which is wholly consistent with the terms of Bankruptcy
18 Code § 1129(a)(9)(C) and (D).

19 30. Without consideration of any acceptance of the Plan by an insider, at
20 least one class of claims that is impaired under the Plan voted to accept the Plan,
21 thereby satisfying the requirements of 11 U.S.C. §1129(a)(10).

22 31. The Plan is feasible, in that confirmation of the Plan is not likely to be
23 followed by the need for further financial reorganization of the Debtors.

24 32. All fees payable under 28 U.S.C. §1930 have been paid, or, pursuant
25 to the Plan, will be paid on the effective date of the Plan.
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1 33. The provisions of 11 U.S.C. §1129(a)(13), concerning the continued
2 provision of retiree benefits, do not apply to the Debtors or the Plan.

3 34. The provisions of 11 U.S.C. §1129(a)(14), concerning domestic
4 support obligations, do not apply to the Debtors or the Plan. The Debtors do not
5 have any domestic support obligations.

6 35. The provisions of 11 U.S.C §1129(a)(15) do not apply to the Plan,
7 since no holders of allowed unsecured claims have objected to the Plan.

8 36. The Debtors are individuals, and as such, the provisions of 11 U.S.C.
9 §1129(a)(16) are not applicable to the Plan.

10 37. The Plan does not discriminate unfairly and is fair and equitable with
11 respect to each class of claims or interests that is impaired under, and has not
12 accepted, the Plan.

13 38. The Plan complies with the requirements of § 1129(b)— Class 6 (BGI
14 Adversary Claim) and Class 8 (General Unsecured Creditors) have accepted the
15 Plan, as has Class 7 (Bentley Calverley Claim). Class 2 (Secured Tax Claims)
16 (which has been satisfied), Class 3 (Maricopa County Tax Claim for Taxes Owed
17 by Lomo One), Class 4 (National City Mortgage Claim) and Class 5 (U.S. Bank
18 National Association Claim) did not vote.

19 39. The Plan does not discriminate unfairly and is fair and equitable with
20 respect to each Class of Claim or interest that is impaired and has not voted to
21 accept the Plan. With respect to Class 3 (Maricopa County Tax Claim for Taxes
22 Owed by Lomo One), Class 4 (National City Mortgage Claim) and Class 5 (U.S.
23 Bank National Association Claim), the Plan provides that (i) the holders of such
24 claims will retain any liens securing the claims to the full extent of such holders'
25 respective claims, and (ii) each holder will continue to receive cash payments in
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1 the ordinary course from Lomo One totaling at least the value of such holder's
2 interest in the estate, if any, and if Lomo One fails to make such payments the
3 holders may pursue any and all available rights under applicable state law.

4 40. All non-exempt property of Glen Lineberry will be sold in the ordinary
5 course and the proceeds will be applied to Plan payments, as more fully set forth
6 in the Plan, and Heather Lineberry will not retain any non-exempt property under
7 the Plan. As such, the Plan complies in all respects with the so-called "Absolute
8 Priority Rule" embodied in Bankruptcy Code 1129(b)(2).

9 41. No other requirements in Bankruptcy Code § 1129 apply to this case.

10 42. The designation of classes made in the plan is based upon the
11 substantial similarity of the claims contained therein. The classification of claims
12 in the Plan is reasonable, was done in good faith, and was not used for the
13 purpose of affecting the vote of any class, or for any other improper purpose.
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15 43. The solicitation of ballots accepting the Plan was carried out in good
16 faith and in compliance with the provisions of the Bankruptcy Court.

17 44. The Ballot Report filed by the Debtors, in accordance with Local Rule
18 3018-1, properly classified and counted the acceptances and rejections of the
19 Plan.

20 Based on the foregoing and the record,

21 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 22
- 23 1. The Plan is hereby confirmed in its entirety. Each of the terms and
24 conditions of the Plan are an integral part of the Plan and are
25 incorporated by reference in this Confirmation Order.
 - 26 2. All applications for approval and payment of Administrative Claims

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shall be filed and served on the Reorganized Debtors as set forth in Section 2.3 of the Plan. Any such Claim that is not served and filed within this time period shall be discharged and forever barred. Objections to any application for allowance of an Administrative Claim must be filed within 21 days after the filing thereof.

3. All Claims arising from the rejection of any executory contract or unexpired lease after the Claim Bar Date must be filed with the Court no later than 30 days after the Effective Date of the Plan. Any such Claim not filed within that time is forever barred.
4. The Reorganized Debtors and all other necessary parties are authorized and empowered, without further Court order, to execute and deliver for recording a deed conveying the Reorganized Debtors' residence to BGI, and upon receipt of such deed from the Reorganized Debtors, BGI shall receive title to the Reorganized Debtors' residence free and clear of all liens and the Homestead exemption (except the BGI Non-Dischargeable Judgment lien). The Reorganized Debtors and all other necessary parties are further authorized and empowered, without further Court order, to deliver this Order for recording as needed in order to confirm the foregoing transfer.
5. The Reorganized Debtors and all other necessary parties are authorized and empowered, without further Court order, to execute and deliver any document, and to perform any act, that is necessary, desirable or required for the consummation of the Plan.
6. This Court shall retain jurisdiction in accordance with the terms of

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Article VIII of the Plan, including the jurisdiction to adjudicate any unresolved issues described and reserved in this Order. Such retention of jurisdiction shall not, and does not, affect the finality of this Order. The Court expressly determines that there is no just reason for delay and expressly directs the entry of this Order as a final order.

7. To the extent that this Order is inconsistent with the terms of the Plan, this Order shall control.
8. All objections to confirmation of the Plan which have not been withdrawn are hereby overruled.
9. The Debtors are authorized and empowered to do all acts and execute all documents necessary to implement the Plan.
10. Upon Heather Lineberry's performance of the obligation to make payments and transfer property under Class 6 of the Plan, Heather Lineberry shall be entitled to a discharge of all obligations under the Plan, and any and all other obligations and liabilities. In furtherance of the foregoing, BGI and Bentley Calverley agree not to pursue any further action against Heather Lineberry following the Effective Date, subject to delivery of all required items as provided herein. Notwithstanding the foregoing, BGI and Bentley Calverley may pursue action on rights provided under the Plan.
11. The Administrative Claims of DMYL are resolved pursuant to the terms of the Settlement Motion as approved by Order of this Court (DE 197) and DMYL will not seek additional fees from the Chapter 11 estate. Any and all claims against DMYL, and in particular, any held

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by BGI, Bentley Calverley, and any other entity or individual associated with them, including their heirs, successors and assigns, are discharged and released. DMYL shall deliver the sum of \$75,000 to BGI within thirty (30) days after the Effective Date.

12. Promptly upon its entry, the Debtors shall serve notice of the entry of this Order upon all creditors, equity holders and parties in interest.

DATED, SIGNED AND ORDERED ABOVE.