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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
SILICON GRAPHICS, INC., *et al.*,	:	**Case No. 09-11701 (MG)**
Debtors.	:	**(Jointly Administered)**

OBJECTION OF THE DEBTORS TO EMERGENCY MOTION OF ELIOT I. BERNSTEIN TO ESTABLISH PROOF OF CLAIM; VACATE OR MODIFY ORDER OF SALE; INJUNCTION; PRIORITY OF CLAIMS; AND OTHER RELIEF

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Silicon Graphics, Inc. ("Silicon Graphics"), on behalf of itself and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby files this objection (the "Objection") to the Emergency Motion of Eliot I. Bernstein to Establish Proof of Claim; Vacate or Modify Order of Sale; Injunction; Priority of Claims; and Other Relief, filed on April 17, 2009 [Docket No. 102] (the "Motion"). In support of their Objection, the Debtors submit the Declaration of Elena Ramirez in Support of the Objection (the "Ramirez Declaration"), and respectfully represent and set forth as follows:

PRELIMINARY STATEMENT

1. In December 2007, Eliot I. Bernstein ("Bernstein") filed a lawsuit (the "Bernstein Lawsuit") against approximately 42 named defendants, which he later amended to add approximately 150 additional defendants, alleging a massive conspiracy to violate his constitutional and intellectual property rights relating to his so-called "holy grail" technologies. In his amended complaint, Bernstein names Silicon Graphics as a defendant in his "Trillion Dollar federal lawsuit" for its purported involvement, with other technology companies, as an equity holder in a company called Real 3D, Inc. To the best of its knowledge, Silicon Graphics was never served with any pleadings from the Bernstein Lawsuit and did not appear in the litigation proceedings for the Bernstein Lawsuit.

2. By the Motion, Bernstein seeks a variety of relief from the Court related to his purported claim against Silicon Graphics (the "Bernstein Claim"), much of which is indecipherable. The relevant portion of Bernstein's Motion is his request to declare his claim to be secured by all of the Debtors' assets, establish the priority of his claim against the Debtors, and enjoin the sale (the "Sale") of substantially of the Debtors' assets to Rackable Systems, Inc. ("Rackable") pursuant to the Sale Order (as defined below). As discussed below, Bernstein has not demonstrated any basis upon which his Motion can be granted.

3. First, Bernstein has failed to make the showing required for the issuance of a preliminary injunction: he has not demonstrated irreparable injury and either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits and a balance of hardships decidedly in his favor. Bernstein offers no evidence in his Motion to support a ruling on any of these factors in his favor.

(a) Bernstein has failed to show any irreparable injury resulting to him from the Sale. This Court has entered the Sale Order, approving the Sale, which

order includes a finding that the Sale is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest. Like other holders of claims against the Debtors, Bernstein (to the extent that he has a claim) will only benefit from the Sale.

(b) Bernstein has failed to show a likelihood of success on the merits, or even sufficiently serious questions going to the merits. The Debtors believe that the allegations set forth in the Bernstein Lawsuit against Silicon Graphics fail to support a finding that Silicon Graphics has any liability to Bernstein under state or federal law and, consequently, the Bernstein Claim against Silicon Graphics has no validity or value. Indeed, the United States District Court for the Southern District of New York (the "District Court") has entered an order dismissing all of Bernstein's claims.

(c) The balance of hardships tips decidedly in the Debtors' favor. Undoubtedly, the harm to the Debtors' estates and creditors greatly outweigh any harm to Bernstein if the Sale were to be enjoined. As discussed on the record before this Court, the Sale provides significant benefits to the Debtors' estates and creditors and allows for the possibility of a plan of reorganization.

4. Second, to the extent that Bernstein asserts a priority or secured claim, the Debtors submit that such claim should be addressed by the filing of a proof of claim and through the normal course of the claims administration process pursuant to the Bar Date Motion (as defined below). Under section 362 of the Bankruptcy Code, the Bernstein Lawsuit against Silicon Graphics, now on appeal, is subject to the automatic stay. Bernstein should not be permitted to use the Debtors' chapter 11 cases as a forum to relitigate claims that have been dismissed and are now stayed on appeal.

5. Bernstein, a litigant asserting a claim of questionable validity, at best, should not be granted relief that would destroy enormous value to the detriment of the Debtors' estates and creditors. Accordingly, the Debtors respectfully request that the Court deny the Motion.

BACKGROUND

6. On April 1, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. Sections 1107(a) and 1108 of the Bankruptcy Code authorize the Debtors to continue to operate their businesses and manage their properties as debtors in possession. No trustee or examiner has been appointed in the Debtors' chapter 11 cases.

Events Leading to the Debtors' Chapter 11 Cases

7. Prior to the filing of these chapter 11 cases, the Debtors faced a number of challenges in their transition to their new business model, which, taken together, have negatively impacted the company's overall financial performance. The challenges relate partly to legacy problems continuing from before the 2006 Reorganization, such as a burdensome cost structure, hardware commoditization, increased competition, and delays in the introduction of new technology. In addition, the Debtors based their projections on their ability to grow into their cost structure, increase sales and market capture for their new cluster computing products, software, and service offerings, and implement a new solution-based selling approach. While the Debtors realized some success, they fell short of this plan to penetrate new markets or capture a greater share of existing markets. Combined, these factors have caused decreased revenues, net losses, and a decline in the Debtors' available cash position.

8. Prior to the Petition Date, the Debtors and their advisors explored multiple restructuring alternatives, including the sale of all or portions of the Debtors' operations, new debt or equity capital infusions, reorganizations of the Debtors' operations, and a comprehensive restructuring of the Debtors' balance sheet. As part of this process, in June 2008, the Debtors retained Houlihan Lokey Howard & Zukin ("Houlihan") as their financial advisor, and through Houlihan, approached approximately 150 potentially interested parties, including strategic and

financial groups in the United States and around the world, to investigate opportunities for a sale of the Debtors' businesses as a going concern. In addition, the Debtors engaged in a continuing dialogue with their prepetition secured lenders (the "Secured Lenders") and examined numerous alternatives to address their short-term and long-term needs. Ultimately, in early March 2009, the Debtors' M&A process produced offers for all or a portion of their businesses from 3 potential buyers, including Rackable.

9. After further discussions, Rackable and the Debtors reached agreement on the terms of an asset purchase agreement under which Rackable would serve as a stalking horse bidder for the Sale of substantially all of the Debtors' assets through an auction in chapter 11 pursuant to section 363 of the Bankruptcy Code.

Sale of Substantially All of the Debtors' Assets

10. On April 3, 2009, this Court entered an Order Approving Bid Procedures and Bid Protections and the Form and Manner of Notices Thereof [Docket Nos. 55 and 65], which approved bidding procedures for the Sale. Rackable served as the stalking horse bidder for the Sale.

11. On April 30, 2009, this Court entered an Order (A) Approving Asset Purchase Agreement Between the Debtors and the Successful Bidder; (B) Authorizing the Sale of All or Substantially All of the Assets of the Debtors Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (C) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith [Docket No. 292] (the "Sale Order"), which approved the Sale of substantially all of the Debtors' assets to Rackable. Under the Asset Purchase Agreement, dated as of March 31, 2009, by and among the Debtors and Rackable (as amended, the "Asset Purchase Agreement"), as amended by the Amendment to the Asset Purchase Agreement, dated as of April 30, 2009 (the "Amendment"), Rackable will, among

other things, pay a purchase price of $42.5 million and assume certain liabilities of the Debtors, including administrative expense claims under section 503(b)(9) of the Bankruptcy Code.

Bar Date Motion

12. On May 4, 2009, the Debtors filed an Application for an Order (A) Establishing Deadlines for Filing Proofs of Claim, (B) Approving the Form and Manner of Notice Thereof, and (C) Authorizing Payment of Related Publication Expenses [Docket No. 312] (the "Bar Date Motion"), requesting entry of an order establishing bar dates for filing proofs of claim in these chapter 11 cases.

Bernstein Lawsuit

13. On December 12, 2007, Bernstein and P. Stephen Lamont, both pro se litigants (the "Litigants"), filed a civil complaint (the "Original Complaint"), attached as Exhibit A hereto,[1] in the District Court against approximately 42 named defendants, plus John Does, alleging a massive conspiracy of fraud, deception, and misrepresentation to violate the Litigants' constitutional and intellectual property rights relating to their so-called "holy grail" technologies. None of the Debtors were named in the Original Complaint.

14. On May 12, 2008, the Litigants filed an amended complaint (the "Amended Complaint"), attached as Exhibit B hereto,[2] against approximately 190 named defendants, plus John and Jane Does. The Amended Complaint named Silicon Graphics as a defendant, but none of the other Debtors. As set forth in the Ramirez Declaration, to the best of

[1] Silicon Graphics was unable to locate the Original Complaint at the District Court and was not served with the Original Complaint. The copy of the Original Complaint attached as Exhibit A was obtained by counsel to the Debtors from Bernstein's website at www.ivewit.tv and is being provided solely to offer background information to the Court.

[2] Silicon Graphics was unable to locate the Amended Complaint at the District Court and was not served with the Amended Complaint. The copy of the Amended Complaint attached as Exhibit B was obtained by counsel from the Debtors from Bernstein's website at www.ivewit.tv and is being provided solely to offer background information to the Court.

its knowledge, Silicon Graphics was never served with the Amended Complaint.[3] In the Amended Complaint, the Litigants allege that Silicon Graphics was an equity holder, along with Intel Corporation ("Intel") and Lockheed Martin, in a company known as Real 3D, Inc. ("Real"). (Amended Compl. ¶ 142). The Litigants further allege that, after Real was wholly acquired by Intel, Real began to use the technologies invented by the Litigants in violation of their intellectual property rights. (Amended Compl. ¶ 278).

15. On August, 8, 2008, the District Court entered an opinion and order (the "District Court Order"), attached as Exhibit C hereto, dismissing all claims against all defendants for failure to state a "legally cognizable federal claim against a single defendant" despite over a thousand paragraphs of allegations and declining to exercise supplemental jurisdiction over the remaining state law claims. (District Court Order ¶ F).

16. On September 4 and 5, 2008, the Litigants appealed the District Court Order to the United States Court of Appeals for the Second Circuit (the "Second Circuit"), where the appeal is pending. Pursuant to section 362 of the Bankruptcy Code, the portion of the Bernstein Lawsuit against Silicon Graphics is subject to the automatic stay.

ARGUMENT

A. This Court Should Not Enjoin the Sale.

17. While the exact nature of the injunction that Bernstein is requesting is not clear from the Motion, the Debtors assume that Bernstein wishes to enjoin the Sale so that he can establish the priority and secured status of his claim. A preliminary injunction is an "extraordinary remedy that should not be granted as a routine matter." JSG Trading Corp. v.

[3] As set forth in the Ramirez Declaration, to the best of its knowledge, the only documents that Silicon Graphics has received from Bernstein are the Motion, copies of letters to the General Counsel of Intel, the President of the United States, the Attorney General of the United States, and White House Counsel (the "Bernstein Letters"); and a copy of Bernstein's complaint to the Securities and Exchange Commission (the "Bernstein Complaint"). The Bernstein Letters and the Bernstein Complaint are attached as exhibits to the Ramirez Affidavit.

Tray-Wrap, Inc., 917 F.2d 75, 80 (2d. Cir. 1990). To obtain a preliminary injunction under Rule 65(c) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable by Bankruptcy Rule 7065, "the moving party must show, first, irreparable injury, and, second, either (a) likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships decidedly tipped in the movant's favor." Northwest Airlines Corp. v. Assoc'n of Flight Attendants-CWA (In re Northwest Airlines Corp.), 483 F.3d 160, 165 (2d Cir. 2007) (citing Green Party of New York State v. N.Y. State Bd. of Elections, 389 F.3d 411, 418 (2d Cir. 2004)). Bernstein has failed to make the showing required for the issuance of a preliminary injunction and offers no evidence to support a ruling on any of these factors in his favor. Accordingly, the Court should deny the Motion.

(1) Bernstein has failed to show any irreparable injury to him that would result from the Sale.

18. First, Bernstein has failed to show what irreparable injury, if any, would result to him from the Sale. This Court has entered the Sale Order approving the Sale of substantially all of the Debtors' assets to Rackable. In the Sale Order, the Court made findings that, among other things: (i) the Sale is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest; (ii) Rackable is a good faith purchaser; (iii) the Debtors demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Sale; and (iv) time is of the essence to close the Sale to preserve the value of the purchased assets and the viability of the business. (Sale Order ¶ M, Q, R, BB). Like other holders of claims against the Debtors, Bernstein (to the extent that he has a claim) will only benefit from the Sale, which extracts the most value from the Debtors' assets for the benefit of their estates and creditors.

19. In contrast, the Debtors would suffer serious irreparable injury if the Sale were enjoined or even temporarily delayed. Indeed, while the impact on Bernstein himself would be minimal, at best, a preliminary injunction against the Sale would result in devastating losses to the Debtors' estates and their value to the creditors. The Debtors, the Secured Lenders, and Rackable have expended significant amounts of time, resources, and expenses on the Sale, which is anticipated to close on May 8, 2009. As this Court has found, it is imperative that the Sale close quickly in order to preserve the value of the purchased assets to Rackable and the viability of the business.

20. The Sale is critical to the survival of the Debtors' operations as a viable enterprise that produces world-class computing solutions and will preserve jobs for those employees of the Debtors who will be retained by Rackable. Accordingly, Bernstein should not be permitted to use his questionable allegations to destroy value to the estates and other creditors.

(2) Bernstein has failed to show either (i) a likelihood of success on the merits or (ii) sufficiently serious questions going to the merits and a balance of hardships decidedly tipped in the movant's favor.

21. Bernstein has also failed to show a likelihood of success on the merits, or even sufficiently serious questions going to the merits. Given the allegations in the Bernstein Lawsuit, the Debtors believe that the Bernstein Claim against Silicon Graphics has no validity or value. As set forth in the Ramirez Declaration, to the best of its knowledge, Silicon Graphics was never served with the Amended Complaint. In addition, on the face of the Amended Complaint, Bernstein alleges only that Silicon Graphics participated as a past equity holder in Real and that after Silicon Graphics transferred its equity interest to Intel, Real engaged in illegal activity against Bernstein. Even assuming these allegations to be true (solely for the sake of argument), Bernstein fails to provide any facts or assert any claims that support a finding that

Silicon Graphics has any liability to Bernstein under state or federal law. As described above, the District Court has entered an order dismissing all of Bernstein's claims against all defendants for failure to state a federal cause of action and declining to exercise supplemental jurisdiction over the remaining state law claims.

22. Morever, even assuming arguendo that Bernstein could demonstrate that he has a secured claim, he cannot succeed on the merits. Any alleged lien of Bernstein would be junior to the first priority liens of the Secured Lenders, and the Secured Lenders remain significantly undersecured ($42.5 million in cash sale proceeds on account of their $162 million secured claim). Thus, under section 363(f)(3) of the Bankruptcy Code, the Debtors would be entitled to sell their assets free and clear of Bernstein's junior secured claim even if he were to object to such sale. Section 363(f)(3) provides that "[t]he trustee may sell property . . . free and clear of any interest in such property of an entity other than the estate, only if . . .such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property." 11 U.S.C. § 363(f)(3). Case law in this district recognizes that the value of Bernstein's lien on the assets sold to Rackable in the Sale is zero because the Secured Lenders are undersecured. In re Beker Industries, 63 B.R. 474, 475 (Bankr. S.D.N.Y. 1986) (concluding that the term "value" means the "actual value as determined by the Court, as distinguished from the amount of the lien"); see also In re Oneida Lake Dev., Inc., 114 B.R. 352, 357 (Bankr. N.D.N.Y. 1990) (agreeing that "the Beker analysis comports with Congressional intent in utilizing the term 'value' versus the term amount in the statute"). Consequently, the Sale would be made free and clear of Bernstein's alleged secured claim.

23. Further, the balance of hardships tips decidedly in the Debtors' favor. Undoubtedly, the harm to the Debtors' estates and creditors greatly outweigh any harm, if any, to

Bernstein if the Sale were to be enjoined. As discussed on the record before this Court, the Sale provides significant benefits to the Debtors' estates and creditors and allows for the possibility of a plan of reorganization. Given the significant benefits provided by the Sale, Bernstein, a litigant asserting a claim of questionable validity, at best, should not be granted relief that would destroy enormous value to the detriment of the Debtors' estates and creditors.

24. Bernstein has failed to show any unusual or exceptional circumstances that would warrant the "extraordinary remedy" of a preliminary injunction. To the extent that Bernstein believes he has a claim against Silicon Graphics, he can assert it by filing a proof of claim pursuant to the Bar Date Motion, as described below.

(3) If the Court were to issue a preliminary injunction, Bernstein should be required to post a bond substantially in excess of $50 million.

25. Under Federal Rule 65(c), a court can issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The terms of the Sale provide that Rackable will pay $42.5 million in cash, plus assume certain liabilities of the Debtors, including administrative expense claims under section 503(b)(9) of the Bankruptcy Code. If the Court were to issue a preliminary injunction, the Debtors respectfully request that Bernstein be required to post a bond in an amount substantially in excess of $50 million for the costs and damages that the Debtors would suffer from such an injunction.

B. The Bernstein Claim Should Be Addressed By Filing a Proof of Claim and Through the Claims Administration Process.

26. Simply put, the Bernstein Claim is a litigation-based claim. As such, the claim is no more than an unsecured, contingent, unliquidated prepetition claim against Silicon Graphics. Under section 362 of the Bankruptcy Code, the Bernstein Lawsuit against Silicon

Graphics is subject to the automatic stay. Further, the Debtors have filed the Bar Date Motion to establish procedures for the filing of proofs of claim for all prepetition claims against the Debtors and expect to attend to such claims through the normal claims administration process and the plan of reorganization. Accordingly, to the extent that Bernstein believes he has a priority or secured claim, the Debtors submit that such claim should be addressed, like all other prepetition claims, by the filing of a proof of claim and through the normal course of the claims administration process pursuant to the Bar Date Motion.

27. For all the foregoing reasons, the Court should deny the Motion.

WHEREFORE the Debtors respectfully request that the Court deny the Motion in its entirety, with prejudice, and grant the Debtors such other and further relief as may be just.

Dated: New York, New York
May 5, 2009

Respectfully submitted,

ROPES & GRAY LLP

/s/ Mark R. Somerstein

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