

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

IN RE:

CUE & LOPEZ CONSTRUCTION, INC.

Debtor


CASE NO. 13-08297(BKT)

CHAPTER 11

**JOINT STIPULATION FOR SURRENDER OF VESSEL AND RELIEF FROM STAY
TO THE HONORABLE COURT:**

COME NOW Cue & López Construction, Inc. ("Debtor") and secured creditor, Oriental Bank ("Oriental")(collectively, the "Parties"), each by their respective undersigned counsel, and respectfully submit this stipulation (the "Stipulation") to settle the matter related to Debtor's vessel named CAMIGABI with Oriental's ship mortgage and promissory note encumbering the same, as follows:

JURISDICTION

 The Bankruptcy Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant 28 U.S.C. § 157 (b)(2).

FACTUAL AND PROCEDURAL BACKGROUND

1. On October 4, 2013, Debtor filed its voluntary petition for relief pursuant to the provisions of 11 U.S.C. Chapter 11 and as of that date has been operating its business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. On November 1, 2013, Oriental filed its secured proof of claim number

13 ("POC No. 13") for \$170,357.32 relative a "First Preferred Ship Mortgage and Security Agreement" and "Promissory Note" for the acquisition of a vessel named CAMIGABI with Hull Identification No. WELHHA80K506 and Official No. 1184840 (the "Vessel" and/or "Collateral"). (Claim No. 13). Nevertheless, on its Answer to Objection to Claim filed at Docket 276, Oriental asserted that its claim should be allowed up to the amount of \$146,631.14.

3. As of this date, Debtor is in possession of the Vessel that secures Oriental's POC No. 13.

4. Consequently, after ample discussions and negotiations by and between the Parties to settle this contested matter, the Parties have reached an agreement subject to and in reliance upon the terms, conditions and limitations set forth herein, as follows:

STIPULATION

- a. The Debtor agree and consents to the stipulation contemplated herein and acknowledge, reaffirm and ratify all security interests granted and liens constituted pursuant to the promissory note and ship mortgage regarding the vessel.
- b. Upon the entry of the order approving this Stipulation, Debtor agrees and consents to the lifting of the automatic stay provisions of Section 362(a) of the Bankruptcy Code and to surrender the Vessel in favor of Oriental Bank;
- c. Debtor shall surrender, transfer and deliver the Vessel and/or the title thereof and/or any interest therein, free and clear of

Cue & López Construction, Inc.
Stipulation


Case No. 13-08297(BKT)
Page-3-

liens and encumbrances except of Oriental's lien, to Oriental Bank as of the entry of the order approving this Stipulation;

- d. Debtor, hereby agree to the signing of any private or public document; including but not limited to any Bill of Sale and/or Assignment of Rights necessary to complete the transfer of title and property to Oriental Bank. Likewise, Debtor hereby agrees to the entry of order by any Court with competent jurisdiction in order to allow Oriental Bank to complete said transfer of title and property.
- e. The parties hereby agree that the Vessel has a "Total Actual Market Value" of \$67,000.00 as per a Survey Condition and Valuation Report dated March 3, 2014.
- f. The parties agree that upon surrender of the vessel Oriental will have an estimated deficiency claim in the amount of \$79,631.14, which will be paid in part, by the Debtor, on a pro-rata basis as a general unsecured claim under Class 5 of the Chapter 11 Plan of Reorganization.
- g. The parties hereby acknowledges, any payment received by virtue of: (a) the transfer of the vessel to Oriental Bank under this Stipulation; and (2) a pro-rata distributions to general unsecured creditors under the terms of a the Chapter 11 Plan of Reorganization, constitute only a partial payment of the debt


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owed to Oriental Bank for the acquisition of the above described vessel.


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- h. Oriental will be entitled to recover any outstanding balance not paid, by (a) the transfer of the vessel to Oriental Bank under this Stipulation; and (2) the pro-rata distributions to general unsecured creditors under the terms of a the Chapter 11 Plan of Reorganization of debt owed for the acquisition of the above described vessel; from any co-debtor, guarantor, and/or third party jointly liable for this debt.
 - i. The parties agree that this Stipulation will not release any co-debtor, guarantor, and/or third parties jointly liable on the loan for the acquisition of the vessel.
 - j. The execution of the Stipulation does not constitute a novation of the obligation owed.
 - k. **Upon the filing of this Stipulation with the Court, Debtor hereby agrees to withdraw its "Objection to Oriental's Claim no. 13 filed at Docket 206. Furthermore, Debtor agrees that Oriental's Claim no. 13 be allowed up to the total amount of \$146,631.14.**
 - l. The Stipulation is agreed between the Parties without prejudice to the right of Oriental to request additional relief it deems necessary in order to obtain the transfer of Debtor's right over the Vessel;

Cue & López Construction, Inc.
Stipulation

Case No. 13-08297(BKT)
Page-5-

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- m. The Stipulation shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Parties, and the order approving the same will have *res judicata* effect upon any matter related to the Stipulation;
- n. The terms of the Stipulation shall be incorporated into, and are adopted by reference as if literally transcribed in Debtors' Disclosure Statement, Debtors' Plan of Reorganization and/or to any of its amendments and supplements, inasmuch it constitutes the agreement between the parties.
- o. The terms of this Stipulation will be binding and the order approving the same will have *res judicata* effect upon any conversion of these proceedings, prior dismissal, and upon any future petition for bankruptcy relief filed by the Debtors.
- p. This Stipulation may only be amended or otherwise modified by a signed writing executed by all of the appearing parties.
- q. The Parties, through their respective attorneys, acknowledge that they have read and understood the Stipulation, and hereby agree to abide by its terms;
- r. The Parties respectfully request that the Court approve this Stipulation, and order the transfer of the title of the Vessel to Oriental Bank.

STIPULATED AND AGREED

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- (A) This Stipulation is subject to the approval of this Court.
- (B) Notwithstanding anything to the contrary contained in this Stipulation, if the same is not approved by the Court, its terms and conditions shall become null and void, the Parties shall be returned to their respective positions as they existed prior to the Stipulation, and any of the Parties shall have the right to seek any relief it deems necessary or appropriate before this Court
- (C) This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of the Stipulation.

NOTICE TO PARTIES IN INTEREST

Within twenty one (21) days after service as certified below, or such other time as the court may order hereafter, any party having any objection to the preceding Stipulation shall serve and file an objection or other appropriate response thereto with the Clerk's Office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the Stipulation will be deemed unopposed and may be deemed automatically granted, unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interests of justice require otherwise.

WHEREFORE, Oriental and Debtor stipulate to the above, and jointly

Cue & López Construction, Inc.
Stipulation

Case No. 13-08297(BKT)
Page-7-

request the Court's approval thereof.

WE HEREBY CERTIFY, that on even date, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case, including, but not limited to, the U.S. Trustee. Copy of this notice will be sent by postage prepaid to those parties listed on the Debtor's' List of Creditors Holding the 20 Largest Unsecured Claims, and parties not electronically notified.

San Juan, Puerto Rico, this 4th day of August, 2014.

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