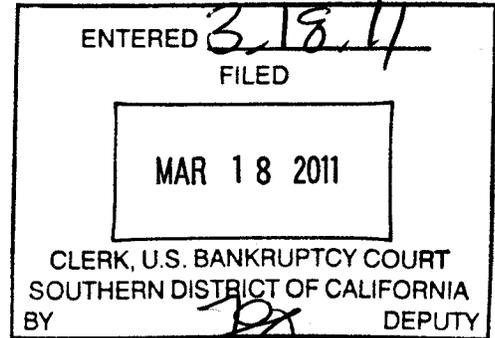


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re ) Case No. 10-02677-PB11  
)  
BRIARWOOD CAPITAL, LLC, ) ORDER ON MOTION FOR  
) BORROWING  
Debtor. )  
\_\_\_\_\_ )

The Chapter 11 trustee seeks approval of an agreement she has made to borrow up to \$500,000 from American Lawyers Funding. The loan would be unsecured and nonrecourse to the estate, but would be an administrative claim under 11 U.S.C. § 364(b). The funds are only to be used to fund the administrative expenses of the estate, including costs and fees incurred in litigating the so-called "Bridges Litigation," as further defined in the Loan Agreement. Draws by the estate against the loan will accrue interest at 25% per annum, but will be repayable only to the extent the estate is able to make distributions to administrative expense creditors.

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1           At oral argument on the motion, the Court inquired about why  
2 ALF would offer to fund such a loan and, correlatively, about the  
3 estate's due diligence in determining to pursue an appeal of the  
4 Superior Court's decision in the "Bridges Litigation." The  
5 estate's largest creditor, Lennar, prevailed at the trial court  
6 level and quite reasonably would like an end to the litigation,  
7 if the ending remains favorable.

8           After review of the pleadings and consideration of the oral  
9 argument, the Court is satisfied that the estate has exercised  
10 due diligence in conducting an independent assessment of the  
11 merits of an appeal of the Bridges decision. In particular, the  
12 trustee has involved an independent appellate law firm in that  
13 assessment. Lennar recognizes that the estate has the right of  
14 appeal from the Superior Court's decision, and that the estate's  
15 only assets are its litigation claims. Of course, Lennar sees  
16 the prospects of success on appeal quite differently than the  
17 trustee. Through the express terms of the Loan Agreement the  
18 trustee has preserved the estate's autonomy in all matters  
19 concerning any appeal of the Bridges decision, so to the  
20 theoretical extent that ALF had some other objective in mind  
21 which induced it to fund the loan, ALF will not have any control  
22 over the estate's decisions regarding the litigation.

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Conclusion

For the foregoing reasons, as well as those set out in the trustee's moving and reply papers, the Court finds and concludes that the trustee has met her burden of showing that the borrowing of funds from ALF on an unsecured, nonrecourse administrative expense priority is in the best interests of this bankruptcy estate. Accordingly, the trustee's motion shall be, and hereby is granted.

IT IS SO ORDERED.

DATED: MAR 18 2011

  
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PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court