

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
ASHINC CORPORATION, <i>et al.</i> ,	:	Case No. 12-11564 (CSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
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CATHERINE E. YOUNGMAN,	:	
LITIGATION TRUSTEE FOR ASHINC	:	
CORPORATION, ET AL., AS	:	
SUCCESSOR TO THE OFFICIAL	:	
COMMITTEE OF UNSECURED	:	
CREDITORS OF ASHINC	:	
CORPORATION, AND ITS	:	
AFFILIATED DEBTORS	:	
	:	
Plaintiff,	:	
	:	Adv. Proc. No.: 13-50530 (CSS)
BDCM OPPORTUNITY FUND II, LP	:	
BLACK DIAMOND CLO 2005-1 LTD.,	:	
SPECTRUM INVESTMENT	:	
PARTNERS, L.P.,	:	
	:	
	:	
Intervenors,	:	
v.	:	
	:	
YUCAIPA AMERICAN ALLIANCE	:	Related Docket Nos. 696 and 705
FUND I, L.P., YUCAIPA AMERICAN	:	
ALLIANCE (PARALLEL) FUND I, L.P.,	:	
	:	
	:	
Defendants.	:	
	:	
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CATHERINE E. YOUNGMAN,	:	
LITIGATION TRUSTEE FOR ASHINC	:	
CORPORATION, ET AL., TO BDCM	:	
OPPORTUNITY FUND II, LP.,	:	
BLACK DIAMOND CLO 2005-1	:	
LTD., SPECTRUM INVESTMENT	:	
PARTNERS L.P., BLACK	:	

DIAMOND COMMERCIAL	:	
FINANCE, L.L.C., as co-administrative	:	
agent, and SPECTRUM	:	Adv. Pro. No. 14-50971 (CSS)
COMMERCIAL FINANCE LLC,	:	
as co-administrative agent	:	
	:	
Plaintiff,	:	
	:	
v.	:	Related docket Nos. 453 and 462
	:	
YUCAIPA AMERICAN ALLIANCE	:	
FUND I, L.P., YUCAIPA AMERICAN	:	
ALLIANCE (PARALLEL) FUND I, L.P.,	:	
	:	
Defendants.	:	
	:	

ORDER

Upon consideration of the Plaintiff’s (“Trustee”) Motion for Summary Judgment [Adv. Pro. 13-50530 [Docket No. 705](#) (“Estate Claims”); Adv. Pro. 14-50971 [Docket No. 462](#) (“Lender Claims”)] (“Trustee’s Motion”) and Defendant’s (“Yucaipa”) Motion for Summary Judgment [Adv. Pro. 13-50530 [Docket No. 696](#); Adv. Pro. 14-50971 [Docket No. 453](#)] (“Yucaipa’s Motion” together with Trustee’s Motion the “Motions”) each filed on May 1, 2020; the Court having reviewed the Motions, the responses thereto and the declarations submitted by the parties; and the Court finding that (1) the Court has jurisdiction over these matters, pursuant to [28 U.S.C. § 1334](#); (2) this is a core proceeding, pursuant to [28 U.S.C. § 157\(b\)](#); (3) this Court has the judicial power to enter a final order; and (4) notice of the

Motion was adequate under the circumstances; and the Court having issued an Opinion on the date hereof (the "Opinion);

IT IS HEREBY ORDERED THAT Trustee's Motion is GRANTED, in part, and DENIED, in part, as follows:

1. Trustee's Motion on Estate Claims 1 (Equitable Subordination) and 2 (Equitable Subordination) and Lender Claim 1 (Equitable Subordination) is granted, in part, and denied, in part.
2. Trustee's Motion on Estate Claim 5 (Breach of Contract) and Lender Claim 2 (Breach of Contract) is granted.
3. Trustee's Motion on Estate Claims 10 (Constructive Fraudulent Transfers), 11 (Constructive Fraudulent Transfers), and 13 (Disallowance of Claims) are granted.
4. Trustee's Motion on Lender Claim 4 (Tortious Interference) is denied.

IT IS FURTHER ORDERED THAT Yucaipa's Motion is GRANTED, in part, and DENIED, in part, as follows:

1. Yucaipa's Motion on Estate Claim 3 (Recharacterization) is granted.
2. Yucaipa's Motion on Estate Claim 4 (Specific Performance) is granted.
3. Yucaipa's Motion on Estate Claim 5 (Breach of Contract) and Lender Claim 2 (Breach of Contract) is denied.
4. Yucaipa's Motion on Lender Claim 3 (Breach of Duty of Good Faith and Fair Dealing) is denied.

5. Yucaipa's Motion on Estate Claim 6 (Specific Performance) is granted.
6. Yucaipa's Motion on Estate Claim 7 (Breach of Fiduciary Duty) is denied.
7. Yucaipa's Motion on Estate Claims 10 (Constructive Fraudulent Transfers) and 11 (Constructive Fraudulent Transfers) is denied.

IT IS FURTHER ORDERED that the parties shall submit a proposed form of Judgment consistent with the Opinion and Order within 14 days of the date hereof.



Christopher S. Sontchi
Chief United States Bankruptcy Judge

Date: May 4, 2021