

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:

SOUTHEAST WAFFLES, LLC
dba WAFFLE HOUSE,
DEBTOR.

Case No. 3:08-bk-07552
Chapter 11 Case
Judge Lundin

**UNITED STATES TRUSTEE'S OBJECTION TO SUBMITTED AGREED
ORDER RESOLVING MOTION TO APPOINT A TRUSTEE AND MOTION TO
APPOINT AN EXAMINER FILED ON BEHALF OF CREDITORS FIRSTBANK
AND SUNTRUST AND REQUEST FOR HEARING THEREON**

The United States Trustee for the Middle District of Tennessee, Region 8, (“UST”), in furtherance of his duties under 28 U.S.C. § 586, hereby objects to the entry of the Agreed Order Resolving Motion to Appoint A Trustee and Motion to Appoint An Examiner Filed on Behalf of Creditors FirstBank and SunTrust Bank (Docket Entry No 139). In support of this Objection, the UST states as follows:

1. On August 25, 2008, the Debtor filed a voluntary petition for relief under chapter 11, Title 11, United States Code (“Bankruptcy Code”).
2. On September 19, 2008, an Official Committee of Unsecured Creditors was appointed in this case.
3. Upon information and belief, the Debtor continues to operate its business as a debtor-in-possession in accordance with 11 U.S.C. § 1107(a) and § 1108.
4. A motion for appointment of a trustee was filed by FirstBank and a motion for appointment of an examiner was filed By SunTrust Bank. Both motions are scheduled for hearing on October 1, 2008.

5. The submitted Agreed Order entered into between FirstBank, SunTrust Bank and the Debtor states that the “agreement involves the appointment of a Chief Restructuring Officer (“CRO”) for the Debtor.” *See* Agreed Order, paragraph two, page one. There is no mechanism under title 11 of the U.S. Code (“Bankruptcy Code”) for “appointment” of a CRO.
6. In essence, the submitted Agreed Order is requesting that the CRO be the “responsible person” for the debtor-in-possession without any of the protections afforded by the Bankruptcy Code. The agreed order instills the CRO, Mr. Gary Murphy, with many, if not all, of the rights, powers and duties of a chapter 11 trustee, and specifically provides that he is subject to removal only by Court order. *See* Agreed Order, paragraphs (a), (c), and (i). Nowhere in the Bankruptcy Code does this CRO-type hybrid appear as an alternative to a debtor-in-possession or a chapter 11 trustee. 11 U.S.C. § 1104.
7. If Mr. Murphy can be employed as a CRO by the debtor-in-possession, then he should be allowed to be hired by the debtor-in-possession as such under applicable Tennessee state law addressing the management structure, and a comfort order by the Bankruptcy Court is not necessary.
8. The submitted Agreed Order does not state Mr. Murphy’s salary or proposed compensation, whether he will be an actual employee or an independent contractor or whether he will working full time or part time as CRO.
9. Although the agreed order establishes Mr. Shaub’s compensation and benefits through December 2008, there is no description of the responsibilities and duties

he will retain after the “appointment” of the CRO and corresponding transfer of all “operational and financial matters of the Debtor.” See paragraph c.

WHEREFORE, the UST requests the proposed Agreed Order be held in abeyance, that a hearing be scheduled on the UST’s objection; and for such other relief as is necessary.

RICHARD F. CLIPPARD
UNITED STATES TRUSTEE, REGION 8
Middle District of Tennessee

Dated: September 22, 2008

/s/ Teresa C. Azan (TN BPR #14075)
TERESA C. AZAN
Trial Attorney for the U.S. Trustee
Office of the United States Trustee
UNITED STATES DEPARTMENT OF JUSTICE
318 Customs House, 701 Broadway
Nashville, TN 37203
Tel: (615) 736-2254 (ext. 229)
Fax: (615) 736-2260
Email: teresa.azan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the attached document was sent (1) via electronic notice to parties who are ECF Filers and Consenting Users and (2) via electronic notice to ECF Filers and Consenting Users who represent parties on September 22, 2008.

/s/ Teresa C. Azan (TN BPR #14075)
TERESA C. AZAN