



Order Filed on February 20, 2015  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) COLE SCHOTZ P.C. A Professional Corporation Court Plaza North 25 Main Street P.O. Box 800 Hackensack, NJ 07602-0800 Michael D. Sirota, Esq. Warren A. Usatine, Esq. Felice R. Yudkin, Esq. (201) 489-3000 (201) 489-1536 Facsimile Proposed Attorneys for C. Wonder LLC, <i>et al.</i> , Debtors-in-Possession	
In re:	
C. WONDER LLC, <i>et al.</i> , <sup>1</sup>	
	Debtors-in-Possession.

Case No. 15-11127(MBK)  
Judge: Michael B. Kaplan  
Chapter 11  
(Jointly Administered)

REVISED

**ORDER GRANTING DEBTOR C. WONDER LLC'S APPLICATION FOR AN ORDER AUTHORIZING ITS RETENTION OF A&G REALTY PARTNERS, LLC AS ITS REAL ESTATE CONSULTANTS, NUNC PRO TUNC TO THE FILING DATE**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

**ORDERED.**

**DATED: February 20, 2015**

Honorable Michael B. Kaplan  
United States Bankruptcy Judge

<sup>1</sup> The Debtors in these Chapter 11 cases are C. Wonder LLC; C. Wonder Gift Cards Inc.; C. Wonder Transport LLC; CW Holland LLC and CW International Holdings LLC.

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THIS MATTER having been opened to the Court by Debtor C. Wonder LLC, *et al.*, one of the within debtors and debtors-in-possession (“**C. Wonder**” and, collectively with its co-debtors, the “**Debtors**”), upon an Application (the “**Application**”) for entry of an Order approving C. Wonder’s retention of A&G Realty Partners, LLC (“**A&G**”) as its real estate consultants, pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, *nunc pro tunc* to January 22, 2015 (the “**Filing Date**”);<sup>2</sup> and the Court having considered the Application and the Amendola Affidavit filed in support thereof; and the Court being satisfied that A&G does not hold or represent any interest adverse to the Debtors, their estates or creditors, and is a disinterested person within the meaning of Sections 327 and 101(14) of the Bankruptcy Code, and that said employment would be in the best interest of the Debtors and their estates; and proper and sufficient notice of the proposed retention having been given in accordance with the requirements of Local Rule 2014-1(a), as evidenced by the Certificate of Compliance with Local Rule 2014-1(a); and for other good cause shown,

IT IS ORDERED AS FOLLOWS:

1. In accordance with Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rules 2014-1 and 2016-1, C. Wonder is authorized to retain A&G as its real estate consultants in accordance with the terms and conditions set forth in the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

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Services Agreement, as modified herein and in the Application, effective *nunc pro tunc* to the Filing Date.

2. Except as set forth in Paragraph 3 of this Order, the Services Agreement and all compensation set forth therein, is approved pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and C. Wonder is hereby authorized and directed to compensate A&G in accordance with the terms and conditions of the Services Agreement without further order of this Court.

3. The provision regarding the fees payable for Lease Claim Mitigations in Schedule B of the Services Agreement is deleted in its entirety and replaced with the following:

If A&G negotiates an assumption and assignment of a Lease but no consideration is payable to the Debtors' estates or A&G negotiates a waiver of a lease rejection claim, A&G shall earn and be paid a fee of five percent (5%) of the estimated anticipated distribution on the lease rejection claim. The estimated anticipated distribution on the lease rejection claim shall be determined jointly by the Debtors and Official Committee of Unsecured Creditors by no later than the filing of a Chapter 11 plan.

4. Notwithstanding anything to the contrary in the Services Agreement, the following shall apply:

- (a) A&G shall not be entitled to indemnification, contribution or reimbursement for services pursuant to the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court;
- (b) The Debtor shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or

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willful misconduct; (ii) for a contractual dispute in which the Debtor alleges the breach of A&G's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution or reimbursement under the terms of the Services Agreement as modified by this Order;

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtor's case (that order having become final and no longer subject to appeal) and (ii) the entry of an order closing the Debtor's Chapter 11 case, A&G believes that it is entitled to payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, or reimbursement obligations under the Services Agreement, including without limitation the advancement of defense costs, A&G must file an application before this Court, and the Debtor may not pay any such amounts to A&G before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by A&G for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify A&G under the Services Agreement; and
- (d) Any limitation on liability or any amounts to be contributed by A&G set forth in the Services Agreement, and any indemnification provisions under the terms thereof, shall be eliminated.

5. A&G shall be compensated for its services pursuant to the following procedures:

- (a) A&G will request allowance of its fees by filing a notice after providing an invoice for any applicable earned fees (the "**Fees**") to the Debtors accompanied with reasonable back-up documentation setting forth the amounts owed to A&G with respect thereto (the "**Fee Notice**") and serving the Fee Notice on (i) the Debtors and their counsel, (ii) the U.S. Trustee; and (iii) counsel to the unsecured creditors' committee (collectively, the "**Notice Parties**").

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(b) The Fee Notice shall contain information regarding: (i) a daily summary of the services rendered; (ii) the amount of the Fee sought; (iii) a brief explanation of the method by which the Fee amount was determined; and (iv) any expenses incurred as of the date of the Fee Notice that are eligible for reimbursement pursuant to the Services Agreement.

(c) The Notice Parties will have ten (10) days after the filing of the Fee Notice to file an objection to any portion of the Fee and serve the objection on (i) the Debtors and their counsel and (ii) A&G. Any objection to the Fee Notice shall set forth the amount of the Fee to which the party is objecting and the reasons for the objection. The decision by any party not to object to a Fee Notice shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court.

(d) If no party timely files and serves an objection to the Fee Notice, the Debtors shall be authorized to pay the Fee to A&G in accordance with the Services Agreement without further notice or authorization from the Court. If any party files a timely objection to the Fee notice, the Debtors shall be authorized to pay, without further notice or authorization from the Court, (i) any portion of the Fee to which any party filing the objection has not objected and (ii) any portion of the Fee to which the Debtors, A&G and the objecting party or parties have agreed in writing may be paid. If the Debtors, A&G and the objecting party or parties are unable to resolve the objection, the Debtors or A&G may schedule a hearing for the Court to resolve the objection.

6. A&G shall file a fee application for final allowance of its requested compensation and for reimbursement of expenses pursuant to the procedures set forth in Sections 328 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the UST Guidelines and any applicable orders of this Court; provided, however, that notwithstanding anything herein to the contrary, the fees payable to A&G pursuant to the Services Agreement shall be subject to review pursuant only to the standards set forth in Section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in Section 330 of the Bankruptcy Code; provided, however, that notwithstanding the foregoing, the Office of the United States Trustee

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for the District of New Jersey may review the reasonableness of A&G's requested fees in its final fee application under Section 330 of the Bankruptcy Code.

7. Because A&G is not in the business of maintaining billing records that itemize its time spent rendering services, and in accordance with the balance of Local Rule 2016-1, A&G is exempted from complying with Local Rule 2016-1(b)(7), in addition to the permitted exceptions of Local Rule 2016-1(b)(3), (4), (5), (6) and (10). Notwithstanding the foregoing, in connection with its requested allowance for out-of-pocket expenses, A&G shall submit to the Court the list of actual incurred expenses with its final fee application.

8. To the extent that there may be any inconsistency between the terms of the Application, the Services Agreement, and this Order, the terms of this Order shall govern.

9. This Court shall retain exclusive jurisdiction to hear and decide any and all disputes related to or arising from the implementation, interpretation and enforcement of this Order.

10. A true copy of this Order shall be served upon all parties in interest within seven (7) days of entry hereof.