

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
Whitehall Jewelers Holdings, Inc., et al.,¹) Case No. 08-11261 (KG)
) Jointly Administered
Debtors.)
)

REQUESTED Hearing Date: September 12, 2008 at 11:00 a.m. Prevailing Eastern Time
REQUESTED Objection Deadline: September 10, 2008 at 4:00 p.m. Prevailing Eastern Time

**DEBTORS' MOTION FOR AN ORDER AUTHORIZING
AND ESTABLISHING PROCEDURES FOR THE SALE OF
MISCELLANEOUS ASSETS OTHER THAN STORE MERCHANDISE
AND STORE FURNITURE, FIXTURES AND EQUIPMENT**

Whitehall Jewelers Holdings, Inc. and Whitehall Jewelers, Inc., debtors and debtors in possession (together, the "Debtors"), by and through their undersigned counsel, hereby move for entry of an order, pursuant to Sections 363(b) and 105(a) of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), authorizing and establishing procedures for the sale of miscellaneous assets other than store merchandise and store furniture, fixtures and equipment (the "Motion"). In support of the Motion, the Debtors respectfully represent as follows:

SUMMARY

1. The Debtors have been authorized to conduct going-out-of-business sales at their store locations and are otherwise in the process of winding down business operations. Besides store merchandise and store furniture, fixtures and equipment, which are being sold in the context of the going-out-of-business sales, the Debtors own certain assets including, without

¹ The Debtors in the cases, along with the last four digits of each Debtor's federal tax identification number, are: Whitehall Jewelers Holdings, Inc. (4126) and Whitehall Jewelers, Inc. (3610). The address for both Debtors is 125 South Wacker Drive, Suite 2600, Chicago, IL 60606.

limitation, desktop and laptop computers, vans, non-saleable inventory, and other miscellaneous assets used in their business, all of which are no longer necessary for their business.² The Debtors believe that the establishment of orderly procedures in connection with the sale of these types of miscellaneous assets will enable the Debtors to reduce such assets to cash in an expeditious and efficient manner, thereby minimizing the administrative expenses typically incurred with obtaining Court approval for individual asset sales and at the same time maximizing values for the benefit of the Debtors' creditors and estates. Accordingly, the Debtors seek entry of an order, substantially in the form annexed hereto as Exhibit "A" (the "Proposed Order"), establishing the procedures described below respecting the sale of such assets.

JURISDICTION

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On June 23, 2008 (the "Petition Date"), the Debtors filed with this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their business and manage their affairs as debtors in possession. On July 8, 2008, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee") in the Debtors' Chapter 11 cases.

² These miscellaneous assets do not include lease designation rights, with respect to which the Debtors anticipate engaging a consultant to assist in their disposition.

4. Prior to the Petition Date, the Debtors were parties to a senior secured revolving credit facility (the “Pre-Petition Revolving Credit Facility”) with LaSalle Bank National Association (“LaSalle”). As of the Petition Date, the aggregate principal amount outstanding under the Pre-Petition Revolving Credit Facility was approximately \$71.5 million, plus interest, costs, fees, expenses and other charges due pursuant to the Pre-Petition Revolving Credit Facility.

5. Prior to the Petition Date, the Debtors were parties to a secured term loan credit agreement (together with all related and ancillary agreements and documents executed in connection therewith, the “Pre-Petition Term Loan Agreement”) with PWJ Lending LLC II (“PWJ”). As of the Petition Date, the aggregate principal amount outstanding under the Pre-Petition Term Loan Agreement was approximately \$40 million, plus interest, costs, fees, expenses and other charges due pursuant to the Pre-Petition Term Loan Agreement.

6. On June 24, 2008, Bank of America, N.A. (“BofA”) provided the Debtors with a Debtor-in-Possession Credit Facility (the “DIP Facility”) which has been approved by this Court on an interim basis pursuant to an interim financing order dated June 24, 2008 [Docket Nos. 66 and 114], and agreed extension orders dated July 18, 2008 [Docket No. 362], July 24, 2008 [Docket No. 417] and August 8, 2008 [Docket No. 542].

7. The factual background relating to the Debtors’ commencement of these Chapter 11 cases is set forth in detail in the *Declaration of Peter Michielutti, the Executive Vice President and Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* filed on June 23, 2008 [Docket No. 5] and incorporated herein by reference.

8. On August 8, 2008, this Court entered an order, among other things, authorizing the Debtors to conduct going-out-of-business sales (the “GOB Sales”) at their store

locations. Also on August 8, 2008, this Court entered a separate order, among other things, authorizing the Debtors to enter into a consulting agreement with a joint venture consisting of Great American Group, LLC, Hudson Capital Partners, LLC, Silverman Consultants, LLC, and Gordon Brothers Retail Partners, LLC (collectively, the “Liquidators”), pursuant to which the Liquidators will act as the Debtors’ liquidation consultants in conducting the GOB Sales.

RELIEF REQUESTED

A. Sale of Miscellaneous Assets

9. As a result of the Debtors’ ongoing efforts to reduce expenses during the wind-down of their business operations, the Debtors have determined (and may in the future determine) that certain miscellaneous assets owned by the Debtors that were previously used in their operations are no longer necessary for their business (collectively, the “Miscellaneous Assets”). The Miscellaneous Assets include, without limitation, (i) excess furniture and equipment located at the Debtors’ headquarters, such as desktop and laptop computers, (ii) vans in the field previously used for remount shows, and (iii) non-saleable inventory such as scrap, gold melt and diamond melee.³ The Debtors reserve the right to add other items, such as names and trademarks, customer lists, distribution center equipment, and data center equipment and leases, to the list of Miscellaneous Assets. The Debtors’ store merchandise and store furniture, fixtures and equipment, which the Debtors previously have been authorized to sell in the context of the GOB Sales, are specifically excluded from the Miscellaneous Assets. The Debtors believe that the value of the Miscellaneous Assets will not be of significant material value in relation to the value of their overall assets and, thus, implementation of orderly procedures for the disposition of such

³ With respect to the excess headquarters’ furniture and equipment, the Debtors are in the process of soliciting bids. With respect to the vans and non-saleable inventory, the Debtors intend to solicit outside bids and work with the Liquidators or other parties to obtain additional bids.

assets on the terms and conditions set forth below is in the best interests of the Debtors' creditors and estates.

B. Proposed Procedures

10. By this Motion, the Debtors seek authority to sell the Miscellaneous Assets in accordance with the following procedures:

- (i) The Debtors may sell one or more Miscellaneous Assets that in a single transaction (or with respect to related sales to a single purchaser, in the aggregate) have a book value of not more than \$50,000 and thereafter give written notice (within five (5) business days of the sale) to (a) the Debtors' pre-petition and post-petition secured lenders (the "Lenders"), (b) the Committee, (c) the Office of the United States Trustee, and (d) all other parties, if any, that, to the Debtors' knowledge, assert a lien or security interest in the Miscellaneous Asset which is the subject of the sale (collectively, the "Notice Parties");
- (ii) The Debtors may sell one or more Miscellaneous Assets that in a single transaction (or with respect to related sales to a single purchaser, in the aggregate) have a book value of between \$50,001 and \$250,000 after giving seven (7) business days' prior written notice to the Notice Parties; provided, however, that in the event a Notice Party opposes such sale, it shall promptly so advise the Debtors and the other Notice Parties in writing, after which the Debtors and the opposing Notice Party shall attempt to resolve the opposition. If such opposition cannot be resolved, the opposing Notice Party shall file and serve an objection to such sale before the expiration of the seven (7) business day notice period (which objection shall be in writing and state with specificity the basis of such objection), in which event the Debtors shall not have the authority to consummate the sale unless this Court orders otherwise or the objecting party withdraws its objection in writing;
- (iii) The written notice referred to in subparagraphs (i) and (ii) above shall contain (a) a description of the item sold or to be sold, (b) the Debtors' original cost for such item, if known, (c) the date on which the Debtors purchased such item, if known, (d) an estimate of the fair market value of such item as of the date of the sale or proposed sale, if known, (e) the name of the actual or prospective purchaser and whether such purchaser has any connection to the Debtors, and

(f) the total amount of consideration received or to be received by the Debtors; and

- (iv) The Debtors may sell one or more Miscellaneous Assets that in a single transaction (or with respect to related sales to a single purchaser, in the aggregate) have a book value in excess of \$250,000 only upon the submission of a motion pursuant to Section 363 of the Bankruptcy Code which is approved by the Court following notice and a hearing.

C. Authority For Sale of Miscellaneous Assets

11. The statutory predicates for the relief requested herein are Sections 363(b)(1) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that: “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . .” 11 U.S.C. §363(b)(1). Section 105(a) of the Bankruptcy Code provides that the court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §105(a).

12. To approve a sale of property other than in the ordinary course of business, the Court must find some articulated business justification for the sale. Courts within this Circuit interpreting Section 363(b)(1) have held that transactions should be approved under Section 363(b)(1) when they are supported by a “sound business purpose”. See In re Exaeris Inc., 380 B.R. 741, 744 (Bankr. D. Del. 2008); In re Dura Auto. Sys., 2007 Bankr. LEXIS 2764, 258 (Bankr. D. Del. 2007); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999); see also In re Martin, 91 F.3d 389, 395 (3rd Cir. 1996) (referencing the “legitimate business justification” standard).

13. The “sound business purpose” test requires a debtor to establish four elements in order to support the sale of estate property other than in the ordinary course of business:

- a. that a “sound business purpose” justifies the sale;
- b. that adequate and reasonable notice has been provided to interested persons;
- c. that the debtor has obtained a fair and reasonable price; and
- d. good faith.

In re Decora Indus., 2002 U.S. Dist. LEXIS 27031, 7-8 (D. Del. 2002); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 397, 399 (Bankr. W.D. Pa 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); cf. Travelers Cas. & Sur. Co. v. Future Claimants Representative, 2008 U.S. Dist. LEXIS 23496, 11 (D.N.J. 2008) (“[T]he court *may consider* [the factors cited above] ... These factors are not dispositive, but merely guide the bankruptcy judge in assessing a § 363(b) motion ...”) (emphasis added).

14. The decision to sell assets no longer utilized or necessary in day-to-day operations is a pure question of business judgment. The risk of not selling such assets is that they could continue to decrease in value the longer they remain in the Debtors’ possession and unsold, especially if such assets are no longer utilized in the Debtors’ operations. In addition, the sale of such assets will eliminate the costs associated with maintaining them such as, for example, the cost of storing and insuring them. Accordingly, the Debtors have determined, in their reasoned business judgment, that it is in the best interests of the Debtors, their creditors and estates to develop an orderly procedure that will allow them to sell the Miscellaneous Assets as quickly and

expeditiously as possible rather than retaining such assets and running the risk that they will further decrease in value.

15. The Debtors further request, pursuant to Section 363(f) of the Bankruptcy Code, that any sales of the Miscellaneous Assets be free and clear of any and all liens, claims and encumbrances, which liens (including, without limitation, any liens of LaSalle, BofA and PWJ) shall attach to the proceeds of sale. The Debtors propose that (i) upon closing of any sale of a Miscellaneous Asset pursuant to the procedures set forth above (the “Sale Procedures”), all net cash proceeds thereof shall be deposited into the Debtors’ concentration account and be applied in satisfaction of the Debtors’ secured obligations under the DIP Facility; provided, however, that if the DIP Facility has been satisfied in full at the time of such sale, the proceeds shall be held in escrow by the Debtors pending further Order of the Court,⁴ and (ii) nothing in this Order shall impair any rights of the Lenders to credit bid pursuant to Section 363(k) of the Bankruptcy Code for any Miscellaneous Asset proposed to be sold by the Debtors pursuant to the Sale Procedures.

16. In addition to the foregoing, the Debtors believe that the value of the Miscellaneous Assets is relatively small. The Debtors respectfully submit that if they were required to prepare, file and serve a motion pursuant to Section 363 of the Bankruptcy Code for each individual proposed sale, a large portion of the sale proceeds generated by such sales would be consumed by the administrative expense of the sale process.

⁴ Various material disputes by and among the Debtors, the Debtors’ senior and junior lenders, the Committee, and a vast majority of consignment vendors have been resolved pursuant to a comprehensive global settlement that has been submitted to this Court for approval. If such global settlement is approved, proceeds of any Miscellaneous Asset sales shall be distributed in accordance therewith.

NOTICE

17. Notice of this Motion has been given to: (i) the Office of the United States Trustee; (ii) counsel to the Lenders, (iii) counsel to the Committee; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

18. No prior request for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter the Proposed Order and grant such other relief as the Court may deem just and proper.

Dated: August 28, 2008
Wilmington, Delaware

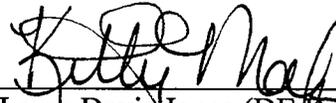
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