

Exhibit "B"

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 10-13779 (ALG)

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In the Matter of:

JENNIFER CONVERTIBLES, INC., ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

August 4, 2010
11:01 AM

B E F O R E:
HON. ALLAN L. GROPPER
U.S. BANKRUPTCY JUDGE

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2 HEARING re Motion filed by debtors for an order authorizing
3 debtors to continue existing cash management systems, to
4 maintain existing bank accounts and business forms and to
5 continue intercompany arrangements and waiving the requirement
6 of Section 345(b).

7

8 HEARING re Motion filed by debtors for an order authorizing the
9 debtors to prepare consolidated list of creditors in lieu of
10 mailing matrix, file a consolidated list of 30 largest
11 unsecured creditors, and mail initial notices.

12

13 HEARING re Motion filed by debtors for an order establishing
14 procedures for the assertion, resolution and satisfaction of
15 claims and reclamation claims.

16

17 HEARING re Motion filed by debtors for an order authorizing the
18 debtors to satisfy prepetition claims relating to common
19 carriers, warehouse providers and the customs broker.

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21 HEARING re Motion filed by debtors for authorization to pay
22 prepetition sales taxes, use taxes, admissions taxes, franchise
23 taxes and other governmental assessments.

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HEARING re Motion filed by debtors for authorization to honor
prepetition obligations to customers and otherwise continue
customer programs in the ordinary course of business.

HEARING re Motion filed by debtors for an order authorizing the
debtors to enter into an interim settlement with their credit
card processor.

HEARING re Omnibus limited objection/request for adequate
protection of Ashley HomeStores, Ltd., with respect to
continued use of trademark and certain matters.

Transcribed by: Penina Wolicki

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P R O C E E D I N G S

THE COURT: All right, I think it's 11, so we'll call Jennifer Convertibles.

(Pause)

THE COURT: Are we ready? Yes. Let's see who we have. Mr. Walsh -- Mr. Fox.

MR. FOX: Yes, not Mr. Walsh.

THE COURT: I still call you Walsh. Why do I call you Mr. Walsh?

(Pause)

THE COURT: Will the parties please give their appearances for the reporter.

MR. FOX: Michael Fox and Jordanna Nadritch --

THE COURT: Do you have a card?

MR. FOX: Yes, sir.

THE COURT: Oh, you do, okay.

(Pause)

MR. FOX: Good morning, Your Honor. Michael Fox and Jordanna Nadritch from the Olshan firm, representing Jennifer.

MR. WILSON: Good morning, Your Honor. Eric Wilson of Kelley Drye & Warren for the creditors' committee. Also with me is Jason Adams.

MR. ADAMS: Good morning, Your Honor.

MR. KHODOROVSKY: Nazar Khodorovsky, trial attorney on behalf of the U.S. Trustee's Office. With me is my colleague,

1 Mr. Andy Velez-Rivera. Thank you.

2 MR. NEIGER: Good morning, Your Honor. Edward Neiger
3 of Neiger LLP, representing Haining Mengnu Group Co. Inc. I'm
4 here with my co-counsel, Lawrence A. Darby, III.

5 MR. BROCK: Good morning Your Honor. Timothy Brock
6 from Satterlee Stephens Burke & Burke on behalf of Merrick Bank
7 Corporation.

8 MS. EHRLICH ALBANESE: Good morning, Your Honor.
9 Rachel Ehrlich Albanese of Greenberg Traurig, on behalf of
10 Ashley HomeStores.

11 THE COURT: All right.

12 MR. FOX: Good morning, Your Honor. I hope your
13 conference was pleasant. It's nice to be back in front of Your
14 Honor, where this is really a continuation of some of the
15 matters that we might have filed on the first day. They were
16 renoticed. And there are various matters that are on before
17 Your Honor today, most of which -- I think all of which, Your
18 Honor, are now uncontested matters. I think that Ms. Nadritch
19 will walk through, and I think she's submitted to your chambers
20 revised orders. And we endeavored very hard to try to embrace
21 all the different comments from the different parties here, and
22 there are plenty, as you can see.

23 The only one that's not completely resolved is the
24 Ashley objection vis-a-vis our cash management. I guess I
25 could take that up at the end.

1 MR. BROCK: Your Honor, I'm in agreement -- a lot
2 depends on the data. A lot depends on the data.

3 MR. FOX: Let's not debate it, Your Honor. I'm hoping
4 that --

5 THE COURT: We'll be back -- we have another hearing a
6 week from today. But all right, this order will be entered.

7 Now we have the cash management.

8 MR. FOX: Cash management, Your Honor. And it's
9 frustrating, it's challenging. Business as usual. Ashley --
10 the only objection to this is Ashley.

11 THE COURT: All right.

12 MR. FOX: We are operating. We're one company. It
13 wants separate date. They want something that we can't do.

14 THE COURT: Separate data?

15 MR. FOX: Separate -- they want -- yes, the tracking.
16 We would have to create new systems to create what they want.
17 There is enough stress on this company today, that we can't
18 afford to put in new systems. The ultimate issue that she has
19 raised is a substantive consolidation, plan confirmation issue.

20 THE COURT: We are not substantively consolidating
21 anything --

22 MR. FOX: Today.

23 THE COURT: -- in connection with this cash management
24 order. And the order can so -- I don't know if there's a
25 clause to that effect in it, but there certainly can be. And

1 it's understood. There is no substantive consolidation.

2 I assume that the debtors are able, under their
3 present system, to trace all transfers of funds from individual
4 companies into the centralized system; and all funds that are
5 transferred out of the centralized cash management system. Is
6 that correct?

7 MR. ABADA: I believe so.

8 THE COURT: I would take that --

9 MR. FOX: That was Mr. -- Your Honor --

10 THE COURT: -- as a yes. Because if the debtors can't
11 do that, then I don't -- then we can't enter an order.

12 MR. FOX: Yes.

13 THE COURT: So the answer is, yes.

14 MR. FOX: And that was Mr. Abada, the COO of Jennifer.

15 THE COURT: So all of the fund transfers, without
16 rewriting your systems, can be traced. And I assume that they
17 could be traced from the day of the petition until today.

18 MR. FOX: Yes, Your Honor.

19 THE COURT: If necessary.

20 MR. FOX: And I'm not --

21 THE COURT: Again, I'm not saying they should be. But
22 we can keep track of them. And any creditor is going to want
23 that. I assume also, that your client is preparing schedules.

24 MR. FOX: The schedules will be filed, I believe --
25 we're going to be filing hopefully by Monday.

1 MS. NADRITCH: Your Honor, we have, I believe, an
2 additional twenty days from this past Sunday, so they'll be
3 filed timely.

4 THE COURT: They'll be filed --

5 MR. FOX: Within the --

6 THE COURT: -- in accordance with the current order.
7 And they'll be filed on a debtor-by-debtor basis. So even
8 though it will obviously result in some angst and discomfort,
9 your client is going to have to file on a debtor-by-debtor
10 basis, schedules of assets and liabilities and creditors.

11 MR. FOX: And that, Your Honor -- I mean, we'll be
12 doing that. But it's very hard when Ashley thinks that their
13 segments are the best segments, and we think that Jennifer is
14 the best segment. Let the information speak for itself, and
15 we'll come to an agreement --

16 THE COURT: That's what I'm trying to lead to. There
17 will be a lot more information shortly on the assets and
18 liabilities of the separate companies, or at least whatever
19 information can be provided. And there is available
20 information on the transfers of funds in and out of various
21 companies.

22 MR. FOX: And our life of disclosure didn't begin on
23 July 18th. This is a public company. There's been lots of Qs
24 and Ks and other documents filed with the SEC that there's
25 always been this information. We don't -- we value the -- we

1 value our relationships with all of our suppliers. We want to
2 keep them going, just as a matter of business. Ashley is
3 providing credit to us on a Sunday to Saturday basis. We're
4 paying them every Tuesday by wire. That has happened. That's
5 going to hopefully continue to happen. Mengnu has been
6 shipping us under the COD. So, you know, we're trying to get
7 along.

8 THE COURT: All right. That's fine. I'm just trying
9 to see where we are on the orders I have before me today and to
10 see where the objections are. So the only objection to the
11 cash management order becoming final, is from Ashley.

12 MR. FOX: Yes.

13 THE COURT: All right. Let me hear Ashley's position.

14 MS. EHRLICH ALBANESE: Thank you, Your Honor. As Mr.
15 Fox noted before, Ashley is the sole supplier for the seven
16 Ashley HomeStores that are operated by the Hartsdale debtor.
17 And that debtor is party to seven separate trademark usage
18 agreements, each of which governs the debtors' usage of Ashley
19 trademarks at a specific store.

20 And as Your Honor noted, Ashley is concerned about its
21 brand, and we're here seeking comfort, until the trademark use
22 agreements are assumed, that the debtors' use of those
23 trademarks will not jeopardize their value. So --

24 THE COURT: I have heard nothing today -- absolutely
25 nothing to indicate that Jennifer's -- pardon me -- that

1 Ashley's trademarks are at issue. We just entered, or agreed
2 to enter, an order regarding the credit card accounts,
3 regularizing them. The credit card processor has stated that
4 it is satisfied with the amount of the reserves. The proffer
5 from the debtor was that there has been no rush to return
6 property or anything of that nature, which I assume applies to
7 the Ashley sales the same as the Jennifer sales.

8 So I haven't heard anything whatsoever to indicate
9 that Ashley is at risk. Now, I have your limited objection,
10 request for adequate protection that was filed as a response to
11 the debtors' motions. The only remaining motion to consider is
12 the cash management motion. Let's focus on that. If you
13 believe that your client is entitled to "adequate protection",
14 its trademarks, you are free -- I'm not inviting it, I don't
15 recommend it -- but you're free to make a properly noticed
16 motion for adequate protection with adequate backup to
17 demonstrate that your client has any grounds for serious
18 concern.

19 But in that motion I would advise you very seriously
20 to explain to me why an unsecured creditor with a contract with
21 the debtor is entitled to adequate protection.

22 MS. EHRLICH ALBANESE: I think maybe we used that term
23 a little bit --

24 THE COURT: Well, that's sort of a --

25 MS. EHRLICH ALBANESE: -- too loosely, but --

1 THE COURT: -- a little bit loosely.

2 MS. EHRLICH ALBANESE: -- let me tell you --

3 THE COURT: And why I should require the debtor, in
4 the first month of the case, to assume your contract, when it's
5 a little early in the case for the debtor to be assuming or
6 rejecting any contracts.

7 MS. EHRLICH ALBANESE: Your Honor, we understand that.

8 THE COURT: So, but that's for another day.

9 MS. EHRLICH ALBANESE: Right.

10 THE COURT: Let's focus on cash management.

11 MS. EHRLICH ALBANESE: Okay. And I will tell you,
12 Your Honor, why it is that we're here in this position today.
13 At the first-day hearing my colleague, Nathan Schultz, had a
14 colloquy with Your Honor and the debtor. And the debtor
15 committed to provide certain information following that
16 hearing. And to date, we haven't gotten a satisfactory
17 response from the debtors that they're actually willing and
18 able to provide or to even work with us to provide the
19 information.

20 But what we have heard is that the accounts -- the
21 money is commingled, and that we've heard alternately that we
22 can't provide you that information; we don't know that
23 information. And then I heard today, well, we already provided
24 you that information. So I just want a commitment from the
25 debtors that they will work with us in good faith to provide

1 the information that we request, to the best of their ability,
2 by a date certain.

3 And what I heard from debtors' counsel this morning
4 was, no. And then upon pressure, he said ninety days. By
5 debtors' own admission, the case could be over by ninety days.

6 THE COURT: Well, then that would to everybody's
7 advantages.

8 MS. EHRLICH ALBANESE: So -- true, but --

9 THE COURT: Maybe your contract will be assumed,
10 assuming you want to --

11 MS. EHRLICH ALBANESE: -- but we'd like the
12 information before that.

13 THE COURT: -- do that. And I haven't heard about the
14 plan and the like. But the debtor, quite properly, put this
15 case on a very fast track when it was filed. And we have a
16 committee. And I realize that things can't be done overnight.
17 But there's no indication in the record that this debtor is
18 going to simply stay in bankruptcy indefinitely.

19 MS. EHRLICH ALBANESE: No, we certainly don't want
20 that result.

21 THE COURT: No cash management order that I am
22 familiar with has -- does not have a clause that says that the
23 debtor shall keep track of the intercompany transfers and
24 language to that effect. Do we have that in this cash
25 management order?

1 MR. FOX: We have it -- if we maintained it in our
2 ordinary course, Your Honor, we have it. Mr. Abada has already
3 said before, he would have that information. I sit here --

4 THE COURT: Well we --

5 MR. FOX: -- so if --

6 THE COURT: -- we need to be able to trace -- as
7 unwieldy as it may be, bankruptcy will require the ability to
8 trace these funds. I assume -- you have a cap on -- I guess
9 all of the retention orders are being adjourned.

10 MR. FOX: Well, all of them are being carried to
11 August 10th, Your Honor.

12 THE COURT: To next week?

13 MR. FOX: Yes. No, is a very definite term, Your
14 Honor. I said no this morning to Ms. Albanese. That's
15 correct. Because her version, if I don't agree to give her
16 information when they want it, is just not acceptable. What
17 she fails to understand, and I've made myself very clear about
18 this, is our clients speak businessperson to businessperson
19 daily. Ashley is a very important party. They were just at a
20 trade show together. I was on a conference call with the
21 Ashley vice presidents and president on Monday. I was on a
22 call on Tuesday with their local counsel in Wisconsin.

23 So, yeah, I may not have spoken to Greenberg Traurig,
24 but I've been giving information, as has been my client, to
25 people. I can't keep track of who they want me to give the

1 information to. But I assume when it goes to officers of
2 Ashley and counsel to Ashley, that they would trickle it on.
3 Because nobody from Greenberg Traurig were on any of those
4 prior phone calls.

5 So I don't take it lightly that I get an e-mail at 11
6 o'clock at night or I get at 10 o'clock this morning, asking me
7 for further information. This company takes seriously their
8 obligation to report, their obligation to account, they're
9 obligation to work out their differences with all of their
10 suppliers and vendors. So when I said no, I just need you to
11 understand why I would say no or why it would appear to be no.
12 It's not no.

13 It's been an ever flowing amount of information that's
14 going across. But I cannot tie my hands today to say I'm going
15 to give you this report this week and then have a default on
16 it. I'm not. You have your license agreements. We're
17 operating under them. We're paying under them. And to the
18 extent we're lucky enough, we will assume them and have that as
19 part of a separate motion at a later date.

20 So I cannot and I do not want to tie down this debtor
21 with more administrative burdens than it otherwise has to have.
22 It is a difficult time in Chapter 11.

23 MS. EHRLICH ALBANESE: Your Honor, to that point, I
24 have my instructions from my client. And I don't dispute what
25 Mr. Fox is saying, but my clients have said they need this

1 particular information that they requested.

2 THE COURT: The information that you are demanding is
3 fairly ambiguous. It's not clear to me -- I don't know that
4 it's clear to you exactly what -- is it clear to you exactly
5 what your client is demanding?

6 MS. EHRLICH ALBANESE: It relates -- it relates to
7 what they call the four laws accounting.

8 THE COURT: That's a little ambiguous. So we're going
9 to do this. The order that is sought has the following
10 language: "The debtor shall continue to maintain records with
11 respect to transfers of cash, in a manner consistent with
12 historical practices, so that transactions can be ascertained,
13 traced, and recorded properly on all intercompany accounts."

14 So I take that to mean that the debtors will be able
15 to determine what cash is being transferred from the Hartsdale
16 debtor to the other debtors. A claim is created from one
17 debtor to another. And any party has the right, in connection
18 with a cash management order, to come back. I think you're
19 absolutely correct that adequate protection is not the right
20 term.

21 But if after a reasonable period of time, your client
22 is seeking some specific information that it has not received
23 that is material, and that can't be worked out by the
24 businesspeople, then you're free to come back and seek some
25 specific relief. But in that case -- and I ask you to first

1 put it in writing, get the debtors' response. And then if you
2 need court intervention, you can certainly come to court for
3 protection of your rights. But I don't hear Ashley saying that
4 all the cash in Hartsdale must be kept in Hartsdale and can't
5 be transferred to other debtors under any circumstances. I've
6 had that argument before made by secured creditors with a
7 security interest in the cash of particular debtors.

8 I had that argument in the General Growth Properties
9 case, which some of you may be involved in. And I rejected the
10 contention that despite language in loan agreements that ring-
11 fenced cash, which you don't -- as far as I know, you don't
12 have, that a debtor can't be deprived of the use of its cash
13 when it most needs it, that is, in bankruptcy. I don't hear
14 you making those extreme arguments.

15 But my DIP order in General Growth Properties was
16 affirmed by Judge Koeltl of the Southern District at 423 B.R.
17 716, and I don't have the cite to my ring-fencing argument in
18 General Growth Properties, but it was last August, if you're
19 interested in it. Greenberg Traurig was very active
20 participant in that case, if I recall correctly.

21 MS. EHRLICH ALBANESE: Yes, Your Honor.

22 THE COURT: Were you involved in that?

23 MS. EHRLICH ALBANESE: I was not.

24 THE COURT: But you're familiar with it.

25 MS. EHRLICH ALBANESE: Yes.

1 THE COURT: You can find the cite. As to cash
2 management generally, the leading case is In re Charter
3 Company, 778 F.2d 617, which endorsed a reasonable cash
4 management system in accordance with prepetition practices. It
5 said that the debtor, in that case, was justified in setting
6 one up. Now, I realize that cash management systems are very
7 difficult to get a handle on. And it takes time.

8 The businesspeople obviously want to be comforted that
9 Ashley isn't, to its disadvantage, carrying the entire company.
10 But I have no evidence that that is the case; no evidence that
11 your concerns about use of the trademarks are in any way
12 damaged by the fact that the debtor's continuing to use a
13 prepetition cash management system, that prior to the petition
14 date, the client had no apparent concern about.

15 So anybody can come back and seek further
16 protection -- maybe not adequate protection, so to speak, but
17 can seek further protection and can seek to modify a cash
18 management order. You can do that at any time, for cause
19 shown. And they can certainly seek certain specific
20 information from the debtor. But I have an order in front of
21 me today. And I can't micromanage the information in it.

22 MS. EHRLICH ALBANESE: May I make a suggestion in that
23 regard? And that is that the Merrick stipulation requires the
24 debtors to provide credit card deposit reports to Merrick each
25 week. Now, 100 percent of Ashley customers -- I'm sorry, 100

1 percent of Ashley customer deposits --

2 THE COURT: Are credit cards.

3 MS. EHRLICH ALBANESE: -- are credit cards. I'm
4 sorry. The vast majority are credit cards. Ashley customers
5 put 100 percent of the deposit on the credit card. So it's a
6 very large figure. And it would go a long way towards
7 alleviating my client's concerns if they could get a copy of
8 that report, because that would have detailed information. It
9 wouldn't be an administrative burden, because the debtors are
10 already required to provide that to Merrick. So if they could
11 provide that to Ashley as well, it might be a good compromise.

12 THE COURT: Well, I certainly think that's something
13 the debtor should take under advisement. Mr. Fox has stated
14 that Ashley's a very important customer -- not customer,
15 supplier. Relations are very important. And I'm sure the
16 debtors would bend over backwards to provide Ashley with
17 information that it wanted and that it would obviously keep
18 confidential, if Merrick had any concerns over that issue. But
19 it doesn't seem obvious to me.

20 MR. BROCK: I don't see one, Your Honor. I don't see
21 any problem.

22 THE COURT: All right.

23 MS. EHRLICH ALBANESE: Thank you, Your Honor.

24 THE COURT: Thank you. Anything else on the cash
25 management order?

1 MS. EHRLICH ALBANESE: And one final point. May we
2 address this issue at the next omnibus hearing as a separate
3 status item?

4 THE COURT: I think -- well, I don't know what issue
5 we're addressing.

6 MS. EHRLICH ALBANESE: The information that we --

7 THE COURT: Well, I think that the information issue,
8 if there is an issue, should be addressed by a letter from --
9 either from you, or better from your client to the company,
10 asking for certain information. Be a response, and the
11 businesspeople should be able to meet and consider that. And
12 if at the end of a good-faith effort to provide your client
13 with what it seems to want, that can't be done, then you can
14 have your rights. But I don't know that that can be done by
15 next --

16 MS. EHRLICH ALBANESE: Okay.

17 THE COURT: -- by next week.

18 MS. EHRLICH ALBANESE: Oh, no. I wasn't referring to
19 that. I was -- a future omnibus. But that's fine, Your Honor.

20 THE COURT: I'm open for business. I'm certainly
21 hopeful that this case will move as quickly as it was the
22 parties' intention at the time of filing. But -- or not that
23 fast -- fairly fast. And that may be the best news of all for
24 Ashley.

25 MS. EHRLICH ALBANESE: Correct. Thanks, Your Honor.