

EPHRON-MANDEL & HOWARD, L.L.P
Attorneys for JPMorgan Chase Bank, N.A.
299 Broadway, Suite 1615
New York, New York 10007

Hearing Date: February 22, 2011
Time: 11:00 am

Objections Due: February 15, 2011
Time: 4:00 pm

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Case No. 10-13779 (ALG)

Debtor.

Jointly Administered

-----X

**NOTICE OF MOTION OF JPMORGAN CHASE BANK, N.A.
FOR ORDER MODIFYING AUTOMATIC STAY OF 11 U.S.C. § 362
TO PERMIT CONTINUATION OF NON-PAYMENT SUMMARY PROCEEDING
AND ENFORCEMENT OF ANY JUDGEMENT OF POSSESSION ISSUED THEREON**

PLEASE TAKE NOTICE, that JPMorgan Chase Bank, N.A. (the "Movant"), the sublandlord of the nonresidential real property known as Store #8 and basement located in the building known as 2420 Broadway a/k/a 2420-2438 Broadway a/k/a 2424 Broadway, New York, New York (the "Premises"), wherein Jennifer Convertibles, Inc. (the "Debtor") claims to be in occupancy, will move (the "Motion") before the Honorable Allan L. Gropper for an order modifying the automatic stay of 11 U.S.C. § 362: (i) to permit Movant to continue prosecution of a non-payment summary proceeding, before the Civil Court of the State, City and County of New York, and/or to commence new litigation, seeking, *inter alia*, recovery of possession of the Premises; (ii) to enforce any possessory judgment issued thereto; and (iii) granting Movant such further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that a hearing to consider the Motion will be held on **February 22, 2011, at 11:00 am** before the Honorable Allan L. Gropper, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton U.S. Custom House, Room 617, One Bowling Green, New York, New York

U.S. BANKRUPTCY COURT
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SOUTHERN DISTRICT OF NEW YORK

10004-1408.

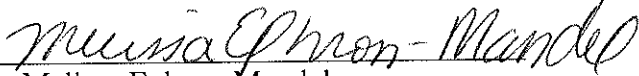
PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief sought in the Motion shall be in writing and served so as to be received by (i) the Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408; with a courtesy copy to the Chambers of the Honorable Allan L. Gropper and (ii) Ephron-Mandel & Howard, L.L.P., 299 Broadway, Suite 1615, New York, New York 10007, Attention: Melissa Ephron-Mandel, so that they are received no later than **February 15, 2011 at 4:00 pm.**

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than by the filing of a notice on the docket sheet in the Debtor's case, or the announcement of the adjournment in open Court.

Dated: New York, New York
February 3, 2011

Respectfully submitted,

EPHRON-MANDEL & HOWARD, L.L.P.


By: Melissa Ephron-Mandel
Attorneys for JPMorgan Chase Bank, N.A.
299 Broadway, Suite 1615
New York, New York 10007
(212) 393-1077

EPHRON-MANDEL & HOWARD, L.L.P
Attorneys for JPMorgan Chase Bank, N.A.
299 Broadway, Suite 1615
New York, New York 10007

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Case No. 10-13779 (ALG)

Debtor.
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Jointly Administered

**MOTION OF JPMORGAN CHASE BANK, N.A.
FOR ORDER MODIFYING AUTOMATIC STAY OF 11 U.S.C. § 362
TO PERMIT CONTINUATION OF NON-PAYMENT SUMMARY PROCEEDING
AND ENFORCEMENT OF ANY JUDGEMENT OF POSSESSION ISSUED THEREON**

TO: THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE:

JPMorgan Chase Bank, N.A. (the "Movant"), the sublandlord of the nonresidential real property known as Store #8 and basement located in the building known as 2420 Broadway a/k/a 2420-2438 Broadway a/k/a 2424 Broadway, New York, New York (the "Premises"), wherein Jennifer Convertibles, Inc. (the "Debtor") claims to be in occupancy, hereby moves this Court for an order modifying the automatic stay of Section 362 of Title 11 of the United States Code (the "Bankruptcy Code"): (i) to permit Movant to continue prosecution of a non-payment summary proceeding, before the Civil Court of the State City and County of New York, and/or to commence new litigation, seeking, *inter alia*, recovery of possession of the Premises; (ii) to enforce any possessory judgment issued thereon, and (iii) granting Movant such further relief as this Court may deem just and proper.

In support of the Motion, Movant respectfully represents as follows:

BACKGROUND

1. On July 18, 2010 the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York.

2. By written lease agreement dated October 3, 1991, between Anchor Savings Bank, FSB, and Columbus Convertibles, Inc. doing business as Jennifer House (the "Tenant"), as extended by letter agreement dated December 14, 2004, between Washington Mutual Bank, FA and Jennifer House, and as extended and modified by Extension and Modification Agreement dated January 31, 2005, between Washington Mutual Bank, FA and Columbus Convertibles, Inc. d/b/a Jennifer House, and Lease Modification Agreement dated April 1, 2009 between JPMorgan Chase Bank, N.A. and Columbus Convertibles, Inc. d/b/a Jennifer Convertibles (collectively the "Lease," copies of which are annexed as Exhibit "A" to the accompanying Declaration of Michael Stengel), the Premises were let by Movant's predecessor-in-interest to Tenant.

3. On or about late December 2010, based on Tenant's significant rent defaults, Movant commenced a non-payment summary proceeding captioned *JPMorgan Chase Bank, N.A. v. Columbus Convertibles, Inc. d/b/a Jennifer Convertibles, "Doe #1" and "Doe #2"*, assigned index no. L&T 095329/2010 (the "Non-Payment Proceeding"), before the Civil Court of the City and County of New York. (Copies of the Notice of Petition, Petition for Non-Payment and Affidavit of Service for the Non-Payment Proceeding are annexed as Exhibit "B" to the accompanying Declaration of Michael Stengel.)

4. At the time of commencement of the Non-Payment Proceeding, Tenant was in arrears for rent and additional rent accrued under the Lease in the sum of Three Hundred Sixty Eight Thousand One Hundred Seventy Six and 53/100 Dollars (\$368,176.53). Since commencement of the Non-Payment Proceeding, additional sums have accrued under the Lease,

including Twenty Nine Thousand Two Hundred Thirty Six and 06/100 Dollars (\$29,236.06) base rent, per month, which remains unpaid.

5. In response to the Non-Payment Proceeding, counsels for Tenant and Debtor have claimed that Debtor is in occupancy of the Premises, although Debtor is not the tenant or subtenant of Movant and does not have Movant's permission to be in possession, use or occupy the Premises.

6. Upon information and belief, Debtor is, or claims to be, in possession under and through the subtenancy of Tenant, although the Lease does not permit Tenant to underlet or otherwise allow another entity to be in possession, use or occupy the Premises without the permission of Movant.

REQUESTED RELIEF

7. By this motion, Movant seeks entry of an order modifying the automatic stay of Bankruptcy Code § 362: (i) to permit Movant to continue prosecution of a non-payment summary proceeding, before the Civil Court of the State City and County of New York, and/or to commence new litigation, seeking *inter alia* recovery of possession of the Premises; (ii) to enforce any possessory judgment issued thereon, and (iii) granting Movant such further relief as this Court may deem just and proper.

8. Bankruptcy Code section 362(d), which governs relief from the automatic stay, provides in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay--

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if --
 - (A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization ...

11 U.S.C. § 362(d).

9. As demonstrated below, it is respectfully submitted that Movant is entitled to relief from the automatic stay under Bankruptcy Code sections 362(d)(1) and (2).

10. Whether “cause” exists to modify the stay must be determined on a “case by case basis, taking into consideration the interests of the debtor, the claimants and the estate.” *In re MacInnis*, 235 B.R. 255, 259 (S.D.N.Y. 1998) citing *In re Keene Corp.*, 171 B.R. 180, 183 (Bankr. S.D.N.Y. 1994); *Manhattan King David Restaurant, Inc. v. Levine* (In re Manhattan King David Restaurant, Inc.), 163 B.R. 36, 40 (S.D.N.Y. 1993) (explaining the “term ‘cause’ is not defined in the Bankruptcy Code, and whether cause exists should be determined on a case by case basis”) citing *Sonnax Indus., Inc. v. Tri Component Prods. Corp.* (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990).

11. Although “cause” is not defined by the Bankruptcy Code, where a claimant seeks relief from the stay to pursue a cause of action in a non-bankruptcy forum, Congress has stated:

[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.
S. Rep. No. 989, 95th Cong., 2d Sess. 50, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836.

12. In *Edmonson v. America West Airlines, Inc.* (In re America West Airlines), 148 B.R. 920, 922-23 (Bankr. D. Ariz. 1993) it was stated that: “The Bankruptcy Court must make the following determinations in deciding whether cause exists to modify the stay:

- (1) Whether the litigation causes the debtor great prejudice. *In re Johnson*, 115 B.R. 634, 636 (Bankr. D. Minn. 1989).
- (2) Whether a balancing of the respective hardships tips in favor of the debtor or creditor, resulting from denial or granting of the relief. *Id.*
- (3) Whether public policy supports the type or kind of action the movant is bringing against the debtor. *Carter v. Larkham* (In re Larkham), 31 B.R. 273 (Bankr. D. Vt. 1983).”

13. Modification of the automatic stay may be granted by a bankruptcy court under section 362(d)(1) to permit a creditor to proceed with litigation in another forum in an attempt to regain possession of its collateral or property for cause. *See In re Burger Boys, Inc.*, 183 B.R. 682 (S.D.N.Y. 1994).

14. Under section 362(d)(1), cause exists to modify the stay where no landlord-tenant relationship is in existence when the bankruptcy case is filed. *See Bell v. Alden Owners, Inc.*, 199 B.R. 451, 458 (S.D.N.Y. 1996); *In re Seven Stars Restaurant, Inc.*, 122 B.R. 213, 218 (Bankr. S.D.N.Y. 1990); *In re GSVC Restaurant Corp.*, 3 B.R. 491 (Bankr. S.D.N.Y. 1980), *aff'd* 10 B.R. 300 (S.D.N.Y. 1980).

15. In the present case, Debtor lacks any landlord-tenant or sublandlord-subtenant relationship with Movant.

16. Moreover, it is respectfully submitted that cause exists to modify the stay because there is no lease or sublease for the Debtor to assume and therefore modification of the automatic stay does not interfere with Debtor's reorganization.

17. The continuation of the stay prejudices Movant as it is not receiving rent or use and occupancy for the Premises from Tenant, Debtor or any other individual or entity.

18. For all of the above reasons, Movant respectfully submits that there is sufficient cause to modify the automatic stay for the purposes indicated herein.

CONCLUSION

19. Notice of the Motion has been given to (a) the Debtor, (b) Debtor's counsel, (c) the Office of the United States Trustee, (d) counsel for the official committee of unsecured creditors and (e) those who have filed and notice of appearance and request for service in this proceeding.

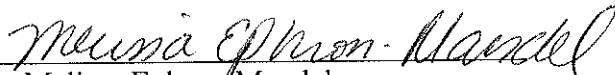
20. No prior request for the relief sought herein has been made to this or any other Court.

WHEREFORE, for all of the foregoing reasons and based upon the Declaration, Movant respectfully requests that this Court enter an order substantially in the form annexed as Exhibit 1 hereto and grant Movant such further relief as the Court deems appropriate.

Dated: New York, New York
February 3, 2011

Respectfully submitted,

EPHRON-MANDEL & HOWARD, L.L.P.


By: Melissa Ephron-Mandel
Attorneys for JPMorgan Chase Bank, N.A.
299 Broadway, Suite 1615
New York, New York 10007
(212) 393-1077

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

JENNIFER CONVERTIBLES, INC.,

Case No. 10-13779 (ALG)

Debtor.

Jointly Administered

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**DECLARATION OF MICHAEL STENGEL
IN SUPPORT OF MOTION OF JPMORGAN CHASE BANK, N.A.
FOR ORDER MODIFYING AUTOMATIC STAY OF 11 U.S.C. § 362
TO PERMIT CONTINUATION OF NON-PAYMENT SUMMARY PROCEEDING
AND ENFORCEMENT OF ANY JUDGEMENT OF POSSESSION ISSUED THEREON**

Michael Stengel, pursuant to 28 U.S.C. §1746, declares under penalty of perjury as follows:

1. I am an associate in the Lease Administration Department for JPMorgan Chase Bank, N.A. ("Movant"), which is the tenant and sublandlord of the nonresidential real property known as Store #8 and basement located in the building known as 2420 Broadway a/k/a 2420-2438 Broadway a/k/a 2424 Broadway, New York, New York (the "Premises") subleased to Columbus Convertibles, Inc. doing business as Jennifer House and/or Jennifer Convertibles (the "Tenant") but now also occupied or claimed to be occupied by Jennifer Convertibles, Inc. (the "Debtor").

2. I respectfully submit this declaration in support of the Movant's motion seeking an order modifying the automatic stay of 11 U.S.C. § 362: (i) to permit Movant to continue prosecution of a non-payment summary proceeding, before the Civil Court of the City and County of New York, seeking *inter alia* recovery of possession of the Premises; (ii) to enforce any possessory judgment issued thereon, and (iii) granting Movant such further relief as this Court may deem just and proper.

3. By written lease agreement dated October 3, 1991 between Anchor Savings Bank, FSB and Columbus Convertibles, Inc. doing business as Jennifer House, as extended by letter agreement dated December 14, 2004, between Washington Mutual Bank, FA and Jennifer House, extended and modified by Extension and Modification Agreement dated January 31, 2005, between Washington Mutual Bank, FA and Columbus Convertibles, Inc. d/b/a Jennifer House, and Lease Modification Agreement dated April 1, 2009 between JPMorgan Chase Bank, N.A. and Columbus Convertibles, Inc. d/b/a Jennifer Convertibles (collectively the "Lease," copies of which are annexed as Exhibit "A" hereto) the Premises were let by Movant's predecessor-in-interest to Tenant.

4. On or about late December 2010, based on Tenant's significant rent defaults, Movant commenced a non-payment summary proceeding captioned *JPMorgan Chase Bank, N.A. v. Columbus Convertibles, Inc. d/b/a Jennifer Convertibles, "Doe #1" and "Doe #2"*, assigned index no. L&T 095329/2010 (the "Non-Payment Proceeding"), before the Civil Court of the City and County of New York. (Copies of the Notice of Petition, Petition for Non-Payment and Affidavit of Service for the Non-Payment Proceeding are annexed as Exhibit "B" hereto.)

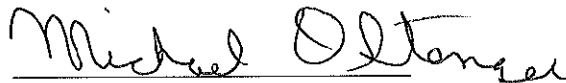
5. At the time of commencement of the Non-Payment Proceeding, Tenant was in arrears for rent and additional rent, accrued under the Lease, in the sum of Three Hundred Sixty Eight Thousand One Hundred Seventy Six and 53/100 Dollars (\$368,176.53).

6. Since commencement of the Non-Payment Proceeding, additional sums have accrued under the Lease, including Twenty Nine Thousand Two Hundred Thirty Six and 06/100 Dollars (\$29,236.06) base rent, per month, which remains unpaid. (A copy of a spread sheet detailing arrears accrued under the Lease is annexed as Exhibit "C" hereto.)

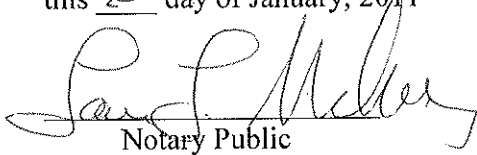
7. No portion of the rents set forth in the Petition for the Non-Payment Proceeding and no portion of the sums accrued under the Lease thereafter have been paid.

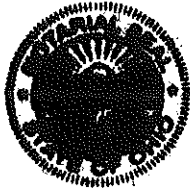
8. Movant has not granted Tenant or Debtor permission for Debtor to use, occupy or otherwise be in possession of the Premises.

WHEREFORE, Movant respectfully requests that the Court modify the automatic stay and permit Movant to prosecute the Non-Payment Proceeding and enforce any judgment of possession issued thereon.


Michael Stengel

Sworn to before me
this 25 day of January, 2011


Notary Public



Laura L. Nichols
Notary Public, State of Ohio
My Commission Expires 07-21-2014