

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,¹

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

ORDER

Acadia Cortland, LLC, one of the Debtors' landlords (the "Landlord"), has moved for permission to file a late objection to the Debtors' Amended Cure Schedule. The Cure Schedule stated that the amount necessary to cure defaults and assume a lease between the parties was zero; the Landlord asserts that the actual cure as of the date of the Cure Schedule, January 13, 2011, was two months' rent or \$36,660. The Landlord's sole reason for having failed to respond to the Cure Schedule, which it admits receiving, was "a personnel termination in the legal department of Acadia on or around the date of the Cure Notice." Aff. of Robert Masters, sworn to April 7, 2011, ¶ 13.

The Landlord asserts that its failure to respond to the Cure Notice constituted "excusable neglect" under *Pioneer Inv. Svc. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1993). However, excusable neglect is not shown by asserting that a dispute existed as to the Debtors' obligation to pay rent as of January 13, 2011 and that a mistake was made. Under Second Circuit law, which takes a "hard line" on excusable neglect, the most important factor is the reason why there was neglect. *In re Enron Corp.*, 419 F.3d 115, 121 (2d Cir. 2005). *See also*, in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

a very different context, *Dillon v. Conway*, --- F.3d ---, 2011 WL 1548955 (2d Cir. April 26, 2011)(“As a general matter we set a high bar to deem circumstances sufficiently extraordinary to warrant equitable tolling.”).

The Landlord has failed to meet its burden in attempting to show excusable neglect from turnover in its legal department. If this excuse were sufficient, there would be little force to bar orders of any type. The Landlord asserts that there was a dispute as to the date on which the Debtors were obligated to start paying rent – the Debtors asserting the date was February 23, 2011 and the Landlord asserting that it was November 25, 2010 – but this does not help the Landlord’s claim of excusable neglect. The existence of a dispute demonstrates that the Landlord should have anticipated that the matter would come to a head, as well as the Debtor’s good faith in listing the cure amount as zero. Indeed, since a chapter 11 debtor ordinarily receives a discharge of all debt as of the confirmation date, which was February 9, 2011, the Landlord’s claim for unpaid rent prior to that date was subject to being discharged on confirmation of a plan even apart from the cure notice. 11 U.S.C. §1141(d)(1). Notice of the confirmation hearing was sent to creditors on December 23, 2010, well before the date of the Cure Notice.

In any event, the Debtors have not raised the effect of the confirmation order. The present order decides only that the Landlord has not shown excusable neglect for having failed to dispute the Cure Notice as of January 13, 2011. If the parties still wish to dispute liability for rent for the period from January 13 to February 23, 2011, when the Debtors started paying rent, nothing in the present order precludes them from doing so.

The Landlord's motion is denied. IT IS SO ORDERED.

Dated: New York, New York
May 6, 2011

/s/ Allan L. Gropper

HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE