

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

In re:)
) Chapter 11
)
JENNIFER CONVERTIBLES, INC., *et al.*¹) Case No. 10-13779 (ALG)
)
Debtors.) (Jointly Administered)
)
)
)

**STIPULATION AND AGREED ORDER RESOLVING
CLAIM OF 376 BOYLSTON STREET REALTY TRUST**

This stipulation and agreed order (the “Stipulation”) is made by and among the Trust Administrator (the “Trust Administrator”) for the Jennifer Convertibles Litigation Trust (the “Trust”) of Jennifer Convertibles, Inc., *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), and 376 Boylston Street Realty Trust (“376 Boylston”), by and through their respective authorized representatives. The Trust and 376 Boylston are collectively referred to herein as the “Parties.”

WHEREAS, on July 18, 2010 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Following the Petition Date, the Debtors continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, on February 8, 2011, the Court entered an Order (the “Confirmation Order”) ² confirming the Debtors’ Amended Joint Chapter 11 Plan of Reorganization For Jennifer Convertibles, Inc. and its Affiliated Debtors (the “Plan”). ³

¹ The Debtors in these chapter 11 cases are: (i) Jennifer Convertibles, Inc.; (ii) Jennifer Convertibles Boylston MA, Inc.; (iii) Jennifer Chicago Ltd.; (iv) Elegant Living Management, Ltd.; (v) Hartsdale Convertibles, Inc.; (vi) Jennifer Management III Corp.; (vii) Jennifer Purchasing Corp.; (viii) Jennifer Management II Corp.; (ix) Jennifer Management V Ltd.; (x) Jennifer Convertibles Natick, Inc.; (xi) Nicole Convertibles, Inc.; and (xii) Washington Heights Convertibles, Inc.

WHEREAS, pursuant to section 9 of the Plan, the Trust was formed on February 22, 2011, which was the date the Plan became effective (the “Effective Date”).⁴ The Trust was formed for the purpose of (i) liquidating and distributing, among other things, the Litigation Trust Causes of Action, the Tranche A Note, the Tranche C Note, 9.9% of the New Common Stock and any other assets acquired by the Trust (the “Litigation Trust Fund”); and (ii) pursuing objections to disputed general unsecured claims. Pursuant to section 8.01 of the Plan, the Debtors were deemed to have assigned to the Trust on the Effective Date the exclusive right to object to disputed general unsecured claims. The appointment of the Trust Administrator was approved pursuant to paragraph 17 of the Confirmation Order.

WHEREAS, on October 25 and 26, 2010, 376 Boylston filed proofs of claim numbers 314 and 315 against Jennifer Convertibles, Inc. each asserting a general unsecured claim against the Debtors in the amount of \$1,038,299.42 (“Claim 314” and “Claims 315” respectively).

WHEREAS, on December 23, 2010, the Debtors filed an omnibus objection pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to certain duplicative claims (the “Debtors’ First Omnibus Objection”).⁵ In the Debtors’ First Omnibus Objection, the Debtors objected to Claim 314 as duplicative of Claim 315. On January 26, 2011, the Bankruptcy Court entered an order granting the Debtors’ First Omnibus Objection and expunging Claim 314.⁶

² Docket Entry No. 491.

³ Docket Entry No. 399.

⁴ Docket Entry No. 503.

⁵ Docket Entry No. 405.

⁶ Docket Entry No. 473.

WHEREAS, on October 11, 2011, the Trust Administrator filed a second (substantive) omnibus objection to certain (a) overstated claims; (b) no liability claims; and (c) rejection damages claims (the “Second Omnibus Objection”).⁷ In the Second Omnibus Objection, the Trust objected to Claim 315 and sought to reduce Claim 315 to \$470,031.66.

WHEREAS, on January 20, 2012, the Trust Administrator filed a fourth (substantive) omnibus objection to certain (a) overstated claims; (b) no liability claims; (c) misclassified claims; (d) rejection damages claims; (e) misclassified landlord claims; and (f) overstated landlord claims (the “Fourth Omnibus Objection”).⁸ In the Forth Omnibus Objection, the Trust objected to Claim 315 as overstated as a result of the failure to account for any mitigation of damages.

WHEREAS, the Parties have engaged in good-faith negotiations with respect to Claim 315 and have determined that it is in the best interests of the Parties to enter into this Stipulation resolving Claim 315.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby stipulate and agree as follows:

1. Claim 315 shall be allowed as a general unsecured claim in the amount of \$750,000.
2. The agreement and obligations set forth in this Stipulation shall be in full and final satisfaction of the matters raised in Second Omnibus Objection and the Fourth Omnibus Objection, but solely as they relate to Claim 315. Upon entry of a final order approving this Stipulation, the Second Omnibus Objection and the Fourth Omnibus Objection as they relate only to Claim 315 shall be deemed moot.

⁷ Docket Entry No. 620

⁸ Docket Entry No. 658.

3. The allowance of Claim 315 as provided in this Stipulation shall fully and finally resolve any and all liability of the Trust to 376 Boylston. 376 Boylston hereby releases, waives and discharges the Trust, the Trust Administrator and each of their respective successors, assigns, agents, and attorneys of and from any and all claims other than Claim 315 as allowed pursuant to this Stipulation.

4. This Stipulation is binding upon the bankruptcy estate, the Parties, their respective successors and assigns, all parties-in-interest, and upon any trustee appointed in this or any converted case. In the event that this case is converted to a case under chapter 7 of the Bankruptcy Code, and a chapter 7 trustee is appointed, this Stipulation shall remain in full force and effect.

5. Each Party represents that it understands and fully agrees to each and every provision hereof. This Stipulation constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions between the Parties. This Stipulation may not be amended, modified or waived without the express written consent of the Parties hereto.

6. This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures on copies of this Stipulation reproduced electronically or by facsimile shall be deemed as effective as original signatures on counterparts.

WHEREFORE, the undersigned have executed this Stipulation on behalf of the

Parties hereto on March 28, 2012.

JENNIFER CONVERTIBLES
LITIGATION TRUST

376 BOYLSTON STREET
REALTY TRUST

By: /s/ James D. Hunt

By: KDW Restructuring & Liquidation
Services LLC, not individually but solely
As Trust Administrator of the Jennifer
Convertibles Litigation Trust

By: James D. Hunt
Title: Chief Operating Officer
101 Park Avenue
New York, New York 10178
Tel: (212) 808-7800
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By: /s/ Philip Touitou

Philip Touitou
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ATTORNEYS FOR 376 BOYLSTON
STREET REALTY TRUST

SO ORDERED:

Dated: April 11, 2012
New York, New York

s/Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE