

A·S·K FINANCIAL LLP
Joseph L. Steinfeld, Jr., Esq.
(Admitted Pro Hac Vice)

Presentment Date and Time: July 10, 2012 at 12:00 p.m.
Objection Deadline: July 9, 2012 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Jennifer Convertibles, Inc., et al.¹

Debtors.

Bk. No. 10-13779 - ALG

Chapter 11

Honorable Allan L. Gropper

MOTION FOR AN ORDER APPROVING THE SETTLEMENT OF AN AVOIDANCE ACTION PURSUANT TO FED. R. BANKR. P. 9019

KDW Restructuring & Liquidation Services, LLC, Litigation Trustee for the Jennifer Convertibles Litigation Trust (the “Plaintiff”) files this motion (the “Motion”) pursuant to section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking the Court’s authorization and approval to settle and resolve the claims against EisnerAmper LLP fdba Eisner LLP (the “Defendant”) and, in support thereof, respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, 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).

JURISDICTION

1. This Court has jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and section 105(a) of the Bankruptcy Code. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(A) and (L). Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 1409.

RELEVANT BACKGROUND

2. On or about July 18, 2010 (the "Petition Date") the Debtors each commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

3. On or about July 22, 2010, the Court entered an order authorizing the joint administration of the Chapter 11 Cases for procedural purposes pursuant to Bankruptcy Rule 1015(b) [Docket No. 51]. The Chapter 11 Cases were jointly administered as Case Number 10-13779 (ALG).

4. Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Reorganization for Jennifer Convertibles, Inc. And Its Affiliated Debtors dated December 21, 2010 [Docket No. 399] (the "Plan"), which was confirmed on February 8, 2011 pursuant to the Court's Findings of Fact, Conclusions of Law, and Order Confirming the Amended Joint Chapter 11 Plan of Reorganization of Jennifer Convertibles, Inc. And Its Affiliated Debtors [Docket No. 491], and the Litigation Trust Agreement, Plaintiff is authorized to pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Litigation Trust Avoidance Actions.

5. The terms of the settlement are reflected in the settlement agreement, which is annexed hereto as Exhibit "A." In sum, the settlement provided that Defendant shall pay Plaintiff on or before October 24, 2011, the sum of \$5,504.10.

RELIEF REQUESTED AND APPLICABLE AUTHORITY

6. By this Motion, Plaintiff seeks entry of an order, substantially in the form attached hereto as Exhibit “B,” approving and granting her authority to execute the settlement agreement on behalf of the Debtor, thereby resolving the Adversary Proceeding.

7. This Motion is governed by Bankruptcy Rule 9019. Bankruptcy Rule 9019(a) provides, in pertinent part: “[A]fter notice and a hearing, the court may approve a compromise or settlement.” The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the “best interests of the estate.” In re Vouzianas, 250 B.R. 478, 481 (E.D.N.Y. 2000), aff’d 259 F.3d 103 (2d Cir. 2001).

8. The United States Supreme Court established the measure for determining whether a settlement is in the best interests of the estate in Protective Committee for Independent Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414 (1968). The Supreme Court held that approval of a settlement requires a finding that the settlement is “fair and equitable.” Id. at 424. According to the Supreme Court, such a finding is to be based on:

[an] educated estimate of the complexity, expense, and likely duration of... litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Id. See also In re Adelpia Communications Corp., 327 B.R. 143, 158-59 (Bankr. S.D.N.Y. 2005), adhered to on reconsideration, 327 B.R. 175 (Bankr. S.D.N.Y. 2005) (determination as to whether proposed compromise is fair and equitable requires exercise of informed, independent judgment by court).

9. The decision to approve a settlement or compromise is within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. See TMT, 390 U.S. at 424-25. The settlement need not be the best that could have been achieved, but need only fall “within the reasonable range of litigation possibilities,” In re Penn Central Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979), and not “below the lowest point in the range of reasonableness.” Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 822 (1983); see also In re Gardi, 273 B.R. 4, 18 (Bankr. E.D.N.Y. 2002); In re Adelphia, supra, 327 B.R. at 159.

10. Based on the standards set forth by the Supreme Court in TMT, courts have held that an evaluation of proposed compromises and settlements should not become a mini-trial on the merits of the claims involved. In re Interstate Cigar Co. 240 B.R. 816, 822 (Bankr. E.D.N.Y. 1999). Rather, the court only need be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. In re Adelphia, supra, 327 B.R. at 159; In re Energy Co-op., Inc., 886 F.2d 921, 924-25 (7th Cir. 1989). Thus, a court should give deference to a debtor’s informed judgment that a compromise is fair and equitable to the estate. Penn Central, 596 F. 2d at 1114.

11. In the case In re Texaco, Inc., 84 B.R. 893, 901 (Bankr. S.D.N.Y. 1988), the court listed a number of factors for consideration in approving a settlement. As a result, bankruptcy courts in this district have considered the following factors in determining whether to approve an application to approve a settlement under Bankruptcy Rule 9019:

- (i) The balance between the likelihood of success compared to the present and future benefits offered by the settlement;

- (ii) The prospect of complex and protracted litigation if the settlement is not approved;
- (iii) The proportion of the class members who do not objection or who affirmatively support the proposed settlement;
- (iv) The competency and experience of counsel who support settlement;
- (v) The relative benefits to be received by individuals or by groups of the class;
- (vi) The nature and breadth of releases to be obtained by officers and directors; and
- (vii) The extent to which the settlement is the product of arms-length bargaining.

In re Interstate Cigar, *supra*, 240 B.R. at 822-23; In re Spielfogel, 211 B.R. 133, 144 (Bankr. E.D.N.Y. 1997). See also In re Adelpia, *supra*, 327 B.R. at 159-60.

12. Having reviewed the merits of the underlying claims against Defendant, Plaintiff, in consultation with its advisors, has determined that the proposed settlement of the claims against Defendant on the terms indicated above, represent a favorable resolution of the potential claims, and is in Plaintiff's best interest, considering, among other things, the defenses asserted by Defendant and the cost, expense, uncertainty and delays associated with litigating the matter. For these reason, the settlement with the Defendant should be approved by the Court.

NOTICE AND PRIOR MOTION

13. Notice of this Motion has been given to (i) counsel for the Creditors' Committee, (ii) the Office of the United States Trustee for this District, and (iii) counsel for the Defendant. In light of the nature of the relief and the cost of giving notice to all of the creditors in this case, the Trustee submits that no other or further notice need be given.

14. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order, in the form annexed hereto as Exhibit “B,” approving the Settlement Agreement annexed hereto as Exhibit “A,” and providing for such other and further relief as the Court deems just and proper.

Dated: June 19, 2012

A·S·K FINANCIAL LLP

By /s/ Kara E. Casteel
Joseph L. Steinfeld, Jr., Esq. (*Admitted Pro Hac Vice*),
Kara E. Casteel, Esq. (*Admitted Pro Hac Vice*),
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Attorneys For Plaintiff, KDW Restructuring &
Liquidation Services, LLC, Litigation Trustee

Exhibit “A”

In Re Jennifer Convertibles, Inc., et al.
Bankruptcy Case No. 10-13779

KDW Restructuring & Liquidation Services, LLC, Litigation Trustee for the
Jennifer Convertibles Litigation Trust
re:
EisnerAmper LLP fdba Eisner LLP

REFER TO FILE NO:
JCIEIS001

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") by and between KDW Restructuring & Liquidation Services, LLC, Litigation Trustee for the Jennifer Convertibles Litigation Trust, ("Litigation Trustee") and EisnerAmper LLP fdba Eisner LLP ("Creditor")¹ is made and entered into as of October 14, 2011.

WHEREAS, on July 18, 2010, Jennifer Convertibles, Inc., et al. (the "Debtors") filed a petition for relief under chapter 11, title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York, Manhattan Division ("Court"), Case No. 10-13779 ("this Case");

WHEREAS, the Litigation Trustee has asserted that the Debtors made transfers totaling \$36,403.00 (the "Transfers") to the Creditor that are avoidable under the provisions of 11 U.S.C. §§ 547-550, respectively;

WHEREAS, the Litigation Trustee now believes that the net preference claim, i.e., after allowance for defenses raised under 11 U.S.C. § 547(c)(2) or (c)(4) may be substantially reduced;

WHEREAS, the Creditor has denied liability for any alleged preferential transfers and has asserted new value and/or ordinary course of business defenses to the Transfers amounts, if any, credited by the Litigation Trustee;

WHEREAS, following good faith negotiations, the Litigation Trustee and the Creditor desire to settle and compromise this matter on the terms set forth herein; and

WHEREAS, the Creditor has agreed to pay the sum of \$5,504.10 U.S. Dollars ("Settlement Payment") in full and final settlement of its alleged liability for the avoidance and recovery of the Transfers,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby stipulate and agree as follows:

1. The Creditor shall pay to the Litigation Trustee on or before October 24, 2011, the sum of \$5,504.10 U.S. Dollars.
2. It is understood that this Settlement Agreement is a compromise of a disputed claim and that the Settlement Payment made hereunder is not to be construed as an admission of any liability for preferential transfers. This Settlement Agreement is intended to fully resolve and settle all claims for the avoidance and recovery of the Transfers.
3. This Settlement Agreement is binding upon the Parties, but is subject to Court approval by Bankruptcy Rule 9019(b). Plaintiff represents that it will obtain court approval of this compromise, or approval on an omnibus basis to effect compromises of this and other preference claims. Plaintiff will return all settlement funds if the Court does not approve this compromise.
4. Any claim by the Litigation Trustee for the avoidance and recovery of the Transfers from Creditor under 11 U.S.C. §§ 544 - 550 in the Case shall be hereinafter barred upon clearance of the Settlement Payment.
5. The Parties hereby declare that the terms of this Settlement Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, settlement and release of any and all claims disputed or otherwise, that may arise to avoid or recover the Transfers under 11 U.S.C. §§ 544-550, on account of the matters, facts, and damages above mentioned.
6. The Creditor hereby waives any right it may have to file a claim for the Settlement Payment.
7. The Creditor's existing Proof of Claim, if any, shall be unaffected by this Settlement Agreement.
8. The Parties each warrant that they have made no assignment, and hereafter will make no assignment of any claim, chose in action, right of action, or any other right released pursuant to this Agreement.

¹Litigation Trustee and Creditor shall be referred to collectively as the "Parties."

- 9. The Parties shall each bear their respective attorneys' fees and costs relating to the costs associated with the Preference Claim settlement negotiations and implementation of this Agreement. However, if any action is commenced by any party hereto to enforce the provisions of this Agreement, the prevailing party shall be entitled to an award, in addition to any other claims or damages, of its costs and expenses including attorneys' fees, in connection with said action.
- 10. Except for the rights and obligations arising out of the Settlement Agreement, the Parties hereby relinquish all claims against each other with respect to the Transfers, whether or not now known, and the Parties hereto expressly waive any and all rights and benefits conferred upon them.
- 11. The Parties hereto have read all of the foregoing and represent that this Agreement has been explained to them by their respective legal counsel, and that each understands all of the provisions hereto.
- 12. The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures. This Agreement may be executed in counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by themselves or on their behalf by their respective attorneys as of the date first above mentioned.

Dated: October 14, 2011

A·S·K FINANCIAL LLP

By: Kara E. Casteel

Joseph L. Steinfeld, Jr., DC SBN 297101, MN SBN 0266292, VA SBN 18666
Kara E. Casteel, Esq.

Attorneys for KDW Restructuring & Liquidation Services, LLC, Litigation Trustee for the Jennifer Convertibles Litigation Trust

Dated: 10/20, 2011

EisnerAmper LLP fdba Eisner LLP

By: David Ringer

Print Name: DAVID RINGER

Title: Partner

RETURN WITH CHECK FOR
PAYABLE TO
PAYMENT DUE

\$5,504.10 U.S. Dollars
JCI Trust Account
October 24, 2011
C/O A·S·K Financial
2600 Eagan Woods Drive, Suite 400
Eagan, MN 55121
Attn: Accounting Department

Exhibit “B”

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

In re

Jennifer Convertibles, Inc., et al.¹

Debtors.

Bk. No. 10-13779 - ALG

Chapter 11

Honorable Allan L. Gropper

**ORDER APPROVING SETTLEMENT BY
AND BETWEEN KDW RESTRUCTURING & LIQUIDATION SERVICES,
LLC LITIGATION TRUSTEE AND EISNERAMPER LLP
FDBA EISNER LLP RESOLVING CLAIMS ARISING
UNDER §§ 547, 548, 549, 502 AND 550 OF THE BANKRUPTCY CODE**

Upon the (i) Notice of Presentment of Order (the “Order”) Approving Settlement by and Between KDW Restructuring & Liquidation Services, LLC Litigation Trustee (the “Plaintiff”) and EisnerAmper LLP fdba Eisner LLP (the “Defendant”) Resolving Claims Arising Under §§ 547, 548, 549, 502 and 550 of the Bankruptcy Code and (ii) Motion in Support of Entry of the Order both dated June 19, 2012, filed by Plaintiff; and upon the Settlement Agreement, a true copy of which is annexed to the Motion as Exhibit “A” (the “Settlement Agreement”); and it appearing that this Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §157(b); and it appearing that venue of this proceeding is proper before this Court pursuant to 28 U.S.C. § 1408 and 1409; and it appearing that notice of presentment of the Order and opportunity to be heard were appropriate under the circumstances and that no further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, 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).

ORDERED, that the settlement between Plaintiff and Defendant pursuant to the terms and conditions described in the Motion and the Settlement Agreement, is hereby approved, and it is further

ORDERED, that the Court shall retain jurisdiction to construe, enforce, and resolve any dispute concerning the Order.

Dated: New York, New York
_____, 2012

By: _____
HONORABLE ALLEN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE