

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: ) Case No. 02-B02474  
)  
KMART CORPORATION, ) Chapter 11  
) Hon. Susan Pierson Sonderby  
Debtor. ) Hearing Date: June 16, 2009  
) Hearing Time: 11:00 a.m. (CDT)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **Tuesday, June 16, 2009, at the hour of 11:00 a.m. (CDT)**, we shall appear before Judge Susan Pierson Sonderby, Courtroom 642, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and shall present the **Kmart Corporation's Motion for Order Applying Bankruptcy Rules 7008 and 7012 to Contested Matter on Claim of Beulah D. Johnson**, a copy of which is attached hereto and herewith served upon you at which time and place you may appear if you so see fit.

PLEASE TAKE FURTHER NOTICE that to appear telephonically at this hearing, please contact Judge Sonderby's courtroom deputy at 312-435-5647 as well as Mark Mackowiak of the law firm below at 312-629-5187.

Dated: May 20, 2009

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, William J. Barrett, an attorney, hereby certify that a true and correct copy of **Kmart Corporation's Motion for Order Applying Bankruptcy Rules 7008 and 7012 to Contested Matter on Claim of Beulah D. Johnson**, was served via first class U.S. Mail, postage prepaid, to the parties listed below, on the 20<sup>th</sup> day of May, 2009.

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/s/ William J. Barrett  
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## Mailing Information for Case 02-02474

### Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notices for this case.

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

KMART CORPORATION,

Reorganized Debtor.

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: June 16, 2009

Hearing Time: 11:00 a.m. (CDT)

**KMART CORPORATION'S MOTION FOR ORDER APPLYING BANKRUPTCY  
RULES 7008 AND 7012 TO CONTESTED MATTER ON  
CLAIM OF BEULAH D. JOHNSON**

Kmart Corporation, for its Motion for Order Applying Bankruptcy Rules 7008 and 7012 to Contested Matter on Claim of Beulah D. Johnson ("Johnson"), states as follows:

1. Johnson filed claim 46097 (copy attached hereto) asserting a claim for (i) amounts owed on a pre-petition judgment of \$75,866 (the "Judgment Claim") and (ii) \$40,000,000 for alleged gender and race discrimination (the "Discrimination Claim").

2. Kmart timely objected to Johnson's claim. Kmart did not have notice of the proceeding that resulted in the Judgment Claim. However, because the claim falls under Class 6 of Kmart's Plan of Reorganization, and is therefore entitled to a distribution of only about \$6,900, Kmart will withdraw its objection to the Judgment Claim upon the resolution of the Discrimination Claim.

3. Kmart objects to the Discrimination Claim as being unfounded. However, because the claim sets forth no facts, Kmart is unable to do more than generally object to the claim. (Johnson did attach to the Proof of Claim a five page narrative written by Johnson; the narrative, however, does not appear to provide any factual basis for the claim).



4. Johnson's Discrimination Claim, and Kmart's objection to the claim, creates a contested matter under Bankruptcy Rule 9014. Kmart believes that the Discrimination Claim should be subject to the rules of pleading applicable to adversary proceedings because claims of that sort are usually subject to motion practice under Rules 12 and 56 of the Federal Rules of Civil Procedure. The Seventh Circuit Court of Appeals has issued several rulings on the pleading requirements for discrimination claims. See, e.g. Kolupa v. Roselle Park District, 438 F.3d 713 (7<sup>th</sup> Cir. 2006) (to survive a motion to dismiss under Rule 12(b)(6), the complaint must at least state a few facts, such as dates, that support the claim). The only way for this Court to determine whether Johnson's claim meets those requirements is for Johnson to set forth her claim in the form of a complaint that meets the requirements of Rule 8 of the Federal Rules of Civil Procedure. Because Rule 8 does not apply in contested matters unless ordered by the Court, Kmart requests that the Court Order that Rule 8 applies in the contested matter concerning Johnson's claim. Kmart also requests that Rule 12 apply to permit either a motion to dismiss or a motion for a more definite statement.

5. Kmart may at some point seek to convert Johnson's claim, and other remaining unresolved claims, to adversary proceedings. Kmart will likely effect the conversion by filing separate adversary proceedings for each claim, and then moving that the Court treat the pleadings filed with respect to the claim as pleadings filed in the adversary proceeding. Kmart believes that the conversion of this and other claims to adversary proceedings can be achieved without any inconvenience to the claimant.

WHEREFORE, Kmart moves that the Court order that Rules 8 and 12 of the Federal Rules of Civil Procedure (Rules 7008 and 7012 of the Bankruptcy Rules of Procedure) apply to the contested matter over the claim of Johnson, and that Johnson accordingly restate her claim in

the form of a complaint satisfying Rule 8 of the Federal Rules of Civil Procedure, and that such complaint be filed by August 1, 2009.

Dated: May 20, 2009

KMART CORPORATION

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