

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

In re:) Chapter 11 Reorganization
)
KMART CORPORATION, et al.,) Case No. 02 B 02474
) (Jointly Administered)
Debtors.)
) The Honorable Susan P. Sonderby,
) Presiding.
)
)
) Hearing: July 15, 2009, at 10:30 a.m. CST

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on the 15th day of July 2009, at the hour of 10:30 a.m. CST, or as soon thereafter as counsel may be heard, counsel identified below shall appear before the Honorable Susan P. Sonderby and present the attached **Joint Motion for Entry of Agreed Order** (the "Motion") in Courtroom 642 at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn, Chicago, Illinois, at which time and place you may appear if you see fit.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's Fifth Amended Motion And Restated Case Management Order (Docket No. 31773), the objection deadline for this Motion shall be July 10, 2009.

Dated: July 1, 2009

LENNAR PARTNERS, INC.

By: /s/ Ronald R. Peterson
One of Its Attorneys

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JOINT MOTION FOR ENTRY OF AGREED ORDER

Lennar Partners, Inc. ("Lennar"),¹ by its attorneys, and Milton Ventures, Limited Partnership ("Milton"), Moshe Shaltiel, Simone Shaltiel, and Richard D. Kushnir (collectively, the "Milton Parties") (together with Lennar, the "Moving Parties"), by their attorneys, hereby file this Joint Motion for Entry of Agreed Order (the "Motion") to resolve, among other things, the Contested Matter (as defined below) among the Moving Parties and to direct that any and all future distributions on account of Claim No. 37772 or Claim No. 53944 filed by Milton against the K-Mart Corporation Inc. and its bankruptcy estate in the above-captioned bankruptcy case, be made to CAPCO. In support of this Motion, the Moving Parties respectfully state as follows:

1. This Court has jurisdiction over the matter set forth in this Motion pursuant to 28 U.S.C. §§ 1334(a) and (e); and 157(a). The matter set forth in this Motion arises in and is related to the above-captioned case under chapter 11, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended from time to time, the "Bankruptcy Code"). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Lennar is acting attorney-in-fact and special servicer for CAPCO 1998-D7 Pipestone, LLC, a Michigan limited liability company ("CAPCO").

2. On January 22, 2002, the above-captioned debtor (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”).

3. On July 29, 2002, and July 30, 2002, Milton filed against the Debtor: (a) Claim No. 37772, for future rents and other damages arising from the Debtor’s rejection of the Lease, and (b) Claim No. 53944 for post petition, pre rejection rents (collectively, the “Claims”).

4. In August 2002, CAPCO claimed that Milton defaulted under a certain mortgage, assignment of rents, and other loan documents; and, pursuant to the assignment of rents, CAPCO asserted that it had a right to all of the rents, including, but not limited to, the rents due from the Debtor and any amounts due from the Debtor pursuant to the Claims.

5. On April 23, 2003, the Bankruptcy Court confirmed the Debtor’s Chapter 11 plan of reorganization (the “Plan”), which provided for a pro rata distribution of the Debtor’s stock to its creditors.

6. On October 6, 2003, Milton filed in the above-captioned bankruptcy case an Assignment of the Claims to Richard D. Kushnir. [Docket No. 18385].

7. On April 13, 2004, Lennar filed in the above-captioned bankruptcy case a notice of interest in the Claims, asserting CAPCO’s interest in the Claims. [Docket No. 23783].

8. On April 29, 2004, Milton filed an objection to CAPCO’s notice of interest and initiated a contested matter before the Bankruptcy Court (the “Contested Matter”). [Docket No. 24291].

9. On August 5, 2004, Milton procured an *ex parte* order from the Bankruptcy Court which (i) purported to resolve the Contested Matter and recognize Simone Shaltiel, a/k/a Simone Saragosi, the daughter of Moshe Shaltiel and Gila Shaltiel, as the owner of the Claims, and

(ii) directed the Debtor to pay any distribution under the Plan to Simone Shaltiel. [Docket No. 25774]

10. On February 18, 2005, CAPCO filed a complaint in the United States District Court for the Northern District of Illinois (the “District Court”) against Milton, Moshe Shaltiel, Richard D. Kushnir, and Simone Shaltiel, styled *CAPCO 1998-D7 Pipestone LLC v. Milton Ventures LLP, et al.*, Case No 05-1024 (the “District Court Case”).

11. On April 19, 2005, the Bankruptcy Court vacated the *ex parte* order, in part. [Docket No. 28222].

12. On May 27, 2005, Lennar filed a motion to withdraw the reference of the Contested Matter to be consolidated with the District Court Case. [Docket No. 28448].

13. On August 1, 2005, the District Court granted the motion to withdraw the reference and then dismissed the District Court Case. [See Docket No. 30393].

14. On March 13, 2006, CAPCO filed a motion for partial reconsideration of the dismissal order in the District Court Case.

15. On March 20, 2006, the District Court granted the motion for partial reconsideration, referred the District Court Case to the Bankruptcy Court, and re-referred the Contested Matter to the Bankruptcy Court.

16. On March 24, 2006, the referred District Court Case and the Contested Matter became consolidated in an adversary proceeding, *CAPCO 1998-D7 Pipestone, LLC v. Milton Ventures, LLP, Moshe Shaltiel, Richard Kushnir and Simone Shaltiel*, Case No. 06-00866 (the “Adversary Proceeding”), which is now *sub judice* before the Bankruptcy Court.

17. On June 30, 2009, the Moving Parties, together with Milton Ventures II, L.P., MAL Corporation, and Gila Shaltiel, entered into a Settlement Agreement that resolves, among

other things, the Adversary Proceeding, which includes the matters raised in the District Court Case and the Contested Matter. Among other things, the Settlement Agreement requires the entry of an order, in the above-captioned bankruptcy case, directing that any future distributions to be made under the Plan on account of the Claims be made to CAPCO.

18. On July 1, 2009, CAPCO and the Milton Parties filed a Stipulation of Dismissal in the Adversary Proceeding, dismissing, without prejudice, the Adversary Proceeding with each party to bear its own costs. The Stipulation of Dismissal provides that the dismissal shall be deemed to be with prejudice upon the entry of a stipulated order dismissing *CAPCO 1998 D7 Pipestone, LLC v. Milton Ventures Lined Partnership et al.*, Case No. 04 3157 CZ T, filed in the Berrien County Trial Court in the State of Michigan (the “Michigan Action”), with each party to bear its own costs. CAPCO and the Milton Parties will seek the entry of a stipulated order dismissing the Michigan Action upon entry of the Agreed Order requested by this Motion.

WHEREFORE, the Moving Parties respectfully request that this Court enter the Agreed Order, attached hereto as Exhibit A, directing that any future distributions under the Plan to be made on account of the Claims be made to CAPCO.

Dated: July 1, 2009

Respectfully submitted,

JENNER & BLOCK LLP

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By: /s/ Ronald R. Peterson

By: /s/ David A. Golin

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