

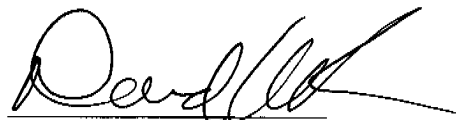
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Case No. 02-02474
)	
KMART CORPORATION, etal)	Chapter 11
)	Chief Judge Susan Pierson Sonderby
Debtors)	
)	

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT

The claimant can't find any case law which permits a bankruptcy court to take jurisdiction over assets not owned by the debtor. The claimant can't find any case law which supports the legal theory that a debtor who has no ownership or title to cash which the debtor is holding in trust for the owner, can refuse to pay that cash to its owner, then file a bankruptcy petition and use the bankruptcy proceedings to illegally withhold a substantial portion of the cash it never had title to or ownership of.

August 23, 2009



DAVID KERSH
PO BOX 75166
HONOLULU, HI 96836

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
SEP 03 2009

KENNETH S. GARDNER, CLERK
PS REP. - SJ

Check Number: 90161556
Check Date: 08/01/2007
Check Amount: \$10,595.18
Page: 1 of 1

DAVID KERSH
P.O. BOX 75166
HONOLULU, HI 96836

Kmart Management Corporation
3100 W Big Beaver Rd
Troy MI 48084-3163

Offline Check

864 38521 530 07/26/2007 ONE \$10,595.18

EX 1

*Tendered per August 3, 2007 letter
from William Barrett to David Kersh.
This is an accord and satisfaction.*

Total \$10,595.18

Check Number **Kmart Management Corporation** Offline Check
90161556

62-35
311

Date
08/01/2007

Pay TO THE ORDER OF
DAVID KERSH
P.O. BOX 75166
HONOLULU, HI 96836

Amount: \$10,595.18

VOID AFTER SIX MONTHS
NOT NEGOTIABLE PRIOR TO
DATE ISSUED

TEN THOUSAND FIVE HUNDRED NINETY FIVE AND 18/100 DOLLARS

Allen Rawson

The Bank of New York (Delaware)
NEWARK, DELAWARE

THIS DOCUMENT IS PRINTED IN BLUE INK AND CONTAINS SECURITY FEATURES ON BOTH SIDES. DO NOT ACCEPT UNLESS THESE SECURITY FEATURES ARE PRESENT.

⑈90161556⑈ ⑆031100351⑆ ⑆0300955614⑈

BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP

200 WEST MADISON STREET, SUITE 3900
CHICAGO, ILLINOIS 60606

William J. Barrett
(312) 629-5170
Voice Mail Ext. 4570
william.barrett@bfkn.com

Telephone (312) 984-3100
Facsimile (312) 984-3150

August 3, 2007

Mr. David Kersh
P. O. Box 75166
Honolulu, HI 96836

Re: Kmart Corporation

Dear Mr. Kersh:

I am following up on our recent telephone conversations regarding your claim in the Kmart bankruptcy case. You have filed a secured claim for \$96,119. As you know, Kmart has objected to the claim, asserting both that the claim is not a secured claim and that the amounts claimed are, with the exception of a few thousand dollars, not valid.

Solely in order to avoid costs of continued litigation over your claim, and without admitting the merits of your claim, Kmart has elected to allow your claim as filed, specifically as a secured claim for \$96,119. As a secured claim, the claim falls under Class 1 of Kmart's Plan of Reorganization. Under Class 1, Kmart may either allow you to recover the collateral that secures the claim or pay the value of the collateral. Because whatever collateral might have once secured the claim no longer exists, and because there is no security agreement or UCC financing statement that describes any collateral, Kmart will pay you the value of the collateral, which it determines to be zero. Accordingly, the distribution on the Class 1 claim is zero.

Class 6 of the Plan is a general unsecured class that includes all unsecured claims other than those related to vendors or landlords. As the holder of a secured claim, you have a claim for a deficiency, which is the difference between the amount of the claim and the amount distributed on the claim as a secured claim. Since zero will be distributed on the claim as a secured claim, you have a deficiency claim for \$96,119. You will accordingly be recognized as holding a Class 6 claim for that amount. Under the Plan, you are entitled to a distribution at 9.7¢ on the dollar plus your share of creditor trust recoveries and interest on the 9.7¢. The total distribution you are entitled to is \$10,595.18. Enclosed is a check for that amount, which is tendered as full satisfaction of all of your claims against Kmart. By accepting and negotiating this check, you agree that all disputed matters between you and Kmart have been fully satisfied.

BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP

Mr. David Kersh
August 3, 2007
Page 2

Kmart considers this matter concluded. If you seek any further relief, you will need to file a motion with the bankruptcy court. Kmart will withdraw its pending motions, and request that the court deny your motion as moot.

Very truly yours,



William J. Barrett

WJB/jmx

Enc.

Cc: Tim Neis



No 009441

EX3

BILLED TO:
 Name K-MART
 Company _____
 Address Tec - 12
 City Southfield
 State/Prov. _____ Zip/P. Code _____
 Telephone (Bus) _____ (H) _____

SHIPPED TO:
 Name _____
 Address _____
 City _____
 State/Prov. _____ Zip/P. Code _____
 Telephone (Bus) _____ (H) _____

ACCOUNT NO. _____

Prev/Acct.	Prev/Renew	Date Ordered	Metro Del.	Pick Up	UPS	A	Date Shipped	TERMS Cash (Final Sale)	C.O.D.
New/Acct	<u>Renew</u>	<u>12/22/90</u>	<u>L</u>				<u>12-22-90</u>	<u>Consignmen</u>	Salesman <u>DK</u>
QUANTITY	DESCRIPTION								TOTAL
<u>24</u>	199 METRO PASSBOOK MEMBERSHIPS AT \$ <u>25⁰⁰</u> EACH								
<u>25</u>	DISPLAY BOOK(S) ON CHAIN								
<u>25</u>	<u>Save</u> WINDOW POSTERS <u>5.40 Gold</u> DOOR POSTERS BROCHURES · FLIERS								
RECEIVED BY (Authorized Signature) <u>T. Boyle</u> DELIVERED BY Metro <u>L. White</u> Memberships not to be sold for under \$ _____									
This contract subject to the terms and conditions contained on the reverse side of this invoice.									

MAIL ALL PAYMENTS TO:
 METRO PUBLICATIONS, INC.
 26600 TELEGRAPH
 SUITE 120
 SOUTHFIELD, MICHIGAN 48034
 (313) 357-5300
 FAX: (313) 357-5301

BOOKS LEFT _____
 DATE _____
 INITIAL _____

DISTRIBUTION FORM
 On File Attached
 TO RETURN UNSOLD PASSBOOKS
 PLEASE SEE REVERSE SIDE FOR
 INSTRUCTIONS



EXY

WITNESSETH: In consideration of the mutual promises of the parties stated herein, they agree, as follows:

- 1. The consignor agrees:
 - A. To deliver to the consignee, on consignment, the number of memberships listed on the front of this invoice.
 - B. To give credit to the consignee for any memberships unsold and returned within 90 days of receipt of memberships.
- 2. The consignee agrees as follows:
 - A. To receive and accept possession of the number of memberships listed on the front of this invoice and as delivered by the consignor, as herein before provided for, on the terms and conditions herein stated.
 - B. To use his best efforts to sell Metro memberships promptly as provided for herein.
 - C. To sell said memberships for retail or group sale at the minimum price listed on the front of this invoice.
 - D. To pay to the consignor the sum listed on the front of this invoice for each membership sold. All monies received by consignee shall be remitted to consignor within 30 days of receipt.
 - E. To make monthly reports of all sales made by the consignee together with payment for all memberships sold. Any membership not returned by time designated by consignor shall be considered sold.
 - F. To keep account books and records showing all sales of memberships and submit list of sales to consignor.
 - G. To prominently display advertising material furnished by consignor in accordance with consignor's directions.

- H. All memberships not paid for, or returned to the consignor by end of the 90 day consignment period are subject to a **SERVICE CHARGE** at the periodic rate of 1.5% a month, (AN ANNUAL PERCENTAGE RATE OF 18%.)
- 3. It is further mutually agreed between the parties as follows:
 - A. The title to and ownership of said memberships consigned under the terms of this contract, and all proceeds of the sale of same, shall remain vested in the consignor, and be his sole property and subject to his order, until the full amount to be received for said memberships as herein provided, shall have been received by the consignor.
 - B. This contract shall continue in force for 90 days, unless extended, in writing, by consignor, on or before the end of the 90 period. It is the responsibility of the consignee to return at its own expense all unsold memberships to the consignor.
- 4. In the event consignee shall fail to perform any of the terms, covenants or agreements in this contract contained, consignor shall then have the right to terminate this contract and consignee will surrender any unsold memberships and pay for the account for all memberships sold forthwith.
- 5. If any party of this agreement, for any reason, shall be declared invalid or of no force and effect, such invalidity shall not affect the validity of the remaining portion, which shall be in full force and effect.

RETURN ALL UNSOLD PASSBOOK MEMBERSHIPS TO THE CLUB OFFICE IN YOUR AREA.