

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CHRISTMAS TREE SHOPS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10576 (TMH)

Jointly Administered

Objection Deadline: TBD

Hearing: TBD

**MOTION BY DEBTORS FOR ENTRY OF A SUPPLEMENTAL ORDER TO THE
FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507
(I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED
SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING
(A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND
(B) ADEQUATE PROTECTION TO CERTAIN PREPETITION LENDERS;
(III) AUTHORIZING USE OF CASH COLLATERAL; (IV) MODIFYING
THE AUTOMATIC STAY; AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”), pursuant to sections 101, 361, 362, 363, 364, 503 and 507, Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order supplementing the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* [Docket No. 229] (the “Final

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Christmas Tree Shops, LLC (1207), Handil, LLC (1150), Handil Holdings, LLC (2891), Salkovitz Family Trust 2, LLC (8773), and Nantucket Distributing Co., LLC (1640). The notice address for the Debtors is 64 Leona Drive, Middleboro, Massachusetts 02346.



DIP Order”) in a form to be submitted prior to the hearing on this Motion. In further support of the relief requested, the Debtors state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Chapter 11 Cases, the Debtors and their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are 105, 363, 365, 503, and 507 of title 11 of the Bankruptcy Code, Rules 2002, 6004, and 6006 of the Bankruptcy Rules, and Local Rule 6004-1.

RELIEF REQUESTED

5. On May 5, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On May 17, 2023, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the

“Committee”) [Dkt. No. 100].

7. The Debtors operate a chain of brick-and-mortar home goods retail stores that specializes in the sale of year-round seasonal goods at value pricing. The Debtors’ stores offer a variety of products including home décor, bed and bath products, kitchen and dining products, furniture, food and seasonal products. As of the Petition Date, the Debtors operated 82 stores in 20 states.

8. A description of the Debtors and their business, and the facts and circumstances surrounding the Chapter 11 Cases are set forth in greater detail in the *Declaration of Marc Salkovitz, Executive Chairman, in Support of First Day Relief* [Dkt. No. 12] and the *Supplemental Declaration of Marc Salkovitz, Executive Chairman, in Support of First Day Relief* [Dkt. No. 23].

9. Upon motion by the Debtors, on June 5, 2023, the Court entered the Final DIP Order² which, among other things, authorized the Debtors to enter into and obtain credit under a certain Senior Secured, Super-Priority Debtor-In-Possession Revolving Credit Agreement, dated as of May 10, 2023.

10. The Final DIP Order provided, among other things, for the Debtors to meet certain Milestones as a condition of the continuation of the financing provided by the Final DIP Order. Those Milestones included the filing by the Debtors of a plan and disclosure statement acceptable to the DIP Lenders on or before June 7, 2023, approval of a disclosure statement on or before July 7, 2023, and confirmation of a plan on or before August 16, 2023.

11. In accordance with an extension of the Milestone to file a plan granted by the DIP Lenders, on June 7, 2023, the Debtors filed a joint chapter 11 plan [Dkt. No. 242] (the “Plan”), a disclosure statement with respect to the Plan [Dkt. No. 243] (the “Disclosure Statement”), and a

² Capitalized terms not defined in this Motion shall have the meanings ascribed to them in them in the Final DIP Order.

solicitation procedures motion [Dkt. No. 244]. The Plan provides for the continuation of the Debtors' business as a going concern and a restructuring of its obligations with funding from a plan sponsor to be identified. A hearing to consider approval of the Disclosure Statement is scheduled for July 7, 2023. Under the circumstances, the Debtors will seek to adjourn the scheduled hearing on approval of the Disclosure Statement to a date to be determined.

12. As provided for in the Final DIP Order, the Debtors retained SSG Capital Advisors, LLC ("SSG") on or about May 31, 2023 to provide investment-banking services in connection with the Debtors' reorganization efforts including identifying potential investors or buyers and entering into a plan funding agreement with a plan sponsor or an asset purchase agreement with a purchaser for all or substantially all of the Debtor's assets.

13. Since SSG's retention three (3) weeks ago, SSG has conducted an extensive marketing process with potential strategic and financial buyers to solicit interest in the Debtors' business. SSG contacted and sent materials to approximately 350 potential acquirers (collectively, the "Interested Parties"). Twenty-nine (29) Interested Parties executed non-disclosure agreements with others still in process and have requested and gained access to the Debtors' electronic data room. The Interested Parties canvassed by SSG included major retailers, private equity firms and other investors. Several Interested Parties have expressed an interest in acquiring substantially all of the Debtors' assets as a going concern pursuant to Sections 363 and 365 of the Bankruptcy Code (such sale, the "Going Concern Sale").

14. On June 21, 2023, the DIP Agent delivered to the Debtors a Notice of Event of Default, DIP Termination Event and Carve Out Trigger Notice under the Final DIP Order (the "DIP Notice"). Due to the occurrence of a DIP Termination Event and pursuant to the DIP Notice, the DIP Secured Parties are relieved of any obligation to provide financial accommodations to the

Debtors under the DIP Facility and the Debtors will be unable to access the funds in their accounts after June 28, 2023 unless the Debtors remedy those Events of Default.³

15. The Debtors do not dispute that one or more Events of Default has occurred and the Debtors have informed the DIP Lenders and the Committee that the Debtors are not able to remedy those defaults by June 28, 2023.

16. Notwithstanding the foregoing, the DIP Lenders have informed the Debtors and the Committee that they would be willing to continue to provide limited financing under the DIP Facility if, the Debtors enter into an asset purchase agreement for a Going Concern Sale with a purchase price sufficient to satisfy the obligations under the DIP Facility on or before July 5, 2023, the proposed purchaser under the asset purchase agreement tenders a non-refundable \$5 million deposit on or before July 6, 2023, the Going Concern Sale is approved by the Bankruptcy Court on or before July 23, 2023, and the Going Concern Sale closes on or before July 30, 2023.

17. In the event that those conditions are not satisfied, the DIP Lenders have demanded that the Debtors that immediately commence Closing Sales at their retail locations in accordance with the orders approving the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume and Perform Under the Consulting Agreement Related to the Sale of Inventory, (II) Approving Procedures for the Sale of Inventory, and (IV) Granting Related Relief* [Dkt. Nos. 20, 201).

18. SSG has informed the Debtors, the Committee, and the DIP Lenders that, although there are multiple Interested Parties that have express interest in a Going Concern Sale, at the present time none appear to be sufficiently advanced in their diligence to enter into an

³ Under the Final DIP Order, the Remedies Notice Period expires five (5) calendar days following delivery of the DIP Notice, or June 26, 2023. The DIP Lenders extended such period through June 28, 2023.

agreement to purchase the Debtors' assets on the terms required by the DIP Lenders on or before July 5, 2023, or to provide the non-refundable deposit required by the DIP Lenders on or before July 6, 2023.

19. On June 24, 2023, the DIP Lenders provided the Debtors and the Committee with a proposed form of order for the continued use of Cash Collateral and limited financing after June 28, 2023 in accordance with a budget to be agreed to by the DIP Lenders and the Debtors. The proposed form of order included a number of material modifications to the Final DIP Order. The Debtors are reviewing and discussing the proposed order with the Committee and preparing a proposed budget for the review of the DIP Lenders and the Committee. As soon as those matters are finalized, the Debtors will file a proposed order with an attached budget.

20. The Debtors have an immediate and critical need for continued access to funds constituting Cash Collateral and funding under the DIP Facility to pay the expenses associated with the operation of their business after June 28, 2023. In the absence of the entry of a supplemental order authorizing the continued use of Cash Collateral and funding, the Debtors will be forced to immediately cease operations resulting in a significant loss of value and substantial harm to the Debtors' creditors and employees.

NOTICE

21. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the United States Department of Justice; (d) the attorneys general for the 20 states in which the Debtors conduct business; (e) the Internal Revenue Service; (f) counsel for the DIP Agent; (g) counsel to Eclipse Business Capital LLC; (h) counsel to Pathlight Capital, LP; (i) counsel for Bed, Bath and Beyond, Inc.; (j) counsel for ReStore Capital (CTS), LLC; (k) those parties asserting

liens or other security interests in certain delineated personal property of the Debtors based upon leases or sales of such property to the Debtor; (l) counsel to the Committee; and (m) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors request entry of the order to be submitted prior to the hearing on this Motion supplementing the Final DIP Order and such other relief the Court deems just and proper.

Dated: June 26, 2023
Wilmington, Delaware

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