

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

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In re:	Chapter 11
ULTIMATE ACQUISITION, PARTNERS, LP, <i>et al.</i> , ¹	Case No. 11-10245 (MFW)
	Jointly Administered
Debtors.	

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**MOTION OF THE DEBTORS AND THE DEBTORS IN POSSESSION FOR AN
ORDER (I) CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY
CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE AND
(II) SETTING BAR DATE FOR FILING FINAL CHAPTER 11 FEE
APPLICATIONS AND ESTABLISHING A HEARING THEREON**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (“Motion”) for entry of an order, pursuant to sections 105(a), 331 and 1112 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 1017, 1019 and 2016 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), (i) converting the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and (ii) setting a date (x) that is no more than thirty (30) days after the entry of an order approving this Motion as the date by which all professionals in these chapter 11 cases must file final fee applications (collectively, the “Final Fee Applications”) in accordance with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals* [Docket No. 214] (the “Interim Compensation Order”), and (y) for a hearing on the Final Fee Applications. In support of their Motion, the Debtors state as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors’ address is 321 West 84th Avenue, Suite A, Thornton, Colorado 80260.

Jurisdiction and Venue

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought in this Motion is section 1112(a) of the Bankruptcy Code.

Background

A. General Background

2. On January 26, 2011 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief in this Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Chapter 11 Cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b). [Doc. No. 53].

3. Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On February 9, 2011, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the “Committee”) in the above-captioned cases. [Doc. No. 136]. No request has been made for the appointment of a trustee or examiner.

4. Additional information regarding the Debtors’ history and business operations, their capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the *Declaration of F. Bruce Giesbrecht in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) [Docket No. 3], which is incorporated herein by reference.

B. The GOB Sales

5. On February 4, 2011, nine (9) days after the Petition Date, the Debtors filed their *Motion of Debtors and Debtors in Possession for An Order Approving Store Liquidating Consultants, Consultant Agreement, Store Closing Sales and Related Relief* (the “GOB Motion”) [Docket No. 104]. By Order dated February 11, 2011, the Court approved the GOB Motion (the “GOB Order”) [Docket No. 179], thereby granting the Debtors authority to commence going-out-of-business sales to liquidate their inventory (the “GOB Sales”). The GOB Sales, in large part, ended April 13, 2011, except with respect to a sale of certain furniture, fixtures and equipment being conducted at the Debtors’ Thornton, Colorado location, which is to conclude not later than April 30, 2011.

C. Establishment of Rejection Procedures

6. On February 22, 2011, the Debtors filed a *Motion to Approve Procedures for the Rejection of Executory Contracts and Unexpired Leases* (the “Rejection Procedures Motion”) [Doc. No. 201] whereby the Debtors would be authorized to reject executory contracts and unexpired leases without filing a separate motion for each such contract as part of their GOB Sales. On March 10, 2011, the Court approved the Rejection Procedures by Order [Doc. No. 294] (the “Rejection Procedures Order”).

7. Since the Rejection Procedures Order was entered by the Court, the Debtors have filed and served numerous Notices of Rejection, consistent therewith, and the Court has entered numerous Orders authorizing the rejection of unexpired leases and executory contracts of the Debtors.

8. The Rejection Procedures Order requires, among other things, that non-debtor parties to such rejected contracts file their rejection damage claims within thirty (30) days of entry of an order authorizing the rejection of their contracts.

D. Establishment of Claims Bar Date

9. On March 9, 2011, the Debtors filed their *Motion Pursuant to Sections 501, 502, 503 and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3) and Local Rule 2002-1(e) for an Order (I) Establishing Deadlines for Filing Proofs of Claim, (II) Establishing Deadlines For Filing Section 503(b)(9) Claims, and (III) Approving Form and Manner of Notice Thereof* (the “Bar Date Motion”) [Doc. No. 289]. By Order dated March 29, 2011, the Court approved the Bar Date Motion (the “Bar Date Order”) [Doc. No. 512] thereby setting a general claims bar date of May 16, 2011 and a governmental claims bar date of July 25, 2011.

E. Liquidation of Debtors’ Intellectual Property

10. On April 8, 2011, the Debtors filed their *Motion for Orders (A)(I) Approving Auction Procedures; and (II) Scheduling a Hearing to Consider the Sale of the Debtors Intellectual Property; and (B) Authorizing and Approving (I) the Sale of Certain of Debtors Intellectual Property Free and Clear of Liens, Claims, Encumbrances and Other Interests and (II) Granting Related Relief* (the “IP Motion”) [Doc. No. 597]. The IP Motion is scheduled to be heard by the Court on April 27, 2011.

F. The Debtors’ Use of Cash Collateral

11. The Debtors’ have been using cash collateral during the pendency of these cases pursuant to that certain *Final Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection* (the “Final Cash Collateral Order”) [Docket No. 363], pursuant to which

GECC, the Debtors' secured lender, with the consent of the Committee and the Debtors, allowed the Debtors to use cash collateral through April 29, 2011.

12. GECC informed the Debtors on April 25, 2011, that GECC would not agree to extend the Debtor's use of cash collateral under the Final Cash Collateral Order beyond April 29, 2011.

13. Additionally, pursuant to an e-mail dated April 25, 2011 from counsel to GECC to counsel for the Debtors, counsel to the Committee and to the Office of the United States Trustee, deemed by GECC to be a "Termination Notice" under the Final Cash Collateral Order, GECC declared a "Termination Event" under the Final Cash Collateral Order, stating:

Ladies and Gentlemen, as you know I am counsel to GECC in the Ultimate Acquisition Partners bankruptcy case. This email constitutes a Termination Notice, as defined in section 10 of the Final Cash Collateral Order, of the debtor's ability to use cash collateral as a result of the occurrence of certain Termination Events, including but not limited to, the debtor making more disbursements than authorized in Week 10 (the week ending April 8, 2011).

14. Per the terms of the Final Cash Collateral Order, if a Termination Notice is not contested within five (5) business days of the date of the Termination Notice, the stay will automatically lift in favor of GECC. No objection has yet been filed to the Termination Notice.

15. Under the Final Cash Collateral Order, any attempt by the Debtors to seek an extension or modification of the Final Cash Collateral Order without the consent of GECC, which consent may be withheld in GECC's sole and absolute discretion, also constitutes a Termination Event under the Final Cash Collateral Order.

16. Accordingly, the Debtors, not later than April 29, 2011, will not have the further right to use cash collateral and have no effective means to seek the use of cash collateral over GECC's objection.

Relief Requested

17. By this Motion, the Debtors request the Court to enter an order, pursuant to sections 105(a), 331 and 1112 of the Bankruptcy Code, and Bankruptcy Rules 1017, 1019 and 2016, (i) converting their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, and (ii) setting a bar date for all professionals in these Chapter 11 Cases to file Final Fee Applications and establishing a hearing thereon.

Basis for the Relief Requested

A. Conversion of the Debtors' Chapter 11 Cases to Chapter 7 of the Bankruptcy Code

18. Section 1112(a) of the Bankruptcy Code governs the conversion of chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. This section provides that:

- (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless –
 - (i) The debtor is not a debtor-in-possession;
 - (ii) The case originally was commenced as an involuntary under this chapter; or
 - (iii) The case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112 (a). Because subdivisions (i), (ii) and (iii) of section 1112(a) of the Bankruptcy Code are inapplicable here, the Debtor may convert these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code as a matter of right. In re Dieckhaus Stationers of King of Prussia, Inc., 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) ([Section 1112(a)] by its terms gives the debtor an absolute right to convert, unless the cases is governed by one of the enumerated exceptions."); In re Schuler, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (same).

19. The Debtors have determined, in their business judgment, that it is in the best interests of their estates to convert their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, for the following reasons:

- (a) The Debtors have completed the liquidation of substantially all their assets.
- (b) The Debtors will not have the further right to seek the use of cash collateral after April 29, 2011.
- (c) GECC has declared a Termination Event under the Final Cash Collateral Order.
- (d) The Debtors have no effective means to obtain the further use of cash collateral without GECC's consent, which consent has not been given.
- (e) The Debtors, without the further use of cash collateral, cannot continue to incur administrative costs, retain employees or otherwise conduct a wind-down of their business operations, prepare and file a plan and otherwise perform their duties under chapter 11.

20. Based on the foregoing, the Debtors believe that an immediate conversion of their Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code is warranted and in the best interests of their estates and creditors.

B. Final Fee Applications

21. In addition to requesting the timely conversion of these case to chapter 7 of the Bankruptcy Code, the Debtors request the Court to establish a bar date (the "Final Fee Bar Date"), no more than thirty (30) days after the entry of any order approving this Motion, for all professionals in these Chapter 11 Cases to file Final Fee Applications. Doing so will allow the Debtors' estates to determine, in a timely and efficient manner, the final amount owed to professionals for fees and expense related to these Chapter 11 Cases. For the Court to be able to

approve the Final Fee Applications, the Debtors further request the Court to establish a hearing date on the Final Fee Applications at such time after the Final Fee Bar Date as is convenient to the Court's calendar.

NOTICE

22. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to GECC; and (iv) those parties that have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"), in accordance with Del. Bankr. LR 2002-1(B), via overnight mail or facsimile or email along with regular mail. Additionally, the Debtors intend to serve a two-page notice of the filing of this Motion upon all known creditors, as identified by the Debtors in their Schedules. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit A**, (i) converting the Debtors' Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (ii) setting a date (x) that is no more than thirty (30) days after the entry of an order approving this Motion as the date by which all professionals in these chapter 11 cases must file Final Fee Applications and (y) for a hearing on such Final Fee Applications; and (iii) granting such other and further relief to the Debtors as is just and proper.

CAMPBELL & LEVINE, LLC

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Dated: April 26, 2011
Wilmington, Delaware