

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: MISC

*In Re: Wayzata Home Products, LLC
and cliqstudios.com LLC*

Court File No.: 27-CV-20-4326

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)
) **THE ASSIGNEE’S MEMORANDUM OF**
) **LAW IN SUPPORT OF SECOND**
) **MOTION TO EXTEND THE STAY**
)

INTRODUCTION

Minnesota Statute § 577.18 provides that:

“Except as provided in this chapter, an assignee shall be treated as a general receiver, the assignment property shall be treated as receivership property, and all proceedings following the filing of the assignment shall be governed by sections 576.21 to 576.53.”

Under Minnesota Statute § 576.42, the appointment of a general receiver gives rise to an automatic stay – an injunction that prohibits persons from taking certain actions affecting the receivership or receivership property. In accordance with that statute, the Assignee requests an additional 180-day extension of the stay created by the entry notice of the assignment for the benefit of creditors and previously extended by the Court. The requested extension will prevent loss or diminution in value of assignment assets while the Assignee implements the court approved claims process, resolves and liquidates accounts receivable issues and file a proposed distribution schedule with the Court.

Because of the number of entities involved in this matter, the challenges presented by the COVID-19 pandemic, and the complexity of this matter, the extension is critical to the Assignee’s ability to thoroughly and accurately implement the court approved claim and objection process. The requested extension is brief and tailored to balance the needs of the Assignee and the best

interests of creditors and other parties in interest with other creditors' ability to exercise rights and remedies that may exist. Accordingly, the Court should grant the Assignee's motion to extend the stay for 180 days, through and including January 7, 2021.

BACKGROUND

I. THE PARTIES

Wayzata Home Products, LLC and cliqstudios.com (together and along with the other subsidiaries of Wayzata Home Products, LLC, collectively, the "Assignment Entities") entered into an assignment for the benefit of creditors with Lighthouse Management Group, Inc. (collectively, the "Assignee"), assigning Assignee all of the Assignment Entities' property, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, general intangibles, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims and demands belonging to the assignor, whenever the property may be located (hereinafter, collectively, the "Assignment Property"), and consenting to the appointment of Assignee as a general receiver ("Assignment for the Benefit of Creditors").

II. THE STATUS OF THE ASSIGNMENT

As more fully set forth in the First Assignee Interim Report, dated June 18, 2020 ("First Interim Report"), and filed with this Court, the Assignee has taken control of all operations, actively marketed the sale of all assets of the Assignment Entities, and negotiated the successful sale of and consummated the sale of the Assignment Property, (Declaration of Samuel J.H. Sigelman ("Sigelman Dec."), at ¶ 3.).

A. The Claims Process.

The Court has approved a claims process that allows the approximately 1,400 creditors to review and potentially submit a revised claim, which will result in the creation of a preliminary claim summary. The approved claims process concludes with the Assignee potentially filing objections within a time-period that is about 90 days from the date of service of the Notice of Claim and Proof of Claim form. The Notice of Claim and Proof of Claim form were served on June 29, 2020; therefore, the Assignee anticipates that this process should conclude by the end of September 2020 (*Id.* at, ¶ 4.).

In addition to the claims process, the Assignee is working to recover funds for the estate. There are sources of the Assignment Entities' accounts receivable that are either contingent or cannot be liquidated within the next few months due to certain circumstances. (*Id.* at, ¶ 5.). It may be several months before the Assignee expects a distribution to the creditors (*Id.* at, ¶ 6.). Consequently, the Assignee maintains it will need additional time to finish the creditor claims process, collect the accounts receivable, and file a proposed distribution schedule with the Court (*Id.*).

B. COVID-19 Pandemic

While the Assignee has made significant progress with regards to administering the Assignment Property, due to the COVID-19 pandemic, some efforts have been slowed, the creditors claim process will take about 90 days from the date of this Declaration to complete, and the process of collecting on the accounts receivable will take much longer than initially anticipated. (*Id.* at ¶ 8.) The Assignee needs more time to fully execute its obligations under the Assignment and law, which is in the best interest of the estate and the creditors. As such, the Assignee contends

that the Court should extend the stay another 180 days from July 11th, through and including January 7, 2021. (*Id.* at ¶ 9.)

ARGUMENT

I. STATUTORY STAYS IN RECEIVERSHIP CASES.

The Assignee is treated as general receiver pursuant to Chapter 576 of the Minnesota Statutes. Section 42 of that chapter provides that appointment of a receiver establishes an automatic stay—an automatic injunction that prohibits persons from taking certain actions affecting the receivership or receivership property. Minn. Stat. § 576.42.

Generally speaking, the statute provides for two distinct automatic stays: (a) a stay of certain actions in all receivership cases, and (b) an additional stay in general receivership cases. Minn. Stat. § 576.42, subds. 3-4. In addition, the statute authorizes a court to extend an existing stay or establish a new stay to protect receivership property or facilitate the administration of the receivership. Minn. Stat. § 576.42, subds. 2, 5.

The statutory stays are a codification of the longstanding principle that upon the appointment of a receiver, the property over which the receiver is appointed passes to the custody of the court. *See, e.g., Culhane v. Anderson*, 17 F.2d 559, 561 (8th Cir. 1927) (“Immediately upon such appointment and after the qualification of the receiver, the property passed into the custody of the law, and thenceforward its administration was wholly under the control of the court by its officer or creature, the receiver.”). Property in the custody of the court should not be subject to interference by others:

The court appointing the receiver has exclusive jurisdiction over the corporation and its property. [...] Because it is not practical for the court to do the physical work in connection with taking possession of and preserving the property, the court appoints the receiver to act for it. The property in the receiver’s possession, collected at the court’s direction, is in *custodia legis*. That is, the

property is in the custody of the law. Creditors have no right to interfere with property held in *custodia legis* or acquire liens upon it which if enforced would affect the rights of those acquiring title under the receiver's distribution with the authority of the court.

In re Telesports Prods., Inc., 476 N.W.2d 798, 799 (Minn. Ct. App. 1991) (internal citations omitted); *see also Nat'l Automatic Tool Co. v. Goldie*, 27 F. Supp. 399, 401-02 (D. Minn. 1939) (describing that the court having custody of the property is authorized to determine what actions may or may not be taken with respect to the property under its control).

A. Stay in All Receiverships.

In both limited and general receiverships, an order appointing a receiver automatically stays:

1. Any act to obtain possession of receivership property, or to interfere with or exercise control over receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property; and
2. Any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

Minn. Stat. § 576.42, subd. 3. This stay exists until the conclusion of the receivership case unless the court orders the stay modified upon motion of a party in interest. Minn. Stat. § 576.42, subds. 3, 5.

B. Additional Stay in General Receiverships.

In addition to the stay in all receivership cases, the entry of an order appointing a general receiver automatically stays:

1. The commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, against the respondent or the

receiver that was or could have been commenced before the time of appointment, or to recover a claim against the respondent that arose before the time of appointment; and

2. The commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

Minn. Stat. § 576.42, subd. 4. Unless ordered extended by the court, this stay expires 30 days after the entry of the order appointing the general receiver. *Id.* at subd. 4(b).

C. A Court May Extend A Stay Or Order A New Stay.

Section 576.42 authorizes a court to extend a stay or establish a new stay to protect receivership property or to facilitate the administration of the receivership. Specifically, the statute provides that “the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.” Minn. Stat. § 576.42, subd. 2 (emphasis added). The statute also expressly provides that the court may extend the stay applicable in general receivership cases beyond 30 days:

As to the acts specified in this subdivision, the stay shall expire 30 days after the time of appointment unless, before the expiration of the 30-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 30 day period, the court orders the stay extended.

Minn. Stat. § 576.42, subd. 4(b). Thus, the filing of a motion to extend the stay triggers an extension until the court rules on the stay extension motion, as long as the ruling is issued within 60 days of the time of the general receiver’s appointment. *See id.*

III. THE COURT SHOULD EXTEND THE STAY FOR 180 DAYS.

The Assignment for the Benefit of Creditors was filed on March 13, 2020, wherein Assignor consented to Assignee being treated as a general receiver for its role in resolving all issues related to the Assignment Property. The Assignee has requested, and this court has granted

a first extension of the stay. Absent the Court granting this motion for an extension, the stay would expire on July 11, 2020. The Assignee requests that the Court extend the general receivership stay by 180 days to protect the receivership property and to facilitate the administration of the receivership.

The Assignee needs the extension to the stay to afford itself the opportunity to implement the court approved claim and objection process. Finally, the length of time of the extension motion requests appropriately balances the needs of the Assignee with the rights and interests of the creditors and other parties in interest. The additional 180 days requested would provide the Assignee with sufficient time to progress with its analysis, approval and objection of the claims in this matter, which process has been approved by this court.

CONCLUSION

For the reasons set forth above, the Assignee respectfully requests that the Court grant its motion to extend the stay under Minn. Stat. § 576.42, subd. 4 for 180 days—through and including January 7, 2021.

Dated: July 7, 2020.

Respectfully submitted,

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**ACKNOWLEDGMENT REQUIRED BY
MINNESOTA STATUTES SECTION 549.211, SUBDIVISION 1**

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the Court.

Dated: July 7, 2020.

Respectfully submitted,

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