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9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION
12

13 In re
14 B&B LIQUIDATING, LLC,
15
16 Debtor.

Case No. 2:18-bk-11744-NB

Chapter 11

MOVANT SIENA LENDING GROUP,
LLC'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR RELIEF FROM AUTOMATIC STAY

Date: September 4, 2018
Time: 10:00 a.m.
Ctrm: Courtroom 1545

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1 **I. INTRODUCTION**

2 Movant Siena Lending Group, LLC (“Siena”) seeks relief from the automatic stay in this
3 Chapter 11 case to foreclose upon its blanket first priority security interest in the personal
4 property (the “Collateral”) of B&B Liquidating, LLC (“Debtor”), worth no more than \$584,000,
5 which secures a debt due from Debtor of approximately \$4.8 million. Relief from stay is
6 warranted under 11 U.S.C. § 362(d)(2) for the following reasons:

- 7 • Debtor’s indebtedness to Siena far exceeds the value of the Collateral. Debtor
8 therefore lacks any equity in the Collateral.
- 9 • The Collateral is not necessary to an effective reorganization because Debtor is in
10 the final stages of liquidation proceedings where there is no prospect of
11 reorganization.

12 **II. STATEMENT OF FACTS**

13 **A. The Financing Relationship between Siena and Debtor**

14 On or about October 30, 2017, Siena and Debtor (which was then known as B&B
15 Bachrach, LLC) entered into a Loan and Security Agreement (the “Loan Agreement”). Pursuant
16 to the Loan Agreement, Siena made a term loan and agreed to make revolving loans to Debtor
17 based upon a formula that included, among other things, a percentage of Debtor’s eligible
18 accounts receivable and inventory. (Declaration of Steven Sanicola (“Sanicola Dec.”), ¶ 6; Ex. 2
19 to Motion for Relief from the Automatic Stay (the “Motion”).)

20 To secure repayment of the advances made under the Loan Agreement, Debtor granted
21 Siena a security interest in substantially all of Debtor’s personal property, including without
22 limitation all of Debtor’s accounts receivable, inventory, general intangibles and proceeds.
23 (Sanicola Dec., ¶ 7; Ex. 2 to Motion at § 3.1.) Siena perfected its security interest in the
24 Collateral owned by Debtor by filing a UCC Financing Statement describing the Collateral with
25 the California Secretary of State on September 29, 2017. (Sanicola Dec., ¶ 7; Ex. 3 to Motion.)
26 The financing statement was amended on February 16, 2018 to reflect Debtor’s name change.
27 (*Id.*) Debtor and the Official Committee of Unsecured Creditors have stipulated that Siena’s
28 security interest in the Collateral is valid, binding, enforceable, non-avoidable, perfected, and of

1 first priority. (Second Amended Stipulation Regarding Continuance of Financing of Debtor and
2 Debtor in Possession, Priority of Advances Made, Modification of the Automatic Stay and
3 Adequate Protection [Doc. # 141] at ¶¶ B-D, pp. 2-3; *see also* UCC search attached to the
4 Motion as Ex. 8.)

5 Debtor filed its Chapter 11 petition on February 16, 2018 and immediately commenced
6 liquidation proceedings. Siena agreed to provide postpetition financing in accordance with a
7 Court-approved budget to enable Debtor to conduct its store closing sales and otherwise operate
8 in bankruptcy. (Sanicola Dec., ¶¶ 9-10; Ex. 4 to Motion.)

9 **B. Current Indebtedness**

10 As of August 7, 2018, the total indebtedness due Siena from Debtor was \$4,779,917.13,
11 consisting of the outstanding balance of principal and interest of \$4,134,562.71, loan fees and
12 charges of \$518,000, attorneys' fees and costs relating to the financing totaling \$127,354.42 as of
13 June 30, 2018, plus additional interest, charges, costs, and attorneys' fees due under the terms of
14 the Loan Agreement. (Sanicola Dec., ¶¶ 11-14; Exs. 5-7 to Motion.)

15 **C. Valuation of Collateral**

16 **1. Inventory**

17 Debtor is in the final stages of its store closing sales. According to Debtor's Third Status
18 Report filed on July 31, 2018 [Doc. # 203], as of the week ending July 27, 2018, Debtor had
19 inventory totaling \$754,603 remaining. Siena does not anticipate that all of this inventory will be
20 sold when the store closing sales conclude, and that the remaining inventory will have to be
21 disposed of through wholesale channels. Siena anticipates that the net proceeds of all such sales
22 will yield no more than \$384,000. (Sanicola Dec., ¶ 16.)

23 **2. Retail Store Fixtures, Furniture, Equipment, and Leasehold**

24 **Improvements**

25 Debtor's Schedule A/B lists retail store fixtures, furniture, equipment, and leasehold
26 improvements with a book value of \$2,259,660 and an unknown current value. As of the Petition
27 Date, Debtor was operating in 14 retail stores. Debtor has been selling or otherwise disposing of
28 the fixtures, furniture, equipment, and leasehold improvements associated with each store along

1 with the inventory during the course of the store closing sales. Debtor currently is operating in
2 only three locations, and the fixtures and associated assets in each of these locations similarly
3 will be sold or otherwise disposed of when the stores close. Accordingly, Siena attributes no
4 value to this category of assets. (Sanicola Dec., ¶ 17; Ex. 1 to Motion.)

5 **3. Office Furniture, Fixtures and Equipment**

6 Debtor's Schedule A/B lists office furniture, fixtures and equipment, primarily in its
7 corporate headquarters and distribution facility which it has now vacated according to Debtor's
8 Third Status Report, with a book value of approximately \$109,000 and an unknown current
9 value. Siena believes that these assets have negligible value given the cost of moving and selling
10 them. (Sanicola Dec., ¶ 18; Ex. 1 to Motion.)

11 **4. Accounts Receivable**

12 Debtor's Schedule A/B listed accounts receivable with a face value of approximately
13 \$66,500, the overwhelming majority of which was more than 90 days past due as of the Petition
14 Date. Siena does not anticipate that any receivables will be collected. (Sanicola Dec., ¶ 19; Ex. 1
15 to Motion.) The receivables therefore have negligible value.

16 **5. General Intangibles, including Intellectual Property**

17 Debtor owns certain intellectual property of unknown but likely little value consisting of
18 the Bachrach registered trademark and the bachrach.com website and associated goodwill. In
19 light of the fact that Bachrach's business failed and it is in liquidation, Siena does not believe
20 that these intangible assets have appreciable value. Siena estimates the sale of such intangible
21 assets would yield no more than \$200,000, and probably substantially less than that. (Sanicola
22 Dec., ¶ 20; Ex. 1 to Motion.)

23 **6. Debtor Has No Equity in the Collateral**

24 Based upon the foregoing analysis, Debtor lacks any equity in the Collateral. Debtor's
25 indebtedness to Siena of approximately \$4.8 million far exceeds any reasonable estimate of the
26 value of Debtor's assets.

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1 **III. SIENA SHOULD BE GRANTED RELIEF FROM STAY UNDER SECTION**
2 **362(d)(2)**

3 11 U.S.C. § 362(d)(2) authorizes relief from stay where the debtor does not have equity
4 in specified property and such property is not necessary to an effective reorganization. Both
5 requirements are satisfied here.

6 **A. Debtor Lacks Equity in the Collateral**

7 As demonstrated above, Debtor's indebtedness to Siena currently is approximately \$4.8
8 million. Debtor's only assets of any value are its remaining inventory and general intangibles,
9 which amount to far less than the debt to Siena. In light of the fact that Debtor is in the process of
10 liquidating its business, liquidation value is the only realistic valuation methodology to employ.
11 *In re Sharon Steel Corp.*, 159 B.R. 165, 169 (Bankr. W.D. Pa. 1993) (debtor was not operating
12 and had long history of significant losses, warranting liquidation valuation); *see also In re*
13 *Schwinn Bicycle Co.*, 192 B.R. 477, 486 (Bankr. N.D. Ill. 1996) ("When a business is in a
14 precarious financial condition or on its financial deathbed, a liquidation value should be used to
15 value the assets" in insolvency analysis). Siena has estimated the liquidation value of Debtor's
16 remaining assets at no more than \$584,000.

17 In short, Debtor owes Siena approximately \$4.8 million on a debt secured by an
18 estimated \$584,000 of property. There is no legitimate dispute that Debtor lacks equity in the
19 Collateral.

20 **B. The Collateral Is Not Necessary to an Effective Reorganization**

21 There also is no dispute that the Collateral is unnecessary to an effective reorganization,
22 an issue upon which Debtor bears the burden of proof under 11 U.S.C. § 362(g). "Effective
23 reorganization" is interpreted to mean a "reasonable possibility of a successful reorganization
24 within a reasonable time." This requires "not merely a showing that if there is conceivably to be
25 an effective reorganization, this property will be needed for it; but that the property is essential
26 for an effective reorganization *that is in prospect.*" *United Savings Ass'n of Texas v. Timbers of*
27 *Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-376 (1988) [emphasis in original]. Here, there
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1 will be no reorganization, as Debtor is nearing completion of its store closing sales and the
2 disposition of most of its assets, and will not resume business.

3 Simply put, the Collateral is not necessary to an effective reorganization because there is
4 no prospect of one. Both prongs of Section 362(d)(2) therefore have been satisfied, warranting
5 relief from stay in Siena's favor.

6 **IV. CONCLUSION**

7 Debtor's lack of any equity in the Collateral and the liquidation of its business, which
8 negates any possibility of reorganization, compel the conclusion that relief from stay is mandated
9 under Section 362(d)(2). Accordingly, the automatic stay should be lifted to allow Siena to
10 exercise its remedies against the Collateral under non-bankruptcy law.

11 DATED: August 8, 2018

LEVY, SMALL & LALLAS
A Partnership Including Professional Corporations

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13 By: /s/ Leo D. Plotkin
14 LEO D. PLOTKIN
15 Attorneys for Movant
16 Siena Lending Group, LLC
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
815 Moraga Drive, Los Angeles, California 90049

A true and correct copy of the foregoing document entitled (*specify*): MOVANT SIENA LENDING GROUP, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 08/08/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Brian L Davidoff on behalf of Debtor B&B Liquidating, LLC -
bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com; jking@greenbergglusker.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 08/08/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

B&B Liquidating, LLC - Debtor -- 5800 S Eastern Ave, Suite 500, Commerce, CA 90040

Service information continued on attached page

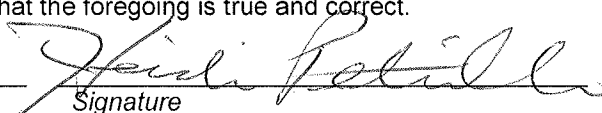
3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 08/08/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Neil W. Bason, VIA FEDERAL EXPRESS
U.S. Bankruptcy Court, Central District of California,
255 E. Temple Street, Suite 1552 / Courtroom 1545,
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

08/08/2018 Heidi Petrilli
Date Printed Name


Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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