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Siena Lending Group, LLC

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re B&B LIQUIDATING, LLC, Debtor.	Case No. 2:18-bk-11744-NB Chapter 11 MOVANT SIENA LENDING GROUP, LLC'S REPLY 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

I. INTRODUCTION

The three responses and sole opposition[1] (collectively, "Responses") to the Motion for Relief from the Automatic Stay (the "Motion") filed by movant Siena Lending Group, LLC ("Siena") fail to articulate any legally cognizable reason not to grant the requested relief. The Responses either assert matters extraneous to the issues raised by the Motion or fail to provide a proper factual or legal basis to justify denial. Specifically:

- The terms and conditions under which Siena may be required, or the proceeds of its Collateral may be used, to pay post-petition rent or other administrative expenses is irrelevant to whether Debtor lacks equity in the Collateral or whether the Collateral is necessary to an effective reorganization, the only issues to be determined on the Motion. However, Siena is in the process of reconciling the claimed expenses and will pay undisputed amounts. To the extent any amounts are disputed, Siena will attempt to resolve such disputes and will abide by the Court's determination of any unresolved disputes.
- There is no serious dispute that Debtor lacks equity in the Collateral. Although the Responses assert that Siena has not valued Debtor's litigation claims, no party has identified the basis of any such claims or provided any information whatsoever as to the alleged merits of such claims. In any event, the argument is irrelevant to whether relief should be granted as to the rest of the Collateral.
- No cogent argument is advanced that the Collateral is necessary to an effective reorganization (nor could there be given that Debtor already has liquidated most of its assets), and Debtor has not even attempted to sustain its burden to establish such necessity.

Siena has expended substantial time and expense in cooperating with and funding Debtor's liquidation sales, which are now near an end. Siena is entitled to relief from stay to

[1] The Official Committee of Unsecured Creditors (the "Committee") filed an opposition to the Motion, while Debtor, The Forbes Company ("Forbes"), and GGP, Inc. and Taubman Company LLC (collectively, "Taubman") filed responses.

conclude the process and salvage what it can to partially offset a substantial loss on the financing extended to Debtor. The Motion should be granted.

II. NO PARTY HAS COUNTERED SIENA'S SHOWING OF LACK OF EQUITY

No party contends that Debtor has any equity in the Collateral. Rather, Debtor, the Committee, and Taubman erroneously assert that Siena did not value Debtor's litigation claims, while Debtor contends that Siena did not establish the value of the intellectual property. Siena did in fact provide evidence that the intellectual property was worth no more than $200,000 (Declaration of Steven Sanicola [Doc. No. 205-1, ¶ 20]), an opinion no one has challenged or disputed. There is no merit to the contention that the intellectual property was not valued.

As for the alleged litigation claims, no party has specifically identified the nature of any claims purportedly held by Debtor, much less provided any evidence that there may be any value to them. No litigation claims are listed on Debtor's schedules. Debtor alludes in the most general terms to potential claims against Debtor's liquidation consultants, Great American Group, LLC ("GA") and Tiger Capital, LLC ("Tiger"), but do not state the nature of the alleged claims. As Debtor acknowledges, ***Siena*** holds claims (against GA's affiliate Great American Group Advisory & Valuation Services, LLC) for pre-petition appraisals it performed and upon which Siena relied in extending financing to Debtor, but those claims belong to Siena, not Debtor.

In any event, even if Debtor believes it possesses claims against GA and Tiger for their conduct of the liquidation sales, by no stretch of the imagination could those claims be valued in a sum that would yield any equity for Debtor. Significantly, no party contends otherwise or provides a factual challenge to Siena's showing that Debtor's obligations are well over $4 million in excess of the Collateral value. Further, Debtor predicted at the outset of the bankruptcy that following liquidation of all of its assets, Siena would not be paid in full, but would be approximately $438,000 short. (Declaration of Brian Allen in support of first day motions [Doc. No. 23], ¶ 14.) Thus, Debtor acknowledged that it had no equity in the Collateral before the liquidation sales even began. The liquidation consultants may have made matters worse for Siena, but under no reasonable scenario could claims against them for the performance

of those services generate equity when the performance Debtor anticipated from them at the outset would not have yielded sufficient funds to pay Siena in full.

In any event, there is no dispute as to Siena's valuation of all other personal property assets (aside from the intellectual property, where Siena's valuation stands unchallenged), or that Debtor lacks equity in such Collateral. Accordingly, there is no legitimate basis to deny relief from stay with respect to such property.

III. THE COLLATERAL IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION

The Committee and to some extent Debtor suggest that the Collateral is necessary to an effective reorganization, such as a structured dismissal or plan of liquidation. Preliminarily, a structured dismissal is not a reorganization, and Debtor's retention of the Collateral is not necessary to a dismissal of the case.

Further, no party seriously contends that Debtor will reorganize, through a plan of liquidation or otherwise, and it is not enough to defeat the Motion to simply make vague references to some undefined plan of liquidation—especially given that Debtor already has liquidated most of its assets. As stated in *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), it is not enough to "merely . . . show[] that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*." [Emphasis in original.] *Id.* at 375-376. Here, no reorganization is in prospect. All parties in interest have cooperated in Debtor's efforts to liquidate its assets during the course of the bankruptcy case and not through a liquidating plan. That process is almost at an end. A liquidating plan simply does not make sense at this late stage of the proceedings, especially since it would generate even more administrative expense to the estate, an issue about which the Responses express concern.

In any event, under Bankruptcy Code Section 362(g), the burden of proof on the necessity of the Collateral to an effective reorganization is firmly upon Debtor, which has not even attempted to sustain such burden. The Collateral clearly is not necessary to an effective

reorganization. Since Debtor's lack of equity cannot seriously be challenged, relief from stay is warranted.

IV. PAYMENT OF ADMINISTRATIVE EXPENSES AND STORE CLOSING ISSUES ARE IRRELEVANT TO RESOLUTION OF THE MOTION

Taubman and Forbes, landlords of two of Debtor's currently-operating retail stores, assert that Siena should be required to make further payments of post-petition rent, while the Committee and Debtor claim that the Court should provide for payment of administrative expenses as part of any order granting relief from stay. Two issues are presented by the Motion, and every other motion under Bankruptcy Code Section 362(d)(2): whether the Debtor has any equity in the collateral, and whether such collateral is necessary to an effective reorganization. Payment of post-petition rent and other administrative claims are irrelevant to a determination of those issues, and there is no basis on which to condition relief on such extraneous matters. That said, the Court should be aware that Siena is in the process of reconciling the claimed expenses and will pay undisputed amounts (and Siena believes there may be some undisputed amounts). To the extent any amounts are disputed, Siena will attempt to resolve such disputes and will abide by the Court's determination of any unresolved disputes.

Forbes and Taubman also request that any order granting relief from stay provide that their premises be completely vacated by September 14. Debtor has confirmed in its response that it will have vacated Forbes' store by the time of the hearing on the Motion, rendering Forbes' argument moot. While sales are ongoing at Taubman's store, Siena is mindful of the September 14 deadline; however, the circumstances under which that store will be vacated are irrelevant to the Motion, and are the subject of other orders issued by the Court. Taubman's remedies, if needed (and they will not be needed), must be pursued in the context of those orders, not Siena's request for relief from stay. However, the landlords' argument highlights the necessity of a waiver of the 14-day stay otherwise imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure: the order granting relief from stay must be effective immediately in order for Siena to be authorized to remove its Collateral on or before September 14.

Forbes also requests that the order bar Siena from removing any fixtures from Store 46. Again, the issue is extraneous to whether relief from stay should be granted, and is beyond the scope of the Motion. Further, while Siena does not believe that it will be removing any fixtures, if Forbes contends that something that Siena intends to take is a fixture, the issue can be resolved in a different venue—just as it would if Debtor, rather than Siena, were the party removing the disputed item.

V. CONCLUSION

The Motion establishes the only two requirements for granting relief from stay: Debtor lacks equity in the Collateral, and the Collateral is not necessary to an effective reorganization. Vague references to undescribed claims for which no value is even suggested and concerns over administrative expenses and an appropriate exit strategy in this case provide no basis to deny the Motion. Relief from stay should be granted as prayed.

DATED: August 28, 2018

LEVY, SMALL & LALLAS
A Partnership Including Professional Corporations

By: /s/ Leo D. Plotkin
LEO D. PLOTKIN
Attorneys for Movant
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 REPLY 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*) 08/28/2018, 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*) 08/28/2018, 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.

Emerald Capital Funding LLC, 4221 Wilshire Blvd Suite 260, Los Angeles, CA 90010
CC Funding, 505 Park Ave 6th Floor, New York, NY 10022
Rommel Mapa, Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219
TN Dept of Revenue, c/o TN Atty. General's Office, BK Division, PO Box 20207,Nashville, TN 37202-0207

☐ 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*) _____, 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.

☐ 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.

08/28/2018	Heidi Petrilli	
Date	*Printed Name*	*Signature*

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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

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