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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-10614-mg

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In the Matter of:

BORDERS GROUP, INC.

Debtors.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 22, 2011
11:09 a.m.

B E F O R E :
HON. MARTIN GLENN
U.S. BANKRUPTCY JUDGE

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Motion for an Order Pursuant to 11 U.S.C. 105, 361, 362, 363,
364, and 507 Authorizing Debtors to Enter Into Second Amendment
to Debtor in Possession Credit Agreement

Transcribed by: Shelia Watkins

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P R O C E E D I N G S

THE COURT: All right, the next matter is Borders Group, Inc., #11-10614. Thank you. I have a list of appearances in front of me. So, Mr. Glenn, go ahead.

MR. GLENN: Thank you, Your Honor, Andrew Glenn, Kasowitz, Benson, Torres & Friedman on behalf of the debtors and debtors-in-possession. Your Honor, today is a good day for the debtors and the estates, in the debtors' view. We've spoken ad nauseam in this case about the statutory deadlines that confront us in terms of assuming or rejecting leases. We filed a motion, our second store closing motion, a couple weeks ago as required by the DIP credit agreement before the amendment that's now before Your Honor that contemplated the sale of fifty-one stores that would be closed as required by the DIP. Since we filed that motion we continued to negotiate with landlords to whittle down that number as low as we could get it. Stipulations were filed with the Court. But ultimately, the company determined that there were still going to be stores that could not be extended for that deadline. During this period, the debtors engaged in good faith and arm's length negotiations with the DIP lenders and the creditors' committee to resolve disputes relating to that motion and the DIP deadlines to derive a process that made sense for all parties to, number one, address these looming deadlines in the first instance, but in the debtor's view to ensure that we

1 could have one centralized process to sell everything at once
2 in a manner that we believe would maximize value. And we
3 clearly believed, as articulated in the store closing motion,
4 that selling assets on a piecemeal basis simply did not make
5 sense. Over the last -- actually, since the beginning of this
6 case, the Jefferies firm, our financial advisor, has been
7 undertaking a process to find sponsors for a plan of
8 reorganization or buyers for the business as a going concern.
9 The Jefferies sale process is swiftly coming to its conclusion,
10 and that was the case even before this dispute arose. So these
11 two processes and deadlines are coalescing, we believe, into
12 one coordinated process that's going to resolve all issues with
13 all parties in a way that maximizes value to the estate. The
14 result of these discussions was the amendment before your Court
15 before Your Honor to approve the second amendment toward DIP
16 credit agreement. The cornerstone of the agreement from the
17 debtor's view are a series of deadlines negotiated to -- for
18 the process of selling the company. First, the first deadline
19 I'd like to discuss is the deadline for bid packages to
20 liquidators. We negotiated June 17th of this year; that
21 deadline was met, and those packages were filed. We have a
22 deadline to anoint a stalking horse or possibly stalking horse
23 bidders of July 1st; a deadline of an order approving the
24 stalking horse and bidding procedures on or before July 15th;
25 an auction we contemplate conducting on July 19th; and finally,

1 a sale hearing on or before July 22nd with a closing on or
2 before July 29th. It's important to note that we're going to
3 be pursuing what we've called a dual track process. We have,
4 as I just articulated, solicited bids for liquidators, the same
5 nationally known liquidators that we did for the first store
6 closing sale commenced at the very beginning of this case. At
7 the same time, we are in constant negotiation and
8 communications with the parties who are interested in bidding
9 on the company on a going concern basis. It's apparent -- I'd
10 say it's likely, I should say, that even the going concern
11 bidders we are talking to will not be buying every single store
12 in the company's network. Instead, the going concern bidders
13 will be buying some, and we expect either they will be teaming
14 up with liquidation firms to buy any stores that the
15 liquidators have chosen not to purchase, or we will be
16 soliciting bids for parts of the company that the going concern
17 bidders are not going to buy from the same pool of liquidation
18 firms. So this is really -- it's a dual track process. It's a
19 Chinese menu type of an auction where we could get multiple
20 types of bids for parts or all of the company, and we're going
21 to have to piece those together in a way that we believe in
22 consultation with the creditors' committee and of course the
23 DIP lenders maximizes the value of the estate. Obviously, all
24 these deadlines are subject to Your Honor's schedule, and we
25 can discuss scheduling and some related issues at the close of

1 my presentation. The next benefit that the company has
2 obtained from this amendment is a agreement from the DIP
3 lenders to allow us to liquidate our small format stores, up to
4 ten, that is, in cases where landlords have exercised valid
5 kick-out rights under their leases to terminate those leases.
6 And we typically do those liquidations on a case by case basis
7 on our own. So as it stands now, we would have to get that
8 consent, and that consent has been obtained. There are two
9 covenants that have been adjusted in the amendment. One is a
10 minimum excess availability covenant, and the other is a
11 availability covenant. Those two covenants are now set at
12 twenty-five million dollars. They will be increased to thirty
13 million dollars each. We believe, again, in consultation with
14 the creditors' committee, that we can abide by those covenants
15 in a way that gets us through the sale process, and we will be
16 managing the process and our cash expenses mindful of that
17 covenant as we have in the past. Finally, in exchange for
18 this, we have agreed, and this is the pill that every debtor
19 has to swallow in these cases --

20 THE COURT: It's a pretty big pill.

21 MR. GLENN: -- and that is one million dollar fee. I
22 should note for the record that that fee is lower than the fee
23 that was originally proposed to us. There were arm's length
24 and vigorous negotiations of that amount. The committee was
25 involved in those negotiations and tried to get it even lower

1 than that, but one million dollars was the best that we could
2 do. Now, the preliminary statement of the motion articulates
3 these deadlines in short form. Pages 9 through 13 of the
4 motion lays them out with all their glorious detail that
5 modifies what I've articulated, but I don't believe in a
6 particularly substantive way. If the Court has any questions
7 about the more detailed parts of the motion, we're happy to
8 address them, but I think those are the highlights and those
9 are the material points. In connection with scheduling, Your
10 Honor, we understand that the Court currently has the omnibus
11 hearing available for this matter on July 14th for our bidding
12 procedures and stalking horse motion. We would ask to include
13 this motion on that date to --

14 THE COURT: Which motion?

15 MR. GLENN: I'm sorry. I'm sorry, the sale motion,
16 the bidding procedures and sale motion. And we understand as
17 well that the Court has available July 21st, and we would
18 continue to request that date to comply with these deadlines.
19 Now, the closing deadline of July 29th contemplates a going
20 concern bid for all or part of the company. If there's a
21 winning liquidation bid for all or part of the company, that
22 liquidation bid would have to close by July 22nd. I should
23 note that for the record. I believe those are the highlights.
24 If Your Honor has any questions, I'm happy to answer them. Ms.
25 Walker and Mr. Simard are here on behalf of the DIP lenders as

1 well. And of course, no objections were filed to the motion.

2 THE COURT: Does committee want to be heard?

3 MR. KIZEL: Paul Kizel, Lowenstein Sandler, on behalf
4 of the committee. Your Honor, we'd concur in the statements
5 made by Mr. Glenn. We believe on balance -- given the
6 concessions in particular with respect to certain -- moving
7 certain dates by the DIP lenders that were originally set forth
8 in the original DIP final order, in light of those concessions,
9 we believe on balance the proposed DIP amendment is reasonable
10 under the circumstances, and we would support the entry of an
11 order approving it.

12 THE COURT: Does anybody else wish to be heard?

13 MR. BRANCH: Good morning, Your Honor, Dustin Branch,
14 Katten Muchin Rosenman LLP, on behalf of various landlords. We
15 have an objection to an agreement between the debtors and the
16 lender to move forward with the sale process or to set a date
17 for bid procedures, but obviously we haven't seen a bid
18 procedures sale motion yet, and landlords would just reserve
19 the right to object to any final sale hearing or any dates that
20 would compromise their ability to receive adequate insurance or
21 to extent necessary conduct a contested sale hearing for an
22 assignee, discovery. Anything of that nature, we just reserve
23 all our rights with that respect.

24 THE COURT: Thank you. Anybody else wish to be heard?
25 So, Mr. Glenn, let's assume you sign up your stalking horse bid

1 by July. July 1st is the deadline, right?

2 MR. GLENN: Yes, sir.

3 THE COURT: And are you doing a filing then? Are
4 you -- when is the stalking -- proposed stalking horse contract
5 going to be made public?

6 MR. GLENN: What we anticipate, Your Honor, at this
7 point is that actually on June 30th we would file a motion to
8 approve the stalking horse bidder with the asset purchase
9 agreement and proposed bidding procedures and related relief --

10 THE COURT: You'd file that on June 30th?

11 MR. GLENN: On June 30th.

12 THE COURT: For the hearing on July 14th?

13 MR. GLENN: Correct.

14 THE COURT: Let me -- I -- you know, I was given a
15 little earlier a draft. It was described as a draft --

16 MR. GLENN: Yes.

17 THE COURT: -- of --

18 MR. GLENN: I can walk you through that if you'd like.

19 THE COURT: -- a notice, and I recognized that, in
20 part, some of the tight schedule is a result of my own
21 schedule, but I'm very concerned that whether all these pieces
22 fit together in the short time that's available. For example,
23 you proposed the sale procedures hearing for 11:00 a.m. on July
24 14th. I just changed it to 10:00 a.m. But you know, you have
25 bids due by 4:00 p.m. that same day, July 14th. And not having

1 seen -- your bidding procedures, not having seen them, but they
2 sound more complicated than one would ordinarily see because
3 you're proposing both liquidation sale procedures and sale as a
4 going concern. Parts of the company may go in each of those
5 pots. You've got a deadline for objections of noon on July
6 11th. So when it comes to July 14th, I don't know what
7 objections there are going to be, and you can't realistically
8 expect to have a bidding deadline before you have bidding
9 procedures. And while I try to act expeditiously, if there are
10 objections to the bidding procedures you're submitting, why you
11 think you're going to have a hearing at 10:00 a.m. as opposed
12 to the 11:00 that you were suggesting, and have finalized
13 bidding procedures within hours so that you can enforce a
14 bidding deadline of 4:00 p.m. that afternoon, I'm not promising
15 that you're going to have approved bidding procedures by 4:00
16 p.m.

17 MR. GLENN: Your Honor, let me explain the genesis of
18 what's before you because we were not -- although we want to
19 discuss with Your Honor these deadlines, the genesis of what
20 you have before you is, as we explored the process and the case
21 management order which requires notice of this process on all
22 parties and interests, which in this case number in excess of
23 one hundred thousand parties, the package for the sale
24 procedures and the stalking horse is going to number in the
25 hundreds of pages. So the purpose of this notice to Your Honor

1 wasn't necessarily to approve these dates, which still have to
2 be discussed with relevant parties and interests, although I do
3 want to discuss them. But the primary purpose was to let Your
4 Honor know that we got a bid from our notice agent if we send
5 out the full package to all one hundred thousand folks it's
6 going to cost upwards of two hundred and fifty thousand
7 dollars. So in consultation with the committee, what we wanted
8 to address with the Court now on an informal basis was if we
9 sent this notice to -- in short form alerting folks to the
10 docket, people who weren't on the 2002 service list, not the
11 Attorneys General and authorities such as that, if that would
12 be a procedure that Your Honor would be comfortable with. Your
13 Honor is going to be out of town coming up soon, and a lot of
14 this stuff is still in flux, candidly, and the bidding
15 procedures are going to be the subject of continuing
16 negotiation with the creditor's committee, the DIP lenders, and
17 the stalking horse bidder. So at this point, I'm not in a
18 position to ask Your Honor for approval of the notice on a
19 formal basis or any of these dates. It is helpful to us,
20 however, to get Your Honor's view about the dates, and we --

21 THE COURT: Well, I'm just --

22 MR. GLENN: -- will certainly abide by them.

23 THE COURT: Yeah, I mean I -- you know, in the past,
24 when I've had 363 sales, and they haven't been as complicated
25 in this because they've typically been we'll get a stalking

1 horse bidder for virtually all the company other than some
2 assets that were -- a handful of assets that were going to be
3 liquidated, you know. And sometimes there have been
4 objections, and it's required changes to the bidding
5 procedures. And I don't know how you expect -- you should be
6 fortunate enough to have more than one bidder, but how you
7 expect -- I mean what is essential is that everybody know what
8 the rules are and be able to digest those, understand them.
9 And business people will hopefully decide, okay, we're going to
10 up our bid, but they have to know what bidding procedures are.
11 I don't know what the dollars are. I don't know what the
12 proposed increments for additional -- I don't know what your --
13 what break-up fee is going to be proposed. In some prior
14 cases, I've required a reduction in the proposed break-up fee.
15 You know, I've generally followed, I think, the integrated
16 resources standard. I've written some. Some of it's probably,
17 you know, unpublished opinions, but -- yes, but I've -- you
18 know, because I've dealt with the issue like everybody else
19 here has, but sometimes there's been a reduction in the
20 proposed bid. So you going to come in on a bidding procedures
21 hearing, and why you think you're going to walk out of that
22 hearing with finalized bidding procedures, I don't know.
23 Maybe you will and maybe you won't. But how you could possibly
24 set a deadline for bids for a few hours later, I don't know.

25 MR. GLENN: We will certainly be mindful of that.

1 THE COURT: So, you contemplate that by June 30th you
2 will file your motion for approval of bidding procedures in the
3 stalking horse bid?

4 MR. GLENN: Yes, Your Honor. I mean there's a --
5 obviously a possibility that it could slip to the actual
6 deadline of July 1st. That will cause us all sorts of
7 logistical issues that we really would like to avoid, so June
8 30th is our strong preference to have the motion filed by.

9 THE COURT: I think the last 363 sale in a sizable
10 case, the actual auction wound up going on for three days --

11 MR. GLENN: We are --

12 THE COURT: -- and you're talking about a July 19th
13 auction and a hearing, sale hearing on July 22nd. You're going
14 to wind up having -- in this prior one, I had to keep moving
15 that actual sale hearing because the auction just kept going on
16 and on.

17 MR. GLENN: I hope we have that high class problem,
18 Your Honor. And I think that the deadline for the hearing and
19 the closing, I think, that the DIP lenders are concerned that
20 they have a no out bid that ensures that they're going to get
21 paid in a manner that doesn't jeopardize bumping up against the
22 deadlines. If we're in the scenario that Your Honor envisions,
23 that means that we have going concern bidders that leave them
24 well behind, and Mr. Kizel's constituency really is the
25 stakeholder involved because the bid would be completely

1 unconditional. And I would hope that at that point, we would
2 have a renegotiation of the deadlines mindful of changes in the
3 process and the happy outcome that Your Honor is describing.

4 THE COURT: Well, let's deal first with the motion
5 that is before me today for the second amendment to the debtor-
6 in-possession credit agreement. With some reluctance, I grant
7 the motion, and the reluctance is because I think you're
8 getting raped -- is the best way I can describe it. This
9 DIP -- and I made comments about this when I approved the DIP
10 loan on a final basis -- the fees were extraordinary then;
11 they're out of sight now. You know, I was told a story once; I
12 won't name my colleague. My colleague was faced with the DIP
13 lenders raising an issue about an extension or fees, and his
14 response was back your trucks up and take the inventory. Is
15 that what you want? Do the DIP lenders really want to pull the
16 plug on DIP loan? Want the collateral? Take the collateral;
17 have fun with it. These fees are out of sight. The other side
18 of the coin is it's the only game in town. So it is with
19 reluctance that I approve the motion. I have no doubt that
20 between the debtor and its professionals and the committee and
21 its professionals that -- and certainly the committee had every
22 incentive to negotiate as hard as it could over this. I don't
23 doubt that this was viewed as the best deal you could get, but
24 the million dollar fee for the very minimal extension in these
25 dates is an extraordinary fee -- very close to me just saying

1 no. Very close to me just saying no. In the schedule that you
2 proposed, Mr. Glenn, you -- if you come in on July 14th -- if
3 you file your motion on June 30th and you file -- you come in
4 on July 14th, so you've given the minimum notice period
5 required for motions. I'm very concerned that you're not going
6 to have a final set of bidding procedures when you walk out the
7 door or not by -- not sufficient time to allow bidders time to
8 really look at their -- make their best and final offers or
9 conduct a lively auction, so I would -- at a minimum, I think
10 you ought to set the bid deadline for the next day. I'm mighty
11 unhappy that the deadline for bid procedures is July 15th, so
12 I've been given at most a day to resolve any issues that may
13 arise over the bidding procedures, but I'll find a way to live
14 with that.

15 MR. GLENN: And we'll consult with Jefferies in terms
16 of whether it's going to make a difference in how we conduct
17 the auction to have it even on the 16th. From our --

18 THE COURT: Well, you all --

19 MR. GLENN: -- perspective, it may not --

20 THE COURT: -- can work all the weekend, you know.

21 MR. GLENN: It may not matter to us, so we'll take
22 that message back to them, and --

23 THE COURT: I just -- I mean I don't want to hear --
24 come into a sale hearing, and they're, well, the bidding
25 procedures, we had two hours to bid and we didn't; it wasn't

1 enough time; we didn't know what the rules were. Is that
2 realistic? Probably not. You're down to a handful of
3 potential bidders at this stage. Although, you know, I've seen
4 in the past where there may be two in the running to become a
5 stalking horse bidder, and then people come in out of left
6 field, people who had just been sitting back waiting to see how
7 this all goes. And you may -- hopefully you'll wind up with
8 more interested parties. It should only happen, right? I only
9 had a very, very quick chance to look at this draft notice, and
10 I had given you the -- my reactions on seeing it. I'm not, you
11 know --

12 MR. GLENN: I guess we'd ask, Your Honor, does you're
13 Your Honor have a problem with doing a short form notice such
14 as what's before you to help the company save the cost of
15 sending the entire package to the world?

16 THE COURT: Well, the entire package will be on ECF.
17 It's not a --

18 MR. GLENN: Correct.

19 THE COURT: It's not a big chore for people to log
20 onto ECF.

21 MR. GLENN: Correct.

22 THE COURT: Mr. Schwartzberg, you're from the U.S.
23 Trustee. Do you have any objection to that procedure?

24 MR. SCHWARTZBERG: No, Your Honor, we had spoke --
25 Paul Schwartzberg for the U.S. Trustee's Office. We had

1 spoken -- or I had spoken with debtor's counsel, and I thought
2 it, you know, a good cost savings benefit. And with the access
3 to the dockets, I didn't think it would cause any undue burden.

4 THE COURT: Okay. I take it the committee is in
5 agreement with that?

6 MR. KIZEL: We're in agreement, Your Honor.

7 THE COURT: All right. I'm okay with that, Mr. Glenn.

8 MR. GLENN: Thank you, Your Honor.

9 THE COURT: Just -- the -- you know, frankly, the
10 information will be more widely available faster from the
11 electronic case filing system: virtually instant access to
12 anybody to get it offline. Okay. So that, I'm okay with.

13 MR. GLENN: Okay.

14 THE COURT: Okay.

15 MR. GLENN: We do expect that the content of this
16 notice will change between now and June 30th.

17 THE COURT: That's fine.

18 MR. GLENN: So -- but we do appreciate it. It's very
19 helpful to have Your Honor's views so that we don't at least
20 start going down the wrong path, and we're happy to provide
21 your chambers with updated versions of the notice if you think
22 that would be helpful.

23 THE COURT: That's fine. But I'm sure you -- when you
24 get to the bidding procedures and the stalking horse bid -- I
25 don't want to give guidance in the abstract. The case law in

1 this district and circuit is pretty well developed. You know,
2 I've had a bunch of fights over break-up fees, and I look at
3 it -- I'm not just going to approve something that gets put in
4 front of me, so everybody ought to be mindful when that's put
5 in. I mean you -- I don't know that you want to get your
6 process derailed at the first -- at the very first step. We're
7 already dealing with one greedy -- extremely greedy set of
8 parties, and so the potential bidders should keep that in mind.

9 MR. GLENN: We will pass along that message and
10 provide them this transcript.

11 THE COURT: Okay. And that goes -- obviously the
12 bidding -- the stalking horse -- I mean, excuse me, the break-
13 up fee and usually the increments get tied -- necessarily get
14 tied together as a result. I guess I could envision potential
15 complications here because you got this mix and match between
16 liquidation, and going concern, and are there -- you know, how
17 many orphan stores wind up that no one seems interested in, how
18 you deal with that, so -- but you'll have to deal with that.
19 Okay. Between this weekend and July 11th, I will be away for
20 most of that time, difficult but not impossible to reach, and
21 my chambers will know how to at least try to reach me if they
22 need to. Hopefully, that won't become necessary, but in the
23 first instance you should contact chambers if there's a need
24 for any emergency action, okay?

25 MR. GLENN: Thank you.

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THE COURT: Anything else anybody wants to raise?

MR. GLENN: Not the debtors, Your Honor.

THE COURT: Anybody else? Okay. We're adjourned.

MR. GLENN: Thank you.

(Whereupon these proceedings were concluded at 11:42 AM)

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I N D E X

RULINGS

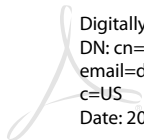
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| Motion for an Order Pursuant to 11 U.S.C. 105, 17 | 17 | 6 |
| 361, 362, 363, 364, and 507 Authorizing | | |
| Debtors to Enter Into Second Amendment to | | |
| Debtor in Possession Credit Agreement, granted | | |

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C E R T I F I C A T I O N

I, Shelia Watkins, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Shelia
Watkins**

 Digitally signed by Shelia Watkins
DN: cn=Shelia Watkins, o, ou,
email=digital1@veritext.com,
c=US
Date: 2011.06.24 15:27:31 -04'00'

SHELIA WATKINS

Veritext
200 Old Country Road
Suite 580
Mineola, New York 11501

Date: June 24, 2011