

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:

Chapter 11

SPORTS AUTHORITY HOLDINGS, INC. et al.,

Debtors.

Case No. 16-10527 (MFW)
(Jointly Administered)

Related Dkt Nos. 20 and 157

LIMITED OBJECTION OF WIGWAM MILLS, INC. TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, 363, AND 364; (II) GRANTING LIENS AND SUPERPRIORITY CLAIMS TO POST-PETITION LENDERS PURSUANT TO 11 U.S.C. §§ 364 AND 507; (III) AUTHORIZING THE USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364; AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C) AND LOCAL RULE 4001-2

Wigwam Mills, Inc. ("Wigwam") by its attorneys, hereby objects on a limited basis (the "Objection") to the Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 (the "DIP Financing Motion") [Docket No. 20]. In support of this Objection, Wigwam states as follows:

Background

1. On March 2, 2016 (the "Petition Date"), Sports Authority Holdings, Inc. and its affiliated debtors (the "Debtors") filed a voluntary petition for relief pursuant to chapter 11 of the



Bankruptcy Code.

2. The Debtors are continuing to manage their financial affairs as debtors-in-possession pursuant to 11 U.S.C. § 1107(a) and § 1108.

Pay by Scan Agreement

3. Wigwam has in the past delivered and may in the future deliver certain goods consisting of socks and various other apparel (the "Wigwam Goods") to the Debtors pursuant to a "pay by scan" arrangement between Wigwam as vendor and TSA Stores, Inc. as vendee.

4. A copy of the 2014 Vendor Deal Sheet Summary (the "Pay by Scan Agreement") regarding the "pay by scan" arrangement between Wigwam and the Debtors is attached hereto as Exhibit A.

5. The Pay by Scan Agreement further provides that "Vendor shall retain title to all goods subject to this agreement until the date of sale at which time title shall pass from Vendor [Wigwam] to the purchaser of such goods." *See* Exhibit A.

The DIP Financing Motion

6. On the Petition Date, the Debtors filed the DIP Financing Motion. By the DIP Financing Motion, the Debtors seek authority to borrow up to \$500 million in senior secured, super-priority asset based revolving credit (the "Revolving DIP Facility") and \$95,285,000 in senior secured, super-priority first in last out term loan credit (the "FILO DIP Facility") (together, the Revolving DIP Facility and the FILO DIP Facility are sometimes referred to herein as the "DIP Facility").

7. By the DIP Financing Motion, the Debtors request that the DIP Facility be secured by, among other things, first- and second-priority priming liens on certain of the Debtors' pre- and post-petition assets (the "DIP Liens"). The DIP Financing Motion also contemplates that

the DIP Liens will be subject to and subordinate to certain "Permitted Prior Liens." *See* DIP Financing Motion; *see also* Interim DIP Financing Order (as defined below), p. 3 and p. 9.

8. The DIP Financing Motion and Interim DIP Financing Order also contemplate that the obligations under the DIP Facility "shall be an allowed administrative expense claim...with priority in the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates..." *See* Interim DIP Financing Order, p. 22, § I.J.15.

9. On March 3, 2016, this Court entered an Interim Order (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 (the "Interim DIP Financing Order") [Docket No. 157], which granted the DIP Financing Motion on an interim basis.

Conflicting Language in Interim Consignment Order

10. On March 11, 2016, this Court entered an Interim Order (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Grant Administrative Expense Priority and Purchase Money Security Interests to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Security Interests and/or Holding Title or Ownership Rights in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment

Vendors (the "Interim Consignment Order") [Docket No. 278].

11. Paragraph 3 of the Interim Consignment Order provides that the Debtors are authorized to sell consigned goods received by the Debtors pre-petition, "with all liens, claims and interests in the Prepetition Consigned Goods, if any, to attach to the applicable proceeds of sale of the Prepetition Consigned Goods (the "Consignment Sale Proceeds") in each case with the same legal, [sic] right, title and/or ownership or other interests and/or the same validity, priority, enforceability and effect as existed as of the Petition Date with respect to such Prepetition Consigned Goods." *See* Interim Consignment Order, ¶ 3. This language conflicts with the DIP Financing Motion and Interim DIP Financing Order, which provide for first- and second-priority priming DIP Liens. *See e.g.*, DIP Financing Motion, ¶ 30; Interim DIP Financing Order, p. 3.

12. Paragraph 7 of the Interim Consignment Order provides that the Debtors are authorized to order and receive consigned goods from consignment vendors, and that, in exchange for post-petition delivery of such consigned goods, the applicable consignment vendor "shall hold (i) a first priority purchase money security interest in such Postpetition Consigned Goods and in the Consignment Sale Proceeds therefrom, (ii) a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code to the extent of any diminution in the value of the Consignment Vendor's postpetition secured claim; and (iii) an allowed administrative expense claim under section 503(b) of the Bankruptcy Code." *See* Interim Consignment Order, ¶ 7. This language conflicts with the DIP Financing Motion and Interim DIP Financing Order, which provide for first- and second-priority priming DIP Liens. *See e.g.*, DIP Financing Motion, ¶ 30; Interim DIP Financing Order, p. 3.

13. According to the Interim Consignment Order, section 507(b) superpriority claims of consignment vendors are to be treated "pari passu with any other superiority claim granted in [the Debtors' bankruptcy cases]." *See* Interim Consignment Order, ¶ 7. This language conflicts with the DIP Financing Motion and Interim DIP Financing Order, which provide that the obligations under the DIP Facility "shall be an allowed administrative expense claim...with priority in the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates..." *See* Interim DIP Financing Order, p. 22, § I.J.15.

14. Paragraph 7 of the Interim Consignment Order further provides that "perfection of the postpetition security interest in the Postpetition Consigned Goods and proceeds thereof will be deemed effective without the need to file any financing statement or further notice to any party in interest, including the Secured Lender Agents." *See* Interim Consignment Order, ¶ 7.

Argument and Relief Requested

15. Because language contained in the DIP Financing Motion and Interim DIP Financing Order conflicts with language contained in the Interim Consignment Order, Wigwam files this Objection out of an abundance of caution to ensure that: (a) the DIP Liens will be subordinate to any consignment vendor's pre-petition, properly-perfected security interest in consigned goods and the proceeds of such consigned goods; (b) for any consigned goods received by the Debtors post-petition pursuant to "pay by scan" agreements such as the Pay by Scan Agreement between the Debtors and Wigwam, consignment vendors will be deemed to have first-priority, properly-perfected purchase money security interests in the consigned goods that they deliver (and the proceeds thereof), which shall take priority over the DIP Liens; and (c) any superpriority administrative expense claims granted to consignment vendors under section

507(b) of the Bankruptcy Code pursuant to the Interim Consignment Order or any other order will be treated pari passu with the superpriority administrative expense claims granted to the DIP Facility lenders.¹

16. Paragraph 3 of the Interim Consignment Order recognizes that consignment vendors will retain their first-priority liens in consigned goods received by the Debtors pre-petition to the extent that such liens were properly perfected pre-petition. Additionally, Paragraph 7 of the Interim Consignment Order grants to consignment vendors such as Wigwam a first-priority, automatically perfected purchase money security interest in consigned goods (and proceeds of such consigned goods) received by the Debtors post-petition, without the need for consignment vendors to take steps to perfect their purchase money security interests under Uniform Commercial Code § 9-324(b).

17. However, the DIP Financing Motion as currently drafted could be read to request authorization to grant first- or second-priority priming DIP Liens: (a) in consigned goods (and the proceeds thereof) received by the Debtors pre-petition for which consignment vendors have pre-petition properly-perfected purchase money security interests pursuant to Uniform Commercial Code § 9-324(b); and (b) in consigned goods (and the proceeds thereof) that may be received by the Debtors post-petition. Wigwam objects to the DIP Financing Motion to the extent that the Debtors request authorization to grant priming DIP Liens in consignment goods or proceeds falling into either category.

¹ This Objection should not be construed as an admission that the prepetition or postpetition delivery of any Wigwam Goods by Wigwam to any of the Debtors constitutes a consignment under Article 9 of the Uniform Commercial Code, nor should it be construed as an admission that Wigwam is not the owner of the Wigwam Goods in the Debtors' possession. Wigwam hereby reserves all of its rights with respect to the Wigwam Goods. Wigwam further reserves all of its rights and defenses with respect to the adversary complaint filed by certain Debtors against Wigwam, Adv. Case No. 16-50306.

18. Additionally, Paragraph 7 of the Interim Consignment Order grants superpriority administrative expense claims under section 507(b) of the Bankruptcy Code to consignment vendors to the extent of any diminution in the value of such consignment vendor's post-petition secured claim, and provides that such superpriority administrative expense claims will be treated pari passu with any other superpriority administrative expense claims granted in the Debtors chapter 11 cases.

19. However, the DIP Financing Motion and Interim DIP Financing Order provide that the superpriority administrative expense claims granted to the DIP Facility lenders under section 507(b) will have priority over all other administrative expense claims in the Debtors cases. Wigwam objects to the DIP Financing Motion to the extent that it requests authority to grant superpriority administrative expense claims to the DIP Facility lenders on anything other than a pari passu basis with the superpriority administrative expense claims granted to consignment vendors.

20. Any final order approving the DIP Financing Motion should be modified to reflect that: (a) the DIP Liens are subordinate to consignment vendors' pre-petition, properly-perfected purchase money security interests in consigned goods and the proceeds thereof; (b) consignment vendors, such as Wigwam, will be deemed to have automatically-perfected, first-priority purchase money security interests in any consigned goods received by the Debtors post-petition (as well as the proceeds thereof), and that such purchase money security interests shall take priority over the DIP Liens; and (c) any superpriority administrative expense claims granted to consignment vendors under section 507(b) of the Bankruptcy Code will be treated pari passu with the superpriority administrative expense claims granted to the DIP Facility lenders.

RESERVATION OF RIGHTS

21. Wigwam hereby reserves the right to appear at the hearing on the DIP Financing Motion, and to supplement this Objection.

WHEREFORE, the undersigned requests that the Court: (a) include in any order approving the DIP Financing Motion language reflecting that (i) the DIP Liens are subordinate to consignment vendors' pre-petition, properly-perfected purchase money security interests in consigned goods and the proceeds thereof; (ii) consignment vendors will be deemed to have automatically-perfected, first-priority purchase money security interests in any consigned goods received by the Debtors post-petition (as well as the proceeds thereof), and that such purchase money security interests shall take priority over the DIP Liens; (iii) any superpriority administrative expense claims granted to consignment vendors under section 507(b) of the Bankruptcy Code pursuant to the Interim Consignment Order or any other order will be treated pari passu with the superpriority administrative expense claims granted to the DIP Facility lenders.; and (b) grant such other and further relief as the Court deems appropriate.

Date: March 21, 2016
Wilmington, DE

SULLIVAN · HAZELTINE · ALLINSON LLC

/s/ William A. Hazeltine

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and

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Attorneys for Wigwam Mills, Inc.

Exhibit A

2014 VENDOR DEAL SHEET SUMMARY

PAY BY SCAN

- If Vendor is converting to the Pay by Scan program, Vendor shall reimburse TSA for all costs of goods on hand and at the time of conversion.
- Vendor shall adhere to the invoice and shipping policies, as well as the terms and conditions of TSA's Vendor Relationship Guide which is available at www.Paidupartner.com/usa/Login.aspx and incorporated by reference.
- TSA and Vendor agree that the arrangement contemplated by this agreement shall be a consignment as defined in Section 9-102 of the Colorado and Delaware Uniform Commercial Codes. Vendor shall retain title to all goods subject to this agreement until the date of sale at which time title shall pass from Vendor to the purchaser of such goods. Vendor shall be entitled to file UCC-1 Financing Statements to reflect this consignment.
- The term of this agreement shall commence as of the Effective Date and remain in effect until a new agreement is signed by TSA and Vendor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

Vendor

By: *James Erntausser*
 Print Name: JAMES ERNTAUSER
 Title: EVP
 Date: 4/21/2014

PLEASE SIGN AND INITIAL USING BLUE INK TO ALLOW FOR EASY IDENTIFICATION OF THE ORIGINAL AGREEMENT.

TSA STORES, INC.

By: *Jennifer Dickson* (Buyer)
 Print Name: Jennifer Dickson
 Title: Buyer
 Date: 4/21/2014

By: *Brian Burnett* (DMM)
 Print Name: BRIAN BURNETT
 Title: Divisional Merchandise Manager
 Date: 4/21/2014

CERTIFICATE OF SERVICE

I, William A. Hazeltine, hereby certify that on March 21, 2016, I caused one copy of the foregoing *Limited Objection of Wigwam Mills, Inc. to Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2* to be served upon the parties listed below via U.S. Mail, First Class, postage pre-paid and facsimile:

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March 21, 2016

Date

/s/ William A. Hazeltine

William A. Hazeltine