

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
Sports Authority Holdings, Inc., <i>et al.</i> ¹ ,)	Case No. 16-10527 (MFW)
Debtors.)	Jointly Administered
)	Re: D.I. 644

JOINDER OF M.J. SOFFE, LLC TO THE OMNIBUS OBJECTION OF ASICS AMERICA CORPORATION TO DEBTORS’ MOTIONS FOR ORDERS ON THE (1) CONSIGNMENT MOTION; (2) GOB MOTION; AND (3) DIP MOTION AND RESERVATION OF RIGHTS

M.J. Soffe, LLC (“Soffe”), by its undersigned counsel, hereby supports and incorporates by reference as set forth herein the Omnibus Objection of Asics America Corporation (the “Omnibus Objection”) to the following motions:

- A. *Debtors’ Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of all Liens, Claims and Encumbrances and (II) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price arising from Sale of Consigned Goods to Putative Consignment Vendors [D.I. No. 9] (the “Consignment Motion”);*
- B. *Debtors’ Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume the Closing Store Agreement, (B) Authorizing and Approving Store Closing Sales Free and Clear of all Liens, Claims and Encumbrances, (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder, (D) Approving Dispute Resolution Procedures, and (E) Approving the Debtors’ Store Closing Plan [D.I. No. 15] (the “GOB Motion”); and*
- C. *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*

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

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 [D.I. No. 20] (the “DIP Motion” and together with the Consignment Motion and GOB Motion, the “Motions”²).

BACKGROUND

- Soffe and Debtor TSA Stores, Inc. (“TSA”) entered into that certain 2010 Domestic Vendor Deal Sheet (Vendor Agreement) Pay By Scan (the “Vendor Agreement”), pursuant to which Soffe periodically consigned goods to TSA for sale in various Sports Authority brand stores across the country. The consigned goods primarily consisted of Soffe clothing apparel. Soffe’s consigned goods and the proceeds therefrom that were in the Debtors’ possession as of the Petition Date are referred to herein collectively as the “Soffe Property.”

- At all times during their consignment relationship, including under the Vendor Agreement, the parties acknowledged and agreed that all right, title, and interest in and to any consigned Soffe goods, including the Soffe Property, remained with Soffe and never transferred to TSA. The Vendor Agreement expressly provided that:

“[Soffe] shall retain title to all goods subject to this agreement until the date of sale at which time title shall pass from [Soffe] to the purchaser of such goods.”

Vendor Agreement, at p. 8 (emphasis added). Thus, in the Vendor Agreement drafted by the Debtors, the Debtors admit that they hold no title to Soffe’s goods consigned under the Vendor Agreement, including the Soffe Property. Pursuant to the Agreement, title to any Soffe goods transfers, if at all, directly from Soffe to the ultimate purchaser of such goods.

- On or about March 15, 2016, the Debtors commenced an adversary proceeding against Soffe by filing a complaint seeking, among other things, declaratory judgment that the

² Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the respective Motions

Debtors had a senior interest in the Soffe Property (the “Complaint”). Soffe intends to strongly defend the Complaint and reserves the right to seek any and all claims, causes of action and damages against the Debtors arising out of or relating to the Complaint.

JOINDER

- Soffe objects to any request by the Debtors to sell or grant a security interest in or lien upon the Soffe Property without Soffe’s consent. Each of the Motions seek to irreparably harm and impair Soffe’s rights in its owned property, either by seeking authority to sell Soffe Property, including at substantially discounted prices at GOB sales, or to grant a security interest in or lien upon property outside of the Debtors’ estates and reserves all rights to be heard before the Court with regard to the Motions.

- The relief requested under the Motions must be denied with respect to the Soffe Property because:

- The Debtors have not met their heavy burden of proof that the Soffe Property is property of their estates, which may only be determined in the context of the Adversary Proceeding (as defined herein). Any sale of Soffe Property prior to a determination of the Debtors’ interests in such property is in direct violation of controlling Third Circuit precedent. See *SLW Capital, LLC v. Mansaray-Ruffin (In re Mansaray-Ruffin)*, 530 F.3d 230, 237 (3d Cir. 2008).
 - ❖ According to the Debtors’ expedited sale procedures under the GOB Motion and Sale Motion [D.I. 106], they are seeking to liquidate all of their assets on or before April 26, 2016 (*i.e.*, the proposed Sale Hearing date under the Sale Motion). There will be no determination of the Debtors’ interest in the Soffe Property prior to the Debtors’ expedited sales in these Chapter 11 Cases.
- The Consignment Motion seeks authority to immediately sell consigned goods, including the Soffe Property, free and clear of all claims, liens, and encumbrances. Soffe objects to the Consignment Motion because the Debtors have not proven, and are unable to prove, that the Soffe Property is property of the Debtors’ estates. Soffe does not consent to any sale of the Soffe Property.
- The GOB Motion seeks to immediately liquidate inventory in over 200 of the Debtors’ 464 stores and sell such property free and clear of all liens, claims, encumbrances, and interests (the “Encumbrances”). The Debtors’ proposal to

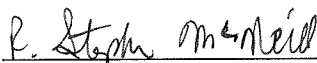
transfer Encumbrances to the proceeds is inadequate because the Debtors cannot sell the Soffe Property in which it has no interest without Soffe's consent. Soffe does not consent to any sale of the Soffe Property. The Soffe Property must be immediately removed from any GOB Sales.

- The DIP Motion seeks authority to grant first priority security interests in and liens on all assets of the Debtors, including all previously unencumbered assets. The Debtors are unable to grant an interest in property that is not property of their estates. Any order approving the DIP Motion must expressly carve-out any property that is not property of the estate.
- Use or impairment of the Soffe Property without Soffe's consent is an unlawful conversion of such property. This Court should not permit the Debtors to commit conversion and must expressly order that the Soffe Property is not subject to the Consignment Motion, GOB Motion, and DIP Motion. Soffe reserves all rights to bring claims against and seek damages from the Debtors.

WHEREFORE, for the reasons set forth in the Omnibus Objection, Soffe requests that this Court deny the Motions and grant Soffe such other and further relief as this Court may deem just and proper.

Dated: March 22, 2016
Wilmington, Delaware

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