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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

ADVANCE WATCH COMPANY LTD, et al.,

Debtors.

Chapter 11

Case No.: 15-12690 (MG)

Jointly Administered

----- X

**EX PARTE MOTION FOR
ENTRY OF AN ORDER AUTHORIZING
TOMMY BAHAMA GROUP, INC. AND TOMMY
BAHAMA GLOBAL SOURCING LIMITED TO FILE
UNDER SEAL CERTAIN CONFIDENTIAL INFORMATION
PERTAINING TO THE OBJECTION OF TOMMY BAHAMA
GROUP, INC. AND TOMMY BAHAMA GLOBAL SOURCING LIMITED
TO PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT**

Tommy Bahama Group, Inc. and Tommy Bahama Global Sourcing Limited (together, “Tommy Bahama”), by and through their undersigned counsel, hereby submit this ex parte motion (this “Seal Motion”), pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order (the “Order”) authorizing Tommy Bahama to: (a) file under seal Exhibit A (the “Sealed Exhibit”) to the *Objection of Tommy Bahama Group, Inc. and Tommy Bahama Global Sourcing Limited to Proposed Assumption and Assignment of Executory*

Contract (the “Objection”)¹ filed contemporaneously herewith, containing confidential information (the “Confidential Information”) regarding the economic and commercial terms of the License Agreement (as defined herein); and (b) provide the Confidential Information contained in the Sealed Exhibit to the parties specifically designated by Tommy Bahama as set forth below. In support of the Seal Motion, Tommy Bahama respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. Pursuant to that certain Trademark License Agreement, dated as of March 12, 2009 by and between Tommy Bahama and Advance Watch Company Ltd. (as amended and together with certain ancillary agreements executed contemporaneously therewith, the “License Agreement”), Tommy Bahama has granted Advance Watch Company Ltd. a nontransferable, non-assignable and exclusive license to use certain Tommy Bahama® trademarks and service marks in connection with the manufacture, advertising, promotion, sale, offering for sale, and distribution of certain products.

3. Pursuant to the motion (the “Sale Motion”) of Advance Watch Company Ltd. and its affiliated debtors and debtors in possession (the “Debtors”) for an order approving the sale of certain assets free and clear of interests and the assumption and assignment of executory contracts and unexpired leases, inter alia, the Debtors sought the authority to assume and assign the License Agreement [Docket No. 17].

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

4. As set forth in the Objection, it is the belief of Tommy Bahama that the License Agreement cannot be assumed and assigned under the Sale Motion without Tommy Bahama's consent. (See Objection ¶¶ 4-9.) As evidence to Tommy Bahama's assertion set forth in the Objection, Tommy Bahama provided the License Agreement as Exhibit A to the Objection.

RELIEF REQUESTED

5. By the Seal Motion, Tommy Bahama seek entry of an order pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 authorizing Tommy Bahama to: (a) file the Confidential Information contained in Exhibit A to the Objection under seal with the Court, and (b) provide copies of the Sealed Exhibit, on a confidential basis, to the Debtors, the Office of the United States Trustee (the "U.S. Trustee"), and the professionals for Official Committee of Unsecured Creditors (the "Committee").

BASIS FOR RELIEF

6. Bankruptcy Code section 107(b) provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .

11 U.S.C. § 107(b). Bankruptcy Rule 9018, in turn, implements section 107 and states:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . .

Fed. R. Bankr. P. 9018.

7. The Second Circuit has noted that while "the right of public access to court records is firmly entrenched and well supported by policy and practical considerations, the right is not absolute." Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures

Corp.), 21 F.3d 24, 27 (2d Cir. 1994). When open inspection of court records may be used as a vehicle for improper purposes, “courts must deny access to judicial documents.” *Id.* (citing Nixon v. Warner Commc’ns Inc., 435 U.S. 589, 597 (1978)).

8. While court documents are generally open for public inspection, Congress provided an exception for bankruptcy cases in Bankruptcy Code section 107(b). *Id.* Under Bankruptcy Code section 107(b), a party seeking to seal information must show only that the information was “confidential” and “commercial” in nature. *Id.* at 27. The Second Circuit has held that Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Id.* at 28. In addition, unlike Federal Rule of Civil Procedure 26(c), there is no requirement for “good cause” to be shown before a court grants such a request. *Id.*

9. Tommy Bahama seeks to limit public access to a very narrow set of information contained in the License Agreement—confidential commercial information relating to certain non-public economic and commercial terms between the Debtors and Tommy Bahama. Historically, Tommy Bahama has kept the economic and commercial terms to their license agreements confidential. Publishing such commercial information could provide an unfair advantage to Tommy Bahama’s competitors seeking to enter into similar agreements with parties Tommy Bahama has already entered into such agreements or is seeking to enter into such agreements, precisely the type of information section 107(b) of the Bankruptcy Code is meant to protect. See In re Orion, 21 F.3d at 28 (adopting the definition of commercial information to mean “information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of [the party seeking the relief]’” (quoting Ad Hoc Protective Comm. for 10½% Debenture Holders v. Intel Corp. (In re Intel Corp.), 17 B.R. 942, 944

(B.A.P. 9th Cir. 1982)). Additionally, the terms set forth in the License Agreement that Tommy Bahama seeks to seal may differ from other, similar license agreements in which Tommy Bahama has already entered or may wish to enter at a later date. Tommy Bahama may be left at a disadvantage when negotiating with already existing or potential new counterparties to agreements similar to the License Agreement if the Confidential Information becomes public.

10. Tommy Bahama will share the Sealed Exhibit, on a confidential basis, with the Debtors, the U.S. Trustee, and the professionals for the Committee. Accordingly, all key stakeholders in these cases will have the relevant information to formulate their positions with respect to the License Agreement. Tommy Bahama believes that further disclosure of the Confidential Information is not necessary to protect the interests of the Debtors' creditors or other parties in interest in these cases. In addition, any party or member of the public with a compelling interest in the information contained in the Sealed Exhibit may obtain such information by seeking a further order from this Court to have that information disclosed. In sum, the relief sought herein is necessary to protect Tommy Bahama's confidential commercial information and will not impair the ability of this Court to protect the public interest or otherwise prejudice the Debtors' creditors and other stakeholders.

NOTICE

11. Pursuant to Bankruptcy Rule 9018, the Court may shorten time without notice. Accordingly, no formal notice of this Seal Motion has been given. Informal notice of this Seal Motion has been provided to the Debtors, the U.S. Trustee, and the Committee.

12. No previous request for the relief sought herein has been made by Tommy Bahama to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, Tommy Bahama respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Seal Motion and such other and further relief as may be just and proper.

Dated: New York, NY
November 9, 2015

COOLEY LLP
1114 Avenue of the Americas
New York, NY 10025
Lawrence C. Gottlieb
Michael A. Klein

By: /s/ Lawrence C. Gottlieb
Lawrence C. Gottlieb
Michael A. Klein

Attorneys for Tommy Bahama

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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TO PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT**

Upon the motion (the “Seal Motion”)¹ of Tommy Bahama Group, Inc. and Tommy Bahama Global Sourcing Limited (together, “Tommy Bahama”) for entry of an order pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 authorizing Tommy Bahama to file the Confidential Information under seal; and it appearing that the relief requested herein is in the best interests of Tommy Bahama, the Debtors’ estates, their creditors, and other parties in interest; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Seal Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Seal Motion.

1. The Seal Motion is GRANTED to the extent set forth herein.
2. Pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018, Tommy Bahama is authorized to file the Confidential Information contained in the Sealed Exhibit under seal with the Court.
3. The Clerk of the Bankruptcy Court shall accept the Sealed Exhibit for filing under seal pursuant to this Order.
4. The Sealed Exhibit shall be available to the Court, the Debtors, the Office of the United States Trustee, and the Official Committee of Unsecured Creditors, but shall otherwise remain under seal and may not be unsealed unless authorized by order of the Court.
5. Tommy Bahama shall dispose of the Sealed Exhibit at the closing of these cases.
6. The relief granted in this Order is without prejudice to the rights of any party in interest, or the U.S. Trustee, to seek to unseal the Sealed Exhibit or any part thereof.
7. Tommy Bahama is authorized to take all actions necessary and appropriate to effectuate the relief granted pursuant to this Order in accordance with the Seal Motion.
8. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

Dated: November __, 2015
New York, New York

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE