

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

IN RE: CREATIVE HAIRDRESSERS, INC. et al., Debtor	Case No.: 20-14583 Chapter 11
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**UNITED STATES TRUSTEE’S OBJECTION TO DEBTORS’
EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) APPROVING RELIEF RELATED TO THE INTERIM BUDGET,
(II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND
APPLICATIONS FOR PAYMENTS, AND (III) GRANTING RELATED RELIEF**

John P. Fitzgerald, III, the Acting United States Trustee for Region 4 (“United States Trustee”), by counsel objects to the Emergency Motion of the Debtors for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief (the “Mothball Motion”).¹ See ECF Doc. No. 12. In support of his objection, the United States Trustee represents and alleges as follows:

PRELIMINARY STATEMENT

The United States Trustee is mindful of the devastating personal and economic impact of the novel coronavirus (COVID-19) on the world at large and particularly on any business, like barbershops and salons, that has been shuttered to enforce social distancing safety measures. While the United States Trustee recognizes the predicament that the Debtors, as well as many debtors in this current environment, find themselves in, given the extraordinary and unprecedented situation caused by COVID-19, the United States Trustee objects to the Mothball

¹ The Debtors in these cases are (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C. The cases are being jointly administered.

Motion given the unfair impact that it will have on creditors. In these cases, the Debtors are attempting to sell all their assets to their secured lender, HC Salons, which is acting as the stalking horse, through a credit bid. Through the Mothball Motion, the Debtors are seeking permission to stop payment to other administrative creditors that they do not deem essential while preventing those administrative creditors from enforcing the rights they would normally have against a debtor that stops post-petition payments. While cognizant of the unprecedented times that the Debtors currently find themselves in, the United States Trustee has the following concerns with respect to the Mothball Motion.

The Mothball Motion appears to violate creditors' due process by forcing them to continue to provide services to the Debtors knowing that they may not ever be paid, in essence requiring certain creditors to act as involuntary lenders. The proposed time period during which the Debtors would dampen the creditors' rights is vaguely defined in the Mothball Motion. The Debtors do not request to hold creditors at bay until a specific date; instead, they seek to stifle creditors until "the earlier of Debtors filing a notice of such termination upon the re-opening of one or more salons and/or their operations generally, or at such other time as is ordered by the Court."

It is unclear why the Mothball Motion is even necessary given that Standing Order 2020-07 of the United States District Court for the District lengthens the response time to most motions to 84 days and allows the presiding judge to set a different deadline by subsequent order. *See* Standing Order 2020-07. Debtors fail to demonstrate why they are entitled to greater relief than is provided by the Standing Order.

Moreover, the relief requested in the Mothball Motion is contradictory to the relief provided for in the form Order for Complex Chapter 11 Bankruptcy Cases, which requires a

motion for relief from stay to be heard in at least twenty-three (23) days after the notice is mailed.

FACTS

1. The Debtors filed a voluntary petition for relief under Chapter 11 of the United States Code on April 23, 2020 (“Petition Date”). The Debtors have remained in possession of the estates' assets and continue to manage their financial affairs. 11 U.S.C. §§ 1107, 1108. The United States Trustee has appointed an Official Committee of Unsecured Creditors.

2. On the Petition Date, the Debtor filed a series of first day motions, including a motion for debtor-in-possession financing, ECF Doc. No. 23, and a motion to establish bid procedures, ECF Doc. No. 22.

3. Although the Debtors filed the Mothball Motion as an “emergency” on the Petition Date, the Debtors announced at the first day hearing conducted on April 27, 2020, that they were not going to pursue the motion as part of the first day hearings.

4. By way of the Mothball Motion, the Debtors seek authority to:
- a. continue to pay certain critical expenses requested in the other “First Day” motions filed concurrently herewith, and as specifically outlined in the proposed Initial DIP Budget (the “Initial Budget”) attached to DIP Motion, that are essential for the Debtors to pursue a value-maximizing outcome to these cases;
 - b. temporarily cease making rent payments to landlords who have not voluntarily consented to a rent deferral;
 - c. automatically adjourn any motions, applications, or demands for payment on account of unpaid invoices or otherwise to the next scheduled omnibus hearing that is no less than 45 days after the end of the “Limited Operation Period” or such date as the Court may determine, unless such payment is to be provided pursuant to the Interim Budget;
 - d. automatically adjourn any motions seeking to lift the automatic stay and motions to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts, for the same time period; and

- e. schedule a monthly hearing to (i) provide all parties in interest an update on the sale process and business reopening timeline, (ii) resolve any material disputes related to the Proposed Order, and (iii) determine if the relief granted by the Proposed Order, if and when granted, should remain in place or be modified in response to changing circumstances.

See Mothball Motion at ¶ 5.

5. The Mothball Motion defines “Limited Operation Period” as “the period of operation under the Interim Budget, which shall commence upon entry of the order approving this Motion and shall terminate upon the earlier of Debtors filing a notice of such termination upon the re-opening of one or more salons and/or their operations generally, or at such other time as is ordered by the Court.” *See id.* at ¶ 16. The Debtors are seeking for any motion, application, action, or pleading filed in these cases demanding payment, seeking to lift the automatic stay, and/or compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts, including any such motion already filed, to be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period. *See id.* at ¶ 21.

ARGUMENT

6. The United States Trustee objects to the relief sought in the Mothball Motion because it is not fair and equitable, is not sufficiently limited in duration, and lacks transparency; in essence, it binds creditors to continue their end of the bargain while depriving them of their rights under the Bankruptcy Code. Said differently, the language in the Mothball Motion provides for drastic relief halting creditors’ rights under the Bankruptcy Code and putting creditors at the mercy of the Debtors without any finite duration of how long that will last.

7. Through the Mothball Motion, the Debtors propose to stop payments to various vendors or landlords that, in their judgment, are non-essential. Not only is it unclear from the

Interim Budget which creditors they seek to pay and which they seek to stop paying, it is also unclear whether these ongoing obligations will be guaranteed payment as an administrative claim. There is nothing in the Mothball Motion, or any other filed motion, that explains how the administrative claims of the rejected leases will be paid. Although the Debtors mention the possibility of proposing an administrative claim procedures process at a later date, certain administrative creditors will be required to wait to be paid despite the fact that they provided services post-petition. In contrast, other administrative creditors will be paid timelier. For example, it is the United States Trustee's understanding that the professionals in these cases will continue to work and get paid, despite sharing the same priority as other creditors who have to face the uncertainty of when they will be paid – if at all. The Debtors' proposed treatment of creditors is not fair or equitable.

8. In addition, through the Mothball Motion, the Debtors seek to extend the time for performance under the leases and other executory contracts until 45-days after the termination of the Limited Operation Period. Limited Operation Period, as shown above, is not a set date.² The Limited Operation Period commences upon entry of the order approving the Mothball Motion and terminates upon the earlier of Debtors filing a notice of such termination upon the re-opening of one or more salons and/or their operations generally, or at such other time as is ordered by the Court. *See* Mothball Motion at 7. As set forth through the bidding procedures approved as part of the first day motions, the Debtors' bankruptcy path consists of the sale of all of their assets on a fast track – with closing of the sale scheduled in less than a month. Presumably, the decision whether to assume or reject leases or executory contracts will be made

² The Mothball Motion may violate Section 365(d)(3), which limits the Court's ability to extend for cause a debtor's time for performance under an unexpired lease to 60 days.

prior to the sale date – all the assumed contracts will be sold, and what is not assumed and sold will be rejected. Therefore, the Debtors’ request to adjourn any type of motion brought by creditors asserting their rights until 45-days after the Limited Operation Period, when all the Debtors’ assets will be sold in 35 days, appears to only serve the purpose of silencing the creditors until their fate has been sealed.

9. Moreover, while the Debtors seek to bind creditors to the relief sought in the Mothball Motion for a period extending possibly well over two months – and certainly beyond the date of the sale is supposed to close – the Interim Budget that they refer to in terms of payments they propose to make – currently only goes through the week of May 10th. Accordingly, while seeking broad relief, it is not clear which creditors exactly the Debtors will pay and/or when they seek to pay them.

10. While it is true that similar motions to the Mothball Motions were granted in *Pier One* and *Modell*, those cases are distinguishable. The debtors in those cases had ongoing going-out-of-business sales that could not proceed given the Covid-19 shutdown; accordingly, the debtors were looking for breathing room while evaluating a path out of bankruptcy. Here, as set forth above, the Debtors are proposing a fast-tracked sale (while rejecting some contracts or leases and assuming others to then transfer to the purchaser), which is set to close by May 29th – less than a month away – with no clarity as to whether all administrative claimants will be paid in full. If the relief is granted in its current form, the creditors’ first opportunity to be heard would be after the sale is concluded.

11. Lastly, it is unclear why the Mothball Motion is necessary at all, given that the Standing Order 2020-07 lengthens the filing deadlines, in all cases, set to fall between March 16, 2020 and June 5, 2020 by 84 days. *See* Standing Order 2020-07. Further, this Court determined

in issuing Administrative Order 20-09 that there is an urgent need to allow reasonable progress under the circumstances of COVID-19 on certain bankruptcy matters. Administrative Order 20-09 allows a creditor to file a motion to shorten time to respond if the creditor's motion needs the Court's quick attention. The Mothball Motion does not allow creditors any opportunity to bring matters to the Court's attention until after the sale is completed and all the assets are sold.

12. Administrative Order 20-09 strikes the delicate balance between giving the Debtor the breathing room from having to respond to motions to lift the automatic stay while allowing the creditors to bring emergency matters to the Court's attention by filing a motion to shorten time to respond. The Mothball Motion does not even attempt to strike such a balance; instead, it places all the power in the Debtors' hands as to when the Court can consider a motion lift the automatic stay. There is no reason, in this case, for the Court to allow such draconian relief when the Court has already set into place administrative procedures that provide the Debtors the relief that they need.

13. Furthermore, it appears as the relief requested in the Mothball Motion contradicts some provisions in the Order for Complex Chapter 11 Bankruptcy Cases, Form CCP-2, including the procedures set forth in paragraphs 3 for setting hearings on emergency and non-emergency motions. According to paragraph 3 of the form Order for Complex Chapter 11 Bankruptcy Cases, "[a]ll motions and other matters requiring hearing (including motions for relief from the automatic stay, but NOT including claims objections and adversary proceedings) shall be noticed for hearing on the next Hearing Day that is at least twenty three (23) days after the notice is mailed." The Debtor's request to push off scheduling for hearing motions to lift the automatic until 45 days after the Limited Operation Period clearly violates and is in contradiction of paragraph 3 of the form Order for Complex Chapter 11 Bankruptcy Cases.

14. The Debtors have provided no explanation as to why this case should be treated differently than other complex chapter 11 cases filed in this jurisdiction.

15. While the United States Trustee realizes that COVID-19 presents some novel issues for the Court, this Court must strike a fair balance between the predicament the Debtors find themselves in and the rights of creditors and parties in interest. As proposed, the relief the Debtors request is not fair and equitable and is too uncertain and prolonged, thus failing to provide the proper balance to everyone involved.

Wherefore, the United States Trustee respectfully requests that the Mothball Motion be denied and for such other and further relief as is just.

Respectfully submitted,

Dated: May 13, 2020

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CERTIFICATE OF SERVICE

I hereby certify that, on the 13th day of May 2020, a copy of the foregoing United States Trustee”), by counsel objects to the Emergency Motion of the Debtors for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related was served by ECF notification to:

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