

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	
<b>HOOP HOLDINGS LLC, a Delaware limited liability company, et al.,</b>	)	Chapter 11
Debtors.	)	Case No.: 08-10544 (BLS)
	)	Jointly Administered
	)	
	)	
	)	
	)	

**MOTION OF DISNEY STORES USA, LLC AND DEBTORS  
TO CONDUCT DISCOVERY PURSUANT TO RULE 2004 OF  
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Disney Store USA, LLC f/k/a T2 Acquisition, LLC (“USA Buyer”), and Hoop Holdings, LLC and its affiliated debtors and debtors-in-possession (collectively, the “Debtors,” and together with USA Buyer, “Movants”) by their undersigned counsel, hereby move (the “Motion”) for entry of an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); for the production by The Children’s Place Retail Stores, Inc. (“TCP”) and The Children’s Place Services Company, LLC (“TCP Services,” and collectively with TCP, the “TCP Entities”) of documents and other information described in Exhibit A hereto (the “Tenant Allowance Documentation”).

The Tenant Allowance Documentation is related to certain claims for Mechanic’s Liens (as defined below) and reimbursements, tenant credits and/or allowances under the Acquired Leases (as defined below). The discovery being sought is essential to the efforts of Movants to obtain cash from third party landlords that can be used to reimburse Movants for the payment of valid mechanic’s lien claims, thereby maximizing the value of Debtors’ assets for the benefit of the estates. A proposed form of order is attached hereto as Exhibit B. In support of the Motion, Movants refer to and rely upon the Declaration of Harry Garner in support of the Motion (the

“Garner Decl.”), attached hereto as Exhibit C. In support of this Motion, Movants respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

### **BACKGROUND**

2. On March 26, 2008 (the “Petition Date”), Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continue to operate their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. Prior to the Closing Date (as defined below), Debtors owned and operated the Disney Stores chain of specialty retail stores (the “Disney Stores Business”), at which they sold specialty retail merchandise pursuant to a License Agreement with Disney Enterprises, Inc. (together with its affiliates, “Disney”).

4. In the spring of 2008, Debtors and the TCP Entities entered into an asset purchase agreement (the “APA”) whereby USA Buyer would purchase substantially all of the Debtors’ assets (the “Sale”). Pursuant to the APA, USA Buyer agreed to acquire, among other things, certain Acquired Leases (as defined in the APA), subject to the Court’s entry of an order pursuant to Bankruptcy Code § 363(f) authorizing the transfer of the Acquired Leases to USA Buyer free and clear of all liens, claims and encumbrances.

5. By order entered on April 28, 2008, the Court approved the Sale, entering its Order Pursuant to Sections 105, 363, 365 and 554 of the Bankruptcy Code and Rules 2002, 6004, 6006, 6007, 9006, and 9019 of the Federal Rules of Bankruptcy Procedure, (I) Authorizing and Approving Debtors’ Entry Into (a) the Asset Purchase Agreement and (b) the Designation Rights

Agreement, and (II) in Connection Therewith, Authorizing Debtors to (a) Sell Certain Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Assume and Assign Certain Leases and Executory Contracts, (c) Establish Procedures for Subsequent Assumption and Assignment or Rejection of Unexpired Leases and Executory Contracts, (d) Settle Certain Claims, and (e) Abandon Property of No Net Value to Debtors' Estate [Dkt. No. 319] (the "Sale Order"). The Sale closed on April 30, 2008 (the "Closing Date").

6. Pursuant to the APA and the Sale Order, USA Buyer agreed to pay all amounts necessary to cure any prepetition arrearages under the Acquired Leases. APA § 2.4.2; Sale Order ¶ 17. At the hearing on the Sale, numerous landlords of the Acquired Leases and contractors that had provided store renovation or construction services in connection with the Acquired Stores informed USA Buyer and Debtors that many mechanic's liens had been filed against the landlords' real property, and that many more were likely to be filed (the "Mechanic's Liens"). Under the terms of the Acquired Leases, the landlords asserted that they were entitled to lien releases as part of the cure of prepetition defaults.

7. After intense courthouse negotiations, Section 12 of the Sale Order was amended to provide that, to the extent that Mechanic's Liens were determined to be valid and required to be paid as part of the "cure" pursuant to Section 365 of the Bankruptcy Code, Debtors' estates would pay the first \$1 million of such claims, and Debtors' estates and USA Buyer would each be responsible for paying half of all such claims in excess of \$1 million (the "Payment Waterfall"). Sale Order ¶ 12.

8. Approximately 60 Mechanic's Liens have been asserted against Debtors or the landlords regarding the Acquired Leases, with a face value of approximately \$4.7 million. Declaration of Harry Garner ("Garner Decl.") ¶ 2. During the course of the Chapter 11 Cases,

Debtors have settled approximately 30 Mechanic's Liens claims in the approximate aggregate amount of \$1 million. Id. Debtors have also obtained default judgments in the Bankruptcy Court declaring that four Mechanic's Liens are invalid, and have otherwise obtained discharges of an additional seven Mechanic's Liens. Id. USA Buyer estimates that unresolved Mechanic's Liens exceed \$1 million. Id.

9. To defray the cost of the Payment Waterfall, Section 12 of the Sale Order implements the parties' agreement that "[a]ll reimbursement or tenant credits or allowances that USA Buyer receives in respect of tenant installations or tenant improvements to the premises under the assumed leases," are to be disbursed by USA Buyer to reimburse payments made pursuant to the Payment Waterfall: first, to Debtors' estates for the 50% that they have paid in excess of the first \$1 million; second, to USA Buyer for its 50% of the overage; and third, to the Debtors' estates for their initial \$1 million (the "Reimbursement Waterfall"). Any residual tenant allowance recoveries would be retained by USA Buyer. Sale Order ¶ 12.

10. The leases for certain of the USA Acquired Stores (the "Tenant Allowance Stores") provide for tenant credits or allowances (the "Tenant Allowances") that may be available to reimburse Debtors and USA Buyer for payments made under the Payment Waterfall. Garner Decl. ¶ 3. USA Buyer estimates that the available Tenant Allowances could be as much as \$1.7 million with respect to Acquired Stores that are the subject of Mechanic's Lien claims. Id. ¶ 4. If such recoveries were achieved, then Debtors' estates could be reimbursed as much as \$1.2 million of their payments under the Payment Waterfall, and USA Buyer could receive as much as \$500,000 pursuant to the Reimbursement Waterfall.

11. Prior to the Petition Date, TCP provided a broad array of services to Debtors, including cash management and financial services, accounting and auditing services, store

operation services (including store development), and other services necessary to assist Debtors in complying with their obligations under the license agreement with Disney. Declaration of Perry M. Mandarino in support of First Day Motions (“Mandarino Decl.”) ¶ 29. Debtors were reliant upon TCP to provide these services, without which they could not have continued to operate. Id. ¶ 33.

12. TCP in fact turned out to be the direct contracting party with respect to at least \$1.7 million of the Mechanic’s Liens that have been asserted, based upon copies of the executed construction contracts. Garner Decl. ¶ 5. It is Movants’ understanding that TCP Services supervised and managed all of the construction for the Acquired Stores, even with respect to construction contracts executed by Hoop Retail. Id. ¶ 6.

13. Since the Closing Date, USA Buyer has attempted to recover the Tenant Allowances from the landlords for the Tenant Allowance Stores. Garner Decl. ¶ 6. As a condition to paying USA Buyer the Tenant Allowances, the landlords have insisted upon full documentation of any and all contractors (“Contractors”) that performed any work in connection with the Tenant Allowance Stores, including, but not limited to construction contracts, invoices, purchase orders, change orders, correspondence with the Contractors, evidence of payments made to the Contractors, and other such documents (the “Tenant Allowance Documentation”). Id. USA Buyer has been unable to satisfy the landlords’ requirements because it has not received the Tenant Allowance Documentation from Debtors or TCP. Id.

14. The Sale included all right, title and interest of Debtors in and to the Tenant Allowance Documentation and other documents relating to the Acquired Stores. APA § 2.1. Upon the Closing Date, Debtors and the TCP Entities were obligated by the APA to deliver to USA Buyer “*all data, manuals, files, computer tapes, databases, correspondence, lists and other*

*books and records* for the [Disney Store Business] to the extent not related exclusively to TCP or its Affiliates other than [Debtors], including . . . *financial and accounting records . . .*” APA § 2.1.8 (definition of “Business Records,” emphasis added). Debtors also represented and warranted that they maintained “books and records that accurately reflect in all material respects the transactions relating to” the operation of the Acquired Stores. APA § 4.3.

15. The Tenant Allowance Stores records that have been received by USA Buyer from Debtors and TCP do not contain the Tenant Allowance Documentation required to collect the Tenant Allowances relating to the Tenant Allowance Stores. Garner Decl. ¶ 7. Debtors have delivered to USA Buyer all Tenant Allowance Store records in their possession. Because the construction completed on behalf of Debtors was managed by TCP Services, not Hoop Retail, and the TCP Entities maintained the files relating to this construction, Movants are informed and believe that the Tenant Allowance Documentation remains in the possession or control of the TCP Entities.

16. USA Buyer has made numerous requests to Debtors and the TCP Entities, both directly and through counsel, for the Tenant Allowance Documentation. Garner Decl. ¶ 8. In response to these requests, Debtors have searched for the Tenant Allowance Documentation but have been unable to locate it among the Debtors’ records. Debtors have also made requests to the TCP Entities for the Tenant Allowance Documentation. Despite these efforts, Movants have been unable to obtain the Tenant Allowance Documentation informally. Garner Decl. ¶ 8. For these reasons, Movants seek access to the Tenant Allowance Documentation. The specific documents are described in more detail in Exhibit A.

17. The Tenant Allowance Documentation will help maximize Debtors’ estates and benefit USA Buyer by facilitating the recovery of the Tenant Allowances, which are payable

through the Reimbursement Waterfall. Accordingly, Movants submit this Motion and order to obtain the Tenant Allowance Documentation from the TCP Entities.

**RELIEF REQUESTED**

18. Movants seek an order requiring that the TCP Entities provide the Tenant Allowance Documentation to Movants pursuant to Bankruptcy Rule 2004. Pursuant to Rule 2004, the Court may allow any party in interest to request information from any entity. Fed. R. Bankr. P. 2004(a). The scope of such request is broad and may relate to “the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.” Fed. R. Bankr. P. 2004(b).

19. Movants’ requests consist only of narrowly-tailored requests for the production of documents and data containing information related to the recovery of the Tenant Allowances for the Acquired Stores. Movants seek discovery of and access to the Tenant Allowance Documentation because it is necessary for the recovery of the Tenant Allowances, thereby maximizing the value of Debtors’ estates and directly affecting the property of the Debtors’ estates that may be distributable to creditors.

### **BASIS FOR RELIEF REQUESTED**

20. Bankruptcy Rule 2004 firmly establishes Movants' right to conduct the discovery as an interested party seeking to maximize recoveries for Debtors' estates. Movants are informed and believe that the TCP Entities are in possession of information essential to the administration of the Debtors' estates and efforts to maximize the value of Debtors' property. Denial of this Motion would significantly impair Movants' ability to obtain reimbursement from the Tenant Allowances to which they are entitled under the Sale Order, and would also undermine Debtors' ability to muster all available assets for distribution to creditors.

21. Debtors' rights under the Reimbursement Waterfall constitute a significant asset of Debtors' estates. Unless the Tenant Allowances are recovered, Debtors will obtain no reimbursement of amounts paid to satisfy valid Mechanic's Liens, and USA Buyer will be unable to realize on a source of funding for cure costs that it bargained for under the APA and the Sale Order.

22. Movants request that the TCP Entities produce the Tenant Allowance Documentation and accordingly, seek the entry of the order attached hereto as Exhibit B. Movants also request that the Court require that the Tenant Allowance Documentation be produced by the TCP Entities within ten (10) business days, or as otherwise deemed to be reasonable by the Court, of the entry of the order.

23. Movants reserve all of their rights to conduct any further discovery against the parties subject to this Motion and Exhibit A under Bankruptcy Rule 2004 as and when necessary, including oral depositions pursuant to subpoena, and all defenses are preserved.



**CERTIFICATION PURSUANT TO LOCAL RULE 2004-1**

24. Movants have contacted TCP counsel regarding a mutually agreeable date, time, place, and scope of production, and are attempting to reach agreement on the details of production.

**NOTICE**

25. Notice of the Motion has been served by hand, electronic mail or by overnight mail on (a) counsel for the TCP Entities; (b) the Official Committee of Unsecured Creditors; (c) the Office of the United States Trustee; and (d) all parties who have filed a notice of appearance and request for service of documents.

**NO PRIOR REQUESTS**

26. No prior request for the relief sought in this Motion has been made to this or any other Court.


**CONCLUSION**

**WHEREFORE**, Movants respectfully request that the Court grant the relief requested herein by entering an order substantially in the form of the annexed Order and such other and further relief as it deems just and proper under the circumstances.

Dated: Wilmington, Delaware  
December 15, 2008

and

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