

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**JOINTLY ADMINISTERED UNDER
CASE NO. 08-46617:**

POLAROID CORPORATION, ET AL.,

08-46617 (GFK)

Debtors.

(includes:

Polaroid Holding Company;
Polaroid Consumer Electronics, LLC;
Polaroid Capital, LLC;
Polaroid Latin America I Corporation;
Polaroid Asia Pacific LLC;
Polaroid International Holding LLC;
Polaroid New Bedford Real Estate, LLC;
Polaroid Norwood Real Estate, LLC;
Polaroid Waltham Real Estate, LLC)

08-46621 (GFK)
08-46620 (GFK)
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Chapter 11 Cases
Judge Gregory F. Kishel

**NOTICE OF HEARING AND (I) MOTION FOR EXPEDITED HEARING, AND (II)
FOR A MOTION IN LIMINE**

TO: The Parties in Interest identified in Local Rule 9013-3.

1. Polaroid Corporation and affiliated debtors (collectively "Polaroid") move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion **at 9:30 a.m. on April 6, 2009**, before the Honorable Gregory F. Kishel, United State Bankruptcy Judge, in Courtroom No. 2A of the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and served by delivery not later than **April 6, 2009**, the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT**

A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 11 case was filed on December 18, 2008. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 363 and 365. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1. Ritchie Capital Management, L.L.C. (“Ritchie”) and Acorn Capital Group (“Acorn”) have filed objections continuing to seek testimony from Mary Jeffries regarding matters before the September 24, 2008 raid of the Petters Company Headquarters and matters relating to the validity of Ritchie and Acorn as secured creditors.

WHEREFORE, Polaroid moves the Court for an order: (1) granting expedited relief; (2) restricting the testimony of Mary Jeffries at the April 6, 2009 Sale Approval Motion hearing to issues arising after the September 24, 2008 raid of the Petters Company Headquarters; (3) restricting the testimony of Mary Jeffries to issues relating to the sale process and the auction sale of Polaroid, and those topics addressed in Polaroid’s reply to objections to the sale, which were verified by Jeffries; and (4) prohibiting testimony concerning whether there is a bona fide dispute as to the liens of Acorn and Ritchie is prohibited.

DATED: April 3, 2009

LINDQUIST & VENNUM P.L.L.P.

e/ Sandra Smalley-Fleming

James A. Lodoen, No. 173605

Terrence J. Fleming, No. 0128983

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ATTORNEYS FOR POLAROID CORPORATION

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MEMORANDUM IN SUPPORT OF MOTION IN LIMINE

INTRODUCTION

Polaroid Corporation and the above-captioned debtors (collectively, “Polaroid”) submits this memorandum of law in support of its Motion in Limine, which motion is brought in an effort to limit the testimony and evidence that will be presented during the April 6, 2009 hearing for an order pursuant to 11 U.S.C. §§ 105(a), 363 and 365 approving the sale process for Polaroid (“Sale Process Approval Motion”). Polaroid respectfully requests that the Court rule as follows on this motion: (1) restrict any testimony by Mary Jeffries (“Jeffries”), Chief Executive Officer of Polaroid, to issues arising after the September 24, 2008 raid of the Petters Company Headquarters; (2) restrict testimony by Jeffries to issues relating to the sale process and the auction sale of Polaroid, and those topics addressed in Polaroid’s reply to objections to the sale,

which were verified by Jefferies; and (3) confirmation by this Court of its statements during the March 26, 2009 hearing prohibiting any testimony concerning whether there is a bona fide dispute as to the liens of Acorn and Ritchie.

I. BACKGROUND

1. On or about September 24, 2008, the Federal Bureau of Investigation, together with the Internal Revenue Service – Criminal Investigation Division and the United States Postal Inspection Service, executed a search warrant on the Petters Company Headquarters at 4400 Baker Road, Minnetonka, and seized records of Petters Company, Inc., Petters Group Worldwide, LLC, their sole owner, Thomas J. Petters, and other employees allegedly involved in a fraudulent Ponzi scheme. On October 3, 2008, Thomas J. Petters was arrested on charges of mail and wire fraud, money laundering, and conspiracy. Other Petters executives implicated in this scheme have also been arrested on various charges and have pleaded guilty to certain crimes. The United States alleges that more than 20 lenders and lending groups may have been bilked out of more than \$3.45 billion.

2. As a result of the investigation and arrests, numerous other employees voluntarily terminated their employment with the Debtors, including the main law firm providing overall corporate counsel, the two senior in-house counsels, the CEO, the CFO, and others with knowledge of the financial transactions among the Debtors and with outside lenders and creditors.

3. On January 28, 2009, Polaroid filed its Sale Process Approval Motion. In connection with that motion, Acorn Capital Group, LLC (“Acorn”) and Ritchie Capital Management, L.L.C. (“Ritchie”) filed written objections and argued during the February 18, 2009 hearing that an expedited discovery process was necessary in connection with the Polaroid

sale. Specifically, Ritchie requested in its February 13, 2009 written objection expedited discovery procedures for the following discovery:

- (1) the analysis (if any) performed by the Debtors' financial professionals with respect to alternatives to the proposed Section 363 sale, (2) the communications between the Debtors' financial professionals and prospective bidders, (3) information regarding the Debtors' operations, financial condition, and ability to reorganize as alternatives to a Section 363 sale, and (4) the facts and circumstances related to any dispute and allegations of the Debtors and their counsel regarding Ritchie's status as a secured creditor.

(Ritchie Objection, p. 6.) The Court overruled its objection and did not grant

Ritchie's request for an expedited discovery procedure. (Order, p. 3.)

4. Acorn and Ritchie served a notice of deposition of Jeffries March 16, 2009 and March 18, 2009 respectively. Acorn and Ritchie unilaterally set the date for the Jeffries deposition for March 23, 2009 just seven days from the date the notice was received. Counsel for Polaroid forwarded the notices of deposition to the personal attorneys for Jeffries. Upon learning that no counsel for any of the interested parties were available on the unilaterally set deposition date, Polaroid contacted Acorn and Ritchie to attempt to continue the depositions. Despite learning that personal counsel for Jeffries and litigation counsel for Polaroid were either in trial or out-of-town the days prior to March 26, 2009, Acorn and Ritchie refused to move the dates for the depositions after March 26, 2009 prompting counsel for Polaroid to move for a protective order.

5. On March 20, 2009 Ritchie served a notice for a Rule 30(b)(6) deposition of Polaroid officers for March 25, 2009, which focused on facts related to the merits of the adversary proceedings against it.

6. On March 26, 2009, the Court granted Polaroid's motion for protective order quashing the deposition notices of Jeffries, Dave Baer, and the Rule 30(b)(6) deposition of

Polaroid officers. (Order, dated March 26, 2009.) During the March 26, 2009 hearing the Court made clear that as to Ritchie's and Acorn's arguments about whether there is a bona fide dispute regarding their status as secured creditors, the Court would decide that issue based upon whether Polaroid's complaints filed in the adversary proceedings against Ritchie and Acorn can withstand a Rule 7012(b)(6) motion. If the complaints can withstand this standard of review, Polaroid will have made its prima facie showing that there is a bona fide dispute as to Ritchie's and Acorn's status as secured creditors.

7. On March 26, 2009, Ritchie served and filed its objection to Polaroid's Sale Process Approval Motion. (Ritchie Objection.) Ritchie makes the following four arguments in support of its objection: (a) there is no business reason supporting a cash sale of Polaroid; (b) the proposed sale appears to benefit insiders such as Jeffries and is therefore not in good faith; (c) if the sale is allowed to proceed the Court should permit Ritchie and others to credit bid for Polaroid under Section 363(k); and (d) discovery consistent with the deposition notices it served upon Jeffries, David Baer, and Polaroid officers pursuant to Rule 30(b)(6) is necessary to fully consider whether business reasons support a cash sale of Polaroid, whether the sale benefits insiders, and whether Ritchie should be allowed to credit bid for Polaroid. (Id. at 2-4.)

8. On March 26, 2009, Acorn served and filed its objection to Polaroid's Sale Process Approval Motion. (Acorn Objection.) Acorn objects to the sale pursuant to 11 U.S.C. § 363(f) arguing the sale is not free and clear of its liens because Polaroid has failed demonstrate there is a bona fide dispute regarding the validity and extent of Acorn's liens. (Id. at 2-5.)

9. On April 3, 2009, Polaroid served and filed its reply to the objections to the sale of Polaroid's assets. (Polaroid Reply.) Polaroid provides specific information in response to the

issues raised by Ritchie and Acorn, including the allegations that the sale is benefiting insiders. (Id. at 14-15.) Jeffries verified the facts in support of the Polaroid reply.

II. ARGUMENT

Testimony Related To Ritchie's and Acorn's Creditor Status And Pre-Raid Matters Is Irrelevant.

Polaroid seeks the Court's approval of the sale process for Polaroid. Richie and Acorn both object to the Sale Approval Motion on the grounds that Polaroid has not demonstrated that a bona fide dispute exists regarding their creditor status, which is the subject of adversary proceedings involving both. Prior to filing their objections, Richie and Acorn sought the depositions of Jefferies, Baer, and Polaroid officers to gather information regarding the basis for Polaroid's complaints in the adversary proceedings. This Court denied their discovery requests and also clarified during the March 26, 2009 hearing that as to Ritchie's and Acorn's arguments whether there is a bona fide dispute regarding their status as secured creditors, the Court would decide that issue based upon whether Polaroid's complaints filed in the adversary proceedings against Ritchie and Acorn withstand a Rule 7012(b)(6) motion. If the complaints withstand this standard of review, Polaroid will have made its prima facie showing that there is a bona fide dispute as to Ritchie's and Acorn's status as secured creditors and testimony regarding their status as secured creditors is irrelevant.

The case law is consistent with this position. The purpose of § 363(f)(4) is to allow the sale of property of the estate free and clear of disputed interests so the liquidation of the assets is not unnecessarily delayed while such disputes are litigated. *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171 (9th Cir. B.A.P. 2001); *In re Durango Georgia Paper Co.*, 336 B.R. 594, 597 (Bankr. S.D. Ga. 2005); *In re Robotic Vision Systems, Inc.*, 322 B.R. at 506. The Bankruptcy

Code does not define “bona fide dispute,” however, many courts, including the Eighth Circuit Bankruptcy Appellate Panel, have stated that the court must determine “whether there is an objective basis for either a factual or legal dispute as to the validity of the debt.” *In re Gaylord Grain, L.L.C.*, 306 B.R. 624, 627 (8th Cir. B.A.P. 2004) (Kressel, C.J.) (*quoting In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987) and *also citing In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). “Clearly this standard does not require the court to resolve the underlying dispute, just to determine its existence.” *Id.* at 627.

In fact, other courts have found in determining whether a bona fide dispute exists, that the propriety of the lien does not have to be the subject of an immediate or concurrent adversary proceeding. *In re Gaylord Grain, L.L.C.*, 306 B.R. at 628; *In re Collins*, 180 B.R. at 452, n.8; *In re Oneida Lake Dev., Inc.*, 114 B.R. at 357-58; *In re Bedford Square Assoc., L.P.*, 247 B.R. 140, 145 (Bankr. E.D. Pa. 2000). In this case, the liens of Acorn and Ritchie are the subject of pending adversary proceedings that clearly articulate a good faith basis to avoid, subordinate, recharacterize and/or disallow such liens, which more than satisfies the requirements of § 363(f)(4) as being in a bona fide dispute.

Any testimony from Jeffries regarding matters prior to September 24, 2008 that are outside of the verified statement she has already provided relate to the validity of Ritchie and Acorn as secured creditors and is not relevant for this proceeding. The Court should prohibit all such testimony.

III. CONCLUSION

For the foregoing reasons, Polaroid respectfully requests an order: (1) restricting any testimony by Jeffries to issues arising after the September 24, 2008 raid of the Petters Company Headquarters; (2) restricting testimony by Jeffries to issues relating to the sale process and the

auction sale of Polaroid, and those topics addressed in Polaroid's reply to objections to the sale, which was verified by Jefferies; and (3) confirmation by this Court of its statements during the March 26, 2009 hearing prohibiting any testimony concerning whether there is a bona fide dispute as to the liens of Acorn and Ritchie.

DATED: April 3, 2009

LINDQUIST & VENNUM P.L.L.P.

e/ Sandra Smalley-Fleming
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ATTORNEYS FOR POLAROID CORPORATION

VERIFICATION

I, Terrence J. Fleming, am an attorney at Lindquist & Vennum PLLP attorneys for Polaroid Corporation. Based upon my personal information and belief, I declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information and belief.

Dated: April 3, 2009.

Signed: e/Terrence J. Fleming
Terrence J. Fleming

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ORDER GRANTING MOTION IN LIMINE

Based upon the argument of counsel, pleadings, files, and the record in this matter,

IT IS HEREBY ORDERED THAT:

1. Expedited relief is granted;
2. The testimony of Mary Jeffries at the April 6, 2009 Sale Approval Motion hearing is restricted to issues arising after the September 24, 2008 raid of the Petters Company Headquarters;
3. The testimony of Mary Jeffries is restricted to issues relating to the sale process and the auction sale of Polaroid, and those topics addressed in Polaroid's reply to objections to the sale, which were verified by Jeffries; and

3. Testimony concerning whether there is a bona fide dispute as to the liens of Acorn and Ritchie is prohibited.

Dated this ____ day of _____, 2009.

BY THE COURT:

The Honorable Gregory F. Kishel
Judge of District Court

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CERTIFICATE OF SERVICE

Brenda Haberman of the City of Golden Valley, County of Hennepin, State of Minnesota, being first duly sworn on oath, states that on April 3, 2009 she served the following documents:

Notice of Hearing and (I) Motion for Expedited Hearing, and (II) for a Motion in Limine, Memorandum in Support of Motion in Limine and Proposed Order

upon

Chad Cooley WCD Property LLC 60 Columbus Circle 18 th Floor New York, NY 10023	Richard Chesley Greg Otsuka Paul, Hastings, Janofsky & Walker, LLP 191 N. Wacker Drive, 30 th Floor Chicago, IL 60606
Data Exchange Corporation William E. Winfield, Esq. Nordman, Cormany, Hair & Compton, LLP 1000 Town Center Drive, 6 th Floor PO Box 9100 Oxnard, CA 93031-9100	Faegre & Benson LLP 90 South Seventh Street 2200 Wells Fargo Center Minneapolis, MN 55402-3901
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