

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**Jointly Administered under
Case No. 08-46617**

In re:

Polaroid Corporation, et al.,

Debtors.

Court File Nos.:

08-46617 (GFK)

(includes:

Polaroid Holding Company;

08-46621 (GFK)

Polaroid Consumer Electronics, LLC;

08-46620 (GFK)

Polaroid Capital, LLC;

08-46623 (GFK)

Polaroid Latin America I Corporation;

08-46624 (GFK)

Polaroid Asia Pacific LLC;

08-46625 (GFK)

Polaroid International Holding LLC;

08-46626 (GFK)

Polaroid New Bedford Real Estate, LLC;

08-46627 (GFK)

Polaroid Norwood Real Estate, LLC;

08-46628 (GFK)

Polaroid Waltham Real Estate, LLC)

08-46629 (GFK)

Chapter 11 Cases

Judge Gregory F. Kishel

**ACORN'S MEMORANDUM IN OPPOSITION TO POLAROID'S MOTION IN
LIMINE**

Acorn Capital Group, LLC (“Acorn”) respectfully submits this Memorandum in Opposition to Polaroid Corporation and its affiliates’ (collectively, “Debtors” or “Polaroid”) Motion in Limine.

Introduction

1. Debtors’ Motion in Limine requests that this Court narrowly restrict the testimony of Mary Jeffries, Chief Executive Officer of Polaroid, at the April 6, 2009, Sale

Approval Motion hearing and prohibit Ms. Jeffries' testimony concerning the issues of whether there is a bona fide dispute as to Acorn's liens and claims and whether Polaroid's assets can be sold free and clear of those liens and claims.

2. Acorn strongly opposes this Motion in Limine, as it is yet another attempt by Debtors to avoid their legal obligation to meet their burden to establish a legitimate basis for stripping Polaroid's assets of Acorn's legitimate secured interests.

3. Ms. Jeffries' testimony concerning the issues of whether there is a bona fide dispute as to Acorn's liens and claims on Polaroid's assets is not only relevant, it is essential to ensure due process and equity. Accordingly, Acorn respectfully requests that this Court deny Debtors' Motion in Limine.

Background

4. On January 28, 2009, Debtors filed a motion seeking, among other things, approval of bidding and auction procedures for the proposed sale of Polaroid's assets (the "Sale Motion"). (*See* Court Docket No. 71.)

5. On February 12, 2009, Debtors commenced an adversary proceeding against Acorn by filing a complaint ("Complaint"). The Complaint alleges that the pre-petition loan transactions between Polaroid and Acorn, which were largely negotiated by Ms. Jeffries, were fraudulent and, therefore, avoidable. 11 U.S.C. §§ 544(b), 548, 550(a), 551, 1107 and Minn. Stat. § 513.41 et seq. Debtors repeatedly assert in the Complaint that Acorn knew of and was complicit in the massive fraud perpetrated by Tom Petters. (*See* Court Docket No. 99.)

6. On February 13, 2009, Acorn objected to the Sale Motion asserting that Debtors failed to meet their burden to produce facts demonstrating the existence of a bona fide dispute under 11 U.S.C. § 363(f)(4). (*See* Court Docket No. 106.)

7. On February 18, 2009, the Court heard arguments concerning the Sale Motion. In overruling Acorn's objection, the Court did not address the merits of its arguments under 11 U.S.C. §§ 363(f)(4) & (2), stating that it "need not reach the very specific discreet statutory issue on [the] merits of whether there is a bona fide dispute over Acorn Capital's claim within the meaning of 363(f)(4) [because] it is technically not ripe until a sale is actually presented to the Court for approval." (Transcript of Hearing ("T") 86.) (For Order *see* Court Docket No. 118.)

8. Following the Court's approval of the bidding procedures outlined in the Sale Motion, Acorn has repeatedly sought discovery to ascertain the basis for the allegations contained in the Complaint. Acorn's counsel endeavored to meet with Debtors' counsel to discuss these matters on numerous occasions, and Debtors repeatedly stonewalled and refused to cooperate or produce relevant information. (*See* Affidavit of Michael A. Rosow in Support of Objection to 363 Sale ¶3.)

9. On March 16, 2009, Acorn's counsel served notices of taking depositions of Ms. Jeffries and David Baer, Polaroid's former General Counsel, for March 23 and 24, 2009, respectively. Acorn also arranged for service of a subpoena on Mr. Baer on March 16, 2009. (*Id.* ¶4.)

10. Although Debtors assert in their Motion in Limine that Acorn "unilaterally" set the date for the deposition of Ms. Jeffries, what Debtors fail to acknowledge are the

extensive efforts Acorn's counsel made to accommodate the schedules of Ms. Jeffries', Mr. Baer's, and Polaroid's counsel any time before the March 26, 2009 hearing.

11. Rather than produce these witnesses who have first hand knowledge of the pre-petition transactions involving Acorn, Polaroid refused to produce these individuals for deposition and moved the Court for a protective order to prevent the depositions from going forward. (*Id.* ¶6.)

12. On March 26, 2009, the Court granted Debtors' motion for a protective order quashing Acorn's deposition notices. As a result, Acorn was prevented from obtaining access to these sources of relevant and material evidence to refute Debtors' conclusory allegations that Acorn's liens are the subject of a bona fide dispute, and could not incorporate that evidence in its Objection to Debtors' Motion to sell Polaroid's assets free and clear of Acorn's legitimate liens (the "Objection to 363 Sale") also filed March 26, 2009.

13. On April 3, 2009, Debtors filed their Reply to the Objection to 363 Sale ("Polaroid Supplemental Reply"). The Polaroid Supplemental Reply was accompanied by a verification signed by Ms. Jeffries (the "Verification").

14. Contrary to Polaroid's claim in its Motion in Limine that the Polaroid Supplemental Reply and the Verification provided "specific information in response to the issues raised by [] Acorn," to date, Polaroid has yet to provide anything more than untested pleadings and has refused to come forward with specific facts or evidence to show they have a legitimate basis for their claims.

15. Debtors have vigorously and persistently resisted all efforts by Acorn and others to obtain evidence that is within Debtors' exclusive possession and control which, if made available, would certainly undercut and vitiate Debtors' claims.

16. Accordingly, Ms. Jeffries' testimony concerning whether there is a bona fide dispute as to Acorn's liens and claims on Polaroid's assets is not only relevant, but essential to ensure due process and equity, and the Court must deny Debtors' most recent attempt to limit Acorn's access to this evidence in its Motion in Limine.

Argument

17. Acorn strongly disagrees with Debtors' assertion that the untested Complaint in the Adversary Proceeding "clearly articulate[s] a good faith basis to avoid, subordinate, recharacterize and/or disallow [Acorn's] liens" and "more than satisfies the requirement of 363(f)(4) as being in a bona fide dispute." (Polaroid's Memorandum in Support of Motion in Limine ("Polaroid Memo") at p. 6).

18. To the contrary, these statements are flatly wrong, ignore the applicable legal standard, and overstate what can be considered "facts" presently in the record.

19. Debtors have misstated the legal standard that applies and the burden that they must meet to establish a bona fide dispute that would justify the sale of Polaroid's assets free and clear of Acorn's liens.

20. Acorn has already briefed this matter at length, and the Court is well aware that Debtors have the burden of demonstrating that a bona fide dispute exists. *See In re Terrace Chalet Apartments, Ltd.*, 159 B.R. 821, 828 (N.D. Ill. 1993); *In re Taylor*, 198 B.R. 142, 162 (Bankr. D.S.C. 1996).

21. Debtors must show that 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) (emphasis added). At a minimum, Debtors must produce evidence illustrating the factual grounds upon which an objective party can conclude that a good faith dispute exists. *In re Gaylord Grain L.L.C.*, 306 B.R. at 627.

22. Contrary to Debtors’ interpretation of the legal standard, mere allegations unsupported by evidence are not sufficient. *In re Octagon Roofing*, 123 B.R. 583, 589-90 (Bankr. N.D. Ill. 1991); *In re Taylor*, 198 B.R. 142, 162 (Bankr. D.S.C. 1996). And the mere existence of an adversary proceeding does not meet this standard *per se*. See *In re Robotic Vision Sys., Inc.*, 322 B.R. 502, 506 (Bankr. D.N.H. 2005).

23. As Acorn has previously established, the Complaint, which is a collection of general and conclusory statements based largely “upon information and belief,” is deficient on its face.

24. Debtors’ argument that this pleading is sufficient for establishing the existence of a bona fide dispute that would strip an honest creditor of its legitimate liens reflects that they are advocating a standard that is wholly devoid of any element of due process or equity

25. Moreover, Debtors’ Motion in Limine overstates what may be considered “facts” in the record.

26. Debtors have consistently resisted providing any particular facts or evidence to support their outrageous claims. Acorn sought to depose Ms. Jeffries in her capacity as Chief Executive Officer for Polaroid, the individual who must have

authorized the filing of the Complaint. Acorn also sought to depose Mr. Baer as Polaroid's former General Counsel, who along with Ms. Jeffries, was intimately involved in soliciting financing from Acorn and who was likewise extensively involved in negotiating the agreements the parties entered into to secure that financing.

27. Debtors have successfully resisted, and are continuing to resist, Acorn's efforts at obtaining this relevant evidence.

28. In the meantime, Acorn has submitted evidence which conclusively undercuts any basis for Debtors' claims of a bona fide dispute and which, as the only evidence in the record, stands entirely unrebutted.

29. The Polaroid Supplemental Reply fails to remedy the fundamental deficiencies in Debtors' position that they can establish a bona fide dispute by resting solely and entirely on their general pleadings. The Polaroid Supplemental Reply is familiarly devoid of any specific facts and evidence to support their claims. Instead, the Polaroid Supplemental Reply speaks entirely in generalities and simply incorporates by reference their defective Complaint. (Reply at 22.)

30. Ms. Jeffries' boilerplate Verification of Polaroid's Supplemental Reply does not set forth any material facts with particularity, nor does it constitute evidence. Indeed, if anything, the Verification is symbolic of Debtors' cynical approach: Polaroid provides a verification from Ms. Jeffries that purports to serve as evidence of the "facts" set forth therein, while simultaneously making this Motion in Limine to prevent Acorn from cross-examining Ms. Jeffries on that "verification" and the "facts" it purports to verify.

31. If Debtors intend to satisfy their burden at the April 6, 2009 hearing, they must produce witnesses with personal knowledge of material facts who can provide testimony concerning whether there is a bona fide dispute as to Acorn's liens. These witnesses would most certainly include Ms. Jeffries. It is quite apparent, and indeed, axiomatic, that in order to ensure fair, equitable, and constitutional protection of its property rights as a lienholder, Acorn must be given a sufficient and meaningful opportunity to examine Ms. Jeffries on these issues at the hearing.

32. It is contrary to law, and indeed contrary to minimal constitutional safeguards, to allow Debtors to deprive Acorn of its property rights as a lienholder based on mere allegations in a complaint and an alleged "verification" with no evidentiary showing and testimony. It is likewise contrary to law for Debtors to seek this Court's assistance in preventing Acorn from access to evidence and obtaining testimony from highly material witnesses such as Ms. Jeffries that would enable Acorn to confront and rebut Debtors' baseless allegations.

33. Accordingly, Acorn strongly opposes Debtors' Motion in Limine because it is another inappropriate attempt to stonewall Acorn's efforts at obtaining facts and evidence, which were Debtors' initial burden to provide, to support or refute any claim that Acorn's liens on Polaroid's assets are the subject of a bona fide dispute.

Conclusion

34. For the foregoing reasons, the Court should deny Polaroid's Motion in Limine.

Dated: April 6, 2009

WINTHROP & WEINSTINE, P.A.

By: /s Michael A. Rosow

Daniel C. Beck, #192053

Thomas H. Boyd, #200517

Michael A. Rosow, #317998

Jessica S. Karich, # 0387156

225 South Sixth Street, Suite 3500

Minneapolis, Minnesota 55402

(612) 604-6400

Attorneys for Acorn Capital Group, LLC

4422750v1

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**Jointly Administered under
Case No. 08-46617**

In re:

Polaroid Corporation, et al.,

Debtors.

Court File Nos.:
08-46617 (GFK)

(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)
08-46623 (GFK)
08-46624 (GFK)
08-46625 (GFK)
08-46626 (GFK)
08-46627 (GFK)
08-46628 (GFK)
08-46629 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2009, I caused the foregoing ACORN'S MEMORANDUM IN OPPOSITION TO POLAROID'S MOTION IN LIMINE to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of electronic filing to the following persons:

- Daniel C. Beck dbeck@winthrop.com, tcooke@winthrop.com
- James C. Brand james.brand@leonard.com, sharon.tilden@leonard.com
- Robert J. Brown Lexbankruptcy@wyattfirm.com, rbrown@wyattfirm.com
- Kenneth Corey-Edstrom kcoreyedstrom@larkinhoffman.com,
bhogan@larkinhoffman.com;bpeppersack@larkinhoffman.com;klatham@larkinhoffman.com
- Andrew W. Davis andrew.davis@leonard.com, callie.sanford@leonard.com

- John P. Dillman houston_bankruptcy@publicans.com
- Jennifer V. Doran jdoran@haslaw.com
- Michael F. Doty mdoty@faegre.com
- Michael S. Dove mdove@gislason.com,
KGlaisner@gislason.com;JBurgau@gislason.com
- Theresa H. Dykoschak tdykoschak@faegre.com
- Terrence J. Fleming tfleming@lindquist.com, mwilkinson@lindquist.com
- Michael D Gordon mgordon@briggs.com
- Michael J Iannacone mji@iannacone.com, knt@iannacone.com
- J Jackson jackson.j@dorsey.com, mckinven.jane@dorsey.com
- James M. Jorissen jjorissen@losgs.com, vrittenbach@losgs.com
- Alan L Kildow alan.kildow@dlapiper.com,
sonya.braunschweig@dlapiper.com;jarod.bona@dlapiper.com
- Thomas Lallier tlallier@foleymansfield.com
- Brian F Leonard bleonard@losgs.com
- Merchandising Technologies, Inc. Leonard jleonard@balljanik.com,
jweisenbach@balljanik.com
- James A. Lodoen jlodoen@lindquist.com, gluessenheide@lindquist.com
- Brown & Connery LLP Ludman dludman@brownconnery.com
- Adam D. Maier adam.maier@leonard.com, callie.sanford@leonard.com
- Nauri J. Manty ecf@mantylaw.com
- Covington & Burling LLP McNeil jmcneil@cov.com
- David A. Orenstein dorenstein@parlaw.com, peatherton@parlaw.com
- RONALD R PETERSON rpeterson@jenner.com
- Douglas R. Peterson douglas.peterson@leonard.com,
callie.sanford@leonard.com
- Larry B. Ricke rickel@srs.net
- Michael E. Ridgway mike.ridgway@usdoj.gov
- Michael Rosow mrosow@winthrop.com, jahlers@winthrop.com
- James A. Rubenstein rubenstein@moss-barnett.com, montpetitm@moss-
barnett.com
- David E. Runck david.runck@fmjlaw.com, Aong.Moua@fmjlaw.com
- RACHEL C STRICKLAND rstrickland@willkie.com, mao@willkie.com
- Richard C Salmen rsalmen@felhaber.com
- K&L Gates LLP Shea mackenzie.shea@klgates.com, chad.dale@klgates.com
- George H Singer gsinger@lindquist.com, lnorton@lindquist.com
- Rebecca G. Sluss rsluss@oppenheimer.com
- Sandra S. Smalley-Fleming ssmalley@lindquist.com,
bhaberman@lindquist.com
- Amy J Swedberg amy.swedberg@maslon.com
- Pillsbury, Winthrop, Shaw Pittman LL Tabibian
David.Tabibian@pillsburylaw.com, David.Tabibian@pillsburylaw.com
- US Trustee ustpreion12.mn.ecf@usdoj.gov
- Michael B. Willey Agbankcal@ag.tn.gov, Michael.Willey@ag.tn.gov

I further certify that a true and correct copy was sent via U.S. Mail to the following non-ECF participants:

Margaret M. Anderson Fox Hefter Swibel Levin & Carroll LLP 200 W Madison St Ste 3000 Chicago, IL 60606	Lynn Hamilton Butler Brown McCarroll LLP 111 Congress Ave Suite 1400 Austin, TX 78701	Richard A. Chesley Paul Hastings Janofsky & Walker LLP 191 N Wacker Dr 13th Flr Chicago, IL 60606
Chad Cooley WCD Property LLC 60 Columbus Circle 18th Floor New York, NY 10023	Martin Croyle Croyle & Associates Pc 220 Broadway Suite 204 Lynnfield, MA 01940	Van C. Durrer Skadden Arps Slate Meagher & Flom 300 S Grand Ave Ste 3400 Los Angeles, CA 90071
Faegre & Benson LLP 90 South Seventh Street 2200 Wells Fargo Center Minneapolis, MN 55402- 3901	E.J. Harris Marketstar Corporation 2475 Washington Blvd Ogden, UT 84401	Richard Hettler 4818 Overlook Lake Circle Bloomington, MN 55437
Ikon Financial Services Bky Administration 1738 Bass Rd PO Box 13708 C/O Christine Etheridge Macon, GA 31208-3708	Iron Mountain Information Management, Inc. C/O Frank F. McGinn, Esq. Bartlett Hackett Feinberg P.C. 155 Federal Street, 9th Floor Boston, MA 02110	KPMG LLP 99 High St Boston, MA 02110-2371
Bryan Krakauer Sidley Autsin LLP One South Dearborn Chicago, IL 60603	Robert B. Lamb PO Box 45120 Salt Lake City, UT 84145- 0120	Paul, Hastings, Janofsky & Walker LLP 191 North Wacker Drive 30th Floor Chicago, IL 60606
Masatoshi Maeda OS Electronics Company, Ltd 3-16-8 Sotokanda Chiyoda-Ku, 1010021 Tokyo, Japan	Gregroy S. Otsuka Paul Hastings Janofsky & Walker LLP 191 N Wacker Dr 13th Flr Chicago, IL 60606	Oracle USA, Inc. C/O Buchalter Nemer Shawn M. Christianson 333 Market St., 25th Floor San Francisco, CA 94105

Ray Mai Proview Technology (Shenzhen) Company North Block 23# Shatoukok Free Trade Zone Shenzhen, 518081 China	Kelly Mundorff Thule Organization Solutions, Inc. 6303 Dry Creek Pkwy Longmont, CO 80503	Ramon M. Naguiat Skadden Arps Slate Meagher & Flom 300 S. Grand Ave Ste 3400 Los Angeles, CA 90071
Daniel Phipps Axis Design 106 West Bagdad Avenue Round Rock, TX 78664	James A Rubenstein Moss & Barnett 4800 Wells Fargo Center 90 South Seventh St Minneapolis, MN 55402	Alexandra Steinberg Barrage Morrixon & Foerster 2000 Pennsylvania Ave NW Suite 6000 Washington, DC 20006- 71888
Sotheby's, Inc. 1334 York Ave. New York, NY 10021	TW Telecom Inc C/O Linda Boyle 10475 Park Meadows Dr Ste 400 Littleton, CO 80124	Junichi Umehara Alps Electric Company, Ltd 1-7 Yukigaya Otsukamachi Ota-Ku, 145-8501 Tokyo, Japan

Dated: April 6, 2009

WINTHROP & WEINSTINE, P.A.

By: s/ Michael A. Rosow

Daniel C. Beck, #192053

Thomas H. Boyd, #0200517

Michael A. Rosow, #317998

Jessica S. Karich, # 0387156

225 South Sixth Street, Suite 3500

Minneapolis, Minnesota 55402

(612) 604-6400

Attorneys for Acorn Capital Group, LLC