

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Jointly Administered Under
Bky. Case No. 08-46617

Polaroid Corporation, et al.,

Bky. Case No. 08-46617

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)

Bky. Case Nos.:

08-46621 (GFK)
08-46620 (GFK)
08-46623 (GFK)
08-46624 (GFK)
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08-46626 (GFK)
08-46627 (GFK)
08-46628 (GFK)
08-46629 (GFK)

**JOINT RESPONSE OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO OBJECTION OF MICHAEL L. O'SHAUGHNESSY TO
PROPOSED SALE OF DEBTOR'S ASSETS PURSUANT TO ORDER: 1)
APPROVING AUCTION AND BIDDING PROCEDURES; 2) APPROVING BREAK-UP
FEE EXPENSE REIMBURSEMENT AND OTHER BUYER PROTECTIONS; 3)
APPROVING NOTICE AND FOR GRANTED RELATED RELIEF**

Polaroid Holding Company, Polaroid Corporation, 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 and Polaroid Waltham Real Estate,
LLC (collectively "Debtors" or "Polaroid") and the Official Committee of Unsecured
Creditors (the "Committee") appointed in the Debtors' chapter 11 cases hereby file this
Joint Response to Michael O'Shaughnessy's Objection to Proposed Sale of Debtor's
Assets Pursuant to the Order: 1) Approving Auction and Bidding Procedures; 2)
Approving Break-Up Fee Expense Reimbursement and Other Buyer Protections; 3)

Approving Notice and for Granted Related Relief (the “Response”). In support of the Response, the Debtors and the Committee, by and through their undersigned counsel, respectfully state as follows:

Background

1. On December 17, 2008 (the “Petition Date”), Debtors filed their voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota. The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
2. On January 8, 2009 the Office of the United States Trustee appointed the Committee in these bankruptcy cases.
3. On January 28, 2009, Debtors filed a motion seeking entry of an order approving the sale of substantially all of Debtors assets to the stalking horse bidder or to the successful bidder at an auction to be conducted free and clear of liens pursuant to a Purchase Agreement.
4. Thereafter, on February 18, 2009, the Court entered the Order (1) Approving Auction and Bidding Procedures; (2) Approving Break-Up Fee, Expense Reimbursement and Other Buyer Protections; (3) Approving Notice; and (4) Granting Related Relief (the “Bidding Procedures Order”).
5. Pursuant to the Bidding Procedures Order, the Debtors are authorized to conduct an auction on March 30, 2009 at 9:00 a.m. The Bidding Procedures Order also contemplates that the Debtors will seek the Court’s approval of a sale (the “Sale”) to the successful bidder on March 31, 2009 at 1:30 p.m.

6. Former Polaroid Corporation Chief Executive Officer, Michael O'Shaughnessy, filed a limited objection (the "Objection") to the Sale. O'Shaughnessy and Debtor Polaroid Holding Company purportedly entered into an Earnout Agreement (the "Agreement") dated December 31, 2007. O'Shaughnessy alleges that the Agreement requires the Debtors to pay him \$7.2 million in cash at the time of final closing of a "Liquidation Event." A Liquidation Event as defined in the Agreement includes ". . . a sale of at least 75% of the assets of Polaroid in existence on the date of this Agreement, as determined by the board of directors of Polaroid, or . . . a sale of the Polaroid brand." (Objection at ¶¶ 8, 9). Thus, according to O'Shaughnessy, he is entitled to receive \$7.2 million upon the closing of the Sale. O'Shaughnessy objects to the Sale unless provision is made in the order approving the Sale: (1) directing that he be paid \$7.2 million in cash at the closing pursuant to the terms of the Agreement or (2) providing for the assumption and assignment of the Agreement to the successful bidder, the cure of any defaults under the Agreement and adequate assurance of future performance of the Agreement.

Argument

7. O'Shaughnessy appears to argue that because he potentially has, at most, a claim against the Debtors' estate that the Debtors should be prevented from proceeding with the Sale unless the Debtors agree as a condition to the Sale to either pay the alleged obligation to O'Shaughnessy or require the successful bidder to assume the Debtors' alleged obligation.

8. O'Shaughnessy cites no authority for such an extreme remedy, and, indeed, none exists. Whatever the merits of O'Shaughnessy's claim (and the Debtors and Committee reserve all their rights in that regard), even if it has merit, the proper

relief under the Bankruptcy Code is not to disallow the Sale. If O'Shaughnessy believes he is owed money pursuant to a pre-petition contract, rather than attempting to obstruct the Sale process, he, like any other creditor, may file a claim.¹

9. Moreover, assuming that O'Shaughnessy has a meritorious claim, the Bidding Procedures Order provides that liens, claims, interests or encumbrances attach to the proceeds of the Sale. (Bidding Procedures Order at 9). Any such lien, claim, interest or encumbrance has "the same validity, dignity, priority, effect and to the same extent as existed prior to the Sale." *Id* at 9-10.

10. Similarly, O'Shaughnessy provides no authority for his request that the Debtor be forced to assume and assign the Agreement to the successful bidder. In fact, the Bankruptcy Code provides the opposite. A debtor, not the contractual counterparty, has the option to assume (and assign) or reject executory agreements. See 11 U.S.C. § 365(a). While in appropriate circumstances, a contractual counterparty may seek to compel the debtor to decide whether to assume or reject, a party cannot compel a debtor to assume or compel a buyer to accept assignment of a contract. In any event, whatever issue O'Shaughnessy may have with the Debtors' performance under the Agreement cannot prevent the Debtors from proceeding with the Sale.

¹ While the Debtors and Committee would evaluate and respond to such a claim if and when it is filed, it appears, at least initially, that the claim would be treated as unsecured. See, e.g., *In re Acoustiseal, Inc.*, 290 B.R. 354 (Bankr. W.D. Mo. 2003) (claim arising from pre-petition agreement treated as unsecured claim).

Accordingly, the Debtors and the Committee respectfully request that the Court enter an order (i) denying Michael O'Shaughnessy's objection and (ii) granting such other relief as this Court may deem just and proper.

Dated: March 30, 2009

Respectfully submitted,

The Debtors, Polaroid Corporation, et al

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CREDITORS

UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

Maureen A. Montpetit, employed by Moss & Barnett, with office address of 4800 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402, declares under penalty of perjury that on March 30, 2009, I caused the following documents: **(1) Joint Response of the Debtors and the Official Committee of Unsecured Creditors to Objection of Michael L. O'Shaughnessy to Proposed Sale of Debtor's Assets Pursuant to Order: 1) Approving Auction and Bidding Procedures; (2) Approving Break-Up Fee Expense Reimbursement and Other Buyer Protections; 3) Approving Notice and for Granting Related Relief; and (2) Certificate of Service** to be filed electronically with the Clerk of Bankruptcy Court through ECF, and that the entities listed on the attached Service List have been served with a copy of said documents through notification by ECF, or if the recipient is not an ECF recipient, then by first class mail.

Executed: March 30, 2009

Signed: /e/ Maureen A. Montpetit
Maureen A. Montpetit

SERVICE LIST
March 30, 2009
In re: Polaroid Corporation
Bky. Case No. 08-46617

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