

Objection Deadline: 7/11/00 @ 4:00
Hearing Date: Negative

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re) Chapter 11
)
SAFELITE GLASS CORP.,) Case No. 00-02252 (MFW)
)
Debtor)

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JUL 12 10 34 AM '00
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

OBJECTION OF THOMAS O'BRIEN TO MOTION FOR ORDER
AUTHORIZING DEBTOR TO REJECT CERTAIN EXECUTORY CONTRACTS

Thomas O'Brien, a creditor and party in interest in the above captioned matter, hereby objects to the motion for order authorizing the debtor to reject certain executory contracts as follows:

1. By this motion, Safelite Glass Corp. (the "Debtor" or "Safelite") is attempting to, among other things, reject an employment agreement which requires payments to be made to Mr. O'Brien for a three-year period. In addition, Mr. O'Brien's ability to be employed in the industry is somewhat restricted by the employment agreement. According to paragraph 15 of the motion, the Debtor does not believe any remaining value to be received in connection with restrictive covenants with Mr. O'Brien are of much value to the Debtor.

2. While Mr. O'Brien was served with a copy of the motion, Mr. O'Brien did not receive a copy of the exhibits to the motion or any proposed form of order. Mr. O'Brien is requesting copies of these documents and reserves his right to supplement this response based upon further review of these documents.

3. Rejection of the contract is not in the best interest of the Debtor. Rejection of this contract will permit Mr. O'Brien to compete with Safelite in the industry utilizing any knowledge that Mr. O'Brien possesses. In addition, Mr. O'Brien's efforts may negatively impact on Safelite's ability to return to profitability. This is particular true if, as alleged by the Debtor, the automotive glass replace industry is experiencing significant contraction, internal competition and pricing pressure.

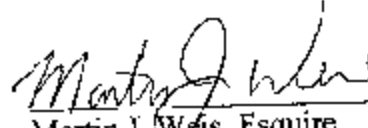
4. In addition, termination of the employment contract with Mr. O'Brien will give rise to Wage Payment and Collection Act claims under applicable state law and related claims under federal law, including the Employee Retirement Income Security Act ("ERISA"). These claims will be brought against various principals of the Debtor and thereby distract from those individuals abilities to aid in the reorganization efforts. Relatedly, to the extent these principals have indemnification rights from the Debtor, the Debtor may be ultimately responsible for more than just the principal balance due under the employment agreement, as these statutory remedies typically provide for awards of attorneys' fees and, in some instances, damages to the injured individual. The decision to reject this contract, therefore, is not in the best interests of the Debtor.

5. Mr. O'Brien is entitled to administrative priority for any claims he may have under the employment agreement. At a minimum, to the extent that Safelite's contract with Mr. O'Brien is permitted to be rejected, Mr. O'Brien is still entitled to be paid as an administrative claimant for the period of time post petition which the contract was in existence and not rejected.

WHEREFORE, for the foregoing reasons, Thomas O'Brien respectfully request that this Court enter an order denying the motion to reject executory contracts and grant such further relief as it deems appropriate.

Dilworth Paxson LLP

By:



Martin J. Weis, Esquire

Pa. I.D. No. 51379

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Counsel for Thomas O'Brien

CERTIFICATE OF SERVICE

I, Martin J. Weis, hereby certify that I served a true and correct copy of the foregoing objection of Thomas O'Brien by telecopy on the following individuals:

Mark D. Collins, Esquire
Richards, Layton & Finger
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Matthew A. Feldman, Esquire
Wilkie, Farr & Gallagher
787 7th Avenue
New York, NY 10019


MARTIN J. WEIS

July 12, 2000

IN THE UNITED STATES BANKRUPTCY COURT RECEIVED

FOR THE DISTRICT OF DELAWARE

JUL 19 11 29 AM '00

In re)
)
SAFELITE GLASS CORP.,)
)
Debtor.)

Chapter 11

Case No. U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

NOTICE OF FILING

TO: Attached Service List

PLEASE TAKE NOTICE that on Tuesday, July 18, 2000, we filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, the Limited Objection of Jack Kellman to Motion of Debtor for Order Authorizing Debtor to Reject Certain Executory Contracts, a copy of which is attached hereto and hereby served upon you.



Marc Kieselstein (IL Bar #6199255)
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Counsel for Jack Kellman

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re) Chapter 11
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SAFELITE GLASS CORP.,) Case No. 00-02252 (MFW)
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Debtor.)

**LIMITED OBJECTION OF JACK KELLMAN TO
MOTION OF DEBTOR FOR ORDER AUTHORIZING
DEBTOR TO REJECT CERTAIN EXECUTORY CONTRACTS**

Jack Kellman ("Kellman"), by and through his attorneys, Sachnoff & Weaver, Ltd., hereby submits his limited objection for Motion for Order Authorizing Debtor to Reject Certain Executory Contracts (the "Motion") and in support thereof, states as follows:

1. Safelite Glass Corp. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on June 9, 2000 (the "Petition Date").
2. Safelite is operating as a debtor and debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
3. The Debtor filed the Motion on June 27, 2000.
4. Pursuant to the Motion, the Debtor seeks to reject, inter alia, that certain Consulting Agreement By and Between Safelite Glass Corp. and Jack Kellman (the "Agreement").
5. Kellman does not dispute that the question of assumption or rejection is generally left to the Debtor's business judgment. As such, Kellman does not object to the rejection per se.
6. However, the proposed order attached to the Motion fails to address the status of Kellman's covenant not to compete. That covenant requires, inter alia, that Kellman not "(i)

enter into or engage in any business that is substantially the same as the Debtor's business; (ii) enter the employ of or render any personal services to, any person engaged in such activities; (iii) receive a financial interest from any such person in any capacity including, without limitation, as an individual, partner, shareholder, officer, director, principal, agent, or trustee." The restrictive covenant set forth above would run until July 1, 2007 and purport to cover the entire United States.¹

7. To the extent that Kellman will not receive the benefits of the Agreement post-rejection, other than in the form of a percentage distribution on any claims he might assert, it would be unfair and unreasonable for Kellman to be held to the broadly drafted prohibitions set forth in the Agreement.

8. Although the Motion seems to imply that the Debtor would not receive the benefit of Kellman's multi-faceted covenant not to compete, the order attached to the Motion makes no mention of a termination of, or release from, those restrictive provisions.

9. It is appropriate for the order to explicitly state that Kellman may seek employment, or explore further business prospects, without laboring under the restriction of the covenants not to compete set forth in the Agreement.

10. Accordingly, the order granting the Motion should be modified to reflect the fact that, in light of the rejection of the Agreement, Kellman will no longer be bound by any of the restrictive covenants set forth therein.

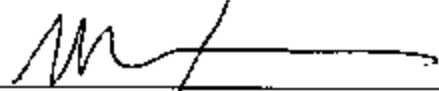
WHEREFORE, Jack Kellman respectfully requests this Court:

1. Condition the granting of the Motion as to Kellman on the inclusion of a provision whereby he is released from the restrictive covenants set forth in the Agreement; and

¹ Kellman does not concede that the restrictive covenants are enforceable under applicable law.

2. To such other relief as this Court deems just and proper.

Dated: July 18, 2000

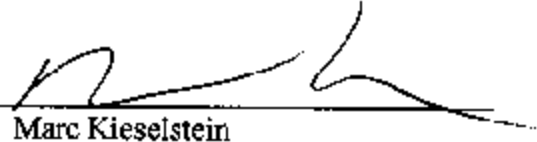


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Counsel for Jack Keltman

CERTIFICATE OF SERVICE

I, Marc Kieselstein, hereby certify that I served a copy of the foregoing Notice of Filing and the Limited Objection of Jack Kellman to Motion of Debtor for Order Authorizing Debtor to Reject Certain Executory Contracts to the attached Service List by depositing same in the U.S. Mail this 18th day of July, 2000.



Marc Kieselstein