

RIMON P.C.
Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Brian Powers
Courtney M. Roman

Hearing Date: May 22, 2024
Time: 10:00 a.m.

Objection Deadline: May 15, 2024
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X
**NOTICE OF HEARING ON TRUSTEE'S
APPLICATION SEEKING AUTHORIZATION PURSUANT TO
11 U.S.C. § 721 TO OPERATE DEBTOR'S BUSINESS ON A LIMITED BASIS**

PLEASE TAKE NOTICE THAT, upon the application (the "Application") of Kenenth P. Silverman, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), by his proposed counsel, Rimon P.C., will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **May 22, 2024 at 10:00 a.m.** (the "Hearing"), or as soon thereafter as counsel can be heard, for entry of an order, substantially in the form annexed to the Application as **Exhibit A**, for signature authorizing him to continue the operations of the Debtor's business for an additional period through and including December 31, 2024, and for such further relief as the Court deems proper.

PLEASE TAKE FURTHER NOTICE, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court's eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.



PLEASE TAKE FURTHER NOTICE, that objections to the relief sought in the Application shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) proposed counsel to the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York, 10004-1408, no later than **May 15, 2024 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor's case.

PLEASE TAKE FURTHER NOTICE, that you need not appear at the Hearing if you do not object to the relief requested in the Application.

Dated: Jericho, New York
May 8, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

RIMON P.C.
Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman
100 Jericho Quadrangle, Suite 300
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
-----X

**TRUSTEE'S APPLICATION SEEKING
AUTHORIZATION PURSUANT TO 11 U.S.C. § 721
TO OPERATE DEBTOR'S BUSINESS ON A LIMITED BASIS**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), respectfully submits this motion (this "Motion") for the entry of an order (the "Proposed Order"), substantially in the form annexed hereto as **Exhibit A**: (i) pursuant to Section 721 of Title 11 of the United State Code (the "Bankruptcy Code"), authorizing him to continue the operations of the Debtor's business for the purposes set forth below for an additional period through and including December 31, 2024 (the "Limited Basis"), subject to such further extensions, as may be warranted under the circumstances, and respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Debtor was a cosmetic skin care retailer that is a subsidiary of the Body Shop International Limited ("TBSI"), a United Kingdom based company. TBSI is currently in administration in the United Kingdom. Shortly after TBSI entering administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

2. Due to the abrupt nature of the closure of the Debtor's sizeable business and termination of its entire staff, the Trustee has faced considerable difficulty in ascertaining certain pertinent financial information relating to the Debtor and its assets. Since his appointment, the Trustee and his professionals have expended considerable time and effort in aggregating and reconciling the electronic data, executory and related contracts, and financial information contained in the Debtor's books and records. The Debtor's Canadian affiliate, The Body Shop Canada Limited (the "TBS Canada"), which is also a subsidiary of TBSI and has filed its own Canadian insolvency proceeding, has retained the services of certain of the Debtor's former back-office staff on a contract basis and has permitted thus far those former employees to assist the Trustee with his investigation.

3. While the Trustee's investigation continues, it has become apparent that the Trustee must manage certain assets of the estate and ensure certain payments are made timely in order to preserve the value of the Debtor's assets, including its real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property"). Permitting the Trustee to operate the Debtor's business on the Limited Basis will provide the Trustee with the ability to maximize these assets expeditiously and for the benefit of creditors.

BACKGROUND

The Bankruptcy

4. On March 8, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

5. On March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor's estate.

6. On April 9, 2024, the initial section 341 First Meeting of Creditors was held and the Trustee duly qualified and has become the permanent Trustee.

The Debtor's Business and Assets

Accounts Receivable

7. As discussed above, the Debtor is a cosmetic skin care retailer that is a subsidiary of TBSI. Upon information and belief, as of the Filing Date, the Debtor leased 40 stores located in the United States, as well as numerous related storage units, and owned the Real Property. The Debtor also rented several spaces from WeWork Companies LLC ("WeWork"), to which it appears the vast majority of the Debtor's mail, including accounts receivable payments, were directed.

Tax Issues

8. During his investigation, the Trustee and his professionals learned that the Debtor has tax liabilities in dozens of jurisdictions, including state and local municipalities, scattered across the country. Although the Trustee's professionals are in the process of preparing and filing the necessary tax returns, the Debtor is likely to incur additional, unnecessary penalties and charges if certain estimated tax payments are not made timely. Additionally, by making such tax payments and permitting the Trustee's professionals additional time to file final tax returns in many jurisdictions, the Trustee expects that the Debtor will likely be entitled to substantial tax refunds upon the filing of final returns.

Real Property

9. At the time of filing, the Real Property was being used as a storage facility for TBSI. At present, approximately \$6,500,000 of TBSI owned inventory is currently being stored in the Real Property. Since shortly after his appointment, the Trustee has engaged with the TBSI

administrator and TBS Canada's proposal trustee to determine the best manner in which to remove and distribute the inventory. Removal of that inventory is necessary in order to facilitate any sale of the Real Property.

10. Importantly, the Trustee has negotiated an agreement in principal, subject to documentation and approval of this Court, for TBS Canada to license the Real Property from the Trustee for a limited period in order to facilitate the removal of inventory. The license fee for that agreement will be an amount which the Trustee expects is sufficient to cover all of the amounts which the Trustee seeks authorization to pay for the duration of TBS Canada's removal of the inventory.

Former Employee Benefit Plan Issues

11. As part of the Trustee's winddown of the Debtor's financial affairs, and pursuant to Bankruptcy Code § 704(a)(11), he is required to "continue to perform the obligations required of the administrator" of certain of the Debtor's employee benefit plans. Additionally, due to the abrupt nature of the termination of the Debtor's employees, it appears that many of the Debtor's employees likely do not have access to their proper payroll and tax information from the period of their employment. Accordingly, in the exercise of his duties to the estate and to minimize any claims which might be raised against the estate by the Debtor's former employees, the Trustee must also winddown employee benefit and insurances plans and ensure that the Debtor's employees have access to and receive proper payroll and tax information. The Trustee has investigated this issue and believes that the Debtor's former payroll and tax providers will facilitate the disbursement of the necessary documentation, subject to payment by the Trustee.

REQUESTED RELIEF

12. Bankruptcy Code section 721 provides:

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

11 U.S.C. §721.

13. Bankruptcy Code § 721 “allows bankruptcy courts to authorize a chapter 7 trustee to operate the debtor's business for a limited period of time if operation of the business is in the best interest of the estate and consistent with an orderly liquidation.” *In re Williams*, 354 B.R. 604, 610 (Bankr. N.D.N.Y. 2006). Courts have found “[t]his power includes the ability to obtain unsecured credit and to incur unsecured debt in the ordinary course of business,” and to pay the necessary expenses to preserve assets of the estate. *In re Cascade Oil Co., Inc.*, 51 B.R. 877, 880–81 (Bankr. D. Kan. 1985); *see also In re Tarrant*, 349 B.R. 870, 880 (Bankr. N.D. Ala. 2006); *Matter of Quarter Moon Livestock Co., Inc.*, 116 B.R. 775, 782 (Bankr. D. Idaho 1990).

14. As discussed above, in order to maximize the value of the assets of the estate, the Trustee needs to be able to expend certain funds and continue the Debtor’s operations on the Limited Basis. Permission for the Trustee to operate a small portion of the Debtor’s business would permit the Trustee to ensure that (i) accounts receivable are properly collected and accounted; (ii) the Debtor does not incur any additional tax liability due to late or unfiled tax returns; (iii) the Real Property can be properly maintained while the Trustee negotiates the removal of TBSI’s inventory, and completes a marketing and sale process for the Real Property; and (iv) the Debtor’s former employees have access to and receive proper payroll and tax information from the winddown of employee benefit and insurances plans.

15. To that end, the Trustee and his professionals have created a budget, a copy of which is annexed hereto as **Exhibit B**, of expenses of which the Trustee is aware and which need to be paid to preserve the assets of the estate. Additionally, the Trustee requests the ability, on

seven (7) days' notice to parties in interest, to seek approval of any additional proposed budgets which the Trustee deems necessary to preserve value to the estate. Importantly, the Trustee is currently holding approximately \$840,000 and expects to continue collecting accounts receivable and fees from the Licensing Agreement with TBS Canada. Accordingly, the Trustee anticipates having more than sufficient funds to make all requested payments.

16. Based on the foregoing, the Trustee submits that the continued operation of the Debtor's businesses on a Limited Basis is in the best interests of and is consistent with the orderly administration of the Debtor's estate, and will preserve the value of the Debtor's assets. Accordingly, the Trustee respectfully requests that the Court enter an order authorizing him to continue to operate the Debtor's business on the Limited Basis.

WHEREFORE, the Trustee respectfully requests entry of the Proposed Order in the form annexed hereto as **Exhibit A** and granting the Trustee such additional relief as is just and proper.

Dated: Jericho, New York
May 8, 2024

RIMON P.C.
Proposed Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: Chapter 7
BUTH-NA-BODHAIGE, INC., Case No.: 24-10392 (DSJ)
Debtor.

-----X
**ORDER GRANTING TRUSTEE'S
APPLICATION SEEKING AUTHORIZATION PURSUANT TO
11 U.S.C. § 721 TO OPERATE DEBTOR'S BUSINESS ON A LIMITED BASIS**

Upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), by his proposed counsel, Rimon P.C., seeking the entry of an order pursuant to Section 721 of Title 11 of the United State Code (the "Bankruptcy Code"), authorizing him to operate the Debtors' business for a period through and including December 31, 2024 (the "Limited Basis"), subject to such further extensions, effective as of March 9, 2024 (the "Appointment Date"); and notice of the Application having been sufficient under the circumstances; and no objection to the relief requested in the Application having been filed; and upon the hearing held before the Court on May 22, 2024 to consider the granting of the relief requested in the Application, the record of which is incorporated herein by reference; and after due deliberation and sufficient cause appearing that the relief requested in the Application is in the best interest of the Debtor's estate and its creditors; it is now hereby

ORDERED, that the Application is granted; and it is further

ORDERED, that the Trustee is authorized to operate the Debtor's business for the Limited Basis, pursuant to Bankruptcy Code § 721 for the purposes and to the extent set forth in the Application and herein; and it is further

ORDERED, the Trustee is authorized to pay the ordinary and necessary expenses relating to the ordinary course operations of the Debtor's business, to the extent set forth in the budget annexed hereto as **Exhibit 1**; and it is further

ORDERED; that if during the Limited Basis period, the Trustee determines that it is necessary to make additional payments to preserve the value of assets of the Debtor's estate, the Trustee may submit a proposed order by presentment approving a supplemental budget (a "Supplemental Budget") for payments to upon seven (7) days' notice via electronic mail to (i) the Office of the United States Trustee, (ii) the Debtor, (iii) and all parties having filed notices of appearance in the Debtor's chapter 7 case; and it is further

ORDERED, that the Trustee is authorized, empowered, and directed to do such things, execute such documents, and expend such funds as are necessary to implement the terms of his appointment and the conditions of this Order.

EXHIBIT 1

BUTH-NA-BODHAIGE, INC. (aka The Body Shop)
Schedule of Post-Petition Expenses

	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Total
Disbursements:									
Tax payments									
Property taxes	\$ -	\$ -	\$ 3,000	\$ 40,000	\$ 4,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 56,000
Income taxes	-	-	-	-	-	36,000	-	-	36,000
Distribution center									
Insurance	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Utilities	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	80,000
Equipment	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Repairs and maintenance	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	240,000
Employees									
Payroll reporting	1,650	1,650	1,650	1,650	1,650	1,650	1,650	10,250	21,800
Benefit plan related	9,000	9,000	9,000	9,000	9,000	9,000	9,000	69,000	132,000
Other									
Mail box and forwarding	500	500	500	500	500	500	500	500	4,000
Registered agent fees	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	8,000
Total Disbursements	\$ 60,150	\$ 60,150	\$ 63,150	\$ 100,150	\$ 64,150	\$ 99,150	\$ 63,150	\$ 131,750	\$ 641,800

BUTH-NA-BODHAIGE, INC. (aka The Body Shop)
Schedule of Post-Petition Expenses

	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Total
Disbursements:									
Tax payments									
Property taxes	\$ -	\$ -	\$ 3,000	\$ 40,000	\$ 4,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 56,000
Income taxes	-	-	-	-	-	36,000	-	-	36,000
Distribution center									
Insurance	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Utilities	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	80,000
Equipment	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	32,000
Repairs and maintenance	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	240,000
Employees									
Payroll reporting	1,650	1,650	1,650	1,650	1,650	1,650	1,650	10,250	21,800
Benefit plan related	9,000	9,000	9,000	9,000	9,000	9,000	9,000	69,000	132,000
Other									
Mail box and forwarding	500	500	500	500	500	500	500	500	4,000
Registered agent fees	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	8,000
Total Disbursements	\$ 60,150	\$ 60,150	\$ 63,150	\$ 100,150	\$ 64,150	\$ 99,150	\$ 63,150	\$ 131,750	\$ 641,800

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
-----x

**DECLARATION OF KENNETH P. SILVERMAN, ESQ.
IN SUPPORT OF CHAPTER 7 TRUSTEE'S APPLICATION
SEEKING AUTHORIZATION PURSUANT TO 11 U.S.C. § 721
TO OPERATE DEBTOR'S BUSINESS ON A LIMITED BASIS**

I, Kenneth P. Silverman, Esq., declare as follows:

1. I the chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of Buth-Na-Bodhaige, Inc. (the "Debtor"), with offices located at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753. I am duly admitted to practice before this Court and the courts of the State of New York.

2. I submit this declaration (this "Declaration") in support of the application (the "Application")¹ seeking entry of an order authorizing me to operate the Debtor's business on a Limited Basis pursuant to Section 721 of Title 11 of the United State Code (the "Bankruptcy Code") and for such further relief as the Court deems proper.

3. I have reviewed the Application and relevant documents thereto and certify that its contents are true and correct to the best of my knowledge, and those facts are incorporated herein by reference.

¹ All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.

I. The Bankruptcy Case

4. On March 8, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

5. On March 9, 2024, I was appointed the interim chapter 7 trustee of the Debtor's estate, and have since duly qualified.

6. The Debtor was a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.

II. The Debtor's Business and Assets

Accounts Receivable

7. As part of my review and analysis of the Debtor's assets, my retained professionals and I determined that prior to the Petition Date the Debtor leased 40 stores located in the United States, as well as numerous related storage units, and owned real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property"). Additionally, my retained professionals and I determined that the Debtor also rented several spaces from WeWork Companies LLC ("WeWork"), to which it appears the vast majority of the Debtor's mail, including accounts receivable payments, were directed. Moreover, I determined that, it is in the best interests of the Debtor's estate that I operate the Debtor's business on a Limited Basis to ensure that accounts receivables are properly collected and accounted.

Tax Issues

8. As part of my review and analysis of the Debtor's financial affairs, my retained professionals and I also undertook a comprehensive analysis of the Debtor's tax liabilities in dozens of jurisdictions, including state and local municipalities, scattered across the country. Although my professionals are in the process of preparing and filing the necessary tax returns, the

Debtor is likely to incur additional, unnecessary penalties and charges if certain estimated tax payments are not made timely. Additionally, by making such tax payments and permitting my professionals additional time to file final tax returns in many jurisdictions, I expect that the Debtor will likely be entitled to substantial tax refunds upon the filing of final returns. Accordingly, it is in the best interest of the Debtor's estate that I operate the Debtor's business on a Limited Basis to ensure that the Debtor does not incur additional tax liability due to late or unfiled tax returns.

Real Property

9. At the time of filing, the Real Property was being used as a storage facility for TBSI. At present, approximately \$6,500,000 of TBSI owned inventory is currently being stored in the Real Property. Since my appointment, I have engaged with the TBSI administrator and TBS Canada's proposal trustee to determine the best manner in which to remove and distribute the inventory. Moreover, I determined that removal of that inventory is necessary in order to facilitate any sale of the Real Property.

10. Importantly, I have negotiated an agreement in principal, subject to documentation and approval of this Court, for TBS Canada to license the Real Property from myself for a limited period in order to facilitate the removal of inventory. The license fee for that agreement will be an amount which I expect is sufficient to cover all of the amounts which I seek authorization to pay for the duration of TBS Canada's removal of the inventory. Ultimately, my operation of the Debtor's business on a Limited Basis is in the best interests of the Debtor's estate and necessary to ensure that the Real Property be property maintained while I negotiate the removal of TBSI's inventory, and complete a marketing and sale process for the Real Property.

Former Employee Benefit Plan Issues

1. As part of my winddown of the Debtor's financial affairs, and pursuant to Bankruptcy Code § 704(a)(11), I am required to "continue to perform the obligations required of the administrator" of certain of the Debtor's employee benefit plans. Additionally, due to the abrupt nature of the termination of the Debtor's employees, it appears that many of the Debtor's employees likely do not have access to their proper payroll and tax information from the period of their employment. Accordingly, in the exercise of my duties to the estate and the minimize any claims which might be raised against the estate by the Debtor's former employees, I must also winddown employee benefit and insurances plans and ensure that the Debtor's employees have access to and receive proper payroll and tax information. Together with my professionals, I have investigated this issue and believe that the Debtor's former payroll tax provider will facilitate the disbursement of the necessary documentation, subject to receiving payment. Moreover, I determined that it is in the best interests of the Debtor's estate that I operate the Debtor's business on a Limited Basis to ensure the Debtor's former employees have access to and receive proper payroll and tax information from the winddown of employee benefit and insurances plans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Jericho, New York on May 8, 2024.

s/ Kenneth P. Silverman

Kenneth P. Silverman, Esq.