

RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

Hearing Date: September 26, 2024
Time: 10:00 a.m.

Objections Due: September 19, 2024
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,
Debtor.

Case No.: 24-10392 (DSJ)

-----X
**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE'S MOTION FOR
AN ORDER APPROVING SETTLEMENT PROVIDING FOR
(I) WAIVER OF CLAIMS, AND (II) ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

PLEASE TAKE NOTICE THAT, upon the motion (the "Motion") of Kenenth P. Silverman, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), by his counsel, Rimom 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 **September 26, 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 Motion as **Exhibit A**, for signature (i) authorizing and approving the Trustee's stipulation (the "Stipulation") with Denver International Airport ("DIA"), (ii) authorizing and approving the abandonment of the Debtor's interest in certain personal property (the "Personal Property") located at "The Body Shop" branded store in the Denver International Airport (the "Premises"), pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) authorizing and approving DIA's waiver of any and all claims to be asserted against the Debtor's estate, and (iv) 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 Motion 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) 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, Attn: Mark Bruh, Esq., no later than **September 19, 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 Motion.

Dated: Jericho, New York
August 28, 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.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Courtney M. Roman

Hearing Date: September 26, 2024
Time: 10:00 a.m.

Objections Due: September 19, 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

**CHAPTER 7 TRUSTEE’S MOTION FOR
AN ORDER APPROVING SETTLEMENT PROVIDING FOR
(I) WAIVER OF CLAIMS, AND (II) ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), submits this motion (this “Motion”) seeking entry of an order, substantially in the form annexed hereto as **Exhibit A** pursuant to section 105(a) of title 11, United States Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”) 9019(a) approving the Trustee’s stipulation (the “Stipulation”) with Denver International Airport (“DIA”) annexed hereto as **Exhibit B**, which provides for (i) the abandonment of the Debtor’s personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (ii) DIA’s waiver of any and all claims to be asserted against the Debtor’s estate, and (iii) for such further relief as the Court deems proper, and respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105(a), 365(a), 502(b), and 554(a) of the Bankruptcy Code, Bankruptcy Rule 6007, and rule 6007(1) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

BACKGROUND

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, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate, and has since been 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 Lease at DIA’s Premises

7. The Debtor is a majority interest holder in TBS Air III, LLC (“TBS Air III”), which operated a “The Body Shop” branded store in the Denver International Airport (the “Premises”).

8. Prior to the Petition Date, TBS Air III and DIA entered into a lease agreement for the Premises.

9. On March 1, 2024, simultaneously with the Debtor ceasing operations at all of its retail locations, TBS Air III ceased operations at the Premises. Upon ceasing operations, TBS Air III locked the Premises and left all of the personal property, including inventory, in the Premises (the “Personal Property”).

10. As set forth in the Declaration of Kenneth P. Silverman, Esq., (the “Silverman Declaration”) filed in support of this Motion and annexed hereto as **Exhibit C**, the Trustee’s

analysis of the Debtor's financial affairs has not determined whether the Debtor has an interest in the Personal Property or if the Personal Property is solely owned by TBS Air III. Notwithstanding, the Trustee has determined that the cost to marshal and liquidate the Personal Property would largely outweigh any potential economic benefit from its sale.

III. The Stipulation By and Between the Trustee and DIA

11. As described below, the Trustee entered into a stipulation, subject to Court approval, with DIA, whereby (i) the Trustee seeks to abandon the Personal Property and inventory left remaining at the Premises, and (ii) DIA waives any potential claims it might have against the Debtor's estate. The Trustee believes that the settlement reached with DIA is fair and reasonable and provides benefits to the estate greater than that which would be obtained through the liquidation of the inventory remaining in the premises.

12. Pursuant to the Stipulation, the Trustee surrenders the Premises to DIA, and all remaining Personal Property left in the Premises, including any inventory, is deemed abandoned and may be disposed of by DIA without any liability or responsibility of the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary. Additionally, DIA waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, against the Debtor and its estate. A copy of the proposed Stipulation is annexed hereto as **Exhibit B**.

RELIEF REQUESTED

13. As set forth above and in the Silverman Declaration, the Trustee has determined in his business judgment that, even if the Personal Property were determined to be property of the Debtor's estate, the liquidation of the Personal Property would provide little to no value to the Debtor's estate. Therefore, in an effort to avoid the risks and costs associated with any litigation

that may arise over DIA's potential claims against the Debtor's estate, the Trustee and DIA have entered into a Stipulation to resolve all disputes between the parties. Accordingly, by this Motion the Trustee seeks approval of the Stipulation.

I. The Stipulation Should Be Approved Under Rule 9019

14. Bankruptcy Rule 9019 governs the approval of compromises and settlements, and provides in relevant part as follows:

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

15. In approving the compromise and settlement, the Bankruptcy Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on an:

educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). *See In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr.N.D.Ohio), *aff'd*, 87 B.R. 472 (N.D.Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

16. In making its determination on the “propriety of the settlement”, the Court should consider whether the proposed settlement is in the “best interest of the estate”.¹ As stated in *Arrow Air*, the “approval of [a] proposed compromise and settlement is a matter of this Court’s sound discretion”. *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, “the bankruptcy court does not substitute its judgment for that of the trustee”. *In re Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required “to decide the numerous questions of law and fact raised by [objectors]. . . . [R]ather [the Court should] canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.”² In evaluating the reasonableness of a proposed compromise, the Court “may give weight to the opinions of the Trustee, the parties and their counsel.” *Bell & Beckwith*, 77 B.R. at 612; *see also In re Handler*, 386 B.R. at 421.

17. The U.S. Court of Appeals for the Second Circuit outlined the following seven factors (the “Iridium Criteria”) to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation’s possibility of success and the settlement’s present and future benefits;
- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;

¹ *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelphia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff’d*, 863 F.2d 45 (2d Cir. 1988).

² *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert denied*, 409 U.S. 1039 (1972); *see also In re Handler*, 386 B.R. at 420-21.

- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arms-length bargaining.

Motorola, Inc. v. Official Comm. of Unsecured Creditors et al. (In re Iridium Operating LLC et al.), 478 F.3d 452, 462; *In re Handler*, 386 B.R. at 421.

18. The proposed Stipulation, among other things: (i) resolves all of the legal issues between the Trustee and DIA; (ii) abandons the Personal Property; (iii) provides for a waiver of any and all claims of DIA against the Debtor's estate; and (iv) reduces the administrative costs to the Debtor's estate for the continued administration, including potential litigation with DIA, and the potential costs associated therewith.

19. The Trustee has determined that abandonment of Personal Property and DIA's waiver of any and all claims against the Debtor and its estate, upon the terms and conditions of the respective proposed Stipulation, is in the best interests of the Debtor's estate, falls well within the lowest ranges of reasonableness, and is the most economical and efficient way to avoid the inherent risks and fees associated with would could be costly, protracted, and complex litigation. Further, the Stipulation bypasses all of the potential complexities and delays associated with litigation and authorizes the Trustee to continue with the administration of the Debtor's estate.

20. The Stipulation was negotiated at arms-length by and among the Trustee and his counsel and DIA and its counsel. Both the Trustee and DIA exercised their business judgment when entering into the Stipulation and have taken into consideration the unknown costs, risks, and delays attendant to proceeding with the potential litigation.

21. The Trustee believes the Stipulation is fair and equitable and in the best interests of the Debtor's estate, and respectfully requests that the Court approve the Stipulation.

22. Under the circumstances of this case, the Stipulation should be approved because it is in the best interests of the Debtor, its estate and its creditors, falls above the lowest range of reasonableness, and represents the reasonable exercise of the Trustee's business judgment.

II. Abandonment of Personal Property, Including Any Inventory, Remaining in the Leased Premises Should Be Approved by the Court

23. With respect to the Trustee's request for authority to abandon the Personal Property, the Trustee submits that the standard set forth in Bankruptcy Code § 554(a) is satisfied.

24. Section 554(a) provides that a debtor in possession may abandon, subject to court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Before authorizing abandonment of property, a bankruptcy court must find either: (i) the property is burdensome to the estate or (ii) the property is both of inconsequential value and inconsequential benefit to the estate. *See, e.g., Midlantic Nat'l bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 497) (1986), *reh'g denied*, 475 U.S. 1091 (1986).

25. As set forth in the Silverman Declaration, the Trustee and his retained professionals thoroughly investigated the inventory remaining in the Premises, and was unable to determine whether title to the Personal Property resided with the Debtor or TBS Air III. Notwithstanding, based upon the Trustee's discussions with potential liquidators relating to all of the Debtor's inventory, the Trustee determined, in his sound business judgment, that the abandonment of the inventory in the Premises would be more beneficial to the estate as part of an agreement with DIA rather than being liquidated. The immediate abandonment of the inventory helped ease negotiations with DIA as it enables DIA to remove the inventory quickly without having to wait for the Trustee to determine how to proceed with the remaining inventory.

26. Rule 6007-1 of the Local Rules requires that notice of a proposed abandonment describe the property to be abandoned, state the reason for the proposed abandonment, and identify the entity to whom the property is proposed to be abandoned, unless the Court orders otherwise. The Trustee submits that given the description provided herein, the requirements of the Local Rules have been satisfied.

27. The Trustee also requests that the abandonment of the inventory should be effective as of the proposed effective date of the Stipulation.

CONCLUSION

28. Based on the foregoing, the Trustee submits that the relief requested is necessary and appropriate, is in the best interests of the Debtor's estate and its creditors, and should be granted in all respects.

29. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests entry of an order substantially in the form annexed hereto as **Exhibit A**, which grants the relief requested herein and for such other, further and different relief as the Court deems just and proper.

Dated: Jericho, New York
August 17, 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

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 CHAPTER 7 TRUSTEE’S MOTION
FOR AN ORDER APPROVING SETTLEMENT PROVIDING
FOR (I) WAIVER OF CLAIMS, AND (II) ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

1. Upon the motion (the “Motion”)¹ of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), seeking the entry of an order(i) authorizing and approving the Trustee’s stipulation (the “Stipulation”) with Denver International Airport (“DIA”), (ii) authorizing and approving the abandonment of the Debtor’s interest in certain personal property (the “Personal Property”) located at “The Body Shop” branded store in the Denver International Airport (the “Premises”), pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) authorizing and approving DIA’s waiver of any and all claims to be asserted against the Debtor’s estate, and (iv) for such further relief as the Court deems proper, and upon the Declaration of Kenneth P. Silverman, Esq. filed in support of the Motion, annexed to the Motion as Exhibit C; and notice of the Motion, the Hearing, and the relief sought in the Motion having been good and sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establishing sufficient cause for the relief requested; now, therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Stipulation, annexed to the Motion as Exhibit B, is hereby approved.

3. The abandonment of the Debtor's interest in any Personal Property remaining in the Premises is hereby approved, as set forth in the Stipulation. The Trustee is authorized to take any and all actions reasonably necessary to perform or enforce any and all obligations contemplated by this Order.

4. DIA waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, against the Debtor and its estate.

5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
September __, 2024

HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE

RIMON P.C.

Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Courtney M. Roman

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

**STIPULATION WITH RESPECT TO
ABANDONMENT OF PERSONAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his attorneys, Rimon P.C. and Denver International Airport (the “Landlord” and, together with the Trustee, the “Parties” and each a “Party”), by its attorneys DEN Legal, hereby enter into this stipulation (this “Stipulation”) and agree as follows:

RECITALS

WHEREAS, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

WHEREAS, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate; and

WHEREAS, the Debtor is a majority interest holder in TBS Air III, LLC (“TBS Air III”), a Delaware limited liability company; and

WHEREAS, TBS Air III was a party to a lease agreement (the “Lease”) for the premises known as and located at the Denver International Airport in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

WHEREAS, on March 1, 2024, simultaneously with the Debtor ceasing operations at all of its retail locations, TBS Air III ceased operations at the Premises, and left certain inventory and other personal property at the premises (the “Personal Property”); and

WHEREAS, based upon the prepetition dealings between the Debtor and TBS Air III, the Debtor may have an ownership interest in the Personal Property; and

WHEREAS, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect to the disposition of the Personal Property, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

NOW, THEREFORE, it is hereby stipulated and agreed by and among the parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Abandonment of Personal Property. All remaining Personal Property left at the Premises, including any inventory, is hereby deemed abandoned and may be disposed of by the Landlord without any liability or responsibility to the Debtor’s estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary.

2. Waiver of Claims. The Landlord hereby waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, against the Debtor and its estate. Nothing herein shall prevent or preclude Landlord from exercising its rights and remedies pursuant to the Lease and applicable law. Landlord does not waive any such claims it may have against TBS Air III, the tenant under the Lease.

3. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). In the event

the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any party.

4. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

5. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

6. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Colorado.

7. Authority. Each signatory hereto, represents and warrants that they hold and are exercising the requisite authority to bind their respective clients.

8. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: Jericho, New York
July 31, 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

Dated: Denver, Colorado
July 31, 2024

DEN Legal
Counsel to Denver International Airport

By: s/ Vianes Rodriquez
Vianes Rodriquez
8500 Pena Boulevard
Denver, Colorado 80249

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 MOTION FOR
AN ORDER APPROVING SETTLEMENT PROVIDING FOR
(I) WAIVER OF CLAIMS, AND (II) ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

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

1. I am a partner of Rimon P.C. and 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 motion (the "Motion")¹ seeking entry of an order (i) authorizing and approving the Trustee's stipulation (the "Stipulation") with Denver International Airport ("DIA"), (ii) authorizing and approving the abandonment of the Debtor's interest in certain personal property (the "Personal Property") located at "The Body Shop" branded store in the Denver International Airport (the "Premises"), pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) authorizing and approving DIA's waiver of any and all claims to be asserted against the Debtor's estate, and (iv) for such further relief as the Court deems proper

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

3. I have reviewed the Motion 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.

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.

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 Lease at DIA’s Premises

7. The Debtor is a majority interest holder in TBS Air III, LLC (“TBS Air III”), which operated a “The Body Shop” branded store in the Denver International Airport.

8. Prior to the Petition Date, TBS Air III and DIA entered into a lease agreement for the Premises.

9. On March 1, 2024, simultaneously with the Debtor ceasing operations at all of its retail locations, TBS Air III ceased operations at the Premises. Upon ceasing operations, TBS Air III locked the Premises and left all of the personal property, including inventory, in the Premises (the “Personal Property”).

10. My analysis of the financial affairs has not determined whether the Debtor has an interest in the Personal Property or if the Personal Property is solely owned by TBS Air III. Notwithstanding, I determined that the cost to marshal and liquidate the Personal Property would largely outweigh any potential economic benefit from its sale.

III. The Stipulation By and Between the Trustee and Landlord

11. As described below and in the Motion, I entered into a stipulation, subject to Court approval, with DIA whereby (i) the Trustee seeks to abandon the Personal Property and inventory left remaining at the Premises, and (ii) DIA waives any potential claims it might have against the Debtor's estate. I believe that the settlement reached with DIA is fair and reasonable and provides benefits to the estate greater than that which would be obtained through the liquidation of the inventory remaining in the premises.

12. I, on behalf of the Estate, and Denver International Airport entered into a stipulation (the "Stipulation") by which the Trustee surrenders the Premises to DIA, and all remaining Personal Property left in the Premises, including any inventory, is deemed abandoned and may be disposed of by DIA without any liability or responsibility of the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary. Additionally, the Stipulation provides that DIA waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, against the Debtor and its estate. A copy of the proposed Stipulation is annexed to the Motion as Exhibit B.

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

Executed in Jericho, New York on August 28, 2024.

s/ Kenneth P. Silverman

Kenneth P. Silverman, Esq.