

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,¹

Debtor.

) Chapter 11
)
) Case No. 09-12200 (BLS)
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**APPLICATION FOR ORDER PURSUANT TO
11 U.S.C. §§ 327(a) AND 329 AND BANKRUPTCY RULES 2014 AND 2016
AUTHORIZING THE EMPLOYMENT AND RETENTION OF
NIXON PEABODY LLP AS COUNSEL FOR THE DEBTOR**

Pumpkin Patch LLC, as debtor and debtor-in-possession, (“Pumpkin Patch”, “Applicant”, or the “Debtor”) files this application to employ and retain Nixon Peabody LLP as counsel for the Debtor. In support of the Motion, the Debtor relies on and incorporates by reference the declaration filed in support of the Debtor’s chapter 11 petition and various first day applications and motions (the “First Day Declaration”), and the declaration of Dennis J. Drebsky, Esq. (the “Drebsky Affidavit”) filed with the Court concurrently herewith. In further support of the Motion, the Debtor, by and through its undersigned attorneys, respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 327(a) and 329. Such relief is warranted pursuant to Bankruptcy Rules 2014 and 2016.

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the First Day Declaration, filed concurrently herewith and fully incorporated herein by reference.²

4. The Debtor continues to manage and operate its businesses as debtor in possession under Bankruptcy Code sections 1107 and 1108.

RELIEF REQUESTED

5. By this Application, the Debtor seeks authority, pursuant to § 327(a) of the Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code, to employ Nixon Peabody LLP as its attorneys to perform the legal services set forth herein including, among other things, preparation for the commencement and prosecution of its case under chapter 11 of the Bankruptcy Code. In addition, the Debtor desires to retain Nixon Peabody LLP as its counsel to provide such other legal services as are necessary and requested by the Debtor, including, without limitation, corporate finance, real estate, and litigation services. The Debtor is seeking the retention of Nixon Peabody LLP nunc pro tunc to the Petition Date.

6. The Debtor has selected Nixon Peabody LLP as its general bankruptcy counsel because Nixon Peabody LLP and its attorneys have extensive experience and knowledge in the fields of debtors' and creditors' rights, debt restructuring and corporate reorganizations, tax law, real estate matters, employee benefits and commercial litigation, among other areas.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

7. When it became apparent that a Chapter 11 filing would be necessary, the Debtor requested Nixon Peabody LLP to provide advice regarding, among other things, the preparation for the commencement and prosecution of a case under chapter 11 of the Bankruptcy Code. Nixon Peabody LLP's attorneys have extensive experience and knowledge in the fields of debtors' and creditors' rights, debt restructuring and corporate reorganizations, real estate matters, corporate matters, financing and commercial litigation, among others. Accordingly, the Debtor believes that Nixon Peabody LLP is particularly well qualified and able to represent the Debtor for the matters in respect of which the firm is to be engaged in this case in a most efficient and timely manner.

8. If the Debtor is required to retain attorneys other than Nixon Peabody LLP in connection with this chapter 11 case, the Debtor and its estate would be prejudiced by the time and expense necessary for such attorneys to become familiar with the Debtor's business operations. In addition, the Debtor has directed Nixon Peabody LLP to work cooperatively with other professionals that may be retained in this case to avoid duplication and inefficiency.

SERVICES TO BE RENDERED

9. Subject to the control and further order of this court, Nixon Peabody LLP will be expected to render the following services to the Debtor:

- (a) Assist, advise and represent the Debtor in the preparation and prosecution of the Chapter 11 case and in its consultations with the creditors' committee and other parties in interest regarding the administration of this case.
- (b) Assist the Debtor with respect to its powers and duties as a debtor and debtor in possession in the continued management and operation of its business and properties.
- (c) Assist the Debtor in connection with any contemplated sales of assets or business combinations, including negotiating any asset, stock purchase, merger or joint venture agreements, formulating and implementing any bidding procedures, evaluating competing offers, drafting appropriate corporate documents with respect to the proposed sales, and counseling the Debtor in connection with the closing of any such sales.

(d) Advise the Debtor in connection with the postpetition financing and cash collateral arrangements, negotiate and draft documents relating thereto, provide advice and counsel with respect to the Debtor's prepetition financing arrangements, provide advice to the Debtor in connection with issues relating to financing and capital structure under any plan of reorganization, and negotiate and draft documents relating thereto.

(e) Advise the Debtor on matters relating to the evaluation of the assumption or rejection of unexpired leases or executory contracts.

(f) Advise the Debtor with respect to legal and regulatory issues arising in or relating to the Debtor's ordinary course of business, including meetings with the Debtor's financial advisors, and meetings of the board of directors.

(g) Assist, advise and represent the Debtor in any investigation of the acts, conduct, assets, liabilities and financial condition of the Debtor, the operation of the Debtor's business and the desirability of the continuation of such business, and any other matter relevant to this case or to the formulation of a plan.

(h) Prepare on behalf of the Debtor all motions, applications, answers, orders, report and papers necessary to the administration of the estate.

(i) Assist, advise and represent the Debtor with respect to the negotiation of a plan of reorganization and related agreements, and take any actions necessary to obtain confirmation of a plan, including the collection and filing with the Bankruptcy Court of any acceptances of a plan.

(j) Assist, advise and represent the Debtor in the performance of all of its duties and powers under the Bankruptcy Code and the Bankruptcy Rules and in the performance of such other services as are in the best interests of the Debtor, the creditors and the estate generally.

(k) Perform all other necessary legal services and provide all other necessary legal advice to the Debtor in connection with this chapter 11 case.

10. Nixon Peabody LLP has indicated its willingness to act as general bankruptcy counsel on behalf of the Debtor. Applicant respectfully submits that the retention of Nixon Peabody LLP as general bankruptcy counsel to perform such services is appropriate pursuant to § 327(a) of the Bankruptcy Code and in the best interests of the Debtor's estate and creditors generally.

11. Except as set forth in the Drebsky Affidavit, a member of the firm, to the best of Applicant's knowledge, Nixon Peabody LLP, its members, counsel and associates: (a) do not

have any connection with the Debtor, its affiliates, its creditors, the Office of the United States Trustee for the District of Delaware or any other party-in-interest, or their respective attorneys and accountants; (b) are “disinterested persons” as that term is defined in § 101(14) of the Bankruptcy Code; and (c) do not hold or represent any interest adverse to the estate.

12. More specifically, as set forth in the Drebsky Affidavit, and to the best of the Debtor’s knowledge, information and belief:

(a) Neither Nixon Peabody LLP, nor any attorney at the firm, holds or represents an interest adverse to the estate;

(b) Nixon Peabody LLP is not a creditor, an equity holder, or an insider of the Debtor; Nixon Peabody LLP has agreed to waive any prepetition claim it may have against the Debtor for services previously rendered except in connection with the preparation of this Chapter 11 case.

(c) Neither Nixon Peabody LLP, nor any attorney at the firm, was, within 2 years before the date of the filing of the Debtor’s chapter 11 case, a director, officer, or employee of the Debtor; and

(d) Nixon Peabody LLP does not have an interest materially adverse to the interest of the Debtor’s estate or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtor or an investment banker specified in the foregoing paragraphs, or for any other reason.

13. Section 1107(b) of the Bankruptcy Code provides that “a person is not disqualified for employment under § 327 of this title by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.” 11 U.S.C. § 1107(b). To the best of the Debtor’s knowledge, with the exception of those matters set forth in the Drebsky Affidavit, the members and associates of Nixon Peabody LLP do not have any connection with the Debtor, its creditors or any other party in interest, or their respective attorneys. Accordingly, the Debtor believes Nixon Peabody LLP is “disinterested” and does not hold or represent an interest adverse to the Debtor’s estate.

COMPENSATION AND RETAINER

14. Prior to the filing of the Debtor's petition, Nixon Peabody LLP was retained by the Debtor to provide services relative to this chapter 11 case, including, but not limited to, advising the Debtor with respect to restructuring alternatives, counseling on general corporate issues and preparing appropriate pleadings and documents necessary for these filings. In connection with these services and the services Nixon Peabody LLP will render in this case, Nixon Peabody LLP received a prepetition retainer of \$75,000.00. The sum of \$75,000.00 was applied on account of services performed prior to the filing in connection with the advice and preparation of this Chapter 11 case.

15. It is anticipated that Nixon Peabody LLP's fees and expenses will be funded by the Debtor upon application therefor in accordance of the provisions of the Bankruptcy Code or in accordance with any other order establishing procedures for the payment of professionals in this case. Nixon Peabody LLP intends to apply to the Court for all such postpetition fees and expenses. However, since the Debtor may require Nixon Peabody LLP to render extensive legal services, the cost of which cannot be estimated, it is necessary and essential for the Debtor, as a debtor in possession, to employ attorneys under a general retainer.

16. Subject to this Court's approval and in accordance with Bankruptcy Code §§ 330 and 331, the Federal Rules of Bankruptcy Procedure, the Debtor requests that Nixon Peabody LLP be compensated on an hourly basis, plus reimbursement of actual and necessary expenses incurred by Nixon Peabody LLP, as more fully set forth in the Drebsky Affidavit.

NOTICE

17. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (i) the United States Trustee for the District of Delaware;

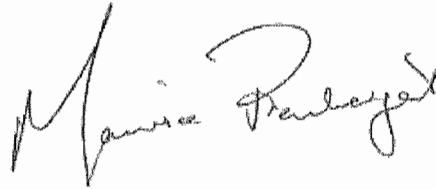
and (ii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors. The Debtor submits that, under the circumstances, no other or further notice is necessary.

18. No previous application for the relief sought herein has been made by Applicant to this or any other Court.

WHEREFORE, Applicant respectfully requests entry of the attached order authorizing it to employ and retain Nixon Peabody LLP as counsel in connection with the prosecution of this case and granting such other and further relief as is just and proper.

Dated: June 29, 2009

PUMPKIN PATCH LLC

A handwritten signature in cursive script, appearing to read "Maurice Prendergast".

By:

Maurice Prendergast
Chief Executive Officer and President

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

ORDERED, that in accordance with § 327(a) of the Bankruptcy Code, the Debtor be, and hereby is, authorized to employ and retain Nixon Peabody LLP as its counsel to perform all of the services set forth in the Application, on the terms set forth in the Application and in the Drebsky Affidavit; and it is further

ORDERED, that the compensation to be paid Nixon Peabody LLP for professional services rendered and expenses incurred shall be as determined by this Court upon proper application therefor pursuant to §§ 330 and 331 of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure or as otherwise prescribed by any Order of this Court setting forth the procedures for the payment of professionals in this case.

Dated: Wilmington, Delaware

_____, 2009

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,¹

Debtor.

)
) Chapter 11

)
) Case No. 09-12200 (BLS)

**AFFIDAVIT OF DENNIS J. DREBSKY IN SUPPORT OF
APPLICATION FOR ORDER PURSUANT TO
11 U.S.C. §§ 327(a) AND 329 AND BANKRUPTCY RULES 2014 AND 2016
AUTHORIZING THE EMPLOYMENT AND RETENTION OF
NIXON PEABODY LLP AS COUNSEL FOR THE DEBTOR**

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

DENNIS J. DREBSKY, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice in the State of New York, as well as the United States District Courts for the Southern District of New York, and the United States Court of Appeals for the Second Circuit, as well as the First, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and D.C. Circuits. I am a partner of the law firm known as Nixon Peabody LLP (“NP”). NP maintains an office for the practice of law at 437 Madison Avenue, New York, New York 10017.

2. Insofar as I have been able to ascertain, NP does not have any connection with Pumpkin Patch LLC, the debtor and debtor in possession herein (the “Debtor”), its creditors,

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

landlords, professionals or any other party in interest herein, or its respective attorneys or professionals, except as disclosed herein.

3. To the best of my knowledge, after due inquiry, except as provided for in paragraph 11 below, NP: (a) is not a creditor (including by reason of unpaid fees for pre-petition services), an equity security holder or an “insider” of the Debtor, as that term is defined in § 101(31) of title 11, United States Code (the “Bankruptcy Code”); (b) is not and has not been, within two years before June 29, 2009 (the “Petition Date”), a director, officer, or employee of the Debtor; and (c) does not have an interest materially adverse to the interests of the Debtor’s estate, or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason. Accordingly, I believe NP is “disinterested”, as that term is defined in § 101(14), as modified by § 1107(b), of the Bankruptcy Code.

4. NP maintains records of all of its clients and the matters on which it represents such clients, and the other parties which have a substantial role in such matters. I have reviewed such records to determine NP’s connections with the Debtor, its creditors, any other party in interest, its respective attorneys and accountants, the United States Trustee and any person employed in the office of the United States Trustee. In addition, I have reviewed NP’s relationships with potential parties in interest to determine if any of such relationships give rise to an actual or potential conflict of interest or otherwise affect my disinterestedness.

5. In so far as I have been able to ascertain, NP has not represented any of the Debtor’s twenty largest creditors.

6. Subject to this Court’s approval in accordance with § 330(a) of the Bankruptcy Code, all compensation will be payable to NP’s office on an hourly basis, plus reimbursement of

actual, necessary expenses incurred. I have a current standard hourly rate of \$840.00; other partners of the firm are currently billed between \$355.00 and \$840.00 per hour; associates of the firm are currently billed between \$230.00 and \$580.00 per hour; and paralegals are currently billed between \$135.00 and \$265.00 per hour. The hourly rates are subject to periodic adjustments to reflect economic and other conditions and are typically increased on January 1 each year.

7. The hourly rates set forth above are the firm's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate NP for its work, the work of its associates and its paralegals, and any other professionals it may utilize and to cover fixed and routine overhead expenses. NP's policy is to charge its clients in all areas of practice for all other expenses incurred in connection with its clients' cases. The expenses charged to clients include, among other things, telephone and telecopier toll charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals", and computerized research and transcription costs, in accordance with the Guidelines of this Court. NP believes that it is appropriate to charge these expenses to the clients incurring them rather than to increase the hourly rates and thereby spreading the expenses among all clients.

8. This Affidavit is intended to comply with Federal Rule of Bankruptcy Procedure 2016(b). NP intends to apply to this Court for compensation for professional services rendered in connection with this case. During its pre-petition representation of the Debtor, NP received a retainer payment from the Debtor in the aggregate amount of \$75,000.00 (the "Retainer") on account of services to be rendered and expenses incurred in connection with the contemplated

Chapter 11 filing. The entire Retainer amount has been expended. Any fees or costs for prepetition services rendered above and beyond the Retainer have been waived.

9. NP has not received any promises as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code. NP does not have an agreement with any other entity to share with such entity any compensation NP receives.

10. Insofar as I have been able to ascertain, NP does not represent any interest adverse to the Debtor or its estate in the matters for which NP is to be engaged. Except as may be stated above, I believe that NP is a “disinterested person” as that term is defined in § 101(14), as modified by § 1107(b), of the Bankruptcy Code. To the extent that, through continued investigation, it is discovered that circumstances relating to the interests represented by NP and those of the Debtor change, a supplemental affidavit will be provided and filed with this Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of June, 2009.

/s/ Dennis J. Drebsky
Dennis J. Drebsky, Esq.