

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

In re:)	Chapter 11
)	
PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
)	
Debtor.)	Objections Due: March 31, 2010 at 4:00 p.m. EDT
)	Hearing Date: April 7, 2010 at 10:15 a.m. EDT
)	

**MOTION OF DEBTOR FOR ORDER AUTHORIZING DEBTOR TO FILE UNDER
SEAL EXHIBIT B TO DEBTOR’S MOTION FOR ORDER PURSUANT TO
11 U.S.C. §§ 105(a), 363(b) AND 365(a) AND FED. R. BANKR. P.
6006 (A) AUTHORIZING AND APPROVING AMENDMENT
OF UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY
BETWEEN DEBTOR AND DULLES TOWN CENTER MALL, L.L.C.
AND (B) AUTHORIZING ASSUMPTION OF LEASE, AS AMENDED**

Pumpkin Patch LLC, the debtor and debtor in possession in the above-captioned case (the “Debtor”) hereby moves (the “Motion to Seal”) for entry of an order pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) authorizing the Debtors to file, under seal, that certain Lease Amendment (defined below) and a summary of benefits thereof (the “Summary”), which together appear as Exhibit B to the motion (the “Lease Amendment Motion”)² for entry of an order, under sections 105(a), 363(b), and 365(a) of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules (a) authorizing the Debtor to enter into an amendment (the “Lease

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.

² Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease Amendment Motion.

Amendment,”) among the Debtor, Dulles Town Center Mall, L.L.C. (the “Landlord”) and Pumpkin Patch Limited (the “Guarantor”) to an unexpired lease (the “Lease”) of nonresidential real property located in Loudoun County, Virginia (the “Premises”) between the Debtor and the Landlord, and (b) authorizing the Debtor to assume the Lease, as amended. In support of the Motion to Seal, the Debtor relies on the Declaration of Matthew Washington, attached to the Lease Amendment Motion as Exhibit A thereto. In further support of this Motion to Seal, the Debtor, by and through its undersigned counsel, respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion to Seal under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 107(b), Bankruptcy Rule 9018, and Local Rule 9018-1(b).

BACKGROUND

2. On June 29, 2009 (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 Declarations, fully incorporated herein by reference.

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

THE LEASE AND THE LEASE AMENDMENT

4. Debtor and the Landlord entered into the Lease on November 15, 2007. On the same date, the Guarantor executed a Guaranty of Lease, under which the Guarantor guaranteed the obligations of the Debtor under the Lease.

5. By the Lease Amendment Motion, the Debtor requests the entry of an order under sections 105(a) and 365(a) of the Bankruptcy Code (a) authorizing the Debtor to enter into the Lease Amendment, (b) authorizing the Debtor to assume the Lease, as amended.

6. Disclosure of the terms of the Lease Amendment will likely prejudice the Parties thereto in their business operations. Accordingly, one of the critical features of the Parties' agreement is that the parties shall maintain in confidence the terms of the Lease Amendment. Accordingly, the Debtor here by files this Motion to Seal.

RELIEF REQUESTED

7. By this Motion to Seal, the Debtor requests that the Court enter an order authorizing the Debtor to file the Lease Amendment and the Summary thereof under seal and directing that the Lease Amendment and the Summary remain under seal, confidential and not be made available to anyone except (i) to the Office of the United States Trustee, or (ii) upon further order of this Court.

BASIS FOR RELIEF

4. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides in part that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

5. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under Bankruptcy Code section 107(b), and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....” Fed. R. Bankr. P. 9018. Local Rule 9018-1(b) additionally provides, in relevant part, that [a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(b).

6. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994); Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.), 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting party and has no discretion to deny the application. “In re Orion Pictures Corp., 21 F.3d at 27 (emphasis added).

7. The Debtor submits that the Lease Amendment contain confidential commercial information. Commercial information has been defined as information that would cause “an

unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” In re Orion Pictures Corp., 21 F.3d at 27.

8. The Lease Amendment and the Summary reveal critical terms of the Lease and the changes thereto as agreed upon by the Parties. The Parties agreed to the confidentiality provision contained in the Lease Amendment because the Parties’ business counterparties may use the information contained in the Lease Amendment and the Summary to their advantage and to the disadvantage of the Parties. Based on these circumstances, the Debtor believes that sufficient evidence exists to show that the benefits to the estate of filing the Lease Amendment and the Summary under seal outweighs the presumed benefit of public access to court records and the Lease Amendment, which in this case is respectfully suggested to be minimal; the public is unaffected. See In re Muma Services, Inc. et al., 279 B.R. 478, 485 (Banks. D. Del. 2002).

9. To ensure that the key constituencies in these cases receive adequate disclosure, the Debtor has agreed to provide copies of the Lease Amendment and the Summary to the Office of the United States Trustee, who shall be required to keep the Lease Amendment and the Summary confidential. The Debtor submits that such disclosure will provide sufficient safeguards to ensure that the relief requested in this Motion to Seal will not adversely affect the interests of parties to this chapter 11 proceeding and is in the best interests of the Debtor's estate.

NOTICE

10. Notice of this Motion has been provided to: (i) the United States Trustee for the District of Delaware; (ii) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; (iii) the Landlord; (iv) the Guarantor; and (v) any party that has requested notice of filed pleadings in this Chapter 11 case. The Debtor submits that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, the Debtor respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in the Motion to Seal and such other and further relief as may be just and proper.

Dated: March 16, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

/s/ Thomas M. Horan

Mark L. Desgrosseilliers (DE Bar No. 4083)
Thomas M. Horan (DE Bar No. 4641)
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
E-mail: mdesgrosseilliers@wcsr.com
E-mail: thoran@wcsr.com

-and-

Dennis J. Drebsky
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

Counsel for the Debtor and Debtor-in-Possession

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

In re:)	Chapter 11
)	
PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
)	
Debtor.)	Re: D.I. _____
)	

**ORDER AUTHORIZING DEBTOR TO FILE UNDER SEAL
EXHIBIT B TO DEBTOR’S MOTION FOR ORDER PURSUANT TO
11 U.S.C. §§ 105(a), 363(b) AND 365(a) AND FED. R. BANKR. P.
6006 (A) AUTHORIZING AND APPROVING AMENDMENT
OF UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY
BETWEEN DEBTOR AND DULLES TOWN CENTER MALL, L.L.C.
AND (B) AUTHORIZING ASSUMPTION OF LEASE, AS AMENDED**

Upon consideration of the motion (the “Motion to Seal”)² of the Debtor seeking entry of an order pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(b) authorizing the Debtors to file under seal authorizing the Debtors to file, under seal, certain Lease Amendment and that certain Summary of benefits thereof, which together appear as Exhibit B to the Debtor’s Lease Amendment Motion; and it appearing that the Court has jurisdiction to consider the Motion to Seal pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the relief requested in the Motion to Seal is in the best interests of the Debtors, their estates and creditors; and it appearing that due and adequate notice and disclosure of the Motion to Seal has been given; and after due deliberation and sufficient cause appearing therefor; it is hereby

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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion to Seal.

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion to Seal is granted.
2. The Lease Amendment and the Summary are confidential and the Debtor is hereby authorized to file the Lease Amendment and the Summary under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).
3. The Lease Amendment and the Summary shall remain under seal, confidential and shall not be made available to anyone, except to the Office of the United States Trustee, or upon further order of this Court.
4. Any party receiving the Lease Amendment and the Summary, including, the Office of the United States Trustee, shall keep confidential the Lease Amendment and the Summary
5. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
_____, 2010

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Lee Harrington (DE Bar No. 4046)

NIXON PEABODY LLP

100 Summer Street

Boston, MA 02110

Telephone: (617) 345-6016

Facsimile: (866) 741-0618

A HEARING ON THE MOTION WILL BE HELD ON **APRIL 7, 2010 AT 10:15 A.M., (EDT)** ONLY IF OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 16, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

_____/s/ Thomas M. Horan_____
Mark L. Desgrosseilliers (DE Bar No. 4083)
Thomas M. Horan (DE Bar No. 4641)
Ericka F. Johnson (DE Bar No. 5024)
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
E-mail: mdesgrosseilliers@wcsr.com
E-mail: thoran@wcsr.com
E-mail: erjohnson@wcsr.com

-and-

Dennis J. Drebsky
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

Lee Harrington (DE Bar No. 4046)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
Telephone: (617) 345-6016
Facsimile: (866) 741-0618

*Counsel for the Debtor
and Debtor-in-Possession*