

**UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

In re:

LE-NATURE'S, INC.,

Debtor.

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THE CIT GROUP/EQUIPMENT  
FINANCING, INC.,

Movant

v.

LE-NATURE'S, INC.,

Respondent.

Chapter 7  
Involuntary Petition

Case No. 06-25454 (MBM)

Document No.

**EMERGENCY MOTION OF THE CIT GROUP/EQUIPMENT FINANCING, INC.,  
FOR ITSELF AND AS AGENT FOR PARTICIPANTS, FOR LIMITED RELIEF  
FROM THE AUTOMATIC STAY**

The CIT Group/Equipment Financing, Inc. ("CIT"), for itself as co-lessor of certain equipment leased to Le-Nature's, Inc. (the "Debtor"), and as Administrative Agent for the Participants (defined below) by and through its undersigned counsel, hereby moves (the "Motion") this court for an order granting CIT limited relief from the automatic stay to allow CIT to take reasonable actions and measures to secure, preserve and protect the equipment that it leases to the Debtor. CIT is not currently seeking to take possession of its equipment, however, CIT reserves its right to seek such relief at a later date. To be clear, by this Motion, CIT is merely seeking limited relief from the automatic stay to allow CIT to take reasonable actions and measures to enable CIT to protect and preserve its equipment. In support of the Motion, CIT states as follows:

**Certificate of Necessity**

THE UNDERSIGNED HEREBY CERTIFIES that as a member of the Bar of this Court, I have carefully examined the matter under consideration and to the best of my knowledge, information and belief formed after reasonable inquiry, all allegations are well grounded in fact and all contentions are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law can be made, that the matter under consideration is not interposed for any improper purpose, such as to harass, or to increase the cost of litigation, and there is just cause to request a consideration of the matter on an emergency basis. I am aware of Federal Rule Civ. Pro. 11 and Bankruptcy Rule 9011 and of the consequences which may result from violations thereof.

THE UNDERSIGNED CERTIFIES FURTHER that this matter is an emergency because in order to preserve the value of equipment leased to the debtor such equipment must be properly secured immediately.

THE UNDERSIGNED CERTIFIES FURTHER that the necessity of this emergency hearing has not been caused by any lack of due diligence on my part, but has been brought about only by circumstances beyond my control or that of my client.

THE UNDERSIGNED CERTIFIES FURTHER that the amount of time needed to present information sufficient under applicable law to enable this Court to enter an order granting the requested relief is fifteen minutes.

**Jurisdiction and Venue**

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Motion presents a core proceeding over which this court has jurisdiction to enter a final order pursuant to 28 U.S.C. § 157(b)(2).

## **Background**

2. On November 1, 1006 (the "Petition Date"), an involuntary petition under chapter 7 of the title 11 of the United States Code (the "Bankruptcy Code") was filed against the Debtor in the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court") by the following petitioning creditors: (i) General Press Corp., (ii) Lyons Contracting, Inc., (iii) M.I. Friday, Inc., and (iv) Jackel Development, Inc. (collectively, the "Petitioning Creditors").

3. The Debtor is a private Delaware corporation that produces bottled water, teas and other natural beverages. The Debtor has bottling facilities in Latrobe, Pennsylvania and Phoenix, Arizona (the "Phoenix Facility").

4. Chapter 7 relief has not yet been ordered by the Bankruptcy Court, as the Debtor's time period to respond to the involuntary petition has not yet expired and no response has been filed by the Debtor. Regardless, pursuant to section 362(a) of the Bankruptcy Code, the filing of the involuntary petition under section 303 of the Bankruptcy Code triggers the operation of the automatic stay.

5. At this juncture, it is not clear who is in control of the Debtor's business and property. Kroll, Zolfo Cooper (the "Custodian") was appointed custodian by the Court of Chancery for the State of Delaware (the "Chancery Court") on October 27, 2006 as agent of the Chancery Court, to take possession and control of Le-Natures, Inc., and its business, operations and assets, to temporarily administer and manage the assets, and to operate the Company's business. Upon information and belief, the Custodian has been in possession or control of the Company's assets since October 27, 2006.

6. Notwithstanding the injunction filed by the Chancery Court against the manager of the Debtor, Petitioning Creditors designated Gregory Podlucky as the Principal Operating Officer and order to that effect was entered by the Bankruptcy Court.

7. The Custodian filed an emergency motion for stay relief before the Bankruptcy Court yesterday, on November 2, 2006 to, inter alia, continue in possession and control of the Debtor's property to protect and preserve the assets of the estate.

8. The Custodian's emergency stay relief motion and various Chancery Court filings against Gregory Podlucky and others are replete with allegations of breach of fiduciary duty and fraud on behalf of the Debtor's management. Indeed, the allegations and evidence submitted in support thereof were sufficient to persuade the Chancery Court to appoint the Custodian.

9. Currently, the Debtor is in a state of chaos and it is not clear who, if any one, is protecting and preserving the Debtor's assets, including the CIT equipment at the Phoenix Facility.

### **The Leased Equipment**

10. CIT is the owner and lessor of equipment used by the Debtor in its bottling operations at the Phoenix Facility. Pursuant to the terms of that certain Master Lease Agreement ("Master Lease") dated as of April 15, 2005, between Marshall Financial, Inc. ("MFI") and Le-Nature's and that certain Assignment and Participation Agreement ("Participation Agreement") of the same date, MFI assigned all of its interest in the Master Lease to CIT, and MFI purchased from CIT an undivided fractional interest in CIT's interest (the "Participation") in (i) the obligations (the "Obligations") of Le-Nature's under the Master Lease and one or more Interim Leases and Equipment Schedules No. 1, 2, 3 and 4 to the Master Lease (collectively, the "Lease

Documents"), (ii) all existing and future property interests in equipment leased to Le-Nature's under the Lease Documents (the "Leased Equipment"), (iii) the Lease Documents and all related documents, (iv) any and all amounts received by CIT on account of the Obligations, and (v) proceeds of the foregoing, all as set forth more fully in the Participation Agreement.

11. MFI has sold and assigned a portion of its interest in the Participation to certain third parties (the "Sub-Participants"). CIT and MFI, as well as the Sub-Participants, are co-lessors under the Lease Documents with CIT acting as the Administrative Agent.

12. Currently, the Debtor owes approximately \$130 million in connection with its obligations under the Lease Documents.

### **Request for Relief**

13. Given the present chaos surrounding the Debtor and its management, CIT respectfully asks the Bankruptcy Court to provide CIT with limited relief from the automatic stay to enable CIT to take reasonable actions and measures to secure and protect the Leased Equipment at the Phoenix Facility. To be clear, by this Motion, CIT is not seeking to take possession of the Leased Equipment at this time, merely to secure the Leased Equipment to prevent any destruction, vandalism, or damage to the same. CIT, however, reserves its rights to seek such other and further relief at a later date.

### **Cause Exists To Grant the Limited Relief Requested**

14. Section 362 of the Bankruptcy Code provides in relevant part as follows:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have equity in such property; and

(B) such property is not necessary to an effective reorganization;

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

See 11 U.S.C. § 362(d)(1), (d)(2), and (f).

15. For the reasons cited herein and in the Custodian's emergency motion for stay relief, "cause" exists to provide the limited relief requested by CIT in this Motion. Further, section 362(f) of the Bankruptcy Code provides the Bankruptcy Court with the authority to grant such limited relief on an expedited basis before the opportunity for notice and hearing. Given the circumstances and the chaos surrounding the Debtor, the limited relief requested by CIT herein is necessary to avoid irreparable damage to the Leased Equipment.

WHEREFORE, CIT respectfully requests that the Bankruptcy Court enter an order, substantially in the form attached hereto, authorizing CIT to take reasonable actions and measures to protect and preserve the Leased Equipment and granting such other and further relief as is just and proper.

Respectfully submitted,

THORP REED & ARMSTRONG, LLP

Dated: November 3, 2006

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