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11 (Successor-In-Interest from The Manufacturers Life Insurance Company
12 (U.S.A.))

13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **LOS ANGELES DIVISION**

16 **In re**
17 **ESTYLE, INC., a Delaware corporation**
18 **d/b/a babystyle, Cadeau and Cadeau Designs,**
19 **Debtor.**

CASE NO.: 2:08-bk-13518-SB

CHAPTER 11

**LIMITED OBJECTION TO MOTION FOR
ORDER APPROVING SALE PROCEDURES
AND BREAK-UP FEE IN CONNECTION
WITH SALE OF ASSETS OF ESTYLE, INC.,
ETC.**

Date: June 24, 2008
Time: 2:00 p.m.
Place Courtroom 1575

20 **TO THE HONORABLE SAMUEL L. BUFFORD, UNITED STATES BANKRUPTCY**
21 **JUDGE, THE DEBTOR AND DEBTOR IN POSSESSION, THE OFFICE OF THE UNITED**
22 **STATES TRUSTEE, AND TO ALL OTHER PARTIES IN INTEREST:**

23 The Landlord for the Leased Premises located at 865 South Figueroa Street, Suite 2700, Los
24 Angeles, California 90017 and creditor herein, John Hancock Life Insurance Company (U.S.A.)
25 (Successor-In-Interest from The Manufacturers Life Insurance Company (U.S.A.)) (“John Hancock”
26 and/or “Landlord”), hereby files this limited opposition to eStyle, Inc.’s (the “Debtor”) *Motion for*
27 *Order Approving Sale Procedures and Break Up Fee in Connection With Sale of Assets of eStyle,*
28 *Inc. and Related Assumption and Assignment of Nonresidential Real Property Leases and Executory*
Contracts in Connection Therewith (the “Motion”) as follows:

1 **STATEMENT OF FACTS**

2 1. Debtor eStyle, Inc., doing business as babystyle and Cadeau Maternity (“Debtor”)
3 formerly operated twenty-three (23) retail stores in shopping centers and urban locations in nine
4 states. On March 19, 2008, Debtor filed its voluntary Chapter 11 petition herein. No trustee has
5 been appointed and Debtor continues to operate its business as a debtor-in-possession under 11
6 U.S.C. §§ 1107(a) and 1108.

7 2. On June 18, 2008, Debtor filed its Sale Procedures Motion (Docket No. 199) seeking,
8 among other things, approval of bidding and sale procedures with respect to a potential “going
9 concern” sale of Debtor’s business and related assumption and assignment of twelve of Debtor’s
10 retail leases, including the lease between Debtor and John Hancock Life Insurance Company
11 (U.S.A.). The Motion seeks approval of an expedited schedule, with a bid deadline of July 1, 2008,
12 an objection deadline of July 1, 2008, and concluding with a July 8, 2008, auction, immediately
13 followed by a sale approval hearing that same day.

14 **DEBTORS’ PROPOSED PROCEDURES AND TIMETABLE FOR ASSIGNMENT AND**
15 **ASSUMPTION OF LEASES NEEDS TO BE MODIFIED TO PROVIDE LANDLORDS**
16 **WITH AN ADEQUATE AND MEANINGFUL OPPORTUNITY TO RESPOND**

17 3. As discussed below, Debtor’s Motion fails to provide adequate procedures by which a
18 successful purchaser would satisfy the requirements of 11 U.S.C. § 365 while providing landlords
19 with adequate notice and an opportunity be heard.

20 4. It is well-established that Debtor bears the burden of presentation of a lease for
21 assumption and assignment and the ultimate burden of proof that all requirements for assumption
22 and assignment have been met. *In re Rachels Industries, Inc.*, 109 B.R. 797, 802 (Bankr. W.D.
23 Tenn. 1990); *In re Memphis-Fridays Associates*, 88 B.R. 830, 840-841 (Bankr. W.D. Tenn. 1988);
24 *see also Richmond Leasing Co. v. Capital Bank, MA.*, 762 F.2d 1303, 1309-1310 (5th Cir. 1985); *In*
25 *re Airlift International Inc.*, 761 F.2d 1503, 1508 (11th Cir. 1985).

26 5. The sale of Debtor’s leasehold interests, as contemplated by the Motion, would
27 potentially require a landlord to evaluate the financial capability and intended use of a purchaser
28 with insufficient prior notice or the opportunity to conduct a meaningful analysis or evaluation,

1 prejudicing the heightened protections afforded shopping center landlords by 11 U.S.C. § 365(b)(3).
2 See, e.g., *In re Joshua Slocum, Ltd.*, supra, 922 F.2d at 1086; *In re Trak Auto Corporation*, 277 B.R.
3 655, 665-666 (Bankr. E.D. Va. 2002) (The legislative history of 1984 amendments to Section 365
4 “indicates that Congress sought to provide special protections to lessors of a debtor.”). The Motion
5 would require landlords to file any opposition to the proposed assumption and assignment of their
6 shopping center leases by July 1, 2008 – the same day proposed for (a) submission of bids by
7 qualified bidders and (b) Debtor’s service of a “Cure Schedule” setting forth Debtor’s proposed cure
8 amounts due upon assumption of leases under 11 U.S.C. § 365(b)(1). The Debtor would potentially
9 forward adequate assurance information regarding qualified bidders to landlords after the July 1 bid
10 deadline, providing landlords with two (2) business days, and an intervening holiday weekend,
11 before having to file oppositions to potentially multiple competing bidders. Apart from the interests
12 of the parties, the “last minute” briefing and evidentiary presentation potentially required by the
13 Motion would leave this Court with little time to prepare in advance for the July 8, 2008 Sale
14 Hearing.

15 6. The Due Process Clause of the United States Constitution applies to proceedings
16 under the Bankruptcy Code. See, e.g., *In re Center Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir.
17 1985); *In re Hobdy*, 130 B.R. 318, 320 (9th Cir. BAP 1991). “The fundamental requisites of due
18 process consist of notice and an opportunity to be heard at a meaningful time and in a meaningful
19 manner,” *Turney v. Federal Deposit Ins. Corp.*, 18 F.3d 865, 868 (10th Cir. 1994). See also *In re*
20 *Nextwave Personal Communications, Inc.*, 244 B.R. 253, 264 (Bankr. S.D.N.Y. 2000) (“The
21 Bankruptcy Code “requires, as an element of basic fairness and due process, notice, a hearing and
22 court approval before actions impacting vital interests may be taken.”)

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1 7. Under Rule 6006 of the Federal Rules of Bankruptcy Procedure, a motion to assume,
2 reject or assign an unexpired lease is a contested matter under Rule 9014. Under Rule 9014, relief
3 shall be requested by motion, and a reasonable notice and opportunity for hearing shall be afforded
4 the party against whom the relief is sought.¹ The bidding and sale procedures proposed by Debtor's
5 Sale Procedures Motion drastically modify these standards, potentially providing landlords with the
6 factual information regarding one or more prospective assignees with insufficient time to respond
7 prior to the Sale Hearing, thus failing to comply with basic standards of due process.

8 8. Following the filing of the Motion, John Hancock Life Insurance Company (U.S.A.)
9 understands that negotiations between counsel for the Debtor, the Creditors' Committee and a
10 majority of the retail landlords affected by the Motion have produced a compromise by which the
11 proposed bidding and sale procedures and the timetable for hearing would be modified as follows:

12 • Debtor will serve its Cure Schedule on or before June 26, 2008,
13 • Qualified Bidders will be required to transmit any declarations or other evidence
14 regarding their proffered showing of adequate assurance of future performance directly to landlords
15 (or their counsel who have entered an appearance) by the July 1, 2008 Bid Deadline.

16 • If adequate assurance of future performance evidence for a particular bidder is not
17 submitted to counsel for the Debtor, the Committee and affected landlords by June 26, 2008, and if
18 such bidder is the successful bidder, landlords shall have a right to request a one-week continuance
19 of the July 8, 2008 Sale Hearing to address adequate assurance issues.

20 • Landlord's deadline to submit objections to the Motion For Order Authorizing and
21 Approving (1) The Sale of The Assets of eStyle, Inc. Free and Clear of Liens and (2) The
22 Assumption and Assignment of Unexpired Nonresidential Real Property Leases and Executory
23 Contracts In Connection Therewith ("Sale Approval Motion") (Docket No. 196) shall be extended to
24 July 2, 2008 (apart from any supplemental objection that might be required for adequate assurance of
25 future performance information received after June 26, 2008).

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27 ¹ Similarly, Bankruptcy Rule 6004(a) generally provides for twenty (20) days' notice of a proposed
28 sale of property other than in the ordinary course of business pursuant to Bankruptcy Rule 2002(a).
Bankruptcy Rule 6004(b) provides for objections to proposed sales to be filed and served not less
than five (5) days before the proposed sale date.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California; I am over the age of 18
4 years and am not a party to the within action. I am employed by the law firm of Moldo Davidson
5 Fraioli Seror & Sestanovich LLP, located at 2029 Century Park East, 21st Floor, Los Angeles,
6 California 90067, Telephone: (310) 551-3100, Facsimile: (310) 551-0238.

7 On **June 23, 2008**, I served the document(s) described as: **LIMITED OBJECTION TO
8 MOTION FOR ORDER APPROVING SALE PROCEDURES AND BREAK-UP FEE IN
9 CONNECTION WITH SALE OF ASSETS OF ESTYLE, INC., ETC.**, on the interested parties
10 in said action by enclosing the document(s) in a sealed envelope addressed as follows:

11 **SEE ATTACHED SERVICE LIST**

- 12 **BY MAIL:** I caused such envelope(s) with postage thereon, fully prepaid, to be placed in the
13 United States mail. I am "readily familiar" with the firm's practice of collection and
14 processing correspondence for mailing. Under that practice it would be deposited with U.S.
15 postal service on that same day with postage thereon fully prepaid at Los Angeles, California
16 in the ordinary course of business.
- 17 **BY FEDERAL EXPRESS/EXPRESS MAIL:** I caused said document(s) to be sent via
18 Federal Express / Express Mail for next business day delivery.
- 19 **BY FACSIMILE:** I caused said document(s) to be sent via facsimile.
- 20 **BY EMAIL:** I caused said document(s) to be sent via email to all parties whose email
21 addresses are indicated below.
- 22 **ELECTRONICALLY MAILED:** Said document(s) were electronically served on the
23 person(s) as indicated on the attached Notice of Electronic Filing.
- 24 **BY TELEPHONIC COMMUNICATION:** I telephoned the interested parties and gave
25 notice as indicated in my declaration.
- 26 **BY PERSONAL SERVICE:** I caused said document(s) to be delivered to the addressees
27 listed on the attached Service List.
- 28 **[State]** I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.
- [Federal]** I declare that I am employed in the offices of a member of the State Bar of this
Court at whose direction the service was made. I declare under penalty of perjury under the
laws of the United States of America that the above is true and correct.

Executed on **June 23, 2008**, at Los Angeles, California.


TRISH MELENDEZ

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Request For Special Notice