



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re:

BLUEFLY HOLDINGS, INC.,
a Delaware corporation,

BLUEFLY, INC., a Delaware
corporation,

Assignors,

To:

DSI ASSIGNMENTS, LLC,
A Delaware LLC acting solely in its
capacity as Assignee for the Benefit of
Creditors

Assignee.

C.A. NO. 2017-0041-AGB

**MOTION OF THE ASSIGNEE FOR AN ORDER APPROVING THE
SALE AGREEMENT WITH TOTAL FASHION, INC.**

DSI Assignments, LLC, (“**Assignee**”), in its sole and limited capacity as the Assignee for the Benefit of Creditors of Bluefly Holdings, Inc. and Bluefly, Inc. (the “**Assignors**”), under a General Assignment for the Benefit of Creditors dated January 20, 2017 (the “**Assignment Agreement**”), respectfully moves (the “**Motion**”) for entry of an order approving the Asset Purchase Agreement, attached hereto as Exhibit A (the “**Agreement**”), with Total Fashion, Inc. (the “**Buyer**”). In support of this Motion, the Assignee states as follows:

1. Pursuant to 10 Del. C. § 7381, this Court has jurisdiction over assignments for the benefit of creditors.

2. The Assignors are Delaware corporations. The Assignors operate an online marketplace focused on the sale of apparel and accessories. The Assignors held title to all of their personal property and assets used in connection with the operation of their business (the “**Assets**”). The Assets are more fully described in the Agreement.

3. Prior to the Assignment Date (defined below), the boards of the Assignors each considered and engaged in a number of activities meant to solve the financial deterioration of the Assignors, including engaging Needham & Company, LLC and other advisors to assist the Assignors with their evaluation and consideration of a variety of potential transactions, including the marketing and potential sale of substantially all of Bluefly’s assets. With the assistance of their advisors, the Assignors solicited over 100 parties regarding their desire to purchase the assets of Bluefly. Additionally, the Assignors considered, and with the assistance of their advisors, attempted to negotiate various acquisition and financing proposals. Ultimately, the Assignors were unable to consummate any transaction with respect to the assets.

4. The boards of the Assignors each further considered seeking bankruptcy protection under either chapter 7 or 11. But, after a thorough analysis,

the boards concluded that an assignment for the benefit of creditors was the most expeditious method of resolving the Assignors' financial difficulties while protecting employees and preserving the Assignors' business.

5. On or about January 20, 2017 (the "**Assignment Date**"), the Assignors delivered to the Assignee their general assignment for the benefit of their creditors. On January 20, 2017, Assignee filed the Petition for Assignment for the Benefit of Creditors (the "**Petition**").

6. Pursuant to the Assignment Agreement, the Assignors transferred to the Assignee:

all right, title and interest in personal property and assets, whatsoever and wheresoever situated, which are now, or have ever been, used in connection with the operation of Assignors' businesses, and which assets include, but are not limited to all personal property and any interest therein exempt from execution, including all stock of merchandise, store furniture and fixtures, book accounts, books, bills, accounts receivable, cash on hand, cash in bank, patents, copyrights, trademarks and trade names, URL's or related website rights, social media platforms, insurance policies, tax refunds, rebates, general intangibles, insurance refunds and claims, and choses in action that are legally assignable, together with the proceeds of any non-assignable choses in action that may hereafter be recovered or received by any one or more of the Assignors. Further, this general assignment specifically includes all claims for refunds or abatement of all excess taxes heretofore or hereafter assessed against or collected from any one or more of the Assignors by the United States or any of its departments or agencies, any state or local taxing authority (the "**Estate**").

Assignment Agmt. ¶ 1.

7. The Assignment Agreement further authorizes the Assignee to sell the assets of the Estate. Specifically, the Assignment Agreement provides that the Assignee “shall have all powers necessary to marshal and liquidate the Estate including . . . To sell or otherwise dispose of all personal property.” Id. ¶ 5(b).

8. The Assignment Agreement also authorizes the Assignee to: “conduct the business of the Assignors until the completion of the sale process for the Assignors’ business,” id. ¶ 5(g); “settle any and all claims,” id. ¶ 5(e); and to “prosecute any action in the name of any one or more of the Assignors.” Id. ¶ 9.

9. On or about January 27, 2017, the Assignee provided notice of the assignment, the Petition, and this motion to approve the sale to the Buyer pursuant to the Agreement to all known creditors of the Assignors.

10. The Assets represent the entirety of the of Assignors’ assets and are encumbered by a first lien held by the Buyer pursuant to the Revolving Credit and Security Agreement dated as of August 23, 2013 (the “**Credit Agreement**”). There is approximately \$4.85 million outstanding under the Credit Agreement.

11. The Assets are also encumbered by a second lien securing the 8% Subordinated Secured Promissory Notes due 2017 (the “**Notes**”) under a Note Purchase Agreement. There is approximately \$15.7 million outstanding under the Notes.

12. The Buyer is beneficially owned by parties that previously beneficially owned the Assignors.

13. During this sale process, and for further administration of the Estate, the Buyer has agreed to fund the costs of administering the Estate, the winding down of the Assignors' business, and other reasonable expenses out of its cash collateral consistent with a budget agreed upon between the Buyer and the Assignee. The Buyer also stands ready to provide additional funding if necessary to meet budgetary obligations.

14. The Assignee believes in light of the previous marketing efforts to sell the Assignors' business that the Buyer's bid is the highest and best offer for the Assets. The Agreement provides that the Buyer will credit bid \$4 million of the secured obligations under the Credit Agreement and the Notes and assume the remaining obligations of the Notes under the Note Purchase Agreement for the Assets on "as is, where is" condition. Thus, if a sale is approved pursuant to the terms of the Agreement, a significant portion of outstanding secured debt will be satisfied.

15. The Agreement provides that the Assignee shall use its best efforts to schedule a hearing to approve the sale 10 days from the date of this Motion, or as soon as the Court will allow. The Assignee believes that, because of the extensive and lengthy pre-Assignment marketing of the Assignors' Assets, no further

marketing efforts are required. Accordingly, this 10 day period is reasonable and necessary to ensure the continuity of the Assignors' business and the preservation of numerous jobs.

RELIEF REQUESTED

16. The Assignee requests approval of its entry into the Agreement with Buyer.

BASIS FOR RELIEF

I. Approval of the Sale of the Assets.

17. As set forth above, the Assignors' Assignment Agreement vested legal title to, and transferred possession of, the Assets to the Assignee. Moreover, the Assignment Agreement empowers the Assignee to sell assets of the estate for the benefit of Assignors' creditors.

18. The Assignee seeks approval of the Agreement so that he may liquidate the assets of the Assignors for the benefit of Assignors' creditors in furtherance of the Assignee's fiduciary duties. Based upon his reasonable business judgment, the Assignee further submits that sale of the Assets, pursuant to the Agreement, is in the best interests of the Assignors' creditors. Attached as Exhibit B is Assignee's Affidavit in support of this Motion. Additionally, Buyer's Declaration in Support of the Sale Motion is attached hereto as Exhibit C.

19. The Assignee further submits that the purchase price is fair and reasonable and that the purchase price constitutes reasonably equivalent value, fair consideration, and fair value under the Uniform Fraudulent Transfer Act and the Uniform Fraudulent Conveyance Act.

20. The Agreement was negotiated at arms-length and in good faith.

21. The Assignee requests that the Assets be sold subject only to the Assumed Liabilities as provided for in the Agreement. The Court of Chancery has allowed similar relief in the related case of In re Indigen Armor, C.A. 9626-CB.

22. Accordingly, for the foregoing reasons, the Assignee respectfully submits that the Court should authorize the Assignee's entry into the Agreement, including the sale of the Assets to the Buyer.

NOTICE

16. Notice of this Motion will be sent to (i) creditors of Assignors, (ii) the Assignors' principal secured lenders, (iii) any taxing authorities asserting an interest in the assets subject to the Agreement, and (iv) any other party having filed a notice of appearance and/or having requested service of notices in this matter. The Assignee submits that, under the circumstances, no other and further notice is required.

WHEREFORE, the Assignee respectfully requests that this Court (i) enter an order substantially in the form attached as Exhibit D authorizing the Assignee's

entry into the Agreement and (ii) grant the Assignee such other and further relief as is just and proper.

Dated: January 27, 2017
Wilmington, Delaware



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