

Mone v Karambiri
2020 NY Slip Op 32447(U)
July 24, 2020
Supreme Court, New York County
Docket Number: 651702/2014
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART

IAS MOTION 53EFM

Justice

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KISITO MONE,

INDEX NO. 651702/2014MOTION DATE 07/17/2020

Plaintiff,

MOTION SEQ. NO. 006

- v -

BEN MALIK KARAMBIRI, ELIZABETH MURPHY, ELEVEN,
KHM, LLC, ELEVEN 1 L.L.C., ELEVEN 2 L.L.C.,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 125, 126, 127, 128, 129, 130

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

A motion ("**Motion**") having duly come to be heard before this Court on July 24, 2020, without any opposition submitted thereto, for an Order authorizing Leslie A. Berkoff, the Court-appointed Receiver ("**Receiver**") of Eleven KHM, LLC, Eleven I, LLC and Eleven 2, LLC (collectively, the "**Companies**") to: (a) return to customers of the Companies consigned items supported by, and sufficiently identified in, written contracts produced by customers of the Companies and delivered to the Receiver on or before June 30, 2020 (the "**Matched Items**"); (b) liquidate: (i) any inventory of the Companies (the "**Inventory**"); (ii) any assets, equipment, furniture and other materials or possessions of the Companies ("**FF&E**"); (iii) any consigned items, wherein any claim of ownership was not supported by, or specifically identified in, a written contract delivered to the Receiver on or before June 30, 2020 (the "**Unmatched Items**"); and, (iv) any items where the Receiver has not received an executed Receipt and Release and/or which are not picked up within the fourteen days of notification by the Receiver (the "**Unclaimed Items**"); (c) retain Le Fay Consulting, as a liquidator to attempt to sell and liquidate

the Inventory, FF&E, Unmatched Items and Unclaimed Items; (d) abandon and/or donate, for no consideration, unsold Inventory, FF&E, Unmatched Items and Unclaimed Items; (e) vacate and abandon the premises and leaseholds previously occupied by the Companies; and (f) granting such other, further and additional relief as this Court deems proper.

NOW, upon the reading of the Notice of Motion dated July 17, 2020, the Affidavit of Leslie A. Berkoff, Receiver, sworn to on July 17, 2020 and all exhibits thereto, in support of the Motion and detailing the Receiver's efforts to identify, locate and notify all customers of the Companies to claim consigned items; and due notice having been given to the named parties, and having been no opposition to the Motion filed by any party, and due deliberation having been had thereon, it is

ORDERED, that based upon the Receiver's Affidavit, demonstrating that the Receiver has exerted her best efforts to identify, locate and notify all customers of the Companies and that the Master List set forth therein is an appropriate notification list for purposes of the relief sought in the Motion, the Motion is granted in all respects; and it is further

ORDERED, that, the Receiver is authorized to vacate and abandon the former business premises of the Companies located at: (i): 70 Fifth Avenue, Brooklyn, New York 11217 ("**Brooklyn Premises**") and 180 First Avenue, New York, New York 10009 ("**NY Premises**") (and together Brooklyn Premises, referred to as "**Corporate Premises**") on or about August 15, 2020; and it is further

ORDERED, that the Receiver shall, upon receipt of an executed Receipt and Release in the form of *Exhibit D* to the Motion, return Matched Items to customers in accordance with the Master List by making such items available at the NY Premises; and it is further

ORDERED, that to the extent the Receiver does not receive an executed Receipt and Release from a customer and/or any Matched Item(s) are not picked up from the NY Premises within **fourteen (14) days** of notification by the Receiver, such Matched Item(s) will be deemed abandoned by the customer(s) and shall become Unclaimed Items; and it is further

ORDERED, that the Receiver may liquidate any and all Inventory, FF&E, and Unmatched Items and Unclaimed Items (collectively, the "**Liquidation Items**") which shall also include, without limitation, clothing racks, display cases, display equipment, mannequins, vacuums, mirrors, cabinets, security systems and miscellaneous items such as cleaning supplies, register drawers or other items the ownership of which is not supported by specific identification in a written contract delivered to the Receiver on or before June 30, 2020; and it is further

ORDERED, that the Receiver may retain the services of Le Fay Consulting ("**LFC**") Fiduciary No. 105694 on the terms and conditions attached as *Exhibit C* to the Motion (the "**Retention Agreement**") to assist in the sale of all Liquidation Items including the Inventory, FF&E, Unmatched Items and Unclaimed Items; and it is further

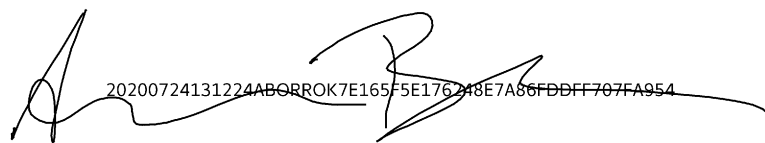
ORDERED, that consistent with the Retention Agreement, LFC may be paid as the Liquidation Items are sold the commissions and expenses identified in the Retention Agreement, provided that LFC adheres to the following requirements: (i) consults with the Receiver on the pricing and sale of the Liquidation Items and any reduction in price for the same; (ii) provides the Receiver with regular monthly reports on the status of the sale of the Liquidation Items and the commissions to be paid consistent with the Retention Agreement; (iii) LFC promptly remits to the Receiver the Receiver's share of the commissions within seven (7) days of LFC receipt of the same; (iv) LFC understands that all commissions paid to LFC and any expenses that are to be reimbursed are subject to both documentation and the final review and approval of this Court upon appropriate application; and it is further

ORDERED, that in the event that the Receiver is unable to sell any of the Liquidation Items, the Receiver has the authority to donate these items to a charity or dispose of the same in any manner she deems fit and appropriate; and it is further

ORDERED, that the Receiver shall hold any funds received from the sale of the Liquidation Items (the "**Liquidation Funds**") pending further application and Order of the Court for payment of any fees, commission or expenses; and it is further

ORDERED, that the Liquidation Funds shall be held until further Order of the Court and no distribution made to any customer, creditor or other holder of a claim against the Companies subject to further Order of this Court in order to ensure that the potential claims of all such parties can be considered.

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7/24/2020

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

☒

CASE DISPOSED

☒

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE