

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

In re:	)	Chapter 11
	)	
Trade Secret, Inc., <i>et al.</i> ,	)	Case No. 10-12153(KG)
	)	(Jointly Administered)
Debtors.	)	
_____	)	<b>Re Dkt No. 790, 804 &amp; 814</b>

**MEMORANDUM ORDER GRANTING  
MOTION TO ENFORCE ORDER DISMISSING CHAPTER 11 CASES**

The Court has before it the Motion of Houston BW, Inc. (“Houston”) to Enforce Order Dismissing Chapter 11 Cases (the “Motion”) (D.I. 790). Upon review of the pleadings, and following an evidentiary hearing on May 1, 2012 (the “Hearing”), the Court ORDERS that the Motion is GRANTED. As described in more detail herein, the Court holds that both Regis and Pure Beauty are jointly and severally liable for the Final Arbitration Award, as set forth in the Arbitration Notice (defined herein), based on the Court’s and Houston’s understanding of the sale transaction as it related to Houston which, in turn, is premised on documentation.

**JURISDICTION**

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1409.

## **BACKGROUND**

The present dispute arises out of Trade Secret, Inc.'s (the "Debtors") 2010 bankruptcy filing. Houston was a franchisee of the Debtors pursuant to certain Franchise Agreements. *See Motion, Exhibit A - Interim Award of the Arbitrator*, at 1-2. In connection with these Franchise Agreements and the operation of the franchises, Houston entered into a License Agreement with Debtors (BeautyFirst, Inc.) pursuant to which Houston was granted a license to use a software system developed and maintained by BeautyFirst, Inc. *Id.* In 2008, disputes arose under the Franchise Agreements and Houston sought arbitration because it asserted that BeautyFirst, Inc. was not rendering the services required under the Franchise Agreements. *Id.* at 3-4. Debtors responded by informing Houston that they would participate in the arbitration, but intended to carry through with the threat to terminate the Franchise Agreements and to take steps to enforce certain non-compete provisions, thereby shuttering Houston's business before the arbitration could commence. *Motion*, at ¶ 7. In response, on May 11, 2010, Houston sought injunctive relief in an action filed in Kansas State Court (the "Kansas State Court Litigation"). *Id.* at ¶ 17. The Kansas State Court entered an order prohibiting Debtors from taking any actions until the issues were determined through the arbitration. *Id.* The foregoing recitation of facts illustrates the difficulties and expense Houston encountered to enforce its arbitration rights.

On July 6, 2010, the Debtors filed the bankruptcy proceedings (the “2010 Bankruptcy Case”). On August 5, 2010, the Court entered an Order, authorizing procedures in connection with the sale of the Debtors’ Assets (the “Sale Procedures Order”) (D.I. 225). On September 16, 2010, the Court entered an Order authorizing the sale of the Debtors’ Assets (the “Sale Order”) (D.I. 464). The Purchaser under the Asset Purchase Agreement (the “APA”) was Regis Corporation, a Minnesota corporation (“Regis”). Pure Beauty Salons & Boutiques, Inc. and BeautyFirst Franchise Corp. (collectively, “Pure Beauty”) were the Assignees under the APA. The Debtors and Regis assert that under the APA, the parties understood that Regis was only credit bidding its secured claim and that if there was an assignment to Pure Beauty, Regis was not taking title to the Acquired Assets nor assuming liabilities. In short, the Debtors and Regis assert that under the APA, Regis neither took title to the Acquired Assets nor assumed the Assumed Liabilities, including any claim that arose as a result of the arbitration proceeding between Houston and the Debtors.

On September 27, 2010, the Court entered an Order Modifying Automatic Stay as to Houston and others, allowing Houston to proceed with the Kansas State Court Litigation and to commence or pursue arbitration with the purpose of liquidating Houston’s claims. (D.I. 494). On January 31, 2011, this Court entered an Order Dismissing the above-captioned case (the “Dismissal Order”) (D.I. 767). The Dismissal Order provided that:

[t]he Purchaser, hereby agrees that the individual franchise agreements (collectively, the “Franchise Agreements”) by and between the Debtors and Houston BW, Inc. . . . (collectively, the “Franchisees”) as set forth in greater detail on the schedule attached hereto as Exhibit A shall be deemed assumed and assigned to the Purchaser; provided, however, that the Purchaser, its

successors and assigns shall, pay, in satisfaction of any cure obligations pertaining to the assumption and assignment of the Franchise Agreements, any and all amounts as may be awarded, if any, to the Franchisees in connection with any pending Arbitration Proceeding and/or Kansas State Court Litigation (as defined in the Franchisee's limited objection to the Motion, Docket No. 736] on such terms and conditions as may be ordered in the Arbitration Proceeding . . . .

*Dismissal Order*, at ¶ 6. To the extent the Purchaser, its successors and assigns failed to pay the cure amount within thirty days of the entry of any order in the Arbitration Proceeding, the Court retained jurisdiction to enforce payment. *Id.* Finally, the Dismissal Order provided that “All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.” *Dismissal Order*, at n.2. The Motion referenced in the preceding sentence is the Motion For an Order Pursuant to Sections 105(a) and 1112(b) of the Bankruptcy Code and 8 Del. C. § 303 (I) Approving the Dismissal of the Debtors' Chapter 11 Cases; (II) Authorizing the Dissolution of the Debtors' Corporate Entities; and (III) Granting Related Relief dated October 12, 2010 (the “Dismissal Motion”) (D.I. 534). The term “Purchaser” is not defined in the Dismissal Order. However, the Dismissal Motion defines the Purchaser as: “[t]he Debtors, Regis Corporation (“Regis”) and Regis's assignees, Pure Beauty Salons and Boutiques, Inc. and BeautyFirst Franchise Corp. (together, the “Assignees” and collectively with Regis, the “Purchaser”)” . . . . *Dismissal Motion*, at 3.

On June 30, 2011, the Arbitrator in the Kansas State Court Litigation entered an Interim Award in favor of Houston in the amount of \$91,821.74 to be paid “[n]o later than July 29, 2011.” *Notice and Filing of Arbitration Award in Favor of Houston BW, Inc.* (the “Arbitration Notice”) (D.I. 789) at ¶ 2. Thereafter, on July 21, 2011, the Arbitrator entered

his final award in favor of Houston for an additional \$225,246.86 to be paid no later than August 31, 2011 (the “Final Arbitration Award”). *Id.* at ¶ 3. On August 1, 2011, Houston filed the Arbitration Notice in Favor of Houston in the 2010 Bankruptcy Case asserting that the Purchaser, its successor and assigns, owed Houston the principal amount of \$317,069.60 in satisfaction of the Purchaser’s cure obligations pertaining to the assumption and assignment of the Franchise Agreement, per the Final Arbitration Award. *Id.* at ¶ 4. On August 18, 2011, Houston made its first demand to Regis for payment of the Final Arbitration Award. *Joint Objection to Motion to Enforce Order Dismissing Chapter 11 Cases*, (the “Joint Objection”) (D.I. 794) at ¶ 27.

On November 9, 2011 Houston filed the instant Motion. On February 22, 2012, Regis and Pure Beauty filed their Joint Objection. On March 12, 2012, Houston filed its Reply in Support of Motion to Enforce Order Dismissing Chapter 11 Cases (D.I. 799). On March 21, 2012, the Court entered an Order Reopening Case and Scheduling Evidentiary Hearing (the “Reopening Order”) (D.I. 804). In the Reopening Order the Court noted that the gravamen of the Motion was that the various motions and orders which the parties submitted led to Houston’s and the Court’s reasonable expectation that Regis was the Purchaser for the purposes of liability to Houston.

Houston asserts that it made several demands on Regis to satisfy the Final Arbitration Award and that Regis has denied liability and has failed to make any payments. Regis’ Assignees under the APA, Pure Beauty Salons and Boutiques, Inc. and BeautyFirst Franchise Corp., filed voluntary petitions under chapter 11 of the Bankruptcy Code on October 4, 2011.

Houston is requesting that this Court Order Regis to pay the full Final Arbitration Award, as required in the Court’s Dismissal Order. The primary issue is whether Regis remains responsible for the Final Arbitration Award.

### **DISCUSSION**

Based on the evidence presented at the Hearing and the process of the sale and dismissal, the Court finds that Regis was the “Purchaser” in the Dismissal Order and is therefore liable to Houston, jointly and severally. Although Regis and Debtors engaged in a sale transaction that they understood to carry a different meaning, throughout the case Regis was clearly the “Purchaser.” Regis was unambiguously defined as “Purchaser” in every document presented to the Court, except in the Dismissal Order in which “Purchaser” is not a defined term. In the Motion seeking dismissal – after the Sale – Regis is identified as “Purchaser.” Specifically, Regis is denominated as “Purchaser” in the following:

- (1) Debtors’ Motion for Order. . . Approving Procedures in Connection with Sale of Debtors’ Assets. . . .(D.I. 19).
- (2) Asset Purchase Agreement . . . . (D.I. 104).
- (3) Order. . . Authorizing Sale . . . . (D.I. 464).<sup>1</sup>
- (4) Debtors’ Motion for an Order. . . Approving the Dismissal of the Debtors’ Chapter 11 Cases . . . . (D.I. 534).

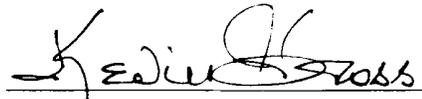
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<sup>1</sup> Regis was not only defined as “Purchaser,” but the Court was asked to and did make such findings as Regis provided adequate assurance of future performance and was a good faith purchaser.

Regis' and Pure Beauty's understanding that Regis was merely credit bidding under the APA without assuming any liability as to the Final Arbitration Award because Regis never took title but instead immediately assigned the sale assets to Pure Beauty does not change Houston's and the Court's reasonable reliance and the effect of the Dismissal Order. Therefore, both Regis and Pure Beauty are jointly and severally liable for the Final Arbitration Award, as set forth in the Arbitration Notice filed with this Court. Regis and/or Pure Beauty shall make payment of the Final Arbitration Award, plus interest at the legal rate, on or before June 30, 2012.

So Ordered.

Dated: June 8, 2012

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.

KEVIN GROSS, U.S.B.J.