

STEVE BROWN & ASSOCIATES, LLC
1414 EAST INDIAN SCHOOL ROAD, SUITE 200
PHOENIX, ARIZONA 85014
(602) 264-9224

Steven J. Brown (#010792) sbrown@sjbrownlaw.com
Steven D. Nemecek (#015219) snemecek@sjbrownlaw.com
Attorneys for Trustee

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

In re:

YOMTOV SCOTT MENAGED,

Debtor.

In Proceedings Under Chapter 7

Case No. 2:16-bk-04268-PS

**TRUSTEE'S MOTION FOR ORDER
APPROVING SETTLEMENT
BETWEEN TRUSTEE AND DENSCO
RECEIVER PETER S. DAVIS RE:
FURNITURE KING**

Pursuant to Bankruptcy Rule 9019, Chapter 7 Trustee Jill H. Ford (the "Trustee") requests the Court enter an order approving a Settlement Agreement between the Trustee and Peter S. Davis, state court-appointed Receiver for DenSco Investment Corporation. A copy of the Settlement Agreement is attached hereto as Exhibit "A" (the "Agreement"). This motion contains only a summary of the key terms. The settlement is governed by the Agreement. The settlement is in the best interests of the Estate and its creditors. This Motion is supported by the following Memorandum Of Points And Authorities.

...

...

...

...

1 DATED this 14th day of September, 2016.

2 STEVE BROWN & ASSOCIATES, LLC

3 By /s/ Steven D. Nemecek

4 Steven J. Brown

5 Steven D. Nemecek

6 1414 East Indian School Road, Suite 200

7 Phoenix, Arizona 85014

8 Attorneys for Trustee

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. BACKGROUND**

11 **A. Furniture King**

12 Debtor filed for Chapter 7 relief on April 20, 2016. Trustee Jill Ford was appointed and
13 retained undersigned counsel by order dated May 4, 2016. This case was dismissed on May
14 12, 2016, and reinstated on June 2, 2016. Debtor was examined at a Section 341 meeting of
creditors on August 26, 2016.

15 Debtor has stated that he is the sole member and manager of the following Arizona
16 limited liability companies:

- 17 (1) Furniture King, LLC, formed on August 26, 2011 ("FK");
18 (2) Furniture & Electronic King LLC, formed on December 4, 2015 ("FEK"); and
19 (3) Scott's Fine Furniture, LLC, formed on March 23, 2016 ("SFF").

20 According to Debtor, FEK is a continuation or successor of FK, and SFF is a
21 continuation or successor of FEK, and thus FK, FEK, and SFF are referred to herein as
22 "Furniture King" because they are all one business.

23 Furniture King was in the business of selling furniture until late August 2016, when
24 Debtor informed the Trustee that he was walking away from Furniture King and taking a loan
25 from his father and starting a new furniture business called American Furniture. Furniture
26 King was operating at the following (leased) three stores and warehouse when Debtor walked

1 away:

- 2 (1) 5905 West Bell Road, Glendale, Arizona (store)
- 3 (2) 13550 West Van Buren Street, Goodyear, Arizona (store)
- 4 (3) 4245 West Thomas Road, Suite 105, Phoenix, Arizona (store)
- 5 (4) 34 North 45th Avenue, Unit C/D, Phoenix, Arizona (warehouse)¹

6 Debtor informed the Trustee that he left Furniture King's hard assets (mostly furniture
7 inventory) at each of the above locations, except that he caused the Thomas Road store
8 location's hard assets to be moved to the warehouse, because he was going to enter into a new
9 lease and begin operating American Furniture at the Thomas Road store location with new
10 inventory purchased with the loan being taken from his father. Thus, all of Furniture King's
11 known hard assets are located at the Bell Road store location, the Van Buren store location,
12 and the warehouse.

13 Before Debtor informed the Trustee that he was shutting down Furniture King, the
14 Trustee's auctioneer inspected all three stores and warehouse and concluded that the combined
15 liquidation value of the furniture inventory across those locations was probably in excess of
16 \$100,000. However, there are numerous liens filed against Furniture King's assets, including a
17 UCC-1 lien in favor of DenSco Investment Corporation ("DenSco") filed on May 8, 2014, at
18 Arizona Secretary of State File Number 2014-001-5063-0.

19 The Trustee has contacted the Furniture King landlords, who have informed the Trustee
20 that they have completed or are in the midst of lockout procedures and want their spaces
21 cleared out. Thus, Furniture King's inventory and other hard assets, which are part of
22 DenSco's collateral, are sitting in the leased locations where Debtor left them and depreciating
23 in value.

24 ¹ The Trustee is aware of two other store locations at which Furniture King was operating: (1)
25 1660 South Alma School Road, Mesa, Arizona; and (2) 7320 West Bell Road, Glendale,
26 Arizona. Debtor informed the Trustee that those stores were closed around the time that he
filed bankruptcy and their furniture items were either liquidated at going out of business sales
or moved to other Furniture King locations.

1 **B. The DenSco State Court Receivership**

2 Debtor and DenSco had previously entered into a Forbearance Agreement dated April
3 16, 2014, under which among other things, the stated debt owed to DenSco was
4 \$35,639,880.71, and DenSco was granted a UCC lien against all or almost all of FK's assets
5 including inventory and equipment and any proceeds.

6 On or about August 18, 2016, Peter S. Davis was appointed as Receiver (the "DenSco
7 Receiver") over DenSco pursuant to an order entered in Maricopa County Superior Court Case
8 No. CV2016-014142.

9 The DenSco Receiver believes based on his preliminary investigation that the balance
10 owed to DenSco may have increased to over \$40,000,000.00 after the Forbearance Agreement
11 was signed. It also appears that DenSco's UCC lien against Furniture King's assets is in first
12 position. Thus, the DenSco Receiver asserts first-position lien rights against Furniture King's
13 assets (which includes the assets of FK, FEK, and SFF) and wants to liquidate those assets for
14 the benefit of the DenSco Receivership Estate immediately.

15 The Trustee and the DenSco Receiver agree that Furniture King's assets should be
16 liquidated immediately, and that the DenSco Receiver, who is also an independent, court-
17 supervised fiduciary, is the appropriate person to pursue that liquidation given DenSco's first-
18 position lien against Furniture King's assets and asserted \$40 million secured debt.

19 **II. The Proposed Settlement**

20 The Trustee and the DenSco Receiver, through their respective attorneys, have
21 discussed the issues and their respective positions. The Trustee, exercising her sound business
22 judgment, has decided to enter into a settlement. The following only summarizes the key
23 terms. The settlement is governed by the Agreement attached hereto as Exhibit "A".

24 The Trustee and the DenSco Receiver will execute a stipulation to expand the DenSco
25 Receivership to include Furniture King, which effectively will place Furniture King (which
26 includes FK, FEK, and SFF) into the DenSco Receivership pending in Maricopa County

1 Superior Court Case No. CV2016-014142 under the terms of the DenSco Receivership Order.
2 A copy of the executed Stipulation is attached to the Settlement Agreement as Exhibit “A”.
3 The Trustee and the DenSco Receiver agree that 10% of the net recoveries from the DenSco
4 Receiver's liquidation of Furniture King's assets will be distributed by the DenSco Receiver to
5 the Trustee for eventual distribution to Debtor's creditors. While the DenSco Receiver has
6 determined that DenSco is a secured creditor with the most senior priority as to the assets of
7 Furniture King, the DenSco Receiver shall notify all other creditors of Furniture King of
8 Furniture King's inclusion in the DenSco Receivership and, after the assets of Furniture King
9 are liquidated, if it is determined that there are other creditors who may have a claim that is
10 senior to that of the DenSco Receiver, the DenSco Receiver shall see that those secured
11 creditors are paid. The proceeds from the liquidation of Furniture King's assets shall be
12 retained by the DenSco Receiver in a segregated bank account of the DenSco Receivership
13 Estate until the Maricopa County Superior Court determines that, after notice to all creditors of
14 Furniture King, any remaining proceeds can be paid to the DenSco Receiver in partial
15 satisfaction of DenSco's secured claim.

16 **III. The Court Should Approve The Settlement.**

17 Bankruptcy Rule 9019(a) allows the Court to approve a settlement on motion by the
18 Trustee. The Ninth Circuit requires that the bankruptcy court consider the following factors in
19 evaluating a settlement or compromise: (1) the probability of success in the litigation; (2) the
20 likely difficulties in collection; (3) the complexity of the litigation; (4) the expense,
21 inconvenience, and delay necessarily attending it; and (5) the paramount interest of the
22 creditors. Martin v. Kane (In re A & C Properties), 784 F.2d 1377 (9th Cir.), cert. denied sub
23 nom. Martin v. Robinson, 479 U.S. 854 (1986). Thus, the standard for approving a settlement,
24 whether it is in the best interest of the estate, entails an examination of the settlement's terms
25 with the litigation's probable cost and benefits.

1 Here, the settlement will help bring monies into the Estate. The Trustee stands in
2 Debtor's shoes with respect to the 100% membership interests in Furniture King and does not
3 believe pursuing a sale of the membership interests will result in a better recovery, as the
4 amount of debt owed by Furniture King, including the \$40 million secured debt asserted by the
5 DenSco Receiver, far exceeds the value of Furniture King's assets. There simply is no way for
6 the Trustee to administer the 100% membership interests in Furniture King or conduct a
7 liquidation of Furniture King's assets and net more than she will net under the settlement with
8 the DenSco Receiver.

9 **IV. Conclusion**

10 Based on the foregoing, the Trustee respectfully requests that the Court enter an order
11 approving the Agreement.

12 DATED this 14th day of September, 2016.

13 STEVE BROWN & ASSOCIATES, LLC

14 By /s/ Steven D. Nemecek

15 Steven J. Brown

16 Steven D. Nemecek

17 1414 East Indian School Road, Suite 200

18 Phoenix, Arizona 85014

19 Attorneys for Trustee

20 Copy of the foregoing electronically filed and
21 served via emailed this 14th day of
22 September, 2016, to:

23 Cody J. Jess

24 Schian Walker, P.L.C.

25 1850 North Central Avenue, #900

26 Phoenix, AZ 85004

cjess@swazlaw.com

Attorneys for Debtor

Jennifer Giaimo

Office of the U.S. Trustee

230 North First Avenue, Suite 204

1 Phoenix, AZ 85003-1706
2 jennifer.a.giaino@usdoj.gov

3 Cynthia L. Johnson
4 Law Office of Cynthia L. Johnson
5 11640 East Caron Street
6 Scottsdale, AZ 85259
7 cynthia@jsk-law.com
8 Attorneys for Sell Wholesale Funding, LLC

9 David L. Knapper
10 Law Offices of David L. Knapper
11 1599 East Oranewood Avenue, Suite 125
12 Phoenix, AZ 85020
13 david.knapper@azbar.org
14 Attorney for AZBEN Limited, L.L.C.

15 Kevin J. Blakley
16 Gammage & Burnham P.L.C.
17 Two North Central Avenue, 15th Floor
18 Phoenix, Arizona 85004
19 kblakley@gblaw.com
20 Attorneys for Shawna C. Heuer, personal
21 representative of the Estate of Denny J. Chittick

22 Ryan W. Anderson
23 Alisan M.B. Patten
24 Guttilla Murphy Anderson
25 5415 East High Street, Suite 200
26 Phoenix, AZ 85054
randerson@gamlaw.com
apatten@gamlaw.com
Attorneys for Receiver Peter S. Davis

Perry L. Goorman
16427 North Scottsdale Road, Suite 410
Scottsdale, AZ 85254-7102
plg@goormanlaw.com
Attorney for Phoenix Newspapers, Inc.

Timothy H. Barnes
Timothy H. Barnes, P.C.
428 East Thunderbird Road, #150

1 Phoenix, Arizona 85022
2 tim@thbpc.com
3 Attorney for Redi Carpet, LLC

4 James E. Shively
5 Ball Santin & McLeran PLC
6 2999 N 44th St Ste 500
7 Phoenix, AZ 85018-7252
8 shively@bsmplc.com
9 Attorneys for BMW Financial Services, NA, LLC

10 Janet Marie Spears
11 Aldridge Pite
12 2 North Central Avenue, Suite 1135
13 Phoenix, AZ 85004
14 jspears@aldridgepite.com
15 Attorneys for US Bank National Association

16 Andrew Q. Everroad
17 Bonnett Fairbourn Friedman & Balint PC
18 2325 East Camelback Road, Suite 300
19 Phoenix, AZ 85016-3422
20 aeverroad@bfffb.com

21 Nancy K. Swift
22 Buchalter Nemer
23 16435 N Scottsdale Rd Ste 440
24 Scottsdale, AZ 85254-1754
25 nswift@buchalter.com

26 Jason Tamashiro
Tamashiro Law Office
21515 Hawthorne Blvd Ste 650
Torrance, CA 90503
jason@tamashirolaw.com

By: /s/ Karen Flaaen