

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Jointly Administered Under
Case No. 08-46617

Polaroid Corporation, et al., Court File No. 08-46617 (GFK)

Debtors.

Includes:

Polaroid Holding Company	08-46621
Polaroid Consumer Electronics, LLC	08-46620
Polaroid Capital, LLC	08-46623
Polaroid Latin America I Corporation	08-46624
Polaroid Asia Pacific, LLC	08-46625
Polaroid International Holding, LLC	08-46626
Polaroid New Bedford Real Estate, LLC	08-46627
Polaroid Norwood Real Estate, LLC	08-46628
Polaroid Waltham Real Estate, LLC	08-46629

Chapter 11 Cases

OBJECTION OF MICHAEL L. O'SHAUGHNESSY TO PROPOSED SALE OF DEBTOR'S
ASSETS PURSUANT TO ORDER: 1) APPROVING AUCTION AND BIDDING
PROCEDURES; 2) APPROVING BREAK-UP FEE EXPENSE REIMBURSEMENT AND
OTHER BUYER PROTECTIONS; 3) APPROVING NOTICE AND FOR GRANTED
RELATED RELIEF

To: The parties specified in Local Rule 9013-3

Michael L. O'Shaughnessy ("O'Shaughnessy") by and through his undersigned counsel hereby submits the following Limited Objection to the Debtors' motion to sell substantially all of the Debtors' assets pursuant to the terms of that certain Asset Purchase Agreement dated as of January 24, 2009 ("the Purchase Agreement") by and among certain of the debtors and PCH Acquisitions LLC (the "Stalking Horse Bidder") or to the successful bidder at that certain auction to be conducted on or about March 30, 2009 pursuant to the terms of the Court's Order dated February 18, 2009 approving auction and bidding procedures and related relief. For the

reasons set forth herein, O'Shaughnessy objects to the proposed sale of the Debtor's assets, unless any order approving the sale contains certain protections for his interest, and states as follows:

1. On December 18, 2008 the above-captioned Debtors (the "Debtors") filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code). The Debtors filed motions for an order to allow the above entitled cases to be jointly administered, which motion was granted by the Court on December 23, 2008.

2. The Debtors continue in possession of their respective properties and have continued to operate their businesses as debtors in possession pursuant to 11 U.S.C. § 1107 and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in the Debtors' Chapter 11 cases. An official committee of unsecured creditors was appointed on or about January 8, 2009

4. On January 28, 2009, the Debtors filed a motion seeking entry of an order approving the sale of substantially all of the Debtors assets to the stalking horse bidder, or to the successful bidder at an auction to be conducted, and authorizing the sale free and clear of liens.

5. On February 18, 2009, the Court entered its order 1) approving auction and bidding procedures; 2) approving break-up fee, expense reimbursement and other buyer protection; 3) approving notice; and 4) granting related relief (the "Bidding Procedures Order").

6. The Bidding Procedures Order contemplates a sale of substantially all of the Debtors' assets pursuant to the terms of the Purchase Agreement. Pursuant to the terms of the Bidding Procedure Order, qualified bidders may submit bids until 5:00 p.m. on March 26, 2009. The Debtors are authorized to conduct an auction on March 30, 2009 at 9:00 a.m. The Bidding

Procedures Order contemplates seeking court approval of a sale to the ultimate successful bidder on March 31, 2009 at 1:30 p.m.

NATURE OF O'SHAUGHNESSY'S CLAIM

7. O'Shaughnessy and Polaroid Holding Company are parties to a certain Earnout Agreement dated December 31, 2007 (the "Agreement") a copy of which is attached hereto and made a part of this Objection. O'Shaughnessy is a former employee of Polaroid, and the Agreement was entered into with Polaroid for good and valuable consideration.

8. Pursuant to the terms of the Agreement, Polaroid is required to pay to O'Shaughnessy the sum of \$7,200,000 upon the occurrence of any "Liquidation Event". Pursuant to the terms of the Agreement, Liquidation Event includes "... a sale of at least 75% of the assets of Polaroid in existence on the date of this Agreement, as determined by the board of directors of Polaroid, or ... a sale of the Polaroid brand." The Debtors' sale as contemplated by the bidding procedures order is a Liquidation Event.¹

9. Upon information and belief, the transaction contemplated by the Bidding Procedures Order does not contemplate the assumption and assignment by Debtor, or assumption by the purchaser under the sale of the Agreement. It is unclear from the Purchase Agreement, whether the Debtors contemplate satisfaction of the obligation due O'Shaughnessy under the Agreement at closing. The Agreement provides that the amount payable to O'Shaughnessy "shall be made in cash at the time of final closing of the Liquidation Event." Agreement, Section 1.1(c).

¹ On information and belief, O'Shaughnessy believes that it has been alleged, or may be alleged by Ritchie Capital Management, LLC and its affiliates (Ritchie) that Ritchie acquired or obtained control of the Polaroid assets pursuant to certain transactions between Ritchie and Polaroid which occurred prior to the commencement of the Debtors' Chapter 11 cases. On information and belief, these transactions, if they occurred, may have constituted a Liquidation Event as defined in the Earnout Agreement. Without question, consummation of the sale of assets contemplated in the Debtors' sale motion will constitute a Liquidation Event.

10. O'Shaughnessy objects to any proposed sale pursuant to the terms of the Bidding Procedures Order unless provision is made in the Order authorizing the sale:

- a. Directing that the O'Shaughnessy obligation be paid in cash at closing pursuant to the terms of the Agreement; or
- b. Providing for the assumption and assignment of the Agreement to the successful bidder and provision made to cure any defaults under the Agreement and provide adequate assurance of future performance of the Agreement.

11. O'Shaughnessy reserves the right to supplement this Objection.

WHEREFORE, for the foregoing reasons, Michael L. O'Shaughnessy requests an order of this Court denying the Debtors request to sell the assets or conditioning any such order on either satisfaction of the Debtors' obligation to O'Shaughnessy pursuant to the terms of the Agreement, or requiring the assumption and assignment of the Agreement to the successful bidder, and granting such other and further relief as to the Court seems just and equitable.

March 13, 2009.

/e/ Larry B. Ricke
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EARNOUT AGREEMENT

THIS EARNOUT AGREEMENT (this "Agreement") is made and entered into as of December 31, 2007, by and between Polaroid Holding Company, a Delaware corporation ("Polaroid"), and Michael L. O'Shaughnessy ("MO").

RECITALS:

A. MO was an employee of Polaroid Holding or its affiliates, and his employment has been voluntarily terminated.

B. MO is parties to a Memo dated May 10, 2004 regarding certain compensation matters (as amended, the "Compensation Memo").

C. The parties wish to enter into this Agreement to memorialize their agreements regarding certain earnout payments.

AGREEMENT:

EARNOUT PAYMENTS

1.1 MO Payout.

(a) Polaroid shall pay MO on any Liquidation Event of Polaroid an amount equal to \$7,200,000 (the "MO Payout") in accordance with the terms and subject to the conditions of this Agreement.

(b) "Liquidation Event" means either (1) the acquisition (whether pursuant to a stock purchase, merger or consolidation) of Polaroid by another entity by means of any transaction or series of transactions, unless Polaroid's stockholders of record (or their affiliates) constituted immediately before such transaction or series of transactions will, immediately after such transaction or series of transactions hold at least a majority of the voting power of the surviving or acquiring entity, (2) a sale of at least 75% of the assets of Polaroid in existence on the date of this Agreement, as determined by the Board of Directors of Polaroid, or (3) a sale of the Polaroid brand. Notwithstanding the foregoing, a transaction shall not constitute a Liquidation Event if: (i) its sole purpose is to change the state of the company's incorporation; (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons (or their affiliates) who held the company's securities immediately before such transaction; (iii) it is a transaction effected primarily for the purpose of financing the operations of Polaroid. In the event of the occurrence of a transaction set forth in (b)(3)(i), (ii) or (iii), Polaroid will require the new parties or entities arising out of said transaction to be bound by and subject to the terms of this Agreement.

The definition of Liquidation Event specifically excludes any event or transaction relating in any way to Watch City and Project Song. Accordingly, notwithstanding anything else herein to the contrary, calculating whether any event is a Liquidation Event

shall specifically exclude Watch City and Project Song, or any ownership interests in or rights thereto, as well as any products or proceeds of or amounts or value attributable to Watch City and Project Song (and any transaction with respect thereto shall not be deemed a Liquidation Event for purposes of this Agreement).

(i) “Watch City” means the real estate project referred to as “Watch City,” as well as ownership interests therein (which as of the date hereof are owned indirectly by Polaroid through Watch City Development, LLC), or profits or proceeds thereof.

(ii) “Project Song” means the lawsuit, Polaroid vs. Hewlett-Packard, the intellectual property subject to such lawsuit, any additional lawsuits or other actions involving some or all of such intellectual property, and all profits, collections or proceeds therefrom.

(c) The MO Payout shall be made in cash at the time of final closing of the Liquidation Event. MO agrees to execute and deliver any agreements, documents or instruments reasonably requested by Polaroid or a buyer in connection therewith. In the event Polaroid is required to pay any indemnification claim or return any proceeds from the Liquidation Event, the parties shall cooperate to determine whether any of the MO Payout should be returned to Polaroid as part of such claim.

(d) With respect to the MO Payout, the following payments will be required:

(i) If the MO Payout (after MO tax liability) exceeds the aggregate amount of debt owed by MO or his affiliates to TJP or his affiliates (whether currently due or due in the future), MO will use or Polaroid may offset against the after-tax MO Payout to repay TJP and his affiliates all such outstanding debt (whether currently due or due in the future). Excluded from the above referenced outstanding debt is any obligation related to payment of the Purchase Price as defined under the Purchase and Earnout Agreement of even date herewith and the Polaroid Note as defined in the Transitional Matters Letter Agreement with Polaroid Holding Company of even date herewith.

(ii) If the MO Payout (after MO tax liability) is less than or equal to the aggregate amount of debt owed by MO or his affiliates to TJP or his affiliates (whether currently due or due in the future), MO will use or Polaroid may offset against 50% of the after tax MO Payout to repay TJP and his affiliates such outstanding debt (whether currently due or due in the future). Excluded from the above referenced outstanding debt is any obligation related to payment of the Purchase Price as defined under the Purchase and Earnout Agreement of even date herewith and the Polaroid Note as defined in the Transitional Matters Letter Agreement with Polaroid Holding Company of even date herewith.

1.2 Founders Bonus. In addition to the Payout set forth in Paragraph 1.1, MO shall also be paid an "Executive Bonus" (sometimes referred to as the "founders bonus") equal to (i) one tenth of one percent (0.10%) of Polaroid Consumer Electronics net sales in 2007, paid quarterly, and (ii) three percent (3%) of adjusted gross margin on such sales for 2007 if the minimum annual budgeted gross margins are met for 2007, each as determined and paid in a manner consistent with past practice. Such amounts are the only remaining amounts payable under the Compensation Memo as defined therein and as determined by the past practices of the parties.

1.3 Certain Acknowledgments and Agreements. The parties acknowledge and agree that (a) the Compensation Memo is terminated, as well as any other agreements related to MO's status as having been an officer, director or employee of Polaroid or its affiliates, (b) except for amounts payable under this Agreement, no further amounts are owed or owing by Polaroid or its affiliates to MO or his affiliates for compensation or otherwise, and (c) Polaroid may offset any amounts otherwise owing under this Agreement against any amounts due and owing by MO or his affiliates to Polaroid, TJP or his affiliates (including, without limitation, and without limiting the generality of the foregoing, for any amounts that are owed or owing by MO or his affiliates as of December 31, 2007).

ARTICLE 2 GENERAL

2.1 Governing Law. This Agreement shall in all respects be governed, enforced and interpreted in accordance with the laws of the State of Minnesota without reference to any conflict-of-laws provisions in Minnesota.

2.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties and their respective heirs, successors and assigns.

2.3 Cooperation. Upon the execution of this Agreement and at any time or from time to time thereafter, each of the parties agrees to execute and deliver additional instruments and documents as may be reasonably requested in order to more effectively carry out the terms and conditions of this Agreement.


2.4 Entire Agreement. This Agreement, and the other agreements, documents and instruments executed and delivered in connection with this Agreement, contain the entire understanding among the parties hereto with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations, written or oral, relating to the subject matter hereof. Each party acknowledges that it has been advised by such party's own counsel in the negotiation, execution and delivery of this Agreement.

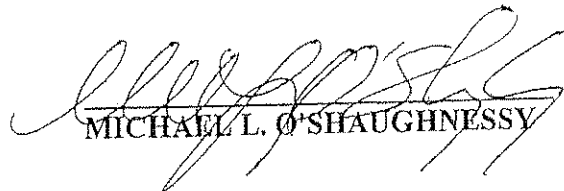
2.5 Modification, Amendment, Waiver or Termination. No provision of this Agreement may be modified, amended, waived or terminated except by an instrument in writing signed by the parties to this Agreement. No course of dealing will modify, amend, waive or terminate any provision of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

2.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement is held to be invalid, illegal or unenforceable under any applicable law or rule, the validity, legality and enforceability of the other provision of this Agreement will not be affected or impaired thereby.

IN WITNESS WHEREOF, Polaroid and MO have executed this Earnout Agreement as of the date set forth above.

POLAROID HOLDING COMPANY

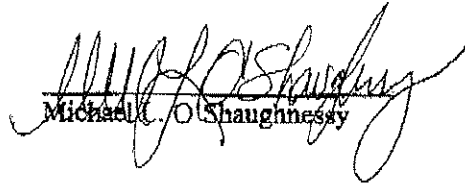
By 
Name:
Title:


MICHAEL L. O'SHAUGHNESSY

Verification

I, Michael L. O'Shaughnessy, verify that the facts stated herein are true and correct according to the best of my knowledge, information, and belief.

March 12, 2009


Michael L. O'Shaughnessy

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