

Ex Parte
Hearing Dates: March 8 and April 3, 2017
Time of Hearings: 10:30 a.m.

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THE COUNTY OF KING

9 WELLS FARGO BANK, NATIONAL
10 ASSOCIATION, a national banking
association,

11 Petitioner,

12 vs.

13 ONLINESHOES.COM INC., a Washington
14 corporation; SHOES.COM, INC., a Delaware
corporation,

15 Respondents.

No. 17-2-02462-7 SEA

DECLARATION OF JOHN L.
DAVIDSON

16
17 The undersigned makes the following Declaration under penalty of perjury as
18 permitted under RCW 9A.72.085.

19 1. I am the managing member and authorized representative of Oswego Group
20 LLC, doing business as Inverness Group ("Inverness Group"). Except as otherwise stated
21 herein, I have personal knowledge of the facts set forth herein and am competent to testify
22 hereto. I make this declaration of my own personal knowledge and in support of Receiver's
23 Motion for Orders: (1) Approving the Sale of Assets Free and Clear of Liens, Clams,
24 Encumbrances and Interests; (2) Approving Bid and Auction Procedures; (3) Scheduling
25 Hearing to Approve Sale of Assets and (4) Approving Assumption and Assignment of
26

DECLARATION OF JOHN L. DAVIDSON
NO. 17-2-02462-7 SEA - 1

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1 Executory Contracts (“Motion”).¹

2 2. Onlineshoes.com Inc. (“OSI”) is a Washington corporation, incorporated on
3 August 16, 1974, and is based in Seattle, Washington. Shoes.com, Inc. (“Shoes.com”), is a
4 Delaware corporation, incorporated on November 22, 1999, and is based in Seattle,
5 Washington. OSI and Shoes.com are both wholly owned subsidiaries of Shoes.com
6 Holdings (USA) Inc., a Washington corporation (“Shoes.com Holdings”). In turn,
7 Shoes.com Holdings is wholly owned by Shoes.com Technologies, Inc., a Canadian
8 corporation (“Shoes.com Canada”).

9 3. On information and belief, on or about January 27, 2017, OSI’s and
10 Shoes.com’s (together, “Sellers” or “Receivership Entity”) senior management announced
11 the immediate suspension of business activities and terminated all of their employees. All
12 employees were instructed to leave OSI’s and Shoes.com’s offices, final payroll checks
13 were issued, and there was reportedly little or no notice of the decision and the terminations
14 provided by management to the Receivership Entity’s lenders, vendors, customers or other
15 stakeholders.

16 4. On information and belief, the decision to suspend operations and terminate
17 staff reflected a severe liquidity problem and followed OSI’s and Shoes.com’s inability to
18 obtain new or additional financing to support ongoing operations. At that time, per their
19 records, OSI and Shoes.com, as co-borrowers, owed approximately \$25 million to their
20 secured lenders, and owed approximately \$55 million to their unsecured creditors, which
21 included their product suppliers.

22 5. Prior to the commencement of this receivership case, OSI and Shoes.com
23 operated online retail sales businesses that were generally focused on the sale of men’s and
24 women’s quality dress, casual and athletic footwear into the United States market. The

25 _____
26 ¹ Capitalized terms not otherwise defined in this Declaration have the meanings
ascribed to them in the Motion.

1 larger of the two, OSI, is reportedly the oldest online footwear retailer in the United States.
2 OSI and Shoes.com were acquired by Shoes.com Holdings in separate purchase transaction.

3 6. Despite two to three years of significant sales growth, and despite significant
4 investment and debt funding to support their rapid expansion, OSI and Shoes.com were
5 unable to achieve profitability. Consequently, OSI and Shoes.com announced the
6 immediate shutdown of operations on January 27, 2017.

7 7. On information and belief, following discussions between representatives of
8 OSI's and Shoes.com's boards and their first priority secured lender, Petitioner Wells Fargo
9 Bank, National Association ("Wells Fargo"), on February 2, 2017, Wells Fargo filed its
10 Petition for Appointment of General Receiver and (jointly with OSI and Shoes.com) the
11 Joint Motion for Entry of Stipulated Order Appointing General Receiver. Pursuant to this
12 Court's Stipulated Order Appointing General Receiver (the "Receivership Order"),
13 Inverness Group was appointed general receiver on February 2, 2017 ("Receiver").

14 8. At the outset of the receivership, the Receiver reviewed a number of factors
15 that are key to decisions and timing to provide the best opportunity to maximize recovery
16 for the Receivership Entity's stakeholders. These included: (A) the circumstances at OSI
17 and Shoes.com following management's and the Board's decision to suspend operations and
18 to terminate all staff six days prior to entry of the Receivership Order, (B) the significant
19 and unsustainable financial and operating losses of Shoes.com and OSI for FY 2015 and
20 2016, (C) the status of customer channels, supplier conditions, and prospects for obtaining
21 necessary financing to purchase product, return qualified staff, and restart operations, and
22 (D) the inability of management and Shoes.com Canada to source necessary funding to
23 continue operations prior to the shutdown.

24 9. As a result of this review, the Receiver determined that a restart of the
25 Receivership Entity's businesses within the receivership was not feasible, and that a well-
26 solicited, open and competitive sale process offered the potential for best value to creditors

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1 and other stakeholders. The Receiver retained certain former employees of OSI and
2 Shoes.com to assist with, among other things, records retrieval, background, and technical
3 and marketing support and analysis to support the Receiver's sale steps and to generate
4 interest among qualified buyers for OSI's and Shoes.com's business assets.

5 10. To assure that the Assets realize the highest value, the Receiver requests that
6 the Court first enter an order approving the Bid and Auction Procedures so that the Receiver
7 may subject the Assets to a competitive bid and auction process.

8 11. The Receiver has taken certain steps since entry of the Receivership Order to
9 analyze and prepare the Assets for sale, including: (a) identifying and categorizing the
10 Assets from available records, (b) targeting, qualifying and soliciting prospective buyers, (c)
11 completing onsite count updates on February 15-16, 2017, covering product inventories
12 located at the Ohio warehouse, and (d) preparing a buyer data room with initial data for
13 access by prospective buyers under non-disclosure agreements.

14 12. To date, the Receiver's sale process has resulted in solicitations of more than
15 57 qualified buyer targets, execution of more than 29 non-disclosure agreements, and active
16 participation of potential buyers in the data room and other due diligence materials
17 established by the Receiver.

18 13. To the best of the Receiver's knowledge, there are no Liens against the
19 Assets other than those alleged by the following (together, the "Lien Claimants"):

- 20 (a) Petitioner Wells Fargo Bank, N.A., claims a first priority security
21 interest in substantially all of the personal property of Sellers.
- 22 (b) Deans Knight Capital Management Ltd., as Collateral Agent, claims a
23 security interest in substantially all of the personal property of Sellers.
- 24 (c) Caleres Investment Company, Inc., claims a security interest in
25 Sellers' inventory, Collateral Records, and Shoes.com Domain Names.
- 26 (d) Daniel Gerler claims a security interest in substantially all of the

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1 personal property of Sellers.

2 (e) Crown Credit Company claims a security interest in OSI's interests in
3 equipment leased by Crown Credit Company to OSI, pursuant to a
4 Master Lease Agreement.

5 (f) GEODIS claims a warehouseman's lien on all assets of Sellers that are
6 located at 2250 Spiegel Dr., Groveport, Ohio.

7 14. Pursuant to the Bid and Auction Procedures, each Qualified Bidder will be
8 required to submit both a marked up version and a clean, signed version of the Purchase and
9 Sale Agreement, a copy of which is attached as Exhibit 1 to the Motion. As set out in the
10 Purchase and Sale Agreement, the assets to be sold may include, but are not limited to, the
11 Receivership Entity's inventory, equipment, furniture and fixtures, causes of action, prepaid
12 expenses and deposits, intellectual property rights, certain executory contracts and unexpired
13 leases, and other assets (the "Assets"). Certain material terms of the Purchase and Sale
14 Agreement are summarized as follows:

- 15 (a) Property to be Sold: Assets (as shall be defined in the Purchase and
16 Sale Agreement), including all or substantially all of the Receivership
17 Entity's inventory and intellectual property rights.
- 18 (b) Owners of the Assets: OSI or Shoes.com, as applicable.
- 19 (c) Purchase Price: To be determined as of the Bid Deadline, and subject
20 to increase at the time of the Auction (if any), and as may be subject to
21 additional adjustments for, among other things, prorated expenses,
22 taxes, inventory count reconciliation, and assumption of liabilities.
- 23 (d) Assumption and Assignment of Executory Contracts and Leases:
24 Sellers will assume and assign the Assumed Contracts (if any) to the
25 Final Buyer(s). Final Buyer(s) shall bear the cost of curing any
26 existing defaults under any Assumed Contract that is assigned to such

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Final Buyer.

- (e) Good Faith Deposit: Qualified Bidders will provide Sellers with a deposit of ten percent (10.0%) of the cash component of their bids.
- (f) Limited representations and warranties from the Sellers for the purchase of the Assets.

I declare under penalty of perjury under the laws of the State of Washington that the facts contained in this Declaration are true and correct.

Executed at Lake Oswego, Oregon, this 28th day of February, 2017, by John L. Davidson.


John L. Davidson

DECLARATION OF JOHN L. DAVIDSON
NO. 17-2-02462-7 SEA - 6

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 28th day of February, 2017, I arranged for service of the foregoing *DECLARATION OF JOHN L. DAVIDSON* to the parties to this action as follows:

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CERTIFICATE OF SERVICE - 2

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