

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

In re	: Chapter 11
	:
The SCO GROUP, INC., <i>et al.</i> , ¹	: Case No. 07-11337 (KG)
	: (Jointly Administered)
Debtors.	:
	:
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	: Hearing Date: 12/30/2009 at 10:00 a.m. (ET)
	: Objection Deadline: 12/23/2009 at 4:00 p.m. (ET)

**MOTION OF THE CHAPTER 11 TRUSTEE FOR ENTRY OF ORDER
AUTHORIZING THE SCO GROUP, INC. TO ENTER INTO A
NONRESIDENTIAL REAL PROPERTY LEASE WITH CANOPY
PROPERTIES, INC., NUNC PRO TUNC TO DECEMBER 4, 2009**

Edward N. Cahn, Esq. (the "Chapter 11 Trustee" or "Trustee"), in his capacity as Chapter 11 Trustee for The SCO Group, Inc. ("SCO") and SCO Operations, Inc. (together with SCO, the "Debtors"), hereby moves (the "Motion") this Court for entry of an order, pursuant to sections 105 (a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing SCO to enter into a lease of nonresidential real property (the "New Lease") with Canopy Properties, Inc. ("Canopy") for premises located at 333 South 520 West, Canopy Building 1, Suite 170, Lindon, Utah 84042 (the "New Premises"). In support of this Motion, the Trustee respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C.

¹ The Debtors and the last four digits of each of the Debtors' federal tax identification numbers are as follows: (a) The SCO Group, Inc., a Delaware corporation, Fed. Tax Id. #2823; and (b) SCO Operations, Inc., a Delaware corporation, Fed. Tax Id. #7393.

§ 157(b)(2). The statutory predicates for the relief sought herein are Bankruptcy Code sections 105(a) and 363(b).

BACKGROUND

2. On September 14, 2007 (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered.

3. On August 25, 2009 this Court approved the appointment of Edward N. Cahn, Esq. as Chapter 11 trustee in these cases [Docket No. 900]. No official committee of unsecured creditors has been established to date.

4. The Debtors are publicly held Delaware corporations with their corporate headquarters located in Lindon, Utah (the “Corporate Headquarters”).

5. The Debtors’ core business focus is to serve the needs of small-to-medium sized businesses and branch offices and franchisees of Fortune 1000 companies, by providing reliable, cost-effective UNIX software technology for distributed, embedded, and network-based systems. Among other things, the Debtors have also focused on mobility products and services for personal and professional productivity.

6. Prior to the Petition Date, the Debtors entered into a lease (the “Old Lease”) dated January 10, 2002, with Canopy to lease corporate office space (Canopy Office Building II located at 355 South 520 West, Lindon, Utah) (the “Old Premises”). The Old Premises consist of approximately 11,480 square feet. The term of the Old Lease expired on December 31, 2008, at which time the landlord allowed SCO to lease the property on a month-to-month basis. Under the terms of the Old Lease, SCO paid rent plus other charges on a monthly basis in the approximate amount of \$22,715.00. SCO believes it is current on postpetition obligations under the Old Lease.

7. Due to the current restructuring of the Debtors' business, the Trustee, in the exercise of his business judgment and in consultation with his retained professionals, has determined that the Old Premises are no longer suitable for the Debtors to occupy. In order to reduce the cost of leasing corporate office space, the Trustee determined to terminate the Old Lease and move the Corporate Headquarters to a smaller location.

8. On or about December 4, 2009, SCO executed the New Lease between SCO and Canopy. The landlord under the Old Lease proposed to lease replacement space to the Debtors in order to reduce the square footage and the monthly rent. The discussions progressed rapidly and in light of the substantial benefit to the estate, SCO leased the New Premises. A true and correct copy of the New Lease is attached hereto as Exhibit "A".

9. Pursuant to the New Lease, Canopy agreed to lease the New Premises to SCO for a period of twelve (12) months commencing on or about December 16, 2009 (the "Lease Commencement Date"). The New Premises consist of approximately 4,365 square feet. The term of the New Lease expires on December 31, 2010, subject to SCO's right to terminate the New Lease, on at least thirty (30) days advance notice to Canopy. Under the terms of the New Lease, SCO will pay Rent² (as defined in the New Lease) plus other charges on a monthly basis in the approximate amount of \$9,850.00 (the "New Rent Amount"). The New Rent Amount is inclusive of certain amounts for improvements

10. Pursuant to paragraph 1.2 of the New Lease, the Old Lease shall be terminated consensually, effective as of the Lease Commencement Date.

² "Rent" means "Base Rent", "Operating Cost Share Rent" and "Additional Rent," each as defined in Section 2.1 of the New Lease.

RELIEF REQUESTED

11. The Trustee submits that entering into a lease of office space for corporate headquarters is an ordinary course transaction. However, out of an abundance of caution, the Trustee requests this Court's authority for SCO to enter into the New Lease *nunc pro tunc* to December 4, 2009.

12. The New Lease provides for the rental of smaller, less expensive corporate office space and terminates the Old Lease with the agreement of the Lessor. Moreover, the arrangements under the New Lease will allow the Debtors to move their Corporate Headquarters from the Old Premises to the New Premises in an efficient manner. In addition, the consensual termination of the Old Lease will not create any administrative claims against these estates. Accordingly, the Trustee submits that entering into the New Lease is in the best interests of the Debtors' estates and their creditors.

BASIS FOR RELIEF

13. Bankruptcy Code section 363 provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." 11 U.S.C. § 363(b)(1).

14. Additionally, section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its powers under section 105(a) to achieve a result not contemplated by the Bankruptcy Code, the exercise of its powers under section 105(a) is proper. *See In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), the court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. *See, e.g., Chinichian v. Campolongo*

(*In re Chinichian*), 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986).

15. To approve the use, sale, or lease of property outside the ordinary course of business, this Court need only determine that the trustee’s decision is supported by “some articulated business justification” *See, e.g., Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also, In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

16. Once the trustee articulates a valid business justification, there “is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Once a valid business judgment is made, the business judgment rule shields the trustee from judicial second-guessing. *See In re Farmland Indus., Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003).

17. The Trustee, in consultation with his retained professionals, has demonstrated sound business justification for the relief requested in this Motion. The Trustee has undertaken numerous steps to reduce operating expenses, including, without limitation, relocating the Corporate Headquarters. It is in the best interest of the Debtors and their estates for SCO to enter into the New Lease as the New Lease will permit the Debtors to reduce their

operating expenses by approximately \$12,850.00 per month. The New Lease is especially valuable and economical to the Debtors at this time because it allows the Debtors to lease smaller, less-expensive office space and consensually terminate the Old Lease without incurring administrative expenses related to the Old Lease. Moreover, the New Lease provides SCO with a termination right, which permits the Debtors to vacate the New Lease space upon thirty (30) days notice.

18. The Trustee respectfully submits that entering in leases for office space for the Debtors' Corporate Headquarters is in the ordinary course of business, will benefit these estates, is in the best interest of these estates, and is justified under the facts and circumstances of these cases. However, out of an abundance of caution and for all the benefits to accrue to the estate under the New Lease, the Trustee requests this Court's approval of the Motion.

NOTICE

19. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) Canopy; and (c) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that no other or further notice need be provided.

NO PRIOR REQUEST

20. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order, substantially in the form attached hereto, (i) granting this Motion, and (ii) granting such other and further relief as is just, proper and necessary.

Dated: December 7, 2009
Wilmington, Delaware

Respectfully submitted,

BLANK ROME LLP

/s/ Bonnie Glantz Fatell

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