

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

In re

FILENE’S BASEMENT, LLC, et al.,

Debtors.¹

Chapter 11

Case No. 11-13511 (KJC)
Jointly Administered

Hearing Date:
March 30, 2012 at 11:00 a.m. (ET)
Objection Deadline:
March 29, 2012 at 4:00 p.m. (ET)

Re: D.I. 1006

**OBJECTION OF THE OFFICIAL COMMITTEE OF SYMS
CORP. EQUITY SECURITY HOLDERS TO DEBTORS’
MOTION TO ADJOURN HEARING DATE AND RELATED RESPONSE
AND DISCOVERY DEADLINES [RE D.I. 1006]**

The Official Committee of Syms Corp. Equity Security Holders (the “Equity Committee”) hereby objects (the “Objection”) to the Debtors’ Motion to Adjourn Hearing Date and Related Response and Discovery Deadlines (D.I. 1006) (the “Motion”). In support of this Objection, the Equity Committee respectfully states as follows:

OBJECTION

1. There is no cause to adjourn the April 10 hearing. We are five months into these cases and no plan has been filed. Maintaining the April 10 hearing will serve as a necessary deadline and incentive to keep the parties focused over the next weeks on reaching a consensual plan, if one is possible. There are only two major issues on which the parties must agree: (1) which real estate assets Syms should hold over and how to maximize the value of those assets; and (2) what treatment Filene’s Basement creditors should be accorded under a

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene’s Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors’ address is One Syms Way, Secaucus, New Jersey 07094.



plan. By April 10, if not well before, the parties will know whether they can reach a deal on these issues. Far from facilitating plan discussions, adjourning the April 10 hearing will remove the pressure of a looming deadline when one is needed most. The end result will be additional, unnecessary delay.

2. We know this because we have been down this road before. In early January, following the liquidation of the Debtors' retail operations, the Equity Committee presented the Debtors and the Official Committee of Unsecured Creditors ("UCC") a term sheet and model for a chapter 11 plan to reorganize Syms as a real estate holding company around some or all of its properties. Neither the Debtors nor the UCC offered any substantive feedback on the Equity Committee's proposal. The next the Equity Committee heard from the Debtors about a plan was at the January 24 hearing, where the Debtors announced that they had been negotiating with the UCC for weeks and expected to file a plan that would leave the Equity Committee "out of the mix." In light of Debtors' apparent intent to freeze the Equity Committee out of plan negotiations, the Equity Committee promptly filed a motion to terminate exclusivity. That motion was set for hearing on March 7.

3. Shortly thereafter, the Debtors agreed to meet with the Equity Committee to discuss plan concepts. At a meeting in early February, the Debtors stated that to evaluate the Equity Committee's plan proposal, they needed the Equity Committee to prepare a business plan for Syms. The Equity Committee began doing just that. In late February the parties agreed to adjourn the exclusivity and examiner motions until April 10, with the understanding that they would use the extra time to try to reach agreement on a consensual plan.

4. While no consensual agreement has been reached, that is not for lack of time to negotiate. The Equity Committee presented the Debtors a business plan more than three

weeks ago. The Debtors are now again asking to postpone the hearing on exclusivity for yet another thirty days. But nowhere in their Motion do the Debtors explain why the outcome of this thirty-day extension will be any different than the last. Instead, the Debtors offer vague generalities about further negotiations, while expressing hope that they can reach a consensual agreement with one or both Official Committees.

5. The Equity Committee shares this hope. But there is no reason that a deal cannot be reached before the April 10 hearing. As noted above, there are two major issues for any plan negotiations. With respect to the first (how to maximize Syms's asset value), the Equity Committee presented a business plan as the Debtors requested. Either the parties can reach a consensus around that plan, or some variation of that plan, or they cannot. With respect to the second (treatment of Filene's Basement creditors), the Equity Committee has been asking since January for a process whereby the Debtors and both Official Committees could try to settle this issue consensually or schedule a trial on it. That issue too can be settled or set for trial in advance of the April 10 hearing.

6. Contrary to the Debtors' assertion (Mot. ¶ 18), a second thirty-day extension of the hearing date would prejudice the Equity Committee. In particular, the Equity Committee's constituents, Syms's shareholders, are seeing Syms's equity value depleted daily by mounting professional fees and other administrative expenses. Delaying the April 10 hearing for an additional thirty days guarantees that millions more of professionals fees and other expenses will come out of shareholders' pockets. Shareholders have already waited long enough for the parties to reach consensus on a plan that will allow Syms to emerge from bankruptcy in a way that maximizes its value for all of its stakeholders. If the parties are unable to reach such a

consensus five months after Syms filed for bankruptcy, the hearing on whether the Equity Committee can file its own plan should go forward as scheduled.

7. The Debtors suggest that by maintaining the current schedule, the parties' positions "will become entrenched, resulting in unnecessary litigation and diminished prospects for a consensual plan." Mot. ¶ 16. But the opposite is the case. Further delaying the April 10 hearing encourages the parties to remain entrenched in their positions, because they no longer have the imminent prospect of a hearing on exclusivity.

8. Finally, the Debtors contend that the one hour that is currently set aside for the April 10 hearing is "insufficient for the contested evidentiary presentations and legal arguments on the examiner and exclusivity motions." Mot. ¶ 17. The Equity Committee respectfully submits that the Court can decide the motions on the papers, but if the Court determines that an evidentiary hearing of more than one hour is necessary, that is not a reason for adjourning the April 10 hearing date for thirty days. The hearing instead should be re-scheduled to the next available date on which the Court has sufficient time for an evidentiary hearing.

CONCLUSION

9. For the reasons discussed, the Court should deny the Motion. In the alternative, the Court should adjourn the hearing to the next available date on which it can hold an evidentiary hearing on the motions.

Dated: March 29, 2012
Wilmington, Delaware

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*Counsel to the Official Committee of Syms Corp.
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CERTIFICATE OF SERVICE

I, Matthew B. Harvey, certify that I am not less than 18 years of age, and that service of the foregoing **Objection Of The Official Committee Of Syms Corp. Equity Security Holders To Debtors' Motion To Adjourn Hearing Date And Related Response And Discovery Deadlines [Re D.I. 1006]** was caused to be made on March 29, 2012, in the manner indicated upon the parties identified on the attached service list.

Dated: March 29, 2012

/s/ Matthew B. Harvey

Matthew B. Harvey (No. 5186)

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