

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

FILENE'S BASEMENT, LLC, et al.,¹

Reorganized Debtors.

Chapter 11

Case No. 11-13511 (CSS)

Hearing Date:
December 21, 2020, at 10:00 a.m. (ET)

Objections Due:
November 18, 2020, at 4:00 p.m. (ET)

**REORGANIZED DEBTORS' MOTION, PURSUANT TO 11 U.S.C. §§ 105, 350,
AND 1142 FOR ENTRY OF A FINAL DECREE CLOSING THE CHAPTER 11
CASE OF FILENE'S BASEMENT LLC**

Trinity Place Holdings Inc. (f/k/a Syms Corporation) ("Syms") and its affiliated reorganized debtors in the above-captioned confirmed cases (the "Reorganized Debtors") hereby move for entry of an Order closing the chapter 11 case of Filene's Basement LLC. In support of the Motion, the Reorganized Debtors respectfully request as follows:

RELIEF REQUESTED

1. Pursuant to sections 105(a), 350(a), and 1142(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 3022, and Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rule") 3022-1, the Reorganized Debtors request entry of a final decree and order (the "Final Decree") closing the above-captioned chapter 11 cases, case no. 11-13511 (the "Filene's Case").

¹ The Reorganized 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 Reorganized Debtors' address is 340 Madison Avenue, New York, NY 10173.



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2. A proposed form of order granting the relief requested herein (the “Proposed Closing Order”) is annexed hereto as **Exhibit A**.

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and section 1142(b) of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

4. On November 2, 2011 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

5. On July 10, 2012, the Local 1102 Retirement Trust (the “Trust”) filed an amended priority claim against Syms in the amount of \$6,408,848, on account of multi-employer pension plan withdrawal liability arising under the Employee Retirement Income Security Act of 1974 (the “Trust Claim”). Syms disputed the asserted Trust Claim and its asserted priority status.

6. On August 30, 2012, the Court entered *Findings of Fact, Conclusions of Law and Order Confirming the Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp and Its Subsidiaries* [D.I. 1983] (the “Confirmation Order”), which confirmed the Plan. The Plan became effective on September 14, 2012 (the “Effective Date”). Among other things, the Plan codified an agreement between Syms and the Trust, allowing the Trust Claim in the amount of \$6,408,848 and setting forth the terms for payment of the allowed amount of the Trust Claim (the “Trust Settlement”). Plan Art. II.B.

7. On February 6, 2018, the Court entered the *Final Decree (I) Closing the Reorganized Debtors Chapter 11 Cases and (II) Terminating Certain Claims and Noticing Services* (the “Original Final Decree”) [D.I. 3415], thereby closing the chapter 11 cases.

8. Since the Effective Date of the Plan, and as set forth in the Trust Settlement, the Reorganized Debtors made thirty-one payments in the amount of \$203,232.00 to the Trust, plus one final payment in the amount of \$108,656.00 on January 31, 2020, for the total amount of \$6,408,848.

9. On February 7, 2020, the Trust claimed that the Reorganized Debtors were in default of their Trust Settlement obligations under the Plan. Specifically, the Trust claimed that the Reorganized Debtors failed to pay the entirety of their scheduled withdrawal liability installment payment due and were \$94,576 in arrears. D.I. 3423 at 8-9. On May 1, 2020, the Trust filed suit in New York, alleging that the Reorganized Debtors owed additional payments to the Trust. C.A. No. 20-3419, D.I. 1 (S.D.N.Y. May 1, 2020).

10. On May 13, 2020, the Reorganized Debtors filed in this Court the *Reorganized Debtors’ Motion (I) to Reopen Chapter 11 Cases of Filene’s Basement, LLC and Certain Affiliates and (II) Granting Related Relief* [D.I. 3420] (the “Motion to Reopen”) and the *Reorganized Debtors’ Motion for Entry of an Order (I) Enforcing the Terms of the Plan and Confirmation Order with Respect to Trust Settlement with Local 1102 Retirement Trust, and (II) Enforcing the Permanent Injunction In the Plan and Confirmation Order* [D.I. 3423] (the “Motion to Enforce”), seeking to reopen the Filene’s Case for the limited purpose of enforcing the terms of the Trust Settlement that are embodied in the Plan and Confirmation Order.

11. On June 10, 2020, the Court held a hearing and granted the Motion to Reopen.² On July 22, 2020, the Court heard argument on the Motion to Enforce and whether to enforce the permanent injunction, Plan and Confirmation Order against the Trustees. On October 26, 2020, the Court issued a memorandum order granting the Motion to Enforce. Specifically, the Court found that the Plan language is unambiguous and that no further payments are due to the Trust. D.I. 3456 at 10-13.

12. Given the Court's recent order granting the Motion to Enforce, the Reorganized Debtors have concluded that it is no longer necessary for the Filene's Case to remain open. Accordingly, the Reorganized Debtors request the entry of an Order closing the Filene's Case.

BASIS FOR RELIEF REQUESTED

13. Section 105(a) of the Bankruptcy Code provides "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

14. Bankruptcy Code section 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Section 1142(b) of the Bankruptcy Code empowers the Court to "direct the debtor and any other necessary party to execute or deliver or join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan." 11 U.S.C. § 1142(b); *see, e.g., In re Terracor*, 86 B.R. 671, 676 (D. Utah 1988) ("The clear intent of section 1142(b) is for the court to retain its jurisdiction to assure that the terms and

² Given the Court's decision to reopen the Filene's Case, the Trust agreed to dismiss the New York Action without prejudice and did so on June 25, 2020.

provisions of the confirmed Chapter 11 plan are carried out until the plan is completed and a final decree is entered closing the case.”) (citing section 350(a), Rule 3022).

15. Bankruptcy Rule 3022 implements the Bankruptcy Code’s requirements for closing a case, providing that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Similarly, Local Rule 3022-1(a) provides that “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.”

16. Although the term “fully administered” is not defined in the Bankruptcy Code or Bankruptcy Rules, the Advisory Committee Note to Bankruptcy Rule 3022 sets forth a non-exclusive list of factors for determining whether a case has been fully administered: (1) whether the order confirming the plan has become final; (2) whether deposits required by the plan have been distributed; (3) whether the property proposed by the plan to be transferred has been transferred; (4) whether the debtor or the successor to the debtor under the plan has assumed the business or the management of the property dealt with by the plan; (5) whether payments under the plan have commenced; and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved. “[T]hese factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed.” *In re SLI, Inc.*, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citation omitted). Courts have also considered whether the plan of reorganization has been substantially consummated in determining whether to enter a final decree. *See In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997).

17. Courts have also observed that entry of a final decree is appropriate to stop the accrual of fees under Bankruptcy Code section 1930. *See In re Junior Food Market of Arkansas, Inc.*, 201 B.R. 522, 524 (Bankr. E.D. Ark. 1996); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997).

18. As was the case when the original Motion to Close [D.I. 3411] was filed, the Filene's Case has been "fully administered" within the meaning of Bankruptcy Code section 350. The Reorganized Debtors have paid or provided for all payments required to be made pursuant to the Plan. The Reorganized Debtors noted in the Motion to Close that as of January 2018, they had made substantially all distributions provided for under the Plan. *See* Motion to Close at ¶ 25. Moreover, for the same reasons set forth in the original Motion to Close, an analysis of the factors enumerated in the Advisory Committee Notes to Bankruptcy Rule 3022 demonstrates that entry of a final decree in the Filene's Case is appropriate. *See id.* (explaining that Plan became effective with respect to Reorganized Debtors on the Effective Date, and all transactions contemplated by the Plan have been implemented).

19. The Filene's Case was fully administered when the original Motion To Close was filed in January 2018. That never changed. Instead, the Filene's Case was reopened in June 2020 for the limited purpose of enforcing the terms of the Plan and the Confirmation Order. Given the Court's October 26, 2020 order granting the Reorganized Debtors' Motion to Enforce, the Reorganized Debtors submit that it is no longer necessary to keep the Filene's Case open. As such, the Reorganized Debtors request that the Court enter the Final Decree closing the Filene's Case.

20. Finally, the Reorganized Debtors will work with the United States Trustee to accurately ascertain the appropriate fee amount due pursuant to 28 U.S.C. § 1930 for the brief

period the Filene's Case was re-opened and that the quarterly fee will be promptly remitted to the United States Trustee.

NOTICE

21. Notice of this Motion has been given by hand delivery or United States first-class mail (postage prepaid) to the United States Trustee, the Trust and all other parties that have requested notice as of the date of this Motion subsequent to the entry of the Final Decree. The Reorganized Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit A** (a) granting this motion; (b) closing the Filene's Case; and (c) granting such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
November 4, 2020

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Tamara K. Mann

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Counsel for Reorganized Debtors

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

In re

FILENE'S BASEMENT, LLC, et al.,¹

Reorganized Debtors.

Chapter 11

Case No. 11-13511 (CSS)

Hearing Date:

December 21, 2020, at 10:00 a.m. (ET)

Objections Due:

November 18, 2020, at 4:00 p.m. (ET)

**NOTICE OF THE REORGANIZED DEBTORS' MOTION, PURSUANT TO 11 U.S.C. §§
105, 350, AND 1142 FOR ENTRY OF A FINAL DECREE CLOSING THE
CHAPTER 11 CASE OF FILENE'S BASEMENT LLC**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Reorganized Debtors' Motion, Pursuant to 11 U.S.C. §§ 105, 350, and 1142 for Entry of a Final Decree Closing the Chapter 11 Case of Filene's Basement LLC* (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be: (a) in writing and served on or before **November 18, 2020, at 4:00 p.m. (ET)** (the "Objection Deadline"); (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served so as to be received on or before the Objection Deadline by the undersigned counsel.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A TELEPHONIC HEARING ON THE MOTION WILL BE HELD ON **DECEMBER 21, 2020, AT 10:00 A.M. (ET)** BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.²

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Reorganized 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 Reorganized Debtors' address is 340 Madison Avenue, New York, NY 10173.

² Any party that wants to participate in the Hearing must make arrangements to do so through CourtCall by telephone (866-582-6878) or facsimile (866-533-2946) by no later than December 21, 2020, at 9:00 a.m. (ET). If you do not make timely arrangements, you may not be able to participate in the Hearing.

Dated: Wilmington, Delaware
November 4, 2020

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Tamara K. Mann

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Counsel for Reorganized Debtors

Exhibit A

Proposed Order

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

In re

FILENE'S BASEMENT, LLC, et al.,¹

Reorganized Debtors.

Chapter 11

Case No. 11-13511 (CSS)

Re: D.I. _____

**FINAL DECREE CLOSING CHAPTER 11 CASE OF
FILENE'S BASEMENT LLC**

The Court having entered the *Final Decree (I) Closing the Reorganized Debtors Chapter 11 Cases And (II) Terminating Certain Claims and Noticing Services* [D.I. 3415] (the "Original Final Decree"); and upon the *Reorganized Debtors' Motion, Pursuant to 11 U.S.C. §§ 105, 350, and 1142 for Entry of a Final Decree Closing the Chapter 11 Case of Filene's Basement LLC* (the "Motion"); and this Court having determined that granting the relief requested in the Motion is in the best interests of the Reorganized Debtors and their estates and creditors; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that no other or further notice is necessary; and the Court having jurisdiction of this matter; and the legal and factual bases stated in the Motion having established just cause for the relief requested in the Motion; and after due deliberation; and good and sufficient cause appearing therefor; it is hereby,

ORDERED, DECREED, AND ADJUDGED THAT:

1. The Motion is GRANTED as set forth herein.

¹ The Reorganized 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 Reorganized Debtors' address is 340 Madison Avenue, New York, NY 10173.

2. The above-captioned chapter 11 case of Filene's Basement LLC (the "Filene's Case") is hereby closed, effective as of the entry of this Final Decree.

3. The Reorganized Debtors shall, on or before thirty days after entry of this Final Decree, pay all fees due and payable pursuant to 28 U.S.C. § 1930(a)(6) for the period that the Filene's Case was re-opened.

4. Nothing herein shall limit the right of any party in interest to seek to reopen the Filene's Case pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 5010, or any other applicable law.

5. Notwithstanding anything to the contrary, the terms and conditions of this Final Decree shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation, implementation, and/or enforcement of this Final Decree.

Dated: _____, 2020

The Honorable Christopher S. Sontchi
Chief United States Bankruptcy Judge