

JONES DAY

222 EAST 41ST STREET • NEW YORK, NEW YORK 10017.6702

TELEPHONE: +1.212.326.3939 • FACSIMILE: +1.212.755.7306

DIRECT NUMBER: (212) 326-3429
TRGEREMIA@JONESDAY.COM

November 11, 2015

BY EMAIL AND ECF

The Honorable Michael E. Wiles
U.S. Bankruptcy Court, Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: *In re Relativity Fashion, LLC, No. 15-11989-mew (Bankr. S.D.N.Y.)*

Dear Judge Wiles:

We represent the Debtors and Debtors in Possession (collectively, “Relativity”) and write in response to the over-length November 10 letter submitted by the “Hunter Killer parties.” Their letter requests a conference concerning a deposition they seek of Relativity’s CEO, one day before a scheduled hearing and on a federal holiday. No conference is necessary, however, because the Court can and should proceed with the scheduled hearing on Relativity’s motion for an order extending the exclusive periods to file a Chapter 11 plan and solicit acceptances for it without the irrelevant and harassing deposition testimony that the Hunter Killers seek.

First, as a threshold legal matter, the discovery the Hunter Killers seek is in aid of an inapposite objection on which the Court should rule without addressing any of the conclusory factual assertions made, or the deposition testimony sought, by the Hunter Killers. Their objection is wholly predicated on the notion that, unless Relativity’s motion is denied, the Hunter Killers “will be trapped in limbo” until they can litigate whether their executory contract should be assumed or rejected, which they say will not occur until “May 2016 at the earliest.” Doc. No. 940 at 2-3. Put to one side for now that this is a pretextual objection made for the transparent purpose of smuggling in false, defamatory statements about Relativity and its CEO in order to coerce the Debtors to relinquish their approximately \$7 million investment in the film. The Hunter Killers’ assertion is also simply not true. Even assuming there were a factual predicate for it—there is none whatsoever, see below—the Hunter Killers omit any mention in their letter that the appropriate device to address the putative “prejudice” to them is to ask the Court to require Relativity to assume or reject the Hunter Killers’ contract “within a specified period of time” before confirmation of the plan pursuant to 11 U.S.C. § 365(d)(2). So, notwithstanding what the Hunter Killers say, there is no reason to hold the entire estate hostage to the Hunter Killers’ objection to extending the exclusivity periods here, especially where, with the exception of one creditor who filed a me-too objection after it saw the Hunter Killers’, all of Debtors’ other creditors consent to an extension of the exclusivity period. The Court can and should rule on the Hunter Killers’ objection, and should overrule it, without addressing either the unsubstantiated notion that their film project cannot await plan confirmation or the Hunter

Killers' outrageous, irrelevant slurs concerning Relativity's financial condition for the past three years and their speculation about Relativity's prospective financial condition post bankruptcy.

Second, even assuming this were the proper procedural context to rule on the purported urgency of assuming or rejecting Hunter Killers' executory contract—and it is not—there is no factual basis for the Hunter Killers' sought-after discovery. The Hunter Killers' objection is, at bottom, predicated on the notion that their film project will fail if they have to wait for the ordinary period of time to determine assumption or rejection of executory contracts. Again, the remedy for that is to invoke § 365(d)(2), but the Hunter Killers also do not establish a *single fact* in support of their theory. In particular, the Hunter Killers highlight in their letter that “known movie star Gerard Butler[] has indicated he cannot and will not wait that long [until May 2016] to make the film.” Hunter Killers' 11/10/15 Ltr. at 4; *see also* Doc. No. at 9 (where the Hunter Killers say, somewhat differently, that Mr. Butler “is committed only for a limited availability period”). More generally, the Hunter Killers assert that other “critical elements”—about which they are vague—they have purportedly lined up will dissipate if assumption or rejection of their contract has to await plan confirmation. *See* Doc. No. 940 at 9; *see also id.* at 2 (the film will “be incapable of being produced” if they have to wait). *None of this is supported with any evidence, though.* It is all just unsubstantiated, conclusory assertions by Hunter Killers' lawyers in their brief. Thus, even assuming that the narrative the Hunter Killers have assembled were apposite as a legal matter—and it is not—there is no reason for the Court to address the second speculative piece of this contrived narrative concerning Relativity's purported wherewithal to exit bankruptcy. There is, accordingly, no basis for distracting the Debtors and their counsel during this busy time with an irrelevant deposition of their CEO. Instead, the Court should rule on whether, under the applicable factor test and for the reasons asserted in Relativity's motion, Relativity has satisfied its burden to show good cause to extend the exclusivity periods.

Third, the Court should not allow for the Hunter Killers to distract Relativity and its CEO from the important, time-intensive business of seeking to reorganize the Debtors' businesses. Mr. Kavanaugh and Relativity's staff and counsel are hard at work lining up the elements necessary to successfully reorganize and have made significant progress, as set out in the motion. It is well-established that senior-level executives, and especially a CEO, are afforded an “additional layer of protection” against their depositions being taken. In determining whether to allow it, the Court should consider the “likelihood that the individual possesses relevant knowledge, whether another source could provide identical information, and the potential disruption of business.” *Scott v. Chipotle Mexican Grill, Inc.*, 306 F.R.D. 120, 122 (S.D.N.Y. 2015). The Hunter Killers have not even remotely engaged this analysis or given the Court any facts to undertake it. Instead, they regurgitate wholly speculative, baseless, and designedly inflammatory *allegations* made by another Relativity creditor in a state court lawsuit—a creditor who is not, importantly, objecting to Relativity's motion to extend the exclusivity periods.

The deposition of the Debtors' CEO that the Hunter Killers seek would be a distracting sideshow. The Court can and should rule on their meritless, inapposite objection—and should overrule it—without reaching any of the irrelevant, speculative factual issues asserted in their motion. This “emergency” discovery is not necessary or relevant, and should not be allowed.

Respectfully submitted,

A handwritten signature in dark ink that reads "Todd R. Geremia". The signature is written in a cursive style with a prominent initial "T".

Todd R. Geremia

cc: Michael S. Elkin, Esq.

DEADLINE.COM