

LuxeYard Close to Dismissing Bankruptcy

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Luxury goods retailer, **LuxeYard Inc.**, which is fighting a group it claims is responsible for a complicated pump-and-dump scheme that defrauded investors of some \$30 million, has prevailed in its effort to dismiss a second involuntary bankruptcy petition against the company's predecessor LY Retail LLC.

Documents from the U.S. Bankruptcy Court in Los Angeles show that Houston-based LY Retail reached a tentative settlement with the bankruptcy petitioners July 14, which if approved by the judge as expected will dismiss the case and not include damages.

The petition against LY Retail was filed by creditors after a previous petition filed against LuxeYard was dismissed by the court because LY Retail was the actual debtor.

The case has its origins in Amir Mireskandari's and Khaled Alattar's efforts to raise capital for the company they co-founded as LY Retail, which operated a flash sales website for luxury goods. Their plan was to capitalize on the popularity of websites such as Gilt Group Inc.'s Gilt.com.

Steven Fox, an attorney for LuxeYard and LY Retail, said the settlement was "a big victory" for his clients even though no damages were involved. He said the companies decided to forego damages because it would have taken too long to pursue them and the amounts wouldn't have been worthwhile. Instead, Fox said the settlement allows LuxeYard and LY Retail to put the bankruptcy petitions behind them and concentrate on using the information gathered in the cases on civil litigation against the pump-and-dump group.

The group accused of the pump and dump involves a number of players in the reverse merger and private-investment-in-public-equity markets including promoters Kevan Casey, Scott Gann and the now-defunct law firm of **Anslow & Jaclin LLP**. Casey and Gann allegedly orchestrated a pump and dump that defrauded LuxeYard investors of some \$30 million from April to August 2012.

Mireskandari claims that nine other companies including **Quest Water Global Inc.**, All Energy Corp., **Bering Exploration Inc.**, China Modern Agricultural Information Inc., China Global Media Inc., **China Electronics Holdings Inc.**, Weikang Bio-Technology Group Co. and Plasma Tech Inc. may have been defrauded by Casey's and Gann's group.

The information against the group includes affidavits from several petitioning creditors.

Christian **Vega**, who once worked briefly at LuxeYard, claimed in his affidavit that Casey, Gann, former LuxeYard CEO Braden Richter and Philip Ison, who owns warehouse space in Winston-Salem, N.C., once rented to LuxeYard, lied to him and other creditors of LuxeYard to persuade them to bring the involuntary bankruptcy. The bankruptcy was meant to halt the company's suit against the alleged pump-and-dump group, Vega said.

"Ison confided in me on several occasions that the involuntary bankruptcy petitions against LuxeYard and its subsidiary LY Retail LLC were actually designed to prevent LuxeYard and its shareholder from further pursuing litigation against Gann and Richter," Vega said in his Feb. 14 affidavit.

"Ison informed me that he was offered \$50,000 to keep the involuntary bankruptcy litigation open," Vega said. "Ison also stated that Gann promised up to \$500,000 to pay the attorneys representing the petitioning creditors."

Over the course of the bankruptcy process, Vega said it became clear to him that the two involuntary petitions were "fraudulent litigation tactics" by Gann's group, Richter and Ison.

"It also became clear that I and other creditors were used and lied to so that the involuntary petitions would be pursued."

LuxeYard is awaiting affidavits to be signed by Ison and others.

In June, LuxeYard agreed to settle another dispute with Ison and Richter in California Superior Court in Los Angeles to recover damages and property.

Robert Hirschman, an attorney for Richter, said his client's affidavit in that case will mention nothing about any alleged wrongdoing and will be just a straight recitation of the facts in the case. He declined to comment on the settlement.

In the affidavit, however, Richter said that during his employment at LuxeYard he became familiar with Casey and "developed what I believed was a friendly relationship" with him. Richter said that through Casey he met Gann, who asked for an introduction to Ison, "who was an angry LY Retail creditor."

"Shortly after my termination from Luxeyard, I was approached by Scott Gann about filing an involuntary petition against Luxeyard or LY Retail LLC. Gann asked me to locate a bankruptcy lawyer in California. I believe he had asked Philip Ison to find an attorney but he was not successful. I made an inquiry of an attorney friend named Jim Dietle who gave me Jim Bastian's contact information. I passed that information on to either Philip Ison or Scott Gann."

Richter said "Gann was adamant that he wanted to interview any attorney that would be hired. My understanding is that Bastian's retainer was paid by Ison using money that was provided to him by Scott Gann."

Over the course of many conversations, Richter said "it was clear to me that Casey, Gann and Ison wished to use an involuntary petition to halt multiple lawsuits that were filed against them."

Richter also said that in February 2013 he attended a meeting at Bastian's office at the invitation of Gann. With Casey participating by telephone, they discussed the involuntary petition and "Casey and Gann reassured Bastian that they would pay for the legal fees. Based on this meeting and several other conversations I had involving Jim Bastian, Bastian was aware that Casey and Gann were orchestrating the involuntary bankruptcy for the purpose of impeding other lawsuits involving Luxeyard."

Mireskandari said LY Retail decided to settle with Ison and Richter in both the bankruptcy and civil cases for no damages because neither of them had any money, though their affidavits had value.

"We decided to go after the pump-and-dump group instead because they have money," Mireskandari said. "I need money to run this business. I can't run it on vengeance."

He said LY Retail has evidence that Casey and Gann funded the involuntary petition against LuxeYard by sending money to the creditors to send to their attorney James Bastian Jr. Bastian, an Irvine, Calif.-based attorney who represents Ison and **801 Realty Investments LLC**, declined to comment.

When Casey and Gann stopped sending the money, the creditors reached out to settle, Mireskandari said. To be sure, the costs of continuing the case could have been exceedingly high.

Wayne Greenwald, a New York-based bankruptcy attorney for LuxeYard and LY Retail, said "our costs from the litigation have been in the hundreds of thousands of dollars. I can't believe their side's costs could have been less."

The costs skyrocketed, in part, because LuxeYard and LY Retail complied with the creditors' discovery requests by sending over tens of thousands of pages of documents and then asked for significant discovery themselves.

"They didn't expect that and I don't think they even looked at them," Mireskandari said.

"A lot of cards were put on the table," Greenwald said. "**Discovery** is very costly. It becomes an expensive process. I doubt Casey and Gann would want to continue to fund that."

After the spigot was turned off, "the creditors were faced with paying the freight," he said. They balked and offered to settle, he said.

LuxeYard originally filed its civil complaint against Casey, Gann, Frederick Huttner, Jonathan Friedlander and about 20 other alleged co-conspirators in the Texas court in **Harris County**.

The Texas lawsuit alleged that Casey and Huttner orchestrated a scheme that involved helping LuxeYard go public through a reverse merger and raising money through private placements in order to gain control of shares to be used in a pump and dump that was executed between April and August 2012.

Casey, Gann and the other defendants have denied the allegations in the suit and blamed LuxeYard's problems on out-of-control expenses that outstripped its ability to raise capital.

Jason Hopkins, a partner with the law firm of **Greenberg Traurig LLP** in Dallas, who represents Casey, didn't return phone calls or e-mails seeking comment.

David Clouston, a Dallas-based attorney who represents Gann, Friedlander, Lee and others, also didn't return several calls or e-mails.

In August 2011, Mireskandari first consulted with his Houston area financial adviser Huttner, who he had known and worked with since 2002.

Huttner allegedly introduced Mireskandari to Casey, who was also from Houston. Huttner and Casey allegedly told Mireskandari they could help him build LY Retail's business by arranging for it to go public through a reverse merger with a public shell and then raising money through private placements. Anslow & Jaclin, the defunct law firm that previously settled litigation with LuxeYard before folding, helped Casey and Huttner find the shell Top Gear Inc., which was controlled by about 50 Israeli shareholders who

were willing to sell it for \$460,171. Casey, Huttner and others named in the lawsuits received LuxeYard shares in the reverse merger.

Casey and Huttner are then alleged to have persuaded a transfer agent to lift the restrictive legend on the shares with a false legal opinion letter from Anslow & Jaclin.

The scheme also allegedly involved continued matched orders to maintain trading volume in LuxeYard stock.

LuxeYard raised about \$5.8 million from private placements of convertible debt, convertible preferred stock and warrants in April and May 2012.

The debt financing in April 2012 raised \$2.91 million. The debentures that LuxeYard sold paid a 10% coupon and were convertible into common stock at 30 cents a share. That was a 73.7% discount to the price where LuxeYard shares closed on April 23, 2012, the day before the private placement was completed.

Meanwhile, on July 17, LuxeYard's complaint against Casey, Gann and the other members of alleged pump-and-dump group was remanded back to the 113th Judicial District Court in Harris County Texas after a temporary removal to federal court.

Brian Keller, a Houston-based attorney who represents Alattar and LuxeYard in the Texas case, said his client and LuxeYard would be able use the sworn affidavits from Vega, Richter and other creditors as evidence of a conspiracy, which could go a long way toward buttressing their cases.

Keller said now that the complaint has been remanded to Texas state court, LuxeYard will be able to present its case. He said a trial date has not been set.

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