

07-25-2002



SHEET

102168124

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Maxim Retail Stores, Inc. N/K/A Flooring America, Inc. (a Delaware Corporation)

- Individual(s)
- General Partnership
- Corporation-State-Delaware
- Association
- Limited Partnership - State -
- Other

7.22.02

Additional name(s) of conveying party(ies) attached?  
 Yes  No

2. Name and address of receiving party(ies):

Name: CarpetsPlus of America, Inc.  
 Street Address: 1510 Gunbarrel Road, Suite 600  
 City Chattanooga State Tennessee  
 Zip 37421

- Individual(s) Citizenship
- National Banking Association

General Partnership

Limited Partnership

Corporation - Tennessee

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:

Yes  No  
(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached?

Yes  No

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Merger
- Change of Name
- Other Bankruptcy Court Order

Execution Date: October 5, 2000

4. Application number(s) or registration number(s):

A. Trademark Application No. (s)

Additional numbers attached?  Yes  No

B. Trademark Registration No. (s) 972,069 (CARPETLAND); 972,070 (CARPETLAND USA); 852,938 (CARPETLAND USA and Design); 1,076,686 (C USA and Design).

5. Name and address of party to whom correspondence concerning document should be mailed:

Mitra N. Vahdat  
 Miller & Martin LLP  
 1000 Volunteer Building  
 832 Georgia Ave.  
 Chattanooga, TN 37402-2289  
 (404) 962-6461

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): ..... \$115

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 13-3403

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

July 15, 2002  
Date

Mitra N. Vahdat  
Signature

Mitra N. Vahdat  
Name of Person Signing

Total number of pages including cover sheet: 14

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
 Box Assignments  
 Washington, D.C. 20231

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 FINANCE SECTION

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	)	Chapter 11
	)	Judge Bihary
FLOORING AMERICA, INC., et al.,	)	
	)	Case Nos. 00-68370 through
Debtors.	)	00-68391 and 00-68190
	)	
	)	(Jointly Administered under
	)	Case No. 00-68370)

**ORDER APPROVING CARPETSPLUS OF AMERICA, INC.'S BID TO PURCHASE  
ASSETS FROM DEBTORS FREE AND CLEAR OF LIENS (CarpetsPlus)**

This matter came before the Court on the DEBTORS' MOTION FOR AUTHORITY TO ENTER INTO AND CONSUMMATE TRANSACTION TO SELL CARPETSPLUS OF AMERICA, INC. (the "Motion"), filed on September 5, 2000. This Court held a hearing on the Motion on October 5, 2000. In attendance were, *inter alia*, counsel for the Debtors, counsel for Foothill Capital Corporation ("Foothill"), the senior secured lender in this case, counsel for the Official Committee of Unsecured Creditors (the "Committee"), counsel for State Street Bank and Trust Company, as indenture trustee (the "Indenture Trustee") for the Senior Subordinated Notes, counsel for an ad hoc committee of the holders of the Senior Subordinated Notes (the "Bondholders"), counsel for the Official Committee of Franchisees (the "Franchisee Committee"), and counsel for CarpetsPlus of America, Inc., a Tennessee corporation, the proposed purchaser under the Motion (the "Purchaser"). Foothill asserts a first priority security interest in and general lien upon all assets of the Debtors. The Bondholders and the Indenture Trustee assert a security interest in and general lien upon all assets of the Debtors (which is disputed by the Debtors) which is subordinated to that of Foothill. After consideration of the Motion, argument of counsel, offers of proof and any objections having been resolved, due notice of the Motion and the hearing having

been given, and it appearing that granting the relief requested in the Motion is in the best interests of the Debtors, their estates and all creditors, the Court finds and orders as follows:

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a "core" proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The Debtors' filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 15, 2000 (the "Petition Date"). Since the Petition Date, the Debtors have continued in possession of their properties and have operated and managed their businesses as debtors in possession pursuant to the provisions of sections 1107 and 1108 of the Bankruptcy Code.
3. The Debtors are affiliates pursuant to section 101(2)(b) of the Bankruptcy Code. Pursuant to this Court's June 16, 2000 Order Authorizing Joint Administration, the Debtors' cases are jointly administered under Case No. 00-68370.
4. Pursuant to the Motion, in consideration of Debtors' severe cash flow problems, Debtors seek to obtain immediate authority to sell certain assets (collectively the "Assets") to the Purchaser for a total sales price of \$1,600,000.00 (the "Purchase Price"). The Assets to be sold include the following:
  - a. Tradenames and trademarks associated with the CarpetsPlus franchise system and Carpetland U.S.A.;
  - b. accounts receivable generated by the CarpetsPlus franchise system commencing September 1, 2000 and thereafter;

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Floor Source Distributors, Inc., a Debtor, filed its voluntary petition on June 12, 2000.

- c. all inventory, carpet samples, furniture, fixtures, equipment, contract rights, contract rights with suppliers and general intangibles owned by CarpetsPlus of America, Inc.;
- d. all rights of the Debtors to restrictive covenants contained in any non-compete or employment agreement executed by Ron Dunn or Jon Louge;
- e. all Member Agreements (as defined below) with the members of the CarpetsPlus franchise system; and
- f. all contract rights and franchise agreements for the business known as Carpetland U.S.A.

The basis of the Purchase Price is set forth in that certain Revised Agreement for Sale and Purchase of Property, dated September 5, 2000, which is attached to the Motion as Exhibit "A" (the "Agreement").

5. The Motion further seeks authority, pursuant to 11 U.S.C. §365, to assume and assign to the Purchaser the unexpired member agreements between CarpetsPlus of America, Inc., a Georgia corporation ("Seller") and certain franchisees of the Debtors, and to assume and assign to the Purchaser the unexpired franchise agreements of Carpetland U.S.A. between one or more of the Debtors and certain franchisees of the Debtors (such member agreements and franchise agreements, collectively, the "Member Agreements"). Each of these franchisees has been served with the Motion and none have objected to the assumption and assignment of the Member Agreements.

6. The Notice of Hearing dated September 7, 2000 (the "Notice") regarding the Motion, which was served on those parties directed by this Court, proper, timely, adequate and sufficient notice of, and an opportunity to be heard in connection with, the sale contemplated by the Motion

and the hearing thereon, has been provided to all persons entitled thereto. Such notice and opportunity for hearing were adequate and appropriate in the circumstances of this case, comport with all due process requirements, and satisfy the requirements of the Federal Rules of Bankruptcy Procedure. The Debtors have followed the procedures for notice set forth in the Motion and the Notice with respect to the proposed sale of the Assets.

7. The sale of the Assets shall be as is, where is, without any representation or warranty of any kind or nature whatsoever, except as set forth in the Agreement. The Purchase Price represents the highest and best bid for the Assets in light of the totality of the circumstances of this case.

8. Due to the severe cash flow problems facing the Debtors, the sale of the Assets should be consummated at the earliest possible date to preserve their value.

9. The terms of the sale of the Assets to the Purchaser are more fully set forth in the Agreement (the "Proposed Sale").

10. The Proposed Sale and the assumption of the Member Agreements meet the requirements of Sections 363(b) and (f) and Section 365 of the Bankruptcy Code and are fair, reasonable and equitable and in the best interests of the estate and creditors of the estate because they represent the maximum value Debtors can expect to reasonably receive for the Assets and result in the curtailment of significant administrative and unsecured rent claims.

11. The Committee and Foothill support this motion. Debtors have consulted and advised counsel for the Ad hoc Bondholders' Committee and the Franchisee Committee regarding the Proposed Sale and assumption of the Member Agreements.

12. Foothill asserts a first priority security interest in all of the assets of the Debtors, both of an intangible and tangible nature. The Motion seeks to pay to Foothill the net proceeds realized from the Proposed Sale, and to allow Foothill to apply the net proceeds of the Proposed Sale to the outstanding balance of Debtors' obligations to Foothill. Foothill consents to the Proposed Sale free and clear of any of its liens, claims, encumbrances or interests so long as all such liens, claims, encumbrances and interests attach to the proceeds of the Proposed Sale and such proceeds are promptly remitted to Foothill as set forth in the immediately preceding sentence.

13. Debtors are aware of no liens or encumbrances on the assets being conveyed, other than the liens and encumbrances described in the Motion, the lien of Foothill and the second position lien asserted by the Bondholders and the Indenture Trustee (which is disputed by the Debtors) on all of the assets of the Debtors, which liens, claims, encumbrances and interests attach to the proceeds of the Proposed Sale to the extent they exist, giving effect to the existing priorities regardless of any transfer or commingling of proceeds.

14. All creditors asserting a lien on the Assets either have consented to the Proposed Sale or could be compelled in a legal or equitable proceeding to accept a money satisfaction of any interest in the Assets.

15. The Purchaser has acted in good faith and is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code in offering to purchase the Assets. The Proposed Sale represents an arms-length, negotiated sale between informed and sophisticated parties, for a fair and reasonable purchase price. Therefore, the Purchaser is entitled to the protections afforded to good faith purchasers under section 363(m).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

**A. The Motion is hereby GRANTED in its entirety, the Proposed Sale to Purchaser is hereby APPROVED, and the assumption of the Member Agreements as set forth herein is hereby authorized and APPROVED;**

**B. The transactions contemplated in the Motion are approved and implemented herein, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including but not limited to sections 363(b), (f) and (g) and 365. The terms and conditions of the Proposed Sale and the other transactions approved by this Order are fair and reasonable;**

**C. In connection with the Proposed Sale, the Debtors are hereby authorized to assume the Member Agreements and transfer and assign the Member Agreements to Purchaser pursuant to 11 U.S.C. § 365. The Debtors shall be obligated to pay \$ 9,112,112 to Purchaser representing the accrued rebates, calculated to the date of closing, payable to the Franchise Members (such term, as used herein, shall have the meaning ascribed thereto in the Motion) earned prior to September 1, 2000 (the "Accrued Rebates"), and Purchaser shall pay the Accrued Rebates, calculated to the date of closing, along with all other rebates earned on and after September 1, 2000, to the Franchise Members. All Accrued Rebates earned before September 1, 2000, but calculated after closing, shall be deemed an allowed administrative expense pursuant to 11 U.S.C. § 503(b) and shall be payable in the ordinary course of Seller's business out of the rebates as they are received. The Member Agreements shall be deemed assumed by the Debtors and transferred and assigned to Purchaser upon entry of this Order and payment of the Purchase Price by Purchaser to the Debtors. Purchaser and**

Debtors may agree to account for the payment of the Accrued Rebates to Purchaser as a deduction from the Purchase Price in the amount of the Accrued Rebates.

D. The Debtors and Purchaser are hereby authorized to escrow \$50,000 of the Purchase Price, such escrowed amount to be payable to Debtors upon final determination by Purchaser and Debtors that all Accrued Rebates due to the Franchise Members earned before September 1, 2000, have been paid to Purchaser.

E. Subject to the fulfillment of the terms and conditions of the Proposed Sale, at the closing the Debtors shall sell, transfer, assign and convey to Purchaser all of the Debtors' right, title and interest in and to the Assets. The Debtors are hereby authorized and directed to convey all of the Assets to the Purchaser by a bill of sale, free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and the Purchaser shall have no liability for the payment or satisfaction of any such encumbrances. Unless the Agreement expressly states to the contrary, the sale of the Assets to Purchaser, including, without limitation, the assignment of Debtors' rights, liabilities and obligations under certain contracts with their respective suppliers (collectively, the "Supplier Agreements"), will be effective upon consummation of the closing pursuant to the terms of the Agreement and all rights, liabilities and obligations of Debtors arising prior to the consummation of the closing in connection with the Assets, including, without limitation, Debtors' rights, liabilities and obligations under the Supplier Agreements, shall remain the rights, liabilities and obligations of the Debtors.

F. The Assets shall be sold "AS IS, WHERE IS," with no warranty whatsoever, express or implied, as to condition, merchantability, fitness for a particular purpose, or otherwise. Pursuant



to sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rule 7070, and Fed.R.Civ.P. 70, this Order shall and does, without further order of the Court, as of the closing of the Proposed Sale and payment in full of the purchase price, divest the Debtors and their estates of all right, title and interest in the Assets, free and clear of any and all liens, claims, security interests, pledges, encumbrances, hypothecations, liabilities or other interests of any nature whatsoever ("Claims").

G. The Proposed Sale and the terms and conditions thereof are hereby approved in their entirety. The Debtors are hereby authorized and directed to execute, deliver, implement and fully perform the Proposed Sale, together with all additional instruments and documents that may be reasonably necessary, convenient or desirable in implementing the Proposed Sale, and to take all further actions (including any prorations, adjustments and the like provided for in the Proposed Sale) as may be necessary or appropriate in performing the obligations as contemplated by the Proposed Sale. The Debtors' authorization to perform the Proposed Sale will not require board of director or shareholder approval or any other approvals.

H. The Debtors and Purchaser are hereby authorized to execute mutual releases and Purchaser, its principals, subsidiaries and affiliates shall withdraw any proof of claim filed in the Debtors' bankruptcy cases and are hereby barred from filing any other proofs of claim in the Debtors' bankruptcy cases.

I. Purchaser shall indemnify, defend and hold harmless the Seller from (i) any and all claims of CarpetsPlus of America Franchise Members arising from October 1, 1998 through the closing date (exclusive of the Accrued Rebates), and (ii) any and all claims of Carpetland U.S.A. Franchise Members arising from October 1, 1999 (exclusive of Accrued Rebates and claims in which

the Seller and Flooring America are jointly liable). This indemnity shall be limited to reimbursement to the Seller of the amount paid by Seller on the claim of a Franchise Member which is indemnified by Purchaser.

J. The provisions of paragraph 2 of the Agreement are approved and will be binding on the Debtors and any Trustee appointed in the Debtors' bankruptcy cases, if any. Debtors shall not assert any avoidance actions or other rights, claims, counterclaims or actions against any CarpetsPlus Franchise Members, provided however, if any CarpetsPlus Franchise Member asserts any action or claim of any kind against any of the Debtors, Debtors shall have the right to assert any avoidance action and the provisions of paragraph 2 of the Agreement shall be void and of no effect.

K. This Order is and shall be effective as a determination that, upon the closing, all Claims (as defined above) existing as to the Assets conveyed to Purchaser at such closing have been and are adjudged and declared to be unconditionally released, discharged and terminated, with such Claims attaching to the net proceeds of the Sale.

L. Neither the purchase of the Assets by Purchaser nor the subsequent operation by Purchaser of any business previously operated by the Debtors, shall cause Purchaser to be deemed a successor in any respect to the Debtors' business within the meaning of any law, rule or regulation, including but not limited to any revenue, pension, ERISA, tax, labor or environmental law, rule or regulation or under any products liability law with respect to the Debtors' liability.

M. Purchaser shall have no liability or obligation under the WARN Act (29 U.S.C. § 2101, et seq.) or the Comprehensive Environmental Response Compensation and Liability Act or any state or local environmental law by virtue of Purchaser's purchase of the Assets.

N. Purchaser in its sole discretion shall be authorized, but not obligated, to employ such of Debtors' employees on a case by case basis as Purchaser deems appropriate. In no event shall Purchaser be deemed a successor employer for any purpose. Any Claim of an employee arising on or prior to the closing or as a result of such employee's termination in conjunction with the transfer of the Assets and business as provided herein, whether such employee is employed by Purchaser or not, shall be a Claim against the Debtors and its estate and not against Purchaser.

O. Except as expressly assumed in writing by Purchaser, Purchaser shall not be deemed to have assumed any "claims" (as that term is defined in Bankruptcy Code section 101(5)) against the Debtors. Under no circumstances shall Purchaser be deemed a successor of or to the Debtors for payment of any debt, liability or obligation of the Debtors (whether direct or indirect, liquidated or unliquidated, choate or inchoate, or absolute, contingent or fixed, unasserted or otherwise).

P. All of the Debtors' interests in the Assets shall be, as of the closing, transferred to and vested in Purchaser. Subject to the fulfillment of the terms and conditions of the Purchase Agreement, as of the closing, this Order shall be considered and constitute for all purposes a full and complete general assignment, conveyance and transfer of the Assets and/or a bill of sale transferring the Debtors' title and interest in the Assets to Purchaser. All governmental recording offices and all other parties, persons or entities are hereby directed to accept this Order as such an assignment and/or bill of sale and, if necessary, this Order shall be accepted for recordation on or after the closing, as conclusive evidence of the free and clear, unencumbered transfer of the Debtors' title to the Assets conveyed to Purchaser at the closing.

**Q. The transfer of the Assets to Purchaser pursuant to this Order is exempt from any transfer or stamp tax pursuant to section 1146(c) of the Bankruptcy Code.**

**R. The terms and provisions of this Order shall be binding in all respects upon the Debtors its employees, officers, and directors, its creditors, any parties having received notice of these proceedings; any affected third parties and other parties-in-interest; any persons asserting a Claim against or an interest in the Debtors' estate or to any of the Assets sold, conveyed and assigned pursuant to this Order.**

**S. This is a final order and enforceable upon entry. To the extent necessary under Rules 5003, 9014, 9021, and 9022 of the Federal Rules of Bankruptcy Procedure, and due to the high likelihood of a very rapid decline in the value of the Assets this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein and the stay imposed by Fed.R.Bankr.P. 6004(g) is hereby modified and shall not apply to the Proposed Sale. The Debtors are authorized immediately to consummate the Proposed Sale to the Purchaser without delay.**

**T. Pursuant to section 363(m) of the Bankruptcy Code, the reversal or modification of this Order on appeal will not affect the validity of the transfer of the Assets to Purchaser or the other transactions contemplated and/or authorized by this Order, unless the same is stayed pending appeal prior to the closing of the transactions authorized herein.**

**U. All liens, claims, encumbrances and interests, including those of Foothill and the Bondholders and the Indenture Trustee, shall attach to the proceeds of the Proposed Sale to the**

extent they exist, giving effect to the existing priorities, regardless of any transfer or commingling of proceeds.

V. Proceeds shall be paid directly to Foothill at the closing of the Proposed Sale. No commission or buyer's premium of any kind is due or shall be paid from such proceeds.

W. All the foregoing findings of the Court are incorporated herein by reference and made a part of this Order.

X. In the event of any inconsistency with the Motion and this Order, this Order shall control.


Y. The Court shall retain exclusive jurisdiction over any issues relating to the sale of the Assets, and to enforce its Orders pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7070. Any suit, action, proceeding, claim or dispute under or related to this Order, the Motion, the disposition of the sale proceeds or any order necessary to consummate the sale transactions contemplated hereby shall be determined by this Court as a core proceeding under 11 U.S.C. § 157(b) and this Court retains jurisdiction with respect thereto.

Z. Buyer shall not solicit, either directly or indirectly, any member of the Debtors' Flooring America or GCO franchise systems, other than the Franchise Members, to become a franchisee of Buyer, or any affiliate or subsidiary of Buyer, for a period ending January 1, 2001.

AA. Within five (5) days of entry, the Debtors shall serve true and correct copies of this Order by United States mail on (i) the United States Trustee; (ii) all entities known to the Debtors

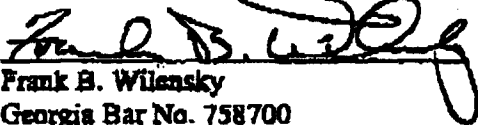
with liens on any of the Assets; (iii) each person or entity that has filed a Notice of Appearance in the Debtors' Chapter 11 cases; (iv) each person or entity that appeared at the hearing on the Motion; and (v) all parties affected by the assumption of the Member Agreements.

SO ORDERED at Atlanta, Georgia this 5<sup>th</sup> day of October, 2000.

  
Joyce E. Barry, Judge  
United States Bankruptcy Court

Prepared and submitted by:

MACEY, WILENSKY, COHEN, WITTNER & KESSLER, LLP



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