

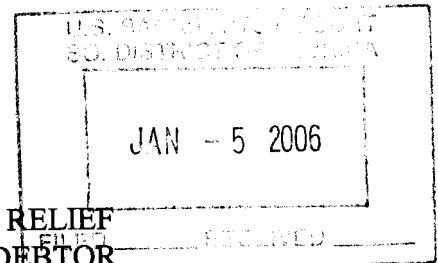
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

In re:

CASE NO.: 05-32994-BKC-SHF
Chapter 11

WELLINGTON VISION, INC.

Debtor.



**ORDER ON (I) MOTION OF PEARLE VISION, INC. FOR RELIEF
FROM THE AUTOMATIC STAY AND (II) MOTION OF DEBTOR
TO EXTEND TIME TO ASSUME OR REJECT SUBLEASE**

This matter came on for hearing upon notice on the motion of Pearle Vision, Inc., ("PVI") pursuant to 11 U.S.C. §362(d), Fed. R. Bankr. P 4001 and 9013 and Local Bankruptcy Rules 4001-1 and 90013-1, for entry of an order granting PVI relief from the automatic stay to, among other things, terminate a franchise agreement (the "Franchise Agreement") between PVI and Wellington Vision, Inc. (the "Debtor"). This matter also came on for hearing upon notice on the motion of the Debtor seeking the entry of an order extending the Debtor's time to assume or reject a certain non-residential sublease entered into between PVI and the Debtor. Notice of both motions was adequate and no further notice is required for entry of this order. The Court after considering the motions and supporting papers submitted relating to both motions by PVI and the Debtor and after hearing extensive oral argument of counsel for PVI and the Debtor relating to PVI's motion for relief from the automatic stay, and the files and records herein, finds that cause exists for granting the relief requested by PVI and denial of the relief requested by the Debtor.

The Court is persuaded that under the case law cited by PVI including, but not limited to, In re Sunterra Corp., 361 F.3rd 257 (4th Cir. 2004) and In re Catapult , 165 F. 3d 749 that pursuant to §365(c)(1) of the Bankruptcy Code the Debtor herein may not assume or assign the Franchise

Agreement without consent of Pearle Vision, Inc. based on, among other things, the fact that the Debtor has a non-exclusive trademark license with PVI. As a result, because the Franchise Agreement is an executory contract, applicable federal trademark law excuses PVI from accepting performance from or rendering performance to an entity other than the Debtor thereby precluding assumption by the Debtor without the consent of PVI as a matter of law; it is therefore

ORDERED that PVI's motion is GRANTED and PVI is granted relief from the automatic stay to terminate the Franchise Agreement with the Debtor and to exercise all of its rights under applicable non-bankruptcy law; and it is further

ORDERED that the sublease is rejected effective December 27, 2005, the date of the oral ruling on the Debtor's Motion to Extend Time to Assume or Reject the Sublease; and it is further

ORDERED that the Debtor's Motion to Extend Time to Assume or Reject the Sublease between PVI, as sub-landlord, and the Debtor, as sub-tenant, is DENIED.

ORDERED in the Southern District of Florida on this 5th day of January, 2006.


UNITED STATES BANKRUPTCY JUDGE