

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE

**DICKINSON THEATRES, INC.,
Debtor.**

**DICKINSON THEATRES, INC.,
Appellant,**

v.

**SPIRIT MASTER FUNDING, LLC,
Appellee.**

BAP No. KS-12-089

Bankr. No. 12-22602

Chapter 11

**APPELLANT DICKINSON THEATRES, INC.'S STATEMENT OF THE
ISSUES AND DESIGNATION OF RECORD ON APPEAL**

Appellant Dickinson Theatres, Inc., a debtor and debtor-in-possession (the "Appellant"), respectfully submits this Statement of the Issues and Designation of Record on Appeal.

Statement of the Issues

1. The Statement of Issues are as follows:

A. Whether the Bankruptcy Court erred as a matter of law when it held that "[i]n Kansas, the intent of the parties plays an elevated role" when relevant Kansas cases hold that "[w]hether or not a contract is entire or divisible is a question of construction to be determined by the court according to the intention of the contracting parties as ascertained from the contract itself *and upon a consideration of all the circumstances surrounding the making of it.*"

B. Whether the Bankruptcy Court erred as a matter of law when it held that "there is no discussion in *Cafeteria Operators* of an express statement of intent that the lease be

nonseverable" when, in fact, the *Cafeteria Operators* case involved such an express statement of intent which was discussed and distinguished by the court.

C. Whether the Bankruptcy Court erred as a matter of law when it held the conduct of the parties "not to be significant under Kansas law."

D. Whether the Bankruptcy Court erred as a matter of law in enforcing a provision which is against public policy by being designed to primarily, if not entirely, restrict or prohibit a debtor from exercising a right under the Bankruptcy Code.

E. Whether the Bankruptcy Court erred as a matter of fact in finding that the express terms of the Amended and Restated Master Lease Agreement (the "Amended Master Lease") between Appellant and Spirit Master Funding, LLC ("Appellee") were consistent with Section 31 of the Amended Master Lease.

F. Whether the Bankruptcy Court erred as a matter of fact in finding that the conduct of the parties was consistent with Section 31 of the Amended Master Lease.

Designation of Record on Appeal

1. Debtor's Motion for Order Rejecting, in Part, the Amended and Restated Master Lease Agreement with Spirit Master Funding, LLC. (Docket No. 16.)

2. Spirit Master Funding, LLC's Objection to the Debtor's Motion for Order Rejecting, in Part, the Amended and Restated Master Lease Agreement with Spirit Master Funding, LLC. (Docket No. 86.)

3. Transcript of the proceedings before the United States Bankruptcy Court for the District of Kansas, October 4, 2012.

4. Courtroom Minutes Sheet for the hearing ("Hearing") held on October 4, 2012. (Docket No. 114.)

5. Memorandum Opinion and Judgment Denying Debtor's Motion for Order Rejecting, in Part, the Amended and Restated Master Lease Agreement with Spirit Master Funding, LLC. (Docket No. 128.)
6. Order Designated as Opinion. (Docket No. 129.)
7. Purchase and Sale Agreement dated July 2, 2004, between Spirit Finance Acquisitions, LLC, and Appellant. (Appellant Ex. 1 at the Hearing.)
8. Purchase and Sale Agreement dated November 8, 2004, between Spirit Finance Acquisitions, LLC, and Appellant. (Appellant Ex. 2 at the Hearing.)
9. Purchase and Sale Agreement dated November 23, 2005, between Spirit Finance Corporation and Appellant. (Appellant Ex. 3 at the Hearing.)
10. Final Settlement Statement dated December 15, 2005 from Fidelity National Title Insurance Company. (Appellant Ex. 4 at the Hearing.)
11. Master Lease Agreement dated July 23, 2004, between Spirit Finance Acquisition, LLC, and Appellant. (Appellant Ex. 5 at the Hearing.)
12. First Amendment to Master Lease Agreement between Spirit Finance Acquisitions, LLC, and Appellant. (Appellant Ex. 6 at the Hearing.)
13. Second Amendment to Master Lease Agreement between Spirit Finance Acquisitions, LLC, and Appellant. (Appellant Ex. 7 at the Hearing.)
14. Master Lease Agreement between Spirit Master Funding II, LLC, and Appellant. (Appellant Ex. 8 at the Hearing.)
15. Amended and Restated Master Lease Agreement between Appellant and Appellee. (Appellant Ex. 9 at the Hearing.)

16. First Amendment to Amended and Restated Master Lease Agreement between Appellant and Appellee. (Appellant Ex. 10 at the Hearing.)
17. Lease Agreement between Appellee and Palazzo 16 Theatres, LLC. (Appellant Ex. 11 at the Hearing.)
18. Appellant's General Ledger History Entry Report for the Period of June 1, 2006 through May 31, 2007. (Appellant Ex. 12 at the Hearing.)
19. Breakdown of Rental Obligations Under Amended Master Lease. (Appellant Ex. 13 at the Hearing.)
20. Comparison Analysis of Palazzo Property Rental Obligation to Amended Master Lease Properties. (Appellant Ex. 14 at the Hearing.)
21. Rental Analysis of the Amended Master Lease Properties. (Appellant Ex. 15 at the Hearing.) (*the text paragraph above the analysis was not admitted by objection.*)
22. Arizona Department of Revenue Bulletin on Tax Rates for Commercial Leases. (Appellant Ex. 16 at the Hearing.)

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2012, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system, which sent notice to all parties receiving electronic notices, and was served *via* United States mail, postage prepaid, on all parties not receiving electronic notices.

This is to further certify that a true and correct copy of the foregoing was served, *via* email, upon the following:

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s/ Paul M. Hoffmann
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