UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
G.I. JOEôS HOLDING CORP. and G.I. JOEôS, INC., Debtors.	Case No. 09-10713 (KG) Jointly Administered
	Objection Deadline: June 10, 2009 at 4:00 p.m. **Hearing Date: June 17, 2009 at 11:00 a.m.**

MOTION OF KIRKLAND TOTEM LAKE, LLC FOR ALLOWANCE AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C. §§ 365(d)(3) AND 503(b)(1)

Landlord Kirkland Totem Lake, LLC (the ñLandlordò), by and through its undersigned counsel, hereby moves this Court for allowance and immediate payment of administrative expenses pursuant to 11 USC §§ 365(d)(3) and 503(b)(1). In support of this Motion, the Landlord respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 USC §§ 157 and 1335. This is a core proceeding pursuant to 28 USC 157(b). Venue of this Motion is proper pursuant to 28 USC §§ 1408 and 1409.

BACKGROUND

2. On March 4, 2009 (the ñPetition Dateò), Debtors G.I. Joes Holding Corporation and G.I. Joeôs, Inc. (ñJoeôsò) filed with this Court voluntary Chapter 11 petitions initiating these Chapter 11 cases. Pursuant to 11 USC §§ 1107 and 1108, the Debtors continue to operate their businesses and manage their properties and assets as debtors in possession.

3. On March 16, 2009, the United States Trustee appointed an official committee of unsecured creditors.

4. Debtor Joeôs leases retail space from the Landlord in Kirkland, Washington (the ñLeased Premisesò) pursuant to a lease agreement for the Leased Premises (the ñLeaseò). Copies

of the documents that collectively constitute the Lease are attached hereto as Exhibits A through F as follows and incorporated herein by reference[1]:

Exhibit A: Commercial Lease Agreement dated August 21, 2006 between TRF Pacific, LLC (ñPredecessor Landlordò) and Joeôs.

Exhibit B: First Amendment to Lease Agreement dated September 12, 2006 between Predecessor Landlord and Joeôs.

Exhibit C: Second Amendment to Lease Agreement dated January 31, 2007 between Predecessor Landlord and Joeôs.

Exhibit D: Third Amendment to Lease Agreement dated March 7, 2007 between Predecessor Landlord and Joeôs.

Exhibit E: Fourth Amendment to Lease Agreement dated April 13, 2007 between Predecessor Landlord and Joeôs.

Exhibit F: Assignment and Assumption of Lease dated May 18, 2007 between Predecessor Landlord and Landlord.

5. The Debtors have employed a liquidating agent to conduct going out of business sales at the Leased Premises. The Debtors filed a Notice of Intent to reject the Lease on May 20, 2009. Pursuant to the terms of the rejection notice, the rejection is effective on the latter of May 27, 2009 or the Debtorsô surrender of the Leased Premises to the Landlord.

6. Pursuant to Paragraph 11.2 of the Lease, Joeôs is obligated to pay the property taxes for the Leased Premises to the taxing authority as they come due. Paragraph 11.2 was replaced in the Second Amendment to the Lease. (See Exhibit C to this Motion.) A property tax payment of $77,484 for the Leased Premises to King County, Washington came due on April 30, 2009. A true and correct copy of a tax bill for the Leased Premises is attached hereto as Exhibit G and incorporated herein by reference.

7. The Landlord requested that Joeôs pay the taxes when due, but Joeôs refused. Even after the due date, Joeôs asserted that its lawyers were ñdeliberatingò on when and how much of the property taxes Joeôs would pay. Exhibit H, attached hereto and incorporated herein

[1] Exhibits attached to the Motion were provided to counsel to the Debtors and counsel for the Committee of Unsecured Creditors. Exhibits will be provided to other service parties upon request.

by reference, is an email string between Landlord and Joeôs, forwarded to Debtorsô counsel by Landlordôs counsel.

8. The unpaid property taxes continue to accrue interest and penalties under Washington law.

ARGUMENT

9. The property taxes at issue in this Motion came due after the Petition Date and before the Rejection Date. Section 365(d)(3) of the Bankruptcy Code provides in relevant part: ñThe trustee shall timely perform all the obligations of the debtor é arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected é ò. 11 USC § 365(d)(3). The Debtors, as debtors in possession, have the rights and obligations of a trustee, pursuant to 11 USC § 1107(a). Thus, the Debtors had an unequivocal obligation under Section 365(d)(3) to pay the property taxes when they came due on April 30, 2009.

10. The precise issues raised by this Motion were addressed by Chief Judge Walsh in the case of In re Valley Media, Inc., 290 B.R. 73 (Bankr. D. Del. 2003). Valley Media held that Section 365(d)(3) compelled a debtor to make immediate payment, as an administrative expense claim, of a property tax payment that came due post-petition and pre-rejection, without any allocation into pre- and post-petition amounts. For the reasons set forth in Valley Media, this Court should order immediate payment of $77,484 by the Debtor to either the taxing authority or the Landlord. The Debtor should also be ordered to pay any penalties and interest that have accrued on this amount by the time the Debtor makes payment.

11. Furthermore, Paragraph 28 of the Lease provides for payment of the Landlordôs attorneysô fees in the event of any proceeding to enforce the Lease provisions, including any proceeding under the U.S. Bankruptcy Code. In this case, the Landlord tried to obtain payment of the taxes without resorting to legal counsel, but the Debtors refused, despite the plain language of Section 365(d)(3) and the clarity of the Valley Media decision. Therefore, Landlord

requests an award of $5,000 in legal fees and costs for its legal fees involved in communicating with counsel and eventually having to file this Motion.

Dated: May 27, 2009

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