

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

ORECK CORP., et al.,

Debtors.

)
)
) **Chapter 11**
)
) **Case No. 13-04006**
) **Judge Lundin**
) **(Jointly Administered)**
)

**COWAY CO. LTD.'S OBJECTION TO INTENT TO ASSUME AND ASSIGN SUPPLY
AND LICENSE AGREEMENT (PASS THRU PRODUCTS) AND CURE AMOUNTS
RELATED THERETO**

Coway Co., Ltd. (f/k/a Woongjin Coway Co., Ltd.) ("Coway") hereby files this Objection to Intent to Assume and Assign Supply and License Agreement (Pass Thru Products) and Cure Amounts Related Thereto filed by Oreck Corporation and its debtor subsidiaries, as debtors in possession ("Debtors"), including debtor Oreck Manufacturing Company ("Oreck Manufacturing"). This Objection is supported by Coway's Proof of Claim filed in this case on June 10, 2013, a conformed copy of which is attached hereto as Exhibit A.

A. Facts.

Coway and Oreck Manufacturing are parties to that certain Supply and License Agreement (Pass Thru Products) effective as of August 29, 2011 (the "Agreement") (Exhibit A, ps. 36-49). Under the Agreement, Coway agreed to supply products to Oreck Manufacturing and Oreck Manufacturing agreed to purchase products from Coway. The parties agreed that Oreck would submit purchase orders to Coway, Coway would manufacture and provide products to Oreck Manufacturing, and Oreck Manufacturing would pay Coway. As of the date of the filing of Debtors' petitions, Oreck Manufacturing's due and unpaid obligations to Coway are \$704,184.72 (Exhibit A).

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Coway is located in Seoul, South Korea. On July 9, 2013, one week *after* the deadline for counter-parties to contracts to assert objections to proposed cure amounts in connection with Debtors' sale of their assets and assumption and assignment of executory contracts, Coway received by regular mail Debtors' Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property, and (II) Cure Amounts Related Thereto (the "Notice"). The Notice sets forth July 2, 2013 as the deadline for objecting to cure amounts and July 15, 2013 as the deadline for all other objections to assumption and assignment.¹ Coway did not receive the Notice prior to July 9, 2013. Coway did not receive the Notice by any manner other than regular mail (including email), and did not become aware of the Notice and objection deadlines until July 9, 2013.

B. To The Extent That Coway Objects to Cure Amounts, The Court Should Consider Coway's Objection Because Coway Did Not Learn of the Deadline Until One Week After The Deadline Passed.

As noted above, presumably because Coway is in Seoul, South Korea and Debtors served the Notice by regular mail only, Coway did not receive the Notice and learn of the objection deadlines until July 9, 2013, one week after the cure amount deadline.² Promptly after receiving the Notice, Coway is filing this Objection. Coway requests that the Court consider not only Coway's objection set forth in Section C. below, but also Coway's objection set forth in Section D. below.

¹ Because there was at least one Qualified Bid other than the bid from the Stalking Horse Bidder and an Auction took place, the deadline was extended from July 8, 2013 to July 15, 2013.

² This Objection is being filed prior to the deadline for all other objections to assumption and assignment of the Agreement. The Objection set forth in Section C. herein is not to cure amounts, but an "other" objection to assumption and assignment.

C. The Agreement is Not Executory and Therefore Cannot Be Assumed and Assigned.

By its terms, the Agreement expired on June 30, 2013 (Exhibit A, p. 43, Section 5.1). There are no extension options in the Agreement. Therefore, the Agreement is not executory and cannot be assumed and assigned. Counties Contracting & Constr. Co. v. Constitution Life Ins. Co., 855 F.2d 1054, 1061 (3d Cir. 1988) (where a contract expires by its terms post-petition, it may not be assumed); In Re Anne Cara Oil Co., 32 B.R. 643 (Bankr. D. Mass. 1983) (where the contract expired by its own terms post-petition, “there is nothing in the Code which . . . prevents the termination of the contract on its own terms”).

D. Oreck Manufacturing’s Monetary Defaults are \$704,184.72.

Because the Agreement is not executory, and therefore not assumable and assignable, there is no need to object to Debtors’ proposed cure amount. Nonetheless, Debtors’ proposed cure amount for the Agreement in the Notice, \$89,791.38, is understated – it should be \$704,184.72 (Exhibit A). Documentary support for Coway’s claim is set forth in its Proof of Claim (Exhibit A). Oreck Manufacturing’s obligations to Coway should not be fixed at Debtors’ proposed cure amount. The Court should either determine that defaults under the Agreement are \$704,184.72 or defer this matter to the claims resolution process.

WHEREFORE, Coway requests that the Court (i) consider Coway’s objections not only to assumption and assignment of the Agreement, but also Coway’s objections to the cure amount, (ii) determine that the Agreement is not executory, and therefore not assumable and assignable, and (iii) either determine that defaults under the Agreement are \$704,184.72 or defer this matter to the claims resolution process.

Dated this 15th day of July, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the parties consenting to electronic service on this the 15th day of July 2013. I further hereby certify that a true and correct copy of the foregoing has been served upon the following via electronic mail (except where indicated via first class, U.S. mail below) on this the 15th day of July 2013:

(Via First Class, U.S. Mail) Oreck Corporation 565 Marriott Drive, Suite 300 Nashville, TN 37214	William L. Norton III Bradley Arant Boult Cummings LLP 1600 Davison Street, Suite 700 Nashville, TN 37203 Counsel for Debtors bnorton@babco.com
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/s/ M. Kimberly Stagg _____