

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SUGARFINA INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11973 (MFW)

Jointly Administered

Related Docket Nos. 257 and 268

Objection Deadline: Oct. 21, 2019 at 4:00 p.m. (ET)

Hearing Date: Oct. 24, 2019 at 10:30 a.m. (ET)

**OBJECTION OF DOMAIN NORTHSIDE RETAIL
PROPERTY OWNER LP IN RELATION TO (I) AMENDED
CURE NOTICE; AND (II) BIDDING PROCEDURES ORDER**

Domain Northside Retail Property Owner LP (“Landlord”), by and through its undersigned counsel, submits this objection (the “Objection”) to the *Amended Notice of Assumption and Cure Cost with Respect to Executory Contracts or Unexpired Leases Potentially to Be Assumed and Assigned in Connection with Sale of Debtors’ Assets* [Docket No. 257] (as amended and supplemented from time to time, the “Notice”) and in furtherance of the *Order (A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief* [Docket No. 268] (the “Bidding Procedures Order”). In support of this Objection, Landlord respectfully states:

¹ The debtors in these chapter 11 cases, along with the last four digits of the debtors’ federal tax identification number or Canadian Revenue Agency, as applicable are (i) Sugarfina, Inc., a Delaware corporation (4356), (ii) Sugarfina International, LLC, a Delaware limited liability company (1254), and (iii) Sugarfina (Canada), Ltd. (4480). The location of the debtors’ corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

Background

1. On September 6, 2019, the above-captioned debtors and debtors-in-possession (together, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code.

2. Landlord is the lessor successor-in-interest with regard to that certain *Lease Agreement*, dated on or about August 25, 2016, as amended, between initial lessor Domain Retail Property Owner LP and initial lessee Sugarfina, LLC, the successor-in-interest of which is debtor Sugarfina, Inc. (the “Debtor”), for certain space in the shopping center located at 11700 Rock Rose, Suite 140, Austin, Texas 78758 (as amended and supplemented from time to time, the “Lease”).

3. On October 11, 2019, Landlord filed proof of claim no. 38 in the amount of \$16,187.22 in relation to Lease rent and charges as more particularly set forth therein. Inclusive of the \$16,187.22 is September 2019 “stub rent” from September 6, 2019 to September 30, 2019 in the amount of \$4,727.50 (“Stub Rent”).

4. On October 8, 2019, the Court entered its *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Authorizing the Debtors’ Use of Cash Collateral* [Docket No. 227], pursuant to which the Debtors were authorized to pay Landlord its Stub Rent and Landlord has been advised that such Stub Rent would be paid. Landlord, though, has yet to confirm receipt of same.

5. On October 14, 2019, in connection with the anticipated entry of the Bidding Procedures Order, the Debtors filed the Notice, listing Landlord as “Domain Retail Property Owner LP,” and proposing to potentially assume and assign the Lease with a cure amount of \$11,346.62 (the “Cure Amount”). Landlord has repeatedly asked the Debtors how they

calculated the Cure Amount and has not received any substantive response.

6. The Notice and the Bidding Procedure Order both require certain objections to Cure Amount and the sale to be filed by October 21, 2019. *See, e.g.*, Bidding Procedures Order at ¶ 25.

Objection

7. Landlord objects to the Notice because it is incorrect. First, it lists the wrong entity. The correct name is Domain Northside Retail Property Owner LP. Second, the amount is wrong. Per the proof of claim, assuming the Stub Rent has yet to be paid, the correct amount is \$16,187.22. Even if the Stub Rent was paid, the correct amount is \$11,459.72. Third, the Notice does not take into account other components of Landlord's claim, which as noted in Exhibit 1 thereto include:

In addition to the current outstanding amounts, there are accruing charges under the Lease that are subject to adjustment and reconciliation that have not yet been billed under the Lease. The Debtor continues to be responsible for all such accrued and accruing charges under the Lease. The Lease further provides that the Debtor must indemnify Lessor under certain circumstances. *See, e.g.*, Lease, Sec. 13.1. To the extent these and any additional obligations under the Lease are pre-petition, Lessor asserts them herein.

8. Landlord objects to the provision of adequate assurance information that it has received from Sugarfina Acquisition Corporation, consisting merely of a Powerpoint presentation mostly discussing Bristol Capital Advisors, LLC, its principals, and two pages for a 2019 and 2020 income statement and balance sheet. This is inadequate for Landlord to gauge this proposed buyer's financial and operational wherewithal and otherwise whether the Lease will be fully performed. The adequate assurance letter sent by Candy Cube is similarly inadequate and hardly complies with that required under the Bidding Procedures Order.

9. Assumption and assignment of the Lease is, pursuant to statute, conditioned on the

Debtors' compliance with the requirements of section 365 of the Bankruptcy Code, including, but not limited to, curing both monetary and non-monetary defaults. Therefore, the terms of any asset purchase agreements (*see, e.g.*, Docket No. 214-1 (the "APA")) and any order authorizing assumption and assignment should be modified to provide the following to the extent they do not already:

- a) Until the effective date of the assumption and assignment (the "Assignment Date"), the Debtors shall remain liable for, among other things: (i) post-petition rent and other charges under the Lease; (ii) amounts accruing under the Lease that may be unbilled as of the date hereof; (iii) any regular or periodic adjustment of charges under the Lease; (iv) any non-monetary defaults; and (v) insurance, indemnification, and other contractual obligations under the Lease. *See* 11 U.S.C. § 365(b)(1).
- b) From and including the Assignment Date and thereafter, the assignee must be responsible for all Lease obligations, including (i) indemnification of Landlord under the Lease for events that occurred prior to the Assignment; and (ii) year-end adjustments and other charges that may have accrued during or relate to (in whole or in part) the period prior to the Assignment Date, but be billable and/or payable after that date.
- c) The Assignee must honor any and all existing reciprocal easement agreements, as well as any other obligations that run with the land.

10. In addition, Landlord objects to the extent the Lease may be assigned to any "assignees" or "designees" identified by the buyer. The definition of "Buyer" in the APA is very broad, and is not limited to that buyer, or even to the buyer and its affiliates. As a result, Landlord does not know with certainty what is the actually assignee of the Lease. Landlord is entitled to know which entity is the actual relevant one, and receive and review adequate assurance information from the proposed assignee or designee, and specifically reserves its right to object to the assignment should it find that the assignee has not established to Landlord's satisfaction its ability to meet Lease obligations.

Joinder

11. Landlord joins in the objections to the Debtors' requested relief filed by other landlords and parties-in-interest to the extent they are not inconsistent with the Objection, including Landlord expressly joins in *The Taubman Landlords' Precautionary Objection to the Amended Notice of Possible Assumption of Certain Contract and Unexpired Leases, and Cure Claim Objection* [Docket No. 263] (and particularly the discussion regarding "retained contracts").

Reservation of Rights

12. Nothing in this Objection is intended to be, or should be construed as, a waiver by Landlord of any of its rights under the Lease, the Bankruptcy Code, or applicable law. Landlord expressly reserves all such rights, including, without limitation, the right to: (i) supplement and/or amend this Objection and to assert additional objections to the proposed assumption and assignment of the Lease on any and all grounds; (ii) amend the cure amount; (iii) assert additional non-monetary defaults under the Lease; (iv) assert any rights for indemnification or contribution against the Debtor arising under the Lease; and (v) assert any further objections as it deems necessary or appropriate.

WHEREFORE, Landlord respectfully requests that this Court enter an order: (i) sustaining this Objection; and (ii) granting Landlord such other and further relief as this Court deems just and appropriate under the circumstances.

[Signature Page Follows]

Dated: October 21, 2019
Wilmington, Delaware

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