

**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)

Re: Docket No. 239

**NORTHPARK PARTNERS, LP'S OBJECTION TO
ASSUMPTION, ASSIGNMENT AND CURE AMOUNT**

NorthPark Partners, LP (“**NorthPark**”) is the lessor under a nonresidential real property lease with Sugarfina, Inc. (the “**Debtor**” or “**Tenant**”). NorthPark files its objection to the *Notice of Assumption of Lease and Cure Costs with Respect to Executory Contracts or Unexpired Leases Potentially to be Assumed and Assigned in Connection with Sale of Debtors’ Assets* [Docket No. 239] (the “**Cure Notice**”) and objects to the contemplated assumption of the lease and the amount required to cure monetary defaults under the lease contained therein.

1. NorthPark and the Debtor are parties to a Shopping Center Lease dated June 28, 2017 (as subsequently amended and modified, the “**Lease**”) covering certain non-residential real property known as Space M2-1120 (the “**Premises**”) located on the first level of the enclosed pedestrian mall at NorthPark Center, Dallas, Texas.

2. The Lease is an executory contract within the meaning of 11 U.S.C. § 365. The Debtor and its affiliated debtors have a copy of the Lease in their possession.

3. The Lease contains a use clause limiting the permitted use of the Premises,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) Sugarfina, Inc., a Delaware corporation (4356), (2) Sugarfina International, LLC, a Delaware limited liability company (1254) and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

solely for the operation of a retail store of the highest quality offering in all respects the highest quality in service and merchandise, which merchandise shall consist primarily of candy, chocolates and other confections and related gift items, and/or such other merchandise that may be sold in a majority of the other stores operated nationwide under the [Sugarfina] trade name. . . .

Lease, §1.1(q).

4. The Lease requires the Debtor to pay rent, common area maintenance, taxes, insurance, utilities, other recurring charges, and certain year-end adjustments. The Lease also requires the Debtor to pay certain cooperative advertising charges to NorthPark Merchants Association (“**Merchants**”). NorthPark is the agent for Merchants and is authorized to collect cooperative advertising charges on behalf of Merchants.

5. The Lease also requires the Debtor to pay monthly electricity charges. Electricity at NorthPark Center is provided by a utility company. Each tenant’s space is individually metered. Those meters are read by a meter reading service each month. NorthPark pays the utility provider for overall electricity usage and then bills each tenant based on the meter reading. Because of the delay in reading the meter and assessing individual tenant charges, electricity charges for any particular month are usually billed to the tenant the month after consumption. For example, August electricity charges are usually billed in September.

6. The Lease also requires the Debtor to reimburse NorthPark for attorneys’ fees and expenses incurred in any bankruptcy case filed by the Debtor. Section 17.3 of the Lease provides:

In addition, if Tenant files a voluntary petition under any section or chapter of the Federal Bankruptcy Code (11 U.S.C. §101 et. seq., as amended) (the "Bankruptcy Code") . . . Tenant acknowledges that Landlord may, at its option, retain an attorney(s) to represent Landlord in such bankruptcy case, and, in such event, all attorneys' fees and expenses (including, without limitation, expenses of consulting or testifying expert witnesses) incurred by Landlord shall be paid by Tenant to Landlord as additional rental under this lease and payment thereof to Landlord shall constitute part of the cure required under Section 365(b)(1)(A) of the Federal Bankruptcy Code if Tenant seeks to assume or assume and assign this lease.

Lease, §17.3.

7. The Cure Notice filed by the debtors lists the cure amount for NorthPark as \$44,523.15. The Cure Notice list the cure amount for Merchants as \$288.75.

8. As of October 11, 2019, the total amount owed to NorthPark for minimum rent, taxes, common area maintenance, utilities, and other charges, both prepetition and postpetition, was \$44,523.15. Attached hereto as **Exhibit A** is a true and correct coy of a detailed breakdown of outstanding water and electric amounts due and owing under the Lease. In addition, some trailing expenses such as electricity have not yet been billed, and year-end adjustments have not yet been calculated.

9. As of October 11, 2019, the total amount owed to NorthPark Merchants Association for advertising charges, promotions, and other expenses was \$288.75. Attached hereto as **Exhibit B** is a true and correct copy of a detailed breakdown of outstanding advertising charges due and owing under the Lease.

10. The Debtor is currently in default under the Lease because of its failure to remit payment as required under the Lease.

11. As of September 30, 2019, NorthPark has incurred reasonable attorney's fees and related expenses of \$2,975.00 relating the Lease, the Premises, and the Debtors' bankruptcy cases. Pursuant to Section 17.3 of the Lease, all reasonable attorney's fees and expenses incurred by NorthPark must be paid as part of the cure required under Section 365(b)(1)(A) of the Bankruptcy Code.²

12. NorthPark objects to any assumption or assumption and assignment of the Lease (a) without compliance with the use clause, (b) without a guarantee by a non-debtor party or equivalent

² NorthPark reserves the right to amend or supplement the total amount of reasonable attorney's fees and expenses incurred up through the date of any assumption or assumption and assignment.

credit enhancement, (c) without curing all monetary defaults or providing adequate assurance that they will be promptly cured, (d) without the assignee's agreement to pay electricity charges and other trailing expenses, (e) without the assignee's agreement to assume obligations for year-end adjustments, even if the amounts to be adjusted relate to periods prior to the effective date of the assignment, (f) without paying NorthPark's reasonable attorney's fees and related expenses incurred in connection with these bankruptcy cases, and (g) without agreement to comply with all future obligations of the tenant under the Lease.

Dated: October 21, 2019
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Brenna A. Dolphin

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