

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

IN RE:)	Chapter 11
)	
ROCKFORD PRODUCTS CORPORATION, et al.,)	Case No. 07 B 71768
)	Jointly Administered
Debtors.)	Hon. Manuel Barbosa

**CENTER CAPITAL CORPORATION’S OBJECTION TO DEBTOR’S NOTICE OF
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES RELATING TO SALE OF ALL OR SUBSTANTIALLY ALL OF
DEBTOR’S REMAINING ASSETS AND PROPOSED ORDER APPROVING THE
ASSET PURCHASE AGREEMENT**

Center Capital Corporation (“CCC”), by and through counsel, and for its Objection to the Debtor’s Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases Relating to Sale of All or Substantially all of Debtor’s Remaining Assets (“Motion to Assume”) and Proposed Order Approving the Asset Purchase Agreement (“Proposed Sale Order”) states as follows:

1. CCC and Rockford Products Corporation (the “Debtor”) entered into Master Lease Agreement No. 30857 dated November 6, 2001 (the “Master Lease Agreement”).

2. On June 1, 2005, CCC and the Debtor entered into Lease Schedule 05 for the lease of the following equipment:

Four (4) used 2003 Miyano Model LZ01 Turning Center as more fully described in the Lease Schedule 05.

3. CCC perfected its interest in the Schedule 05 lease equipment by filing a UCC-1 financing statement covering the equipment on May 9, 2005.

4. Thereafter, on September 20, 2005, CCC and the Debtor entered into Lease Schedule 06 for the lease of the following equipment:

Two (2) used 2003 Miyano Model LZ01 Turning Center as more fully described in the Lease Schedule 06.

5. CCC perfected its interest in the Schedule 06 lease equipment by filing a UCC-1 financing statement covering the equipment on October 3, 2005.

6. On January 6, 2006, CCC and the Debtor entered into Lease Schedule 07 for the lease of the following equipment:

Two (2) used 2002 Miyano Model LZ01R Turning Center as more fully described in the Lease Schedule 07.

7. CCC perfected its interest in the Schedule 07 lease equipment by filing a UCC-1 financing statement covering the equipment on September 27, 2002 and a continuation statement on August 16, 2007.

8. Thereafter, on March 13, 2007, CCC and the Debtor entered into Lease Schedule 08 for the lease of the following equipment:

One (1) new 2007 Murata Model MW 120 GT Twin Spindle CNC Turning Machine as more fully described in the Lease Schedule 08.

9. CCC perfected its interest in the Schedule 08 lease equipment by filing a UCC-1 financing statement covering the equipment on March 13, 2007.

10. On September 25, 2007, CCC filed its proof of claim against the Debtor in the amount of \$520,875.11.

11. In its Motion to Assume, the Debtor and the buyer, Rockford Acquisition LLC have elected to treat the contracts between CCC and the Debtor as executory contracts and

request authority for an assumption and assignment of those contracts. While CCC does not object to the Debtor and Rockford Acquisition, LLC's decision to treat the CCC contracts as executory contracts, however, if the Court approves such treatment it should be final and binding on the estate under the terms and conditions set forth in this Objection.

CURE AMOUNTS

12. In its Motion to Assume the Debtor listed as zero the amount necessary to cure Lease Schedules 05, 06, 07 and 08.

13. Per CCC's records, the amounts necessary to cure the defaults under the contracts are as follows:

Lease Schedule 05	\$242.00 lien search fee
Lease Schedule 06	\$127.00 lien search fee
Lease Schedule 07	\$0
Lease Schedule 08	\$374.00 late charges
	\$350.00 initial document fee

14. In addition to the foregoing cure costs, CCC is entitled to recover its attorney's fees and costs incurred pursuant to paragraph 12 of the Master Lease Agreement. Attorney fees and cost allowed pursuant to the terms of the lease should to be paid as condition of debtor's assumption of the lease. *See In re Entertainment, Inc.*, 223 B.R. 141, 152 (Bankr. N.D. Ill. 1998) (J. Schmetterer).

15. Section 365(b)(1)(B) requires that in order to assume an executory contract in which a default has occurred, the trustee must cure the default and provide compensation for pecuniary loss or provide adequate assurance that cure and compensation will occur promptly.

16. Debtor's Motion to Assume is silent on the issue of the timing of the payments of

the cure amounts but any order approving such assumption and assignment should require the cure payments be made at closing.

ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

17. Pursuant to Section 365(f)(2) in order to assume the CCC contracts, the Debtor must provide “adequate assurance of future performance.” Debtor’s Motion to Assume is silent regarding what assurance of future performance will be provided. Any order approving the assumption of the Lease Schedules 05, 06, 07 and 08 should be conditioned on the Debtor providing evidence of the buyer’s ability to perform.

POST-PETITION LEASE PAYMENTS

18. The Debtor has made post-petition lease payments to CCC on account of Lease Schedules 05, 06 07 and 08. In the event that this bankruptcy proceeding will be converted to a case under chapter 7 of the Bankruptcy Code and a trustee appointed, any order approving the assumption assignment of the CCC contracts should be expressly conditioned on an order of this Court approving the post-petition lease payments as authorized Section 549 transfers.

PREFERENCE LIABILITY

19. The Debtor and Rockford Acquisition LLC have determined to treat the CCC contracts as executory and assume and assign such contracts pursuant to Section 365 of the Bankruptcy Code. Any order approving the assumption and assignment of the CCC contract should expressly provide that the Debtor or its estate cannot recover any payments made to CCC during the preference period under Section 547 of the Bankruptcy Code. “[P]ayments made on executory contracts that are assumed pursuant to 11 U.S.C. § 365 cannot also be avoidable preferences.” In re ABC-Naco, Inc., 483 F.3d 470, 474 (7th Cir. 2007) *citing* In re Superior Toy & Mfg. Inc., 78 F.3d at 1169 (7th Cir. 1996).

20. Under paragraph eleven of the Proposed Sale Order the Agents, as defined therein, obtain a general release from all claims and CCC should be entitled to the similar treatment with respect to any preference liability.

TRANSFER OF SECURITY INTEREST

21. CCC has filed UCC-1 financing statements against the Debtor to protect its interests in the Lease Schedule 05, 06, 07 and 08 leased equipment. Any order approving the assumption and assignment of the CCC contracts should be provide that CCC's security interests in the Lease Schedule 05, 06, 07 and 08 leased equipment are transferred in the same right and priority against Rockford Acquisition LLC or whomever is ultimately the successful purchaser. Paragraph twelve of the proposed sale order should provide that any liens of CCC transfer to the buyer in the same right and priority as held against the Debtor.

22. Paragraphs thirteen, fourteen and fifteen of the Proposed Sale Order would act to terminate CCC's security interest in the Lease Schedule 05, 06, 07 and 08 leased equipment and are therefore objectionable.

GENERAL OBJECTION AND RESERVATION OF RIGHTS

23. To the extent that the Debtor does not seek to treat the CCC contracts as executory contracts, CCC objects to any sale of the Lease Schedule 05, 06, 07 and 08 leased equipment unless the proceeds of such sale are apportioned directly to CCC and the amount of such sale proceeds equals or exceeds the amount of the proof of claim filed by CCC. Further, CCC does not consent to a sale of the Lease Schedule 05, 06, 07 and 08 lease equipment, there is no applicable nonbankruptcy law that would allow such sale, there is no dispute as to CCC's interest in the Lease Schedule 05, 06, 07 and 08 leased equipment and CCC cannot be compelled to accept a money satisfaction of its interest in an amount that is less than its filed proof of claim.

24. To the extent that the Debtor elects not to treat the CCC contracts as executory contracts, the Lease Schedule 05, 06, 07 and 08 leased equipment must be valued as a going concern. *See In re Taffi*, 68 F.3d 306 (9th Cir. 1995).

25. Counsel for CCC received the Proposed Sale Order on approximately 7:30 p.m. on November 3, 2007, and due to the limited time to review the materials reserves the right to assert additional objections to the Motion to Approve and the Proposed Sale Order.

WHEREFORE, Center Capital Corporation respectfully requests that this Court condition the assumption and assignment of Lease Schedules 05, 06, 07 and 08 and the order approving the Proposed Sale Order upon the terms set forth in this Objection and for any further relief as this Court deems just under the circumstances.

CENTER CAPITAL CORPORATION,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 14th day of November, 2007, a copy of the foregoing was served electronically upon the registered CM/ECF participants as reflected on the Notice of Electronic Filing and sent via facsimile to the parties set forth below:

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