

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

In re:	:	Chapter 11
URBAN BRANDS, INC., <i>et al.</i>	:	Case No. 10-13005 (KJC)
	:	(Jointly Administered)
Debtors.	:	
	:	Hearing Date: October 27, 2010 at 4:00 p.m. ET
	:	Objection Deadline: October 21, 2010 at 4:00 p.m. ET
	:	
	:	Related Docket Nos.: 34, 143

OBJECTION OF CHICAGO BUILDING, L.L.C., BY ITS MANAGEMENT AGENT, MID-AMERICA ASSET MANAGEMENT, INC., THE LANDLORD FOR THE CHICAGO BUILDING, AND C. MICHELLE PANOVICH OF MID-AMERICA ASSET MANAGEMENT, INC., AS COURT APPOINTED RECEIVER FOR LINCOLN MALL, TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363, AND 365, FOR ENTRY OF AN ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C) ESTABLISHING ASSUMPTION AND REJECTION PROCEDURES FOR CERTAIN ADDITIONAL EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING GUIDELINES FOR CONDUCTING STORE CLOSING SALES; (E) APPROVING AGENCY AGREEMENT; AND (F) EXTENDING THE DEADLINE TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(d)(4)

Chicago Building, L.L.C., an Illinois limited liability company, by and through its management agent, Mid-America Asset Management, Inc., an Illinois corporation, the landlord for the property commonly known as The Chicago Building, located at 7 West Madison Street, Chicago, Illinois (identified in these proceedings as store number 435) (hereinafter "Landlord") and C. Michelle Panovich of Mid-America Asset Management, Inc., as court appointed Receiver for the property commonly known as Lincoln Mall located at 208 Lincoln Mall Drive in Matteson, Illinois, (identified in these proceedings as store number 137) ("Receiver"), hereby objects to the Debtors' *Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rule 2002, 6004, and 6006 for (I) Entry of an Order (A) Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of*

All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Assumption and Rejection Procedures for Certain Additional Executory Contracts and Unexpired Leases; (D) Approving Guidelines for Conducting Store Closing Sales; (E) Approving Agency Agreement; and (F) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. §365(d)(4) (hereinafter the “Motion”)¹, and in support thereof states as follows:

I. PRELIMINARY STATEMENT

1. The Debtors seek to approve the sale of its assets and the assumption and assignment of certain leases and guidelines for store closing sales for any closing store lease locations (“GOB Sales”). Any successful purchaser of the assets and leases should be required to enter into an appropriate assignment and lease amendment to establish privity with the counterparties to contracts and leases, among other reasons. Additionally, the Successful Purchaser should not be able to direct the Debtors to assume and assign the leases to a Buyer Designee not related to the Successful Purchaser without meeting all requirements of the bankruptcy code, including adequate assurances of future performance. Furthermore, Landlord and Receiver should be able to apply any security deposit or similar security in accordance with applicable law, without the necessity of seeking specific court approval for such action.

2. Any GOB Sales will contravene the provisions of the Landlord’s and Receiver’s Leases not only with regard to the conduct of the GOB Sales in general but also insofar as Debtors seek to limit Landlord’s and Receiver’s rights to enforce the provisions of the Leases, including, but not limited to, the right to control signage. If such GOB Sales are permitted they must be subject to reasonable guidelines and protections for third parties.

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

II. BACKGROUND FACTS

3. Urban Brands, Inc., and its affiliated co-debtors (the “Debtors”), filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on September 21, 2010. The Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

4. The Receiver is in control of the Debtors’ commercial retail space at a location commonly known as Lincoln Mall located at 208 Lincoln Mall Drive, Space 249, in Matteson, Illinois pursuant to that certain lease dated on or about July 22, 1996, as subsequently amended. The Debtors lease commercial retail space from Landlord at a location commonly known as The Chicago Building located at 7 West Madison Street in Chicago, Illinois, 60602 pursuant to that certain lease and guaranty of lease dated on or about December 29, 2006. Collectively, the commercial spaces referenced above shall be referred to as “Premises” and the leases shall hereinafter be referred to as the “Leases.”

5. The Leases are “lease[s] of real property in a shopping center” as that term is used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3d Cir. 1990).

6. On September 22, 2010, the Debtors filed the Motion seeking to approve the sale of substantially all of its assets and setting store closing sales and guidelines.

7. On October 1, 2010, the Receiver filed her initial objection to the Motion (Docket Number 110), and hereby reincorporates and reasserts those same objections to the sale and store closing guidelines to the extent they have not been resolved. Landlord hereby adopts, joins, and asserts those same objections.

8. On October 4, 2010, the Court entered its *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts For Executory Contracts and Leases to be Assigned; and (E) Granting*

Certain Related Relief (the “Procedures Order”), providing among other things, the deadline to object to the sale of assets and deadline to object to store closing procedures.

III. OBJECTIONS

A. Assumption and Assignment to a Buyer Designee

9. Section 2.5 of the Stalking Horse Bidder’s Asset Purchase Agreement provides that the Buyer can select a “Buyer Designee” for each particular lease to be assumed and assigned to.

10. Under the definition of Buyer Designee, the Asset Purchase Agreement states that it can be any Affiliate of the Buyer, or in the case of a Real Property Lease, such Buyer Designee can be a non-Affiliate of the Buyer.

11. This provision allows the Buyer to direct the Debtor to assume and assign any Real Property Lease to any entity or person whatsoever during the 120 day period of time for the exercise of designation rights, effectively circumventing the bidding, auction, sale, cure objection, and sale objection procedures set forth by this Court and the restrictions of the Bankruptcy Code.

12. Landlord and Receiver hereby object to the assumption and assignment of the Leases to any designee at the Buyer’s sole discretion. Landlord and Receiver have a right to know the name and information of any potential designee/assignee, and right to adequate assurances of future performance, among other rights.

13. The Buyer should only be able to direct the Debtors to assume and assign any Real Property Lease to the Purchaser/Buyer, with all of the normal and requisite safeguards in place under the Bankruptcy Code, including providing the requisite adequate assurances of future performance².

² Landlord and Receiver also note that the Stalking Horse Bidder has failed to provide additional information requested for the requisite information for adequate assurance at this time and are objecting to such a lack of information by separate objection.

B. Restrictions on Security Deposit Applications

14. Under Paragraph 46(vi) of the Rejection Procedures in the Motion, the Debtors seek to restrict all landlords' ability to apply deposited monies (security deposits) as a set off or recoup or otherwise use such funds without the prior approval of Court.

15. Landlord and Receiver should have the ability to apply security deposits in accordance with applicable law, without the necessity of making an application to the Court and invest additional expenses in this matter.

16. If this procedure is allowed, numerous landlords, already suffering substantial financial losses as a result of Debtors' bankruptcy and lease termination, will be forced to spend additional legal fees and costs, and will inundate this Court, with motions to determine how security deposits should be applied.

17. Landlord and Receiver object to this restriction and request that the Sale Hearing Order remove the applicable language from the proposed Sale Hearing Order.

C. Store Closing Sale Guidelines and Procedures

18. While Landlord and Receiver understand Debtors' desire to maximize the value of the inventory in the stores, and that historically courts have granted debtors the right to conduct such sales notwithstanding the seemingly contrary provisions of Section §365(d)(3), the sales must not be allowed to have a detrimental effect on Landlord and Receiver and the other tenants at the Shopping Centers and must not be allowed to subvert the requirements of §365(d)(3), which specifically requires compliance with all of the terms of each of the leases.

19. Any store closing sales must be of limited duration, subject to reasonable guidelines and balance the rights and interests of landlords, whose leases Debtors seek to breach, and the landlords' other non-debtor tenants, who must compete for the consumer's retail dollars without the

benefit of being allowed to breach signage and other restrictions in such tenants' leases or are otherwise affected by the proposed activities.

20. Debtors cite to In re: Ames Dep't Stores, 136 B.R., 357 (Bankr. S.D.N.Y.) 192), among other cases, for the proposition that going out of business sales are regularly approved by courts as Debtors must maximize the estate. However, Debtors, as with most other debtors who cite to *Ames*, fail to mention a further significant holding of that case wherein the Court stated that “§ 363(e) reserves for Bankruptcy Courts the discretion to condition the time, place and manner of store closing sales thereby providing adequate safeguards to protect shopping center landlords and their other tenants, . . .”

21. Landlord and Receiver object to the use of any exterior signage and/or banners at any of their locations except as set forth herein. Debtors' Leases do not give them the right to use any space in Lincoln Mall or the Chicago Building of which the Premises are not a part or at any other location, outside of the Premises for any purpose other than, perhaps, the installation of store identification signs strictly in accordance with the Landlord's and Receiver's sign and design criteria. No provision of the Bankruptcy Code empowers the Court to allow a debtor to use a third party's property without the third party's consent. In many instances, the property lying outside the interior premises is common area property which all tenants have an undivided right to use pursuant to the terms of their leases.

22. In the event that this Court allows the use of exterior banners at certain store locations, such banners must be limited to the size and location of Debtors' exterior signs, and may only be placed in or on that part, or those parts, of the Premises that are actually leased by Debtors. Signage must not be permitted in any other area of either the building of which the Premises are a part and no other exterior devices, such as balloons, may be permitted in any other areas of Landlord's and Receiver's Shopping Centers. In addition, exterior banners must be limited to one (1) per store and

affixed without drilling or otherwise penetrating either the façade of Landlord's building or the roof of any such building.

23. Landlord and Receiver object to the use of any "sign walkers". No signage or sign walkers may be allowed on Landlord's and Receiver's properties. Moreover, such signage should not be permitted without giving notice to each affected governmental unit and affording said unit an opportunity to be heard. Governmental officials have complained that sign walkers in particular cause traffic hazards.

24. Window signs should be limited to one (1) per window, not to exceed sixty (60) inches by thirty-six (36) inches, set back at least twelve (12) inches from the glass. No more than six (6) signs per 1000 square feet and no larger than 30'x36' should be employed within the store themselves. Interior banners should be limited to no more than two (2) per store, no longer than 3'x10' and set back at least one-third (1/3) of the way from the front of the Premises.

25. No distribution of handbills, leaflets and other written materials should be permitted unless permitted under the Leases.

26. The Motion requests that this Court prohibit landlords from enforcing, or from Debtors complying with, clauses in "restrictive documents", including reciprocal easement agreements and other recorded documents that in some cases were recorded and agreed to by parties operating the shopping centers long before the Debtor was even a tenant. The language is far too broad. Lease provisions requiring the payment of the full contract rent, heating and air conditioning requirements, requirements regarding lighting of the premises, store hours, and even use clauses, must be complied with. Furthermore, recorded easement and operating agreements, and restrictions on easements and

the general operation of the shopping center, especially those restrictions running with the land, must be complied with.³

D. Assumption and Amendment Agreement.

27. To the extent any assumption and assignment to the successful bidder is eventually approved, Landlord and Receiver requests that the Court require the successful bidder to enter into a lease amendment and assignment agreement (the "Agreement") in a form acceptable to Landlord and Receiver, respectively, that will cause the successful bidder to become directly obligated to the Landlord and Receiver under the Leases. The Agreement shall include the modification of notice addresses for the parties. The Agreement is critical to Landlord and Receiver for the maintenance of their lease files, and under the laws of various states it is critical to establish privity of contract between a landlord and the assignee.

E. Reservation of rights to object to form of documents and to raise further objections.

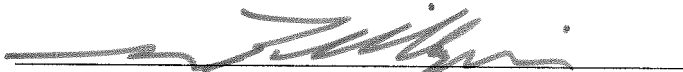
28. Due to the lack of information available to Landlord and Receiver to identity the proposed assignee, and pending the results of the auction, this Objection is without prejudice to Landlord's and Receiver's ability to raise further objections at any Sale Hearing and Landlord and Receiver reserve the right to raise all objections to any successful bidder under Section 365, including objections based upon adequate assurance of future performance and proposed use. Nothing in the approval of the Sale Hearing Order should waive or compromise the Landlord's and Receiver's rights under the Leases, or with respect to its ability to object to any document that Debtors propose in connection with the results of the auction.

³ Landlord and Receiver are in negotiations for an agreement in principal with Gordon Brothers Retail Group, Inc. ("Agent") regarding their objections to proposed Store Closing Guidelines. Accordingly, if an agreement is reached with regard to the objections and in the event that New Ashley is the successful bidder then Landlord and Receiver's will be resolved pursuant to a side letter agreement with Agent.

WHEREFORE, Chicago Building, L.L.C., by and through its management agent, Mid-America Asset Management, Inc., the landlord for the property commonly known as The Chicago Building, and C. Michelle Panovich of Mid-America Asset Management, Inc., as court appointed Receiver for the property commonly known as Lincoln Mall, respectfully request that any order approving the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rule 2002, 6004, and 6006 for *Entry of An Order Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Assumption and Rejection Procedures for Certain Additional Executory Contracts and Unexpired Leases; (D) Approving Guidelines for Conducting Store Closing Sales; (E) Approving Agency Agreement; and (F) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. §365(d)(4)*, reflect the objections and relief requested above by Landlord and Receiver, and for such other and further relief as may be just and required under all of the circumstances.

Dated: October 21, 2010

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