

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

In Re:)	Chapter 11
)	
Urban Brands, Inc., et al,)	10-13005 (KJC
)	
Debtors.)	(Jointly Administered)
)	Objection Deadline: October 21, 2010 @ 4:00 p.m.
)	Hearing Date: October 27, 2010 @ 11:00 a.m.
)	Ref. D.I. No. 34

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF MORRIS PROP MGMT
THE HUB, LLC TO DEBTORS’ MOTION SEEKING 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 OF AND ASSIGNMENT OF CERTAIN
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) AND JOINDER IN OBJECTION OF OTHER
LANDLORDS**

Morris Prop Mgmt The Hub, LLC (“Morris” or “Landlord”), by and through the undersigned counsel, for its limited objection and reservation of rights to the Debtors’ Motion Seeking 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 Of And Assignment Of Certain 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) (the “Motion), states as follows:

1. This is a contested matter pursuant to Bankruptcy Rules 6006(b) and 9014.
2. Jurisdiction is based upon 28 U.S.C. §1334.
3. This is a core proceeding within the meaning of 28 U.S.C. §157(b).

4. Morris is the property management company for the landlord of The Hub Shopping Center in Hempstead, NY, in which Debtor Large Apparel of New York, Inc. is a tenant, store number 316 (“the Lease”). On October 19, 2010, Morris filed an Objection to Debtors’ stated cure amount (D.I. No. 258). Because the objection deadline for the Motion comes before Landlord has received evidence of adequate assurance of future performance of all obligations under the Lease from prospective bidders for Debtors’ leases, and before the auction date and selection of the winning bidder, Landlord files this limited objection to preserve Landlord’s rights at the sale hearing to object should the Debtors propose the sale of Landlords’ Lease to an entity which has not provided evidence of its intent to comply with all obligations under 11 U.S.C. § 365, and any other applicable section of the Bankruptcy Code.

5. Bankruptcy Code Section 365(b)(2), governs the financial obligations of a debtor which wishes to assume and assign a lease. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(Emphasis added).

6. Landlord asserts that the Debtors must comply with all financial obligations asserted in Landlord's Cure Objection filed on October 19, 2010, prior to assuming and assigning the Lease.

7. Further, under 11 U.S.C. § 365(f)(2), the Debtors must provide evidence of "adequate assurance of future performance of the assignee of such contract or lease" ... "whether or not there has been a default in such contract or lease."

8. Adequate assurance under the Bankruptcy Code requires more than just a commitment to timely pay the rent and other obligations. Section 365(b)(3) of the Bankruptcy Code states, in pertinent part:

For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance -

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent under the lease will not decline substantially;

(C) that assumption and assignment of such lease is subject to all provisions thereof, including (but not limited to) provisions such as radius, location, use, or exclusivity provision contained in any other lease, financing agreement, of master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such center.

11 U.S.C. §365(b)(3).

9. With respect to the Lease, there is a use clause in Section 1.1(L) that states as follows:

Permitted Use: The Demised Premises shall be used solely for the display and retail sale of children's, infant's, men's and women's apparel,

furnishings and accessories. Lingerie, perfume, handbags, shoes, scarves, cosmetics, wigs and costume jewelry (including precious metals), gifts and boutique items, and for no other purpose. Lessee may also (i) perform alterations on apparel sold at the Demised Premises and (ii) sell health and beauty products provided such products do not occupy more than 5% of the selling, area of Lessee's store.

Further, Section 2.2 of the Lease contains Prohibited Uses of the Premises

PROHIBITED USES: Lessee covenants and agrees that it will neither conduct nor use any part or portion of the Demised Premises nor allow any other person or persons to sell and/or rent and/or display, nor engage in permitting the use of the Demised Premises Or any part thereof for the operation of, any amusement devices, games and machines whatsoever, including, but not limited to, pinball, electronic or video type amusement machines, games or devices, ie., Pac Man, etc.: and in addition thereto. Lessee shall neither offer nor permit the sale at or from the Demised Premises of any lottery tickets or raffle chances, or permit any forms of games of chance or gambling, in any form, from or at the Demised Premises, regardless of whether the same is sponsored by the federal, state, county or local authorities. ...

Under 11 U.S.C. § 365(b)(3)(C), any prospective purchaser must comply with this use clause and prohibited use clause.

10. Moreover, when a lease is being assigned, a debtor bears the heavy burden of demonstrating the proposed assignee's ability to provide adequate assurance of future performance. See, e.g., In re Federated Dept. Stores, Inc., 135 BR 941, 944 (Bankr. SD Ohio 1991), and In re TSW Stores of Nanuet, Inc., 34 BR 299, 308 (Bankr. SDNY 1983).

11. To date, Landlord has not been provided with any evidence that the stalking horse or any other successful bidder, has the ability to comply with all aspects of §365 and that the assumption and assignment of Landlord's Lease will not violate any existing use provisions in the Lease, disrupt tenant mix, or interfere with any other provision of § 365. Landlord reserves the right to supplement this objection as it has not yet been determined who the winning bidder at auction will be or what information they may provide to Landlord consistent with their

obligations under the Bankruptcy Code.

GOB Guidelines

12. The Sale Order seeks approval of the APA and an Agency Agreement. In Ames, the Bankruptcy Court for the Southern District of New York 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, by allowing the trustee to fulfill its fiduciary obligations. In re Ames Department Stores, Inc., 136 B.R. 357 (Bankr. S.D.N.Y. 1992). The Landlord could be seriously damaged by the proposed GOB Sales. Store closing or going out of business sales are detrimental, not only to the shopping center, but also to other tenants of the shopping center in question. Shopping centers are designed and planned for the retail sale of merchandise by numerous tenants operating in harmony with one another. The Landlord has designed well-thought out shopping centers with diverse tenant mixes. When one tenant deviates from customary operations by selling merchandise at liquidation or drastically reduced prices, all tenants suffer.

Specifically, the GOB Guidelines should be modified as follows:

1. They should set forth a time frame in which the sale will conclude.
2. There should be a prohibition on any solicitation of customers (whether in writing or not) outside of the Premises;
3. There should be no sign walkers, sandwich boards or street signage on the Shopping Center property, immediately adjacent streets, or ring roads;
4. No banners outside the Premises should be permitted
5. There should be no more than one sign in any front window of the store and the sign may not take up more than 50% of the window space;

6. Any signs placed in a store's front window must be set back at least one foot.
7. Only one interior banner no larger than 3' x 8' may be hung. The interior banner may only be hung in the rear third of the store;
8. Total additional in-store signage must be limited to four 24" x 36" signs per 1,000 square feet of store floor area.
9. The GOB Sale Procedures should specify that no interior or exterior balloons are permitted;
10. The Debtor or the Agent must be required to repair any damage caused by the placement of any signage;

JOINDER

13. Morris joins in the objections of other landlords to the Motion, to the extent not inconsistent herewith.

Wherefore, Morris Prop Mgmt The Hub, LLC prays that the Motion be denied and that the debtors and any purchaser be required to comply with all obligations under § 365, and for such other and further relief as the Court shall determine.

Date: October 21, 2010

COOCH AND TAYLOR, P.A.

/s/ Susan E. Kaufman

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