

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

IN RE:) **Chapter 11**
)
URBAN BRANDS, INC., et al.,) **Case No. 10-13005 (KJC)**
)
Debtors.) **Jointly Administered**
)
) **Related to Docket No. 34**
)

OBJECTION OF EGI PROPERTIES, L.L.C. TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(A), 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006 FOR (I) ENTRY OF AN 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; AND (II) 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)

EGI Properties, L.L.C. f/k/a Equity Properties and Development, L.L.C., a Delaware limited liability company ("Landlord"), hereby files this Objection (the "Objection") 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) 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; and (II) 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) (the "Sale Motion") [Docket No. 34] and, in support thereof, respectfully states as follows:

I. BACKGROUND

1. On September 21, 2010 (the "Petition Date"), Urban Brands, Inc. and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, Landlord and Large Apparel of Illinois, Inc. ("Tenant"), one of the Debtors and successor in interest to Stewart River Oaks, Inc., a New York Corporation, D/B/A Ashley Stewart Woman Sizes 14-28 / 100% Girls / Kidspot, entered into that certain Lease Agreement dated February 1, 2000 (the "Lease Agreement"), pursuant to which Landlord leased to Tenant certain property containing a total floor space of approximately 7,238 square feet and located at the property commonly known as Ford City

Shopping Center in Chicago, Illinois (the "Premises"). The Premises are managed by CBL & Associates Management, Inc.

3. Urban Brands, Inc. guaranteed the Tenant's obligations under the Lease Agreement pursuant to a Guaranty dated February 1, 2000.

4. On September 22, 2010, the Debtors filed the Sale Motion, which proposes to enter into a stalking horse bid with New Ashley Stewart, LLC (the "Stalking Horse Bidder").

5. On September 30, 2010, the Debtors filed their *Corrected Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors' Assets and the Proposed Cure Amounts with Respect Thereto* (the "Amended Notice") [Docket No. 104].

6. 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 "Order") [Docket No. 143], providing, among other things, a procedure for objecting to the sale.

II. OBJECTION

7. The expedited timetable established by the Order does not provide adequate time for the Landlord to (i) make an informed decision as to the ability of any

successful bidder to perform under the Lease; or (ii) assess information regarding the statutory requirement of adequate assurance of future performance.

8. If the Lease is assigned, the Buyer must assume all of the burdens and obligations under the Lease, and cannot allocate some obligations as retained by the estate or assume only designated obligations exonerating the estate as to others. The Debtors may be exonerated under Section 365(k) of the Bankruptcy Code only if the same liabilities are assumed by the Buyer.

9. The Debtors have not provided sufficient evidence of adequate assurance of future performance as required by Section 365(b)(1)(C) and Section 365(f)(2) of the Bankruptcy Code. Moreover, due to the unique nature of shopping center leases, the Bankruptcy Code requires more than the basic adequate assurance of future performance of the Leases under Section 365(b)(1)(C). *In re Sun TV and Appliances, Inc.*, 234 B.R. 356, 359 (Bankr. D.Del. 1999). Under Section 365(b)(3), adequate assurance of future performance of a lease of real property in a shopping center includes the following 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, must be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee. *See* 11 U.S.C. § 365(b)(3)(A).

(b) That any percentage rent due under the lease will not decline substantially. *See* 11 U.S.C. § 365(b)(3)(B).

(c) That assumption or assignment of the lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision contained in any other lease, financing agreement, or master agreement relating to such shopping center. *See* 11 U.S.C. § 365(b)(3)(C).

(d) That assumption or assignment of the lease will not disrupt the tenant mix or balance in the shopping center. *See* 11 U.S.C. § 365(b)(3)(D).

As of the date of this Objection, the only information with respect to the Stalking Horse Bidder is basic information regarding the Stalking Horse Bidder's parent, GB Merchant Partners, LLC. Without additional information, it is impossible for the Landlord to assess the Stalking Horse Bidder's ability to perform under the Lease. Landlord reserves the right to object to the assignment of the Lease as additional information on the Stalking Horse Bidder is provided.

10. The Debtors have provided no information or evidence of adequate assurance of future performance with respect to any other bidders. Thus, Landlord is unable to assess the ability of any other potential bidder to perform under the Lease. Landlord reserves the right to object to the assignment of the Lease as additional information on potential bidders is provided.

11. Any sale free and clear must not include a waiver of obligations of the Debtors (or the assignees) for liabilities arising under the Lease but not yet due and payable, including obligations for taxes and percentage rent.

12. The Debtors' proposed closing guidelines for the rejection of the Lease must be amended to reflect that (i) the Debtors are subject to all Liquidation Sale Laws (as defined in the Sale Motion); (ii) the Debtors are required to remove their signs from the

building and replace the sign lettering with blank paneling; (iii) the sale must be conducted during normal business hours; (iv) the Debtors cannot augment their inventory on the Premises or prejudice the Landlord by extending the time that the store closing sale takes place; and (v) any sign holder or walker cannot be present on the premises of the shopping center and should not in any way impede traffic in or around the shopping center.

13. The Sale cannot result in the waiver of the Landlord's administrative claim rights under Section 365(d)(3) of the Bankruptcy Code or any other applicable provision. In Section 2.5(i) of the Stalking Horse Asset Purchase Agreement (the "APA") that is attached as Exhibit B to the Sale Motion, the buyer is required to be "solely responsible" for, inter alia, any and all rent, charges, fees and expenses charged under a lease on nonresidential real property beginning on the Closing Date (as defined in the APA) though the date that a lease is assumed and assigned or rejected. This provision violates Section 365(d)(3) of the Bankruptcy Code, which states:

The trustee shall timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3). Thus, while the buyer may owe a reimbursement obligation to the Debtors, the Debtors are and must remain liable to pay all amounts accruing or otherwise owing under the Lease while the buyer determines whether to assign and assume the Lease.

III. JOINDER

14. Landlord joins in the Objections of all other landlords to the extent they are not inconsistent with the objections herein.

IV. RESERVATION OF RIGHTS

15. Due to the expedited nature of the sale process, Landlord may have insufficient time to fully examine any adequate assurance information provided. Therefore, Landlord hereby reserves the right to make additional objections with respect to the sale process and adequate assurance.

WHEREFORE, Landlord requests that the Court: (1) sustain this Objection; and (2) grant such other relief as this Court deems just and proper.

Dated: October 21, 2010

Respectfully submitted,

Edwards Angell Palmer & Dodge LLP

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