

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

In re	:	Chapter 11
UBI Liquidating Corp., <i>et al.</i>	:	Case No. 10-13005 (KJC)
	:	(Jointly Administered)
Debtors.	:	
	:	<b>Related Pleadings: #752</b>
	:	<b>Objection Deadline: February 10, 2011 at 4:00 p.m.</b>

**LIMITED OBJECTION TO ASSUMPTION AND ASSIGNMENT BY  
CHICAGO BUILDING, L.L.C., BY ITS MANAGEMENT AGENT, MID-AMERICA ASSET  
MANAGEMENT, INC., THE LANDLORD FOR THE CHICAGO BUILDING**

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) (“Landlord”), by and through its undersigned counsel, hereby files this limited objection to reassert its objection to the stated cure amount and to object to the language of the assumption and assignment order, and in support thereof states as follows:

**I. Background Facts**

1. 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.
2. 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 (“Premises”) pursuant to that certain lease and guaranty of lease dated on or about December 29, 2006 as guaranteed by one of the Debtors’ consolidated entities (collectively the “Lease”).
3. The Lease is a “lease 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).

4. During the Debtors' process of selling substantially all of its assets, the Debtors served their 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 ("Notice of Intent"). On September 29, 2010, the Debtors served their corrected Notice of Intent.

5. On October 4, 2010, the Court entered its Procedures Order for the bidding and auction of substantially all of the Debtors' assets which included, among other things, a procedure by which to object to proposed cure amounts.

6. On or about October 19, 2011, Landlord filed its objection to the Debtors' proposed cure amount identified on the schedule to the corrected Notice of Intent, in the amount of \$20,291.68, and claimed its cure amount as \$28,965.35, plus attorney's fees and costs in an amount to be determined upon assumption and assignment, and specifically reserved its right to allege continuing defaults that accrued between the date of filing its objection to actual assumption and assignment.

7. On October 27, 2010, this Court entered the Sale Order of substantially all of its assets to New Ashley Stewart, Inc. as docket number 434 ("Sale Order")<sup>1</sup>.

8. On January 31, 2011, the Debtor's filed their Notice of Intent to Assume and Assign Landlord's Lease to New Ashley ("Notice to Assume").

9. Landlord hereby files this limited objection to (i) reassert its cure claim, now in the amount of \$47,314.92, since additional administrative expenses have accrued and remain unpaid by the Debtor, plus legal fees and costs in the amount of \$17,803.14, for a total cure claim of \$65,118.06<sup>2</sup>; and (ii) to incorporate the specific language mutually negotiated and entered as part of the Sale Order with respect to the Purchaser's ongoing liabilities for year end reconciliations and adjustments.

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<sup>1</sup> All capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Motion.

<sup>2</sup> This amount is subject to revision to include incurred but unbilled legal fees and will be updated prior to hearing on this objection to include all amounts then due.

## **II. Cure Amounts**

10. As a condition to any assumption and assignment of the Lease, all defaults must be cured at closing. *See* 11 U.S.C. § 365(b)(1)(A).

11. The Debtors list the proposed cure amount at \$20,291.68 on the corrected Notice of Intent.

12. Landlord objects to the stated cure amount for two (2) reasons: (a) the Debtors are currently in default in the amount of \$47,314.92; and (b) defaults also include attorney's fees and costs in the amount of \$17,803.14, for a total cure claim of \$65,118.06<sup>3</sup>.

### **A. The Amount of Debtors' Default is currently \$47,314.92**

13. The actual amount of Debtors' current Lease default for rent and charges is \$47,314.92. A copy of Landlord's current detailed ledger reflecting the amounts owed under the Lease is attached hereto as Exhibit "A" and incorporated herein by reference. The Debtors have allowed numerous administrative defaults to accrue since the Sale Order was entered, which should be paid immediately.

### **B. Attorney's Fees and Costs.**

14. In conjunction with the obligation of the Debtors to cure defaults upon assumption of the Lease, the Debtors must compensate Landlord for any actual pecuniary loss [*See* 11 U.S.C. §365(b)(1)(B)], including attorney's fees and costs resulting from the default of Debtors under the Lease.

15. The Lease provides in section 8.1 (a) (p) that tenant is responsible to reimburse landlord for its reasonable legal fees as follows: "(p) Enforcement Expenses. To pay on demand Landlord's expenses, including reasonable attorney's fees, expenses and administrative hearing and

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<sup>3</sup> This amount is subject to revision to include incurred but unbilled legal fees and will be updated prior to hearing on this objection to include all amounts then due.

court costs incurred either directly or indirectly in enforcing any obligation of Tenant under this Lease ... "

16. Landlord claims attorney's fees and costs in the amount of \$17,803.14 plus amounts incurred but not yet billed.

## **II. The Assumption and Assignment Order should Mirror the Sale Order**

17. The proposed assumption and assignment order does not adequately protect Landlord for year-end adjustments and reconciliations that are posted post assumption and assignment. The proposed assumption and assignment order simply states: "Upon entry of this Order, the Assignee shall assume those obligations under the Lease accruing, relating, attributable or billed to the period after the date of entry of this Order with respect to the Lease."

18. The Court already specifically ordered more explicit language, which should be included in the assumption and assignment order for the sake of clarity of the parties' respective rights. The Sale Order provides, at Section 15, as follows: "...the Purchaser will assume to the extent applicable under such Assumed Real Property Lease, (i) any amounts due as year-end adjustment and/or reconciliation charges without regard to whether those amounts accrued prior to or after the effective date of the assignment, including without limitation all Landlord percentage rents, (ii) any liabilities that arise under such Assumed Real Property Lease that do not constitute defaults prior to the Designation Deadline, including, without limitation any amounts billed in the ordinary course of business under the terms of the respective Assumed Real Property Lease, or (iii) the Debtors' obligation, if any, to indemnify a non-Debtor counterparty to such Assumed Real Property Lease. . ."

19. Landlord requests the same protective language in any assumption order to apply to assumption and assignment of its Lease.

WHEREFORE, 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, respectfully requests that any order approving assumption and assignment of the Lease reflect the relief requested above by: (A) stating the Debtors' current default is \$47,314.92 plus attorney's fees and costs in the amount of \$17,803.14 or such amount to accrue as of the date this objection is heard, for a total cure claim of at least \$65,118.06<sup>4</sup>; (B) incorporating this Court's language from the Sale Order to provide that the Purchaser/Assignee will assume to the extent applicable under such Assumed Real Property Lease, (i) any amounts due as year-end adjustment and/or reconciliation charges without regard to whether those amounts accrued prior to or after the effective date of the assignment, including without limitation all Landlord percentage rents, (ii) any liabilities that arise under such Assumed Real Property Lease that do not constitute defaults prior to the Designation Deadline, including, without limitation any amounts billed in the ordinary course of business under the terms of the respective Assumed Real Property Lease, or (iii) the Debtors' obligation, if any, to indemnify a non-Debtor counterparty to such Assumed Real Property Lease. . . ."; and (C) for such other and further relief as may be just and required under all of the circumstances.

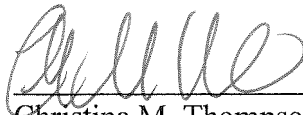
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<sup>4</sup> This amount is subject to revision to include incurred but unbilled legal fees and will be updated prior to hearing on this objection to include all amounts then due.

Dated: February 8, 2011  
Wilmington, Delaware

CONNOLLY BOVE LODGE & HUTZ LLP



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