

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	) Chapter 11
	)
CBC Restaurant Corp., <i>et al.</i> , <sup>1</sup>	) Case No. 23-10245 (KBO)
	)
Debtors.	) (Jointly Administered)
	)
	) Obj. Deadline: March 24, 2023 at 11:59 p.m. <sup>2</sup> ET
	) Hearing Date: March 28, 2023 at 1:00 p.m. ET
	) Relating to Docket Nos.: 52, 141

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**LIMITED OBJECTION OF EAGLE GREEN, LP AND TOWSON UE LLC TO FIRST  
OMNIBUS MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER:  
(1) AUTHORIZING THE REJECTION OF CERTAIN UNEXPIRED LEASES AND  
ABANDONMENT OF CERTAIN PERSONAL PROPERTY (WITH CERTAIN  
REJECTIONS AND ABANDONMENTS EFFECTIVE *NUNC PRO TUNC* AS OF THE  
PETITION DATE); AND (2) GRANTING RELATED RELIEF**

Eagle Green, LP ("Eagle Green") and Towson UE LLC ("Towson", and together with Eagle Green, the "Landlords") by and through their undersigned counsel, hereby filed this limited objection (the "Objection") to the Debtors' *First Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief* (the "Rejection Motion") [D.I. 52]. In support of this Objection, the Landlords respectfully state as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Lane, Ste. 301, Newton PA 18940.

<sup>2</sup> Extended by agreement of parties.



### **BACKGROUND**

1. On February 22, 2023 (the “Petition Date”), CBC Restaurant Corp. and their affiliated debtor entities (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Debtors’ cases have been jointly consolidated for administrative purposes only.

2. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.<sup>3</sup> No trustee or examiner has been appointed in the Chapter 11 Cases at this time.<sup>4</sup>

3. The Debtors lease retail space (the “Premises”) from the Landlords pursuant to unexpired leases of nonresidential real property (individually, a “Lease,” and collectively, the “Leases”) at the locations (the “Centers”) set forth below:

<b>Store No.</b>	<b>Store</b>	<b>Location</b>	<b>Landlord</b>	<b>Proposed Rejection Effective Date</b>
269	Goucher Commons	Towson, MD	Towson UE LLC	Petition Date
308	613 W, Lancaster Avenue	Wayne, PA	Eagle Green, LP	February 28, 2023

4. Each 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, 1086-87 (3d Cir. 1990).

5. On February 28, 2023, the Debtors filed the Rejection Motion, seeking, *inter alia*, to reject leases effective as of the dates set forth therein and to abandon any personal

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<sup>3</sup> Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

<sup>4</sup> SSCP Restaurant Investors LLC (“SSCP”) filed the *SSCP Restaurant Investors LLC’s Motion to Appoint Chapter 11 Trustee* [D.I. 159] on March 20, 2023.

property remaining at the premises pursuant to Sections 105(a), 365(a), and 554(a), which relief affects the Leases, and proposes rejection dates effective as of the dates set forth in Paragraph 3 above (the “Rejection Dates”).

6. On March 20, 2023, SSCP filed the *Limited Objection of SSCP Restaurant Investors LLC to First Omnibus Motion of the Debtors for Entry of an Order: (I) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief (“SSCP’s Objection”)* [D.I. 163], which asserts, *inter alia*, that the Debtors should not be permitted to reject the leases for the Recently Vacated Premises<sup>5</sup> (which would include the Eagle Green Lease) and should not be permitted to abandon the personal property remaining therein.

7. On March 23, 2023, the Debtors filed the *Debtors’ Response to the Limited Objection of SSCP Restaurant Investors LLC to First Omnibus Motion of the Debtors for Entry of an Order: (I) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief* [D.I. 198].

8. The Landlords have been working with the Debtors on a proposed form of order (the “Proposed Order”) to address any concerns and objections they have to the Rejection Motion on an informal basis, although as of the date of this Objection, those discussions are ongoing necessitating this Objection.

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<sup>5</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Rejection Motion.

9. Further, at approximately 4:30 p.m. ET on March 24, 2023, more than 24 days after the filing of the Rejection Motion and the Debtors' surrender of the respective Premises to the Landlords on or before February 28, 2023, the Debtors served the Landlords with the attached supplemental notice of potential equipment lessors (the "Equipment Lessors") that may have rights in certain leased equipment remaining on the Premises. True and correct copies of these supplemental notices (the "Supplemental Notices") are attached hereto as **Exhibit A**.<sup>6</sup>

### **OBJECTION**

10. The Landlords do not oppose the rejection of the Leases. Landlords do object, however, to any attempt to set the date for the rejection of the Leases as a date other than the later of the date when the Debtors have (i) unequivocally relinquished possession and control of the Premises, and (ii) returned the same to the Landlords free of any interests or property of the Debtors or any other parties, and any ability to later retrieve or abandon property at the Premises.

11. The Landlords have had productive discussions with the Debtors regarding the Landlords' comments and objections to the Proposed Order. These conversations, which are ongoing, included discussions and negotiations surrounding the abandonment relief sought by the Debtors and the status of certain personal property remaining at the Premises. As a result of these negotiations, the Landlords and the Debtors reached an agreement on language to be included in a revised Proposed Order (the "Revised Proposed Order"), to address the Landlords'

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<sup>6</sup> With respect to the Towson Lease, the Landlord was previously made aware of the Loomis interest and has been working separately with the Debtors and Loomis to effect the removal of a safe at the Premises, which Premises has been in possession of the Landlord prior to the Petition Date. With respect to the Eagle Green Lease, the Supplemental Notice was the first Notice to the Eagle Green Landlord that there were potential third parties who may have an interest in any personal property at the Premises. In fact, Landlord believes the Debtor removed all property prior to the Rejection Date, and only Landlord owned property remains.

concerns and objections. The Landlords appreciate the Debtors' willingness and efforts to reach a consensual informal resolution on these issues; however, as of the date of this Objection, to the Landlords knowledge, the Revised Proposed Order has not been agreed to by SSCP or any other party who may have an interest in the remaining personal property sought to be abandoned as of the proposed Rejection Dates. Landlords are also concerned that certain property is being left behind at the Premises subject to other party's interests, which cannot be disposed of by the Landlords and, therefore, there has not been an unequivocal surrender of possession to the Landlords at this time.

12. Landlords file this Objection out of an abundance of caution in light of SSCP's Objection and the Supplemental Notices. SSCP's Objection and Supplemental Notices seek to retroactively reverse the Debtors' prior unequivocal surrender of the Premises to the applicable Landlords and force Landlords to act as both involuntary lenders and bailees bearing the associated costs and risks of liability associated with the maintenance of the premises and the protection of the personal property remaining therein (the "Third-Party Property"). The Landlords have acted in good faith and relied on the Rejection Motion and the Debtors' stated unequivocal surrender of the Premises, a condition precedent for rejection.

13. The Bankruptcy Code clearly provides for the immediate surrender of property upon rejection. *See* 11 U.S.C. § 365(d)(4)(A) ("the trustee shall immediately surrender that nonresidential real property to the lessor"); *In re Scarborough-St. James Corp.*, 2015 Bankr. LEXIS 3258, \*9-10, 2015 WL 5672628 (Bankr. D. Del. Sept. 24, 2015) ("[U]pon rejection of a lease of nonresidential real property, the trustee shall 'immediately surrender that nonresidential real property to the lessor.'" (*quoting* 11 U.S.C § 365(d)(4)(A))); *In re Cobham Enters., Inc.*, 72 B.R. 779, 781 n.1 (S.D.N.Y. 1987) ("under 11 U.S.C. § 365 (Supp. 1986) the trustee in bankruptcy or

the debtor in possession may ‘assume’ the lease and continue to exercise control over the leasehold estate or ‘reject’ it and surrender the leased premises to the landlord.”); *In re Newman*, 81 B.R. 796, 803 (S.D.N.Y. 1988) (“assuming a valid lease, there is legal authority for the proposition that a trustee who remains in possession of property subsequent to his rejection of the lease, must continue to pay the full rent reserved, pending surrender of the property.”)

14. There is no basis for a bankruptcy court to grant third parties a right to use and occupy real property leased by debtors outside the parameters of Section 365, and the Debtors have pointed to none. *See, e.g., In re Antwerp Diamond, Inc.*, 138 B.R. 865, 866-869 (Bankr. N.D. Ohio 1992) (denying approval of a proposed sale of the debtor’s assets where the purchaser would have been permitted to conduct going out of business sales on the leased premises without effecting an assignment in violation of Section 365).

15. There is no basis for a bankruptcy court to grant a party rights to use and occupy real property leased by debtors outside the parameters of Section 365, and the Debtors have pointed to none. *See, e.g., In re Antwerp Diamond, Inc.*, 138 B.R. 865, 866-869 (Bankr. N.D. Ohio 1992) (denying approval of a proposed sale of the debtor’s assets where the purchaser would have been permitted to conduct going out of business sales on the leased premises without effecting an assignment in violation of Section 365).

16. This exact issue was raised and decided on April 21, 2020 by Judge Walrath in *In re Forever 21, Inc., et al.*, Case No. 19-12122 (KG). Following objections raised by landlords, Judge Walrath clearly and correctly ruled that, even during the COVID-19 pandemic, she had no authority to vitiate the Bankruptcy Code’s requirement that “rejection is effective when possession of the premises is delivered to the landlord.” Specifically, Judge Walrath ruled:

I appreciate that the COVID-19 pandemic, by its very name, is worldwide and has caused terrible disruption in all countries, in all

industries, and even on many, many personal levels. And I do feel for the situation that both the buyer and the landlords find themselves in. Unfortunately, I believe that I do not have authority to grant any of the relief that the buyer is requesting.

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And I think that the relief requested contravenes Section 365, where, at (d)(3), it says that, before a lease is rejected, the debtor or its representative has to timely perform all lease obligations; and at (d)(4), where it says, if a lease is rejected, the debtor must surrender possession of the premises. There is no in between. Neither the debtor, nor the buyer -- who stands in its shoes -- can purport to reject a lease, not pay rent, but not give up possession. And there are plenty of cases that say rejection is effective when possession of the premises is delivered to the landlord. I think it also might contravene Section 363(e), which requires the payment of adequate protection to anyone for use of that third party's property.

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So, while -- again, while I'm sympathetic, I just do not have the power to grant the relief requested. And I am hopeful that the landlords and the buyer can otherwise work out the arrangement. But I will hold that -- the rejection of any lease, whether noticed or not -- well, if it's been noticed, whether noticed for any specific date, cannot be effective under longstanding case law until the premises are delivered to the landlord, and that rent must be paid.

Transcript of Hearing at 27:17-14, 27:23-28:10, 29:7-15, *In re Forever 21, Inc., et al.*, Case No. 19-12122 (MFW) (April 21, 2020).<sup>7</sup> The present case dictates the same result, and the Debtors have provided *no* authority to violate the provisions of the Bankruptcy Code or established precedent.

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<sup>7</sup> In that case, a buyer filed a *Motion for Entry of an Order Modifying the Sale Order and Granting Certain Other Relief Relating to Going Out of Business Sales and Store Closings* [D.I.1115], and the debtors filed a *Ninth Notice of Rejection of Unexpired Non-Residential Real Property Leases* [D.I. 1110]. Landlords respectfully request this Court to take judicial notice, pursuant to Federal Rules of Evidence 201, as made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 9017, of the publicly available records (Docket Nos. 1110, 1115) in *In re Forever 21, Inc., et al.*, Case No. 19-12122 (MFW) and pertinent portions of the Transcript of Hearing (the "Transcript"). Pertinent portions of the Transcript are attached hereto as Exhibit B.

17. Accordingly, any property remaining on the Premises must have either been removed before the effective Rejection Dates, or be abandoned free and clear of all liens, claims, interests, and encumbrances as of the effective Rejection Dates, not some future date, and any order should provide that the Landlords may use or dispose of any such abandoned personal property without notice or liability to the Debtors or any third parties, without further notice or order of this Court, and without waiver of any claim that the Landlords may have against the Debtors. Moreover, to the extent applicable, the automatic stay should be modified to permit the use or disposition of any abandoned property remaining, including but not limited to the transfer of title by the applicable Debtor(s).

18. If the Landlords do not have unequivocal surrender of the Premises as of the applicable Rejection Dates, it impacts property rights spanning far beyond the accrual of rent including, but not limited to, responsibility for utilities, building security, and who has an insurable interest with respect to the property and the risk of loss in the event of damages to the Premises or the personal property located therein. The Debtors cannot abdicate these obligations by seeking to reject leases, thereby cutting off the insurable interest in the property, while still utilizing the Premises for their benefit and putting the risk of loss for any damage to the Premises and any property, or any injury to a third party entering therein solely on the Landlords. *See, e.g., Shotmeyer v. N.J. Realty Title Ins. Co.*, 195 N.J. 72, 85, 948 A.2d 600 (2008) (there must be “an insurable interest at the time of the loss.”). *See also Commercial Union Fire Ins. Co. v. Parvin*, 189 So. 2d 330, 334 (Ala. 1966) (holding that where a lessee’s rights ended, he consequently “had no insurable interest in the property. . .”).

19. The Debtors control the rejection of their Leases, and any rejection must provide that the Debtors unequivocally vacate and turnover the Premises to the respective Landlord,



including removal and/or abandoned of all property prior to the Rejection Date. Landlords should not be subjected to any risk of loss from the Rejection Date occurring prior to the Landlords' complete control of the Premises. There is no basis in law or equity to require that Landlords bear the entire cost and risks associated with the Debtors' proposal, and the Court should not order the Landlords to provide rent-free use, occupancy, and storage, at its risk of loss.

20. The language in the Revised Proposed Order provides finality to confirm that whatever property left behind in the Premises is being abandoned free and clear of all claims, liens, encumbrances and interests, which relief is appropriate and necessary in these cases to Landlords' ability to dispense with such property and commence re-letting activities.

21. This is especially true where the Debtors have sought retroactive Rejection Dates. The general rule in this District is that the premises must be unequivocally surrendered to the landlord on the Rejection Date if there is to be a retroactive rejection of a lease. *See Namco Cybertainment, Inc.*, Case No. 98-00173 (PJW), April 15, 1998 Transcript of Proceedings, at p. 35 (attached hereto as Exhibit 2).<sup>8</sup> Pending a resolution of the SSCP Objection and the Supplemental Notices, the Landlords have no ability to release, or otherwise deal with, the Premises, regardless of whether such third-party objections are ultimately sustained, overruled or withdrawn. Landlords will not have possession and control of the Premises until then, and it is inappropriate for the Rejection Date to occur prior to the Landlords having unequivocal possession and control over the Premises. The Landlords cannot be tasked with bearing the costs for the storage of the property on the Premises, risk of loss for any damage that has occurred to the property on the

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<sup>8</sup> Landlords respectfully request this Court to take judicial notice, pursuant to Federal Rules of Evidence 201, as made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 9017, of the April 15, 1998 Transcript of Proceedings in *Namco Cybertainment, Inc.*, Case No. 98-00173 (PJW), attached hereto as **Exhibit C**.

Premises post-rejection, and any claims that may arise post-rejection based on the requested relief. The Landlords must have certainty as to abandonment of the property and surrender of the Premises as of the Rejection Dates to mitigate their losses and regain full possession of the Premises. All property either must be removed by the Debtors or any third parties, or abandoned on or before the effective Rejection Dates.

22. The Bankruptcy Code grants the Court the authority in which to enter such an order granting the rejection of the leases and as well as the abandonment of property remaining therein as it sees fit. Specifically, Section 554 permits a debtor to abandon property, and there is nothing in the language of the Bankruptcy Code or the case law interpreting that section that limits the language a Court may use to effectuate Section 554. Section 363 further permits the Court to authorize the sale, use or lease of property free and clear of liens, claims and encumbrances, in addition to the broad equitable authority granted to this Court under Section 105.

23. Here, the Debtors were required to provide notice to all parties with an interest in the property that may be abandoned at the Premises, and that such property remaining at the Premises would be abandoned, absent their removal prior to the effective date of any Lease rejection, and Landlords have presumed that SSCP and the Equipment Lessors received actual notice of the Rejection Motion and the relief sought by the Debtors, i.e., that the personal property remaining at the Premises upon the Rejection Date would be abandoned and subject to disposal by the Landlord free and clear of all liens, claims, encumbrances, and interests or other rights of third parties, and without further notice or liability to the Debtors or any third party.

24. To the extent the Court is inclined, to approve SSCP's Objection and give effect to the Supplemental Notices, in denying the Rejection Motion as it relates to the Leases, the Landlords reserve the right to request immediate payment of rent for March 2023 pursuant to

section 365(d)(3) and to demand proof of insurance for the Premises from the Surrender Date forward as required pursuant to the Leases.

**WHEREFORE**, the Landlords do not oppose entry of the Revised Proposed Order granting the Rejection Motion and respectfully reserve their right to further oppose SSCP's Objection, the Supplemental Notices, and/or raise other and further additional arguments with respect to the Rejection Motion at the hearing.

Dated: March 24, 2023  
Wilmington, Delaware

/s/ Leslie C. Heilman

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# **EXHIBIT A**



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March 24, 2023

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800-472-2855



**Re: Notice of Lease Rejection and Vacating Premises**  
**Corner Bakery Store No. 269 - Towson**  
**Premises: 823 Goucher Blvd. Towson MD 21286**  
***In re CBC Restaurant Corp., et al., Case No. 23-10245-11***  
**(Bankr. Del., Petition Date 2/22/2023)**

Please be advised that the real property lease for the premises identified above is being rejected by the Debtors under section 365 of the Bankruptcy Code as set forth in and effective as of the date set forth in the attached First Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (With Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (3) Granting Related Relief [Dkt. 52] attached hereto.

We understand that certain equipment lessors who are being copied on the letter/email may have equipment on the premises. The purpose of this notice is allowing the parties to coordinate between themselves as to how and when the equipment can be removed from the premises.

Each of you has the other party's contact information as set forth in this communication which should be helpful.

Thank you for your anticipated cooperation.

Respectfully,  
**CULHANE MEADOWS PLLC**  
RICHARD G. GRANT, ESQ.  
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March 24, 2023

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**Re: Notice of Lease Rejection and Vacating Premises**  
**Corner Bakery Store No. 308 - Wayne**  
**Premises: 613 West Lancaster Avenue Wayne, PA 19087**  
***In re CBC Restaurant Corp., et al., Case No. 23-10245-11***  
**(Bankr. Del., Petition Date 2/22/2023)**

Please be advised that the real property lease for the premises identified above is being rejected by the Debtors under section 365 of the Bankruptcy Code as set forth in and effective as of the date set forth in the attached First Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (With Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (3) Granting Related Relief [Dkt. 52] attached hereto.

We understand that certain equipment lessors who are being copied on the letter/email may have equipment on the premises. The purpose of this notice is allowing the parties to coordinate between themselves as to how and when the equipment can be removed from the premises.

Each of you has the other party's contact information as set forth in this communication which should be helpful.

Thank you for your anticipated cooperation.

Respectfully,  
**CULHANE MEADOWS PLLC**  
RICHARD G. GRANT, ESQ.  
Partner

RGG/hl  
Enclosures



# **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
FOREVER 21, INC., et al, . Case No. 19-12122 (MFW)  
Debtors. . 824 Market Street  
Wilmington, Delaware 19801  
. Tuesday, April 21, 2020

TRANSCRIPT OF TELEPHONIC HEARING ON MOTION TO MODIFY  
BEFORE THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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For the Official Committee  
of Unsecured Creditors: Lucian Murley, Esq.  
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(Appearances Continued)

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(Appearances Continued)

APPEARANCES VIA TELEPHONE: (Continued) A

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1 that -- obviously, parties need to be able to review the  
2 order that was just filed. But we would ask that Your Honor  
3 grant the motion for the changes that we've talked about and  
4 for the limited relief that we are seeking today.

5 THE COURT: All right. Well, thank you. Let me  
6 make my ruling.

7 I appreciate that the COVID-19 pandemic, by its  
8 very name, is worldwide and has caused terrible disruption in  
9 all countries, in all industries, and even on many, many  
10 personal levels. And I do feel for the situation that both  
11 the buyer and the landlords find themselves in.

12 Unfortunately, I believe that I do not have  
13 authority to grant any of the relief that the buyer is  
14 requesting. And I appreciate that the buyer has used great  
15 efforts to get a settlement with as many landlords as  
16 possible, but I think that is its only recourse.

17 And the reason I say this is Section 105 does not  
18 give me the authority to do what is requested. That section  
19 is not a blank check. And the Supreme Court has told us in  
20 Law v. Siegel that any relief granted under 105 must be in  
21 furtherance of a Bankruptcy Code provision and not in  
22 contravention of any specific provision.

23 And I think that the relief requested contravenes  
24 Section 365, where, at (d)(3), it says that, before a lease  
25 is rejected, the debtor or its representative has to timely

1 perform all lease obligations; and at (d)(4), where it says,  
2 if a lease is rejected, the debtor must surrender possession  
3 of the premises. There is no in between. Neither the  
4 debtor, nor the buyer -- who stands in its shoes -- can  
5 purport to reject a lease, not pay rent, but not give up  
6 possession. And there are plenty of cases that say rejection  
7 is effective when possession of the premises is delivered to  
8 the landlord. I think it also might contravene Section  
9 363(e), which requires the payment of adequate protection to  
10 anyone for use of that third party's property.

11 And I say -- I mention the Section 365(d)(3) and  
12 the constraints on the debtor, and further note that it is  
13 not the debtor that is requesting the relief here, but a  
14 third party, the buyer. And there is certainly no provision  
15 in the Bankruptcy Code meant to protect the interest of  
16 nondebtors, non-creditor third parties. The buyer's rights  
17 are limited by the asset purchase agreement and the sale  
18 order.

19 And again, while I'm sympathetic to the buyer's  
20 plight because I agree nobody foresaw the devastation that  
21 the COVID-19 pandemic would cause in this country, there  
22 simply is no basis in the Bankruptcy Code and the Supreme  
23 Court decisional law that precludes me from granting the  
24 relief requested.

25 The cases cited by the buyer -- and I note that my

1 colleagues in Modell's and Pier One have entered orders, but  
2 they are not for the benefit of a nondebtor third party; they  
3 were for the benefit of the debtors, and they were founded on  
4 provisions of the Bankruptcy Code, Section 305 specifically,  
5 to allow for a delay in the case because of the unusual  
6 circumstances.

7           So, while -- again, while I'm sympathetic, I just  
8 do not have the power to grant the relief requested. And I  
9 am hopeful that the landlords and the buyer can otherwise  
10 work out the arrangement. But I will hold that -- the  
11 rejection of any lease, whether noticed or not -- well, if  
12 it's been noticed, whether noticed for any specific date,  
13 cannot be effective under longstanding case law until the  
14 premises are delivered to the landlord, and that rent must be  
15 paid. I understand, under the asset purchase agreement, it  
16 is the buyer who's responsible for that rent.

17           So I'll ask one of counsels to submit a form of  
18 order to that effect for me to enter.

19           MR. KAPLAN: And so just -- Your Honor, just to  
20 avoid coming back on a -- this is Gary Kaplan again, from --  
21 on behalf of the buyer. To avoid coming back -- because I  
22 suspect people will try to read more into it -- you're not  
23 ordering -- well, I'm asking. You're not making a  
24 determination about whether or not we are obligated to pay  
25 rent because there may or may not be defenses under these

1 leases where we have no access, as to whether rent is owed.  
2 So I understand what Your Honor is saying, vis-a-vis the  
3 relief requested. But I wanted to make sure that Your Honor  
4 is not going beyond the relief to, in fact, order payment of  
5 rent, where there may be defenses or not.

6 I don't know whether Your Honor is the appropriate  
7 court or not to decide those disputes. Maybe -- I haven't  
8 given it any thought. But before we get into a dispute with  
9 others and come back, or others put in provisions mandating  
10 the payment of rent, I wanted to be sure that that was not  
11 something, since nobody argued the provisions of the leases -  
12 -

13 THE COURT: Yes.

14 MR. KAPLAN: -- with respect to that.

15 THE COURT: Yes. I am not making any ruling on  
16 whether there is any exception to payment of rent under the  
17 lease. I'm simply stating that, until -- the rejection under  
18 365 is effective only when the property has been delivered to  
19 the landlord, and that whatever obligations there are under  
20 that lease have to be performed until rejection is effective.

21 MR. KAPLAN: Thank you, Your Honor.

22 THE COURT: And I think that covers all of the  
23 remaining items on the agenda, as well. It may moot some of  
24 them.

25 MR. KAPLAN: That is correct, I think, from the



1 buyer's side. I think that does address all of the issues on  
2 the agenda.

3 MS. DAVIS JONES: From the debtors --

4 THE COURT: All right. So --

5 MS. DAVIS JONES: -- perspective, that's correct,  
6 as well.

7 THE COURT: Okay.

8 (Recorded proceedings concluded at 2:45 p.m.)

9 \*\*\*\*\*

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in cursive script, appearing to read "Coleen Rand", is written over a horizontal line.

April 22, 2020

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable

# **EXHIBIT C**

1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: )  
 )  
NAMCO CYBERTAINMENT, INC., ) Case No. 98-173 (PJW)  
 )  
Debtor. )

United States Bankruptcy Court  
Courtroom No. 2  
Sixth Floor  
824 North Market Street  
Wilmington, Delaware 19801

Wednesday, April 15, 1998  
4:00 p.m.

BEFORE: HONORABLE PETER J. WALSH  
United States Bankruptcy Judge

TRANSCRIPT OF PROCEEDINGS

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WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477



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15 THE COURT: Okay. Well, it does seem  
16 to me that where it is patently clear that the lease is  
17 going to be rejected that as a matter, some equity  
18 relief ought to be granted.

19 And I think the role that I am  
20 inclined to adopt--and I'm not going to apply it in  
21 this case because for the reasons I mentioned--I  
22 believe that if the premises are surrendered with an  
23 unequivocal statement to the landlord that the debtor  
24 is abandoning and thereafter the debtor files a motion



1 to reject, then I believe that it would be equitable to  
2 allow the rejection date to be effective on the date  
3 that that motion is served, provided that the motion  
4 contains a representation that the committee agrees  
5 with the motion; because if that representation were in  
6 the motion, then I can't conceive of the circumstances  
7 under which the motion would be denied.

8 And if a landlord wants--I'm sorry.  
9 If the debtor wants a rejection date prior to the  
10 hearing date, then to the extent it seeks that date,  
11 then a part of my rule would be that the debtor cannot  
12 change its mind.

13 So, if you want a rejection date  
14 prior to the hearing, it seems to me that it could be  
15 done in the circumstances where (a) prior to the filing  
16 of the motion, the keys were surrendered, the premises  
17 surrendered with an unequivocal statement to the  
18 landlord of abandonment; (b) the motion is served and  
19 filed on the landlord; (c) the motion states that the  
20 committee agrees with the motion; and (d) that the  
21 debtor acknowledges that it will not have the right to  
22 withdraw that motion prior to the hearing. Given those  
23 situation--given those factors, I would permit the  
24 rejection effective as of service of the motion.



1                   You don't have those facts in this  
2 case. So, I wouldn't apply the rule in this case.

3                   However, it does seems to me that  
4 there was an objection deadline of April 6th, 1998.  
5 Nobody objected to the rejection. And it certainly  
6 seems to me that a rejection date of April 6 would be  
7 appropriate under these circumstances. So, I'll sign  
8 an order authorizing the rejection as of April 6.

**CERTIFICATE OF SERVICE**

I, Leslie C. Heilman, hereby certify that, on this 24th day of March 2023, I caused a true and correct copy of the foregoing *Limited Objection of Eagle Green, LP and Towson UE LLC to First Omnibus Motion of the Debtors for Entry of an Order: (I) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief* to be served via CM/ECF on all parties who have registered for electronic service in these cases.

Dated: March 24, 2023  
Wilmington, Delaware

/s/ Leslie C. Heilman

Leslie C. Heilman (DE No. 4716)  
BALLARD SPAHR LLP