

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

IN RE: ) Chapter 11  
)  
CBC RESTAURANT CORP., et al.<sup>1</sup> ) Case No. 23-10245 (KBO)  
)  
Debtors. ) (Jointly Administered)  
)  
) Re: Docket Nos. 361, 418, 469  
)  
) **Objection Deadline (By Agreed Extension):**  
) **May 24, 2023 @ 4:00p.m.**  
) **Hearing: June 1, 2023 @ 9:30a.m.**

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**OBJECTION AND RESERVATION OF RIGHTS OF HALF BAKED, LLC TO THE (I)  
NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT TO  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS AND (II)  
PROPOSED SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

Half Baked, LLC ("HB"), by and through the undersigned counsel, timely files this objection and reservation of rights (the "Objection") by agreed extension to the *Notice of Possible Assumption and Assignment with Respect to Executory Contracts and Unexpired Leases of the Debtors* [D.I. 418] (the "Notice"), and the proposed sale of the Debtors' assets pursuant to the *Order (I) Approving Bidding Procedures In Connection With The Sale Of Substantially All Of Debtors' Assets, (II) Scheduling Bid Deadlines And The Auction, (III) Approving Form And Manner And Notice Thereof, And (IV) Granting Related Relief* [D.I. 361] (the "Bid Procedures Order"). In support thereof, HB respectfully states:

**PRELIMINARY STATEMENT**

HB files this Objection to the cure amounts set forth in the Notice and to any purported adequate assurance received to date on behalf of Corbak Acquisition, LLC, the Debtors' selected

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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, Suite 301, Newtown, PA 18940.



stalking horse bidder. Specifically, HB requests that the Court: (a) deem the Notice and this Objection a contested matter; (b) allow parties to conduct discovery; and (c) set an evidentiary hearing ("Evidentiary Hearing") to determine the issues raised in the Notice (as defined herein) and this Objection, including: (i) whether the Debtors have defaulted under the terms of its franchise agreements with HB; (ii) whether HB was damaged by such defaults; (iii) where a default of the franchise agreements has occurred, whether the default is curable; (iv) the cure amount that the Debtors must pay to cure any curable default; and (v) whether the Debtors have provided "assurance of future performance" pursuant to 11 U.S.C. §365(b)(1)(C).

As set forth herein, the Debtors, as franchisors, have become the functional equivalent of an absentee landlord and essentially "gone dark" in recent years, sitting back and merely collecting royalty fees while franchisees languished under the Debtors' corporate stewardship. This inaction has caused the Corner Bakery Café® brand to be tarnished beyond repair. Years ago, HB bought into the Debtors' distinctive system of the operation of bakery café style restaurants, which has essentially been abandoned under existing management. Such abandonment led to the substantial financial detriment of and/or closure of franchised locations at large and has contributed to substantial and ongoing financial losses at HB's franchised locations, which exceeded \$475,000 per annum in 2021 and 2022. HB is simply baffled that either of its franchised locations might be included in any potential sale at this juncture. Indeed, HB holds a growing concern as to what information (if any) has been communicated to potential bidders concerning the actual viability of its locations, other than a significant likelihood that such franchised locations can or will shutter given the complete lack of support or ongoing development of the Debtors' brand. In short, the Debtors' inaction in recent years has led franchisees to prop-up their individual locations to stay afloat, and absent further substantial cash outlays, will not be able to continue. It is unfathomable

to HB at this juncture what adequate assurances exist to cure the Debtors' ongoing defaults, and as a result, HB does not see a path forward regardless of who might serve to steer the Corner Bakery Café® brand in the near future.

### **JURISDICTION**

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(D) and (M).

### **BACKGROUND**

2. HB is a franchisee, and a counter-party to Debtor, CBC Restaurant Corp. pursuant to: (1) that certain Corner Bakery Cafe® Franchise Agreement dated March 28, 2014, for a franchise location in Bowling Green, Kentucky (the "Bowling Green Agreement"); and (2) that certain Corner Bakery Cafe® Franchise Agreement dated June 11, 2018, for a franchise location in Nashville, Tennessee (the "Nashville Agreement" and together with the Bowling Green Agreement, the "HB Franchise Agreements").

3. On February 23, 2023 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Court.

4. On April 28, 2023, Debtor CBC Restaurant Corp. filed its *Schedule G* [D.I. 414] identifying an executory contract with HB for a "franchise agreement" [Docket 414 at Section 2.130]. Based upon recent dialog with counsel for the Debtors, it is now understood that the Debtors intended for such entry on *Schedule G* to reference and include both the Bowling Green Agreement and the Nashville Agreement.

5. On April 20, 2023, the Court entered the Bid Procedures Order, which among other

things, approved bidding procedures and procedures for (i) filing objections to the sale of substantially all assets of the Debtors (the “Sale”); and (ii) providing notice to counterparties of unexpired leases and executory contracts of the potential assumption and assignment of such agreements. Objections to the Sale and the assumption and assignment of unexpired leases and executory contracts set forth in the Notice were due by May 22, 2023, except that certain adequate assurance or other sale related objections may be raised at the sale hearing. By agreed extension with counsel, HB’s deadline to object was extended from May 22, 2023, through May 24, 2023.

6. Under the Bid Procedures Order, bids are due by May 25, 2023, and an auction to select the winning bidder (the “Successful Bidder”) is scheduled for May 30, 2023, with a sale hearing on June 1, 2023.

7. On May 1, 2023, the Debtors filed the Notice which identifies certain unexpired leases and executory contracts which may be assumed and assigned in connection with the Sale, including an ambiguous statement concerning one or both HB Franchise Agreements. Specifically, the Notice indicates that \$0.00 is the aggregate amount necessary to cure all defaults with HB for a “franchise agreement” (the “Proposed Cure Amount”). Based upon dialog with counsel for the Debtors subsequent to the filing of the Notice, it is now understood that the Debtors’ intended for such entry on the Notice to reference and include the application of the Proposed Cure Amount for both the Bowling Green Agreement and the Nashville Agreement.

8. On May 19, 2023, the Debtors filed their *Notice of Selection of Selection of Proposed Stalking Horse Purchaser (Corbak Acquisition LLC) and Filing of Proposed Staking Horse Asset Purchase Agreement* [Docket 469], identifying Corbak Acquisition, LLC as the Debtors’ stalking horse bidder (the “Stalking Horse”).

9. On or about May 20, 2023, a confidential letter was provided to HB, the contents

of which was identified as the adequate assurance of the Stalking Horse (the “Corbak AA Letter”).

### **OBJECTION**

10. HB objects to the Sale to the extent that the terms of any potential sale order (the “Sale Order”) seek to impair or limit HB’s rights under the HB Franchise Agreements, the Bankruptcy Code, or other applicable law. Any assumption of either of the HB Franchise Agreements must be conditioned on the Debtors’ compliance with the requirements of section 365 of the Bankruptcy Code. This includes, but is not limited to, performing Debtors’ duties, burdens, and obligations to HB as its franchisee, through the effective date of any assumption of the HB Franchise Agreements, together with adequate assurance of future performance information to HB in accordance with the terms of the Bid Procedures Order and the Bankruptcy Code.

#### **A. Objection to Proposed Cure Amount**

11. The Proposed Cure Amount is not reflective of all defaults under either of the HB Franchise Agreements. Where a default is non-monetary, the debtor may be precluded from assuming an executory contract if the default is material or if the default causes substantial economic detriment. Section 365(b)(1) of the Bankruptcy Code provides that:

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 other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(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.

12. In the instant case, the Debtors have failed to perform and defaulted on their obligations under the HB Franchise Agreements. Such inaction includes but is not limited to the Debtors' failure to:

- a. **Protect the Corner Bakery Cafe® brand.** The Debtors had a duty to protect the reputation of the Corner Bakery Cafe® brand. To the contrary, management drove the brand into the ground and these chapter 11 proceedings. The Debtors also ceased site visits to franchised cafés in 2022 (versus previous visits every 60 days) and failed to enforce compliance with location branding and café standards. Indeed, corporate employees advised franchisees that corporate personnel were “100% off the road” due to the Debtors not reimbursing travel expenses to its employees.
- b. **Duty to educate franchisees on new products.** The Debtors gave up on introducing new products by eliminating the role of company chef and shutting down the corporate test kitchen. Absent the introduction of "power grains", no new products have been developed and the Debtors continue to regurgitate the same menu items over and over, causing the brand to become stale.
- c. **Reasonably exercise marketing programs.** The Debtors have required marketing expenditures and fees to be incurred by franchisees, but Debtors failed to diligently perform their marketing obligations to develop, enhance and promote the brand. For example, the Debtors' marketing personnel historically and diligently

communicated with franchisees at least 2x per week, but since 2021 such communication has been virtually non-existent, absent a monthly inquiry on which “coupon” a franchisee would like to run within their respective region.

- d. **Implied covenant of good faith and fair dealings.** The Debtors have defaulted on their implied covenants of good faith and fair dealings and HB is hard-pressed to see the executory nature of the HB Franchise Agreements when performance has by and large become one-sided (by the franchisees). HB respectfully submits that the Debtors full well know they have let the Corner Bakery Cafe® brand sit idle, and that it is abundantly clear that outside offering “coupons” and an online ordering system, the Debtors have failed to perform their obligations as stewards of the brand.

In light of the foregoing examples, HB seeks discovery and a determination by the Court of the full extent of the Debtors’ defaults that need to be cured in advance of any actual assumption and assignment by the Debtors and/or a Successful Bidder via the auction process (including but not limited to the Stalking Horse). While the ongoing damages to HB are unquantifiable – the damages incurred by HB in the last two years alone are staggering -- with year over year net losses exceeding \$475,000 per annum (specifically, 2022 losses being \$183,182.19 at Bowling Green and \$305,150.24 at Nashville). With the Debtors asserting \$0.00 as the Proposed Cure Amount for the HB Franchise Agreements, the Notice simply fails to recognize such defaults under the HB Franchise Agreements and the Debtors’ essential abandonment of their duties and obligations to their franchisees.

**B. The Corbak AA Letter Is Insufficient for HB to Evaluate the Stalking Horse’s Financial Condition.**

13. HB further opposes the assumption and assignment of the Bowling Green

Agreement and/or Nashville Agreement unless the Debtors, the Stalking Horse and/or any Successful Bidder provide adequate assurances of (monetary and non-monetary) future performance. At this juncture, the Debtors have not yet met the requirements of Section 365(b)(1)(C), as the Debtors have yet to provide actual evidence to demonstrate adequate assurance of future performance by either the Stalking Horse or any other proposed assignee.

14. Section 365(b)(1)(C) of the Bankruptcy Code mandates that a debtor seeking to assume and assign an unexpired lease must provide “adequate assurance of future performance under such contract or lease.” 11 U.S.C. § 365(b)(1)(C); see also 11 U.S.C. § 365 (f)(2); In re Wills Motors, Inc., 133 B.R. 297, 302 (Bankr. S.D.N.Y. 1991) (section 365(f)(2) requires debtors to provide adequate assurance of future performance as a condition to assumption and assignment of any contract).

15. At this juncture, the Debtors and Stalking Horse have not yet provided the type of adequate assurance information courts have considered sufficient when the assignee is a newly formed entity. Specifically, the Debtors and Stalking Horse have not provided evidence of (i) “sufficient financial backing, escrow deposits or other forms of security or guaranty,” In re Gold Standard at Penn, Inc., 75 B.R. 669, 674 (Bankr. E.D. Pa. 1987); (ii) sound financial statements and a substantial net worth, In re Taylor Manufacturing, Inc., 6 B.R. 370, 372 (Bankr. N.D. Ga. 1980); (iii) a substantial cash reserve, a favorable market outlook, and a history of prompt payment, Seacoast Products, Inc. v. Spring Valley Farms, Inc., 34 B.R. 379, 381 (M.D.N.C. 1983); or (iv) otherwise provide the adequate assurance required under section 365(b) of the Bankruptcy Code. See In re Fleming Cos., No. 03-10945 (MFW), 2004 WL 385517 (Bankr. D. Del. Feb. 27, 2004), *aff’d*, 499 F.3d 300 (3d Cir. 2007).

16. In accordance with section 365 of the Bankruptcy Code, HB must be provided with



sufficient information with respect to adequate assurance of future performance prior to potential assumption and assignment of the Bowling Green Agreement and/or Nashville Agreement. At a minimum, the Debtors must provide to HB assurance that the Stalking Horse, a Successful Bidder or proposed assignee: (a) has or promptly will cure any and all defaults under the HB Franchise Agreements; (b) has sufficient experience to support a nationally franchised brand in the restaurant industry; (c) demonstrate a financial condition and operating performance that can satisfy the obligations of the HB Franchise Agreements; and (d) has the financial wherewithal to operate and support the assumed liabilities contemplated in the Sale.

17. To date, HB has only received the “confidential” Corbak AA Letter, which lacks any material substance other than the Stalking Horse’s cursory assessment of issues concerning the Debtors, broad strokes of strategic initiatives going forward, and a generalized forecast of a consolidated profit and loss statement going forward based upon perceived cash flow of the assets acquired in the Sale. While the Corbak AA Letter invites further inquiry at the burden of counterparties set forth in the Notice, it is simply void of any demonstration of the financial wherewithal (i.e., capitalization, cash reserves, etc.) of the Stalking Horse to perform the duties and obligations of a franchisor under the HB Franchise Agreements or the Stalking Horse’s ability to satisfy the extent of assumed liabilities in Sale and/or operate on a go-forward basis. As a result, the Corbak AA Letter fails to provide any actual evidence or otherwise demonstrate adequate assurances of performance at the time of the proposed assumption of the HB Franchise Agreements.

#### **RESERVATION OF RIGHTS**

18. Nothing in this Objection is intended to be, or should be construed as, a waiver by HB of any of its rights under either of the HB Franchise Agreements, the Bankruptcy Code, or

applicable law. HB expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to the Proposed Cure Amount, adequate assurance of future performance, the Sale, or the proposed Sale Order; (b) assert further nonmonetary defaults under the HB Franchise Agreements; and (c) assert any further objections as it deems necessary or appropriate.

**CONCLUSION**

WHEREFORE, HB requests that the Court: (a) sustain this Objection; (b) set a discovery schedule and Evidentiary Hearing to determine the rights, if any, of the Debtors and HB with respect to the HB Franchise Agreements; and (c) grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

CAROTHERS & HAUSWIRTH LLP

Dated: May 24, 2023

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

IN RE:	)	Chapter 11
	)	
CBC RESTAURANT CORP., et al. <sup>1</sup>	)	Case No. 23-10245 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket Nos. 361, 418, 469
	)	
	)	<b>Objection Deadline (By Agreed Extension):</b>
	)	<b>May 24, 2023 @ 4:00p.m.</b>
		<b>Hearing: June 1, 2023 @ 9:30a.m.</b>

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**NOTICE OF SERVICE**

The undersigned hereby certifies that on May 24, 2023, a true and correct copy of the *Objection and Reservation of Rights of Half Baked, LLC to the (I) Notice of Possible Assumption and Assignment with Respect to Executory Contracts and Unexpired Leases of the Debtors and (II) Proposed Sale of Substantially all of the Debtors' Assets* was caused to be served upon the parties on the enclosed Service List via Electronic Mail.

Dated: May 24, 2023

CAROTHERS & HAUSWIRTH LLP

By: /s/ Gregory W. Hauswirth  
Gregory W. Hauswirth (DE Bar No. 5679)

*Attorneys for Half Baked, LLC*

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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, Suite 301, Newtown, PA 18940.

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