

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: § Chapter 11
§
STAGE STORES, INC., et al, § Case No. 20-32564 (DRJ)
§
Debtors. § (Jointly Administered)

**SILVER CITY ETR INVESTORS, LLC’S OBJECTION TO
JOINT AMENDED CHAPTER 11 PLAN, Doc. 536**

Creditor, Silver City ETR Investors, LLC (“Silver City Investors”), by its undersigned counsel, objects to the above debtors’ Joint Amended Chapter 11 Plan (“Plan”), doc. 536, as follows:

Procedural and Factual background

1. Silver City (65% interest), JRF Investors, LLC (25% interest) and BROB Equities, LLC (10% interest), are successor landlords (“Landlords”), and Specialty Retailers, Inc. is successor tenant, under a *Sublease Agreement* dated July 20, 1995, as amended (“Lease”), for Store #660, 2148, 2150, 2154 Highway 180 East, Silver City, New Mexico (“Premises”). Declaration, doc. 603, ¶4.

2. On April 7, 2014, Silver City Investors and Specialty Retailers, Inc. entered into a *Second Amendment to Lease* to extend the term for 10 years and to in part establish basic rent beginning on January 1, 2017 and continuing through January 31, 2025, in the amount of \$6,150.00 per month, plus CAM. Declaration, doc. 603, ¶5.

3. On October 29, 2019, Landlords and Specialty Retailers, Inc. entered into a *Third Amendment to Lease* to extend the term for an additional 5 years, to establish the



minimum guaranteed rent for the extended term at \$6,900.00 per month, and to provide that Landlords pay \$50,000 for the extension and to defray cost to be incurred by Tenant to convert the Premises to a Gordman's store. Declaration, doc. 603, ¶6.

4. On November 20, 2019, Silver City paid \$50,000 to Specialty Retailers, Inc. for the extension and to defray the costs to convert Store #660 to a Gordmans. The Premises has not been converted to Gordmans. Declaration, doc. 603, ¶7.

5. On May 10, 2020, Debtors commenced this bankruptcy case. Doc. 1. The Lease was in default when this case was filed due to the non-payment of rent and CAM expenses. Proof of Claim, No. 146.

6. On May 15, 2020, this Court entered an *Order (I) Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* ("Rejection Procedures Order"). Doc. 204.

7. On June 12, 2020, this Court entered a *Final Order (I) Authorizing the Debtors to close Stores and Wind-Down Operations, (II) authorizing the Debtors to Assume and Perform under the Consulting Agreement Related to the Store Closings, (III) Approving Procedures for Store Closing Sales, (IV) Approving Modifications to Certain Customer Programs, and (V) Granting Related Relief* ("Store Closing Order"). Doc. 435.

8. The Store Closing Order *inter alia* allows Debtors to conduct Store Closing Sales at the Closing Locations which includes the Premises, through August 30, 2020, but does not inform Landlords what will happen on August 31, 2020. Doc. 435 at 43.

9. The Plan contains the following provisions relating to unexpired commercial leases ("Unexpired Leases"):

Article I #38. “**Effective Date**” means the date that is the first Business Day after the Confirmation Date on which (a) the conditions to the occurrence of the Effective Date has been satisfied or waived pursuant to Article IX.B of the Plan, (b) no stay of the Confirmation Order is in effect, and (c) the Debtors declare the Plan effective. Doc. 536, p. 4.

Article V.A. On the Effective Date, except as otherwise provided herein, each Unexpired Lease not previously rejected, assumed, or assumed and assigned . . . shall be deemed automatically rejected unless such Unexpired Lease (1) is specifically described in the Plan to be assumed in connection with confirmation of the Plan, is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement, or otherwise is specifically described in the Plan to not be rejected; (2) is subject to a pending motion to assume as of the confirmation date; (3) is to be assumed by the Debtors or assumed and assigned to a third party in connection with a sales transaction. Entry of the Confirmation order shall constitute approval of such assumptions, assignments, rejections. Doc. 536, p. 22.

Article V.E. At least 14 days prior to Confirmation Hearing, Debtors shall distribute to the applicable counterparties notices of proposed assumption (or assumption and assignment), etc. Doc. 536, at 24.

Article V.F. Rejection of an Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors, as applicable, under such Unexpired Leases. Doc. 536, at 24.

Article V.J. In the event that the Effective Date **does not occur**, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code. (Emphasis added).

10. Article V.A of the Plan supersedes the Rejection Procedures Order. Doc. 536, p. 22.

11. On July 31, 2020, Debtors filed a notice of plan supplement which defers a decision on the assumption of its remaining Unexpired Leases. Doc. 639, Ex. A (Debtors are not seeking to assume any Unexpired Leases at this time; *provided* that Debtors reserve the right to alter, amend, modify, or supplement the Schedule of Assumed

Executory Contracts.).

12. Debtors have not filed a notice to assume or reject the Lease.

Objections

13. The circuitous language on assumption or rejection of Unexpired Leases in the Plan appear to provide that Debtors will decide whether to assume or reject on the Effective Date, unless of course the Effective Date does not occur, at which time Debtors may or may not file another request to extend the deadline to assume or reject.

14. A Plan which allows a debtor to disguise its intention with respect to Unexpired Leases for an undefined future period of time which may not occur, is not proposed in good faith. 11 U.S.C. § 1129(a)(3). Because of the uncertainty as to when/if the Lease will be assumed or rejected, Silver City Investors is prevented from taking steps to re-let the Premises after August 2020.

15. The Plan does not provide that upon confirmation property of the estate reverts in the Debtors, at which time the automatic stay would become inapplicable. 11 U.S.C. § 1141(b); § 362(c)(1). *See Paradise Valley Country Club v. Sun Valley Development Co., (In re Paradise Valley Country Club)*, 26 B.R. 990, 992 (Bankr. Colo. 1983) (concluding that “[s]ince confirmation of a Chapter 11 plan has the dual effect of revesting the debtor with title to its property and discharging the debtor from all dischargeable pre-petition debts, there can be no further application of the automatic stay.”).

16. Instead, the Plan provides in Article VIII.L. in part:

Unless otherwise provided in the Plan or Confirmation Order, all injunctions and stays in effect pursuant to sections 105 or 362 of the Bankruptcy Code, or any other of the Court, and extant on the confirmation date, shall remain in full force

and effect until the Effective Date.

As previously noted, the Effective Date is illusory and may never come to pass.

11 U.S.C. § 1129(a)(3).

17. The Plan as proposed leaves Silver City Investors in limbo as to its post-rejection rights and will require further litigation to terminate the automatic stay as to the Lease and Premises.

18. The Plan does not contain a default provision which informs creditors what their recourse is if the Debtors do not perform their obligations. For example, if Debtors reject the Lease but refuse to vacate the Premises after August 30, 2020, Silver City Investor's remedies are unclear. 11 U.S.C. § 1129(a)(3).

Proposed Modification to Resolve Objections

19. Silver City Investors is informed that the Store located at the Premises is projected to be closed, and the Lease will likely be rejected. If Debtors do not intend to assume the Lease, the order confirming the Plan should state that effective August 31, 2020: (a) the Lease is rejected and terminated, and (b) the automatic stay is terminated as to the Lease and Premises.

WHEREFORE, Silver City Investors objects to confirmation of the Plan as provided herein, and asks for such other relief as is proper.

Respectfully submitted,

JURGENS & WITH, P.A.

/s/ James Jurgens

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via the Courts ECF system on those parties listed below and those parties registered to receive ECF notices by the Court:

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on August 7, 2020.

/s/ James Jurgens