

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

In re:)	
)	Chapter 11
)	
STAGE STORES, INC., <i>et al.</i> , ¹)	Case No. 20-32564 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 536, 639

**OBJECTION OF GALLERIA 2425 OWNER, LLC
TO CONFIRMATION OF JOINT AMENDED CHAPTER 11 PLAN OF
STAGE STORES, INC. AND SPECIALTY RETAILERS, INC.**

Galleria 2435 Owner, LLC (“**Landlord**”), the lessor of Debtors’ headquarters at 2425 West Loop South, Houston, Texas, hereby files its objection to confirmation of the *Joint Amended Chapter 11 Plan of Stage Stores, Inc. and Specialty Retailers, Inc.* [Docket No. 536] (“**Amended Plan**”)² and, in support thereof, respectfully states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. Debtor Specialty Retailers, Inc., as tenant, and Landlord, as landlord, are parties to that certain Office Lease Agreement dated May 27, 2015, as subsequently amended (the “**Lease**”) with respect to certain portions of the building located at 2425 West Loop South, Houston, Texas (the “**Headquarters Premises**”), utilized by Debtors as their corporate headquarters. Monthly rent and charges under the Lease are currently \$477,868.25. The term of the Lease for the Headquarters Premises is not scheduled to expire until January 31, 2027.

2. On May 10, 2020 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). On

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Stage Stores, Inc. (6900) and Specialty Retailers, Inc. (1900). The Debtors’ service address is: 2425 West Loop South, Houston, Texas 77027.

² This objection is filed pursuant to an extension of time to object to the Amended Plan to August 10, 2020 granted by Debtors’ counsel.



May 11, 2020, this Court entered its order authorizing joint administration and procedural consolidation of these Chapter 11 cases [Docket No. 45]. No trustee or examiner has been appointed and Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. On May 21, 2020, Debtors filed the *Joint Chapter 11 Plan of Stage Stores, Inc. and Specialty Retailers, Inc.* [Docket No. 296] (the “**Proposed Plan**”), the accompanying *Disclosure Statement For The Joint Chapter 11 Plan of Stage Stores, Inc. and Specialty Retailers, Inc.* [Docket No. 295] (the “**Disclosure Statement**”), and the *Motion for the Entry of an Order Approving (I) the Adequacy of Information in the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates With Respect Thereto* [Docket No. 297].

4. On July 1, 2020, Debtors filed the solicitation versions of their Amended Plan and accompanying Disclosure Statement [Docket No. 535].

5. On July 1, 2020, this Court entered its *Order Approving (I) The Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots and Notices in Connection Therewith, and (IV) Certain Dates with Respect Thereto* [Docket No. 539].

6. On July 31, 2020, Debtors filed their *Notice of Plan Supplement for the Joint Amended Chapter 11 Plan of Stage Stores, Inc. and Specialty Retailers, Inc.* [Docket No. 639] (“**Plan Supplement**”)³ in support of the proposed confirmation of the Amended Plan.

II. THE AMENDED PLAN IMPROPERLY SEEKS TO EXTEND DEBTORS’ TIME TO ASSUME AND REJECT LEASES BEYOND CONFIRMATION

7. Bankruptcy Code § 1129(a)(1) plainly provides that a bankruptcy court shall confirm a proposed Chapter 11 plan “only if” such plan “complies with the applicable provisions of [Title 11].” *See Mabey v. Southwestern Elec. Power Co. (In re Cajun Electric Power Cooperative, Inc.)*, 150 F.3d 503, 513, n.3 (5th Cir. 1998), citing *Mickey’s Enters., Inc. v. Saturday Sales, Inc. (In re Mickey’s Enters., Inc.)*, 165 B.R. 188, 193 (Bankr. W.D. Tex. 1994) (“In order

³ Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Amended Plan.

to confirm a plan the court must find that the plan and its proponent have complied with the applicable provisions of Title 11”). Here, as part of Debtors’ rush to confirmation, the proposed procedures for the assumption or rejection of Debtors’ unexpired leases of nonresidential real property fail to conform to the requirements of the Bankruptcy Code and the realities of these Chapter 11 cases.

8. As written, Article V.A. of the Amended Plan provides that, as of the Effective Date, all of Debtors’ Unexpired Leases shall be deemed automatically rejected unless such Unexpired Lease: (1) is specifically described in the Amended Plan or a Plan Supplement, (2) is the subject of a pending motion to assume such Unexpired Lease pending as of the Confirmation Date, or “(3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the [sic] any sale transaction.” The Amended Plan does not identify any Unexpired Leases for potential assumption or assignment. To the contrary, the Plan Supplement states that “[t]he Debtors are not seeking to assume any Executory Contracts or Unexpired Leases at this time; provided that the Debtors reserve the right to alter, amend, modify, or supplement the Schedule of Assumed Executory Contracts.” Thus *there is no time limitation* on Debtors’ purported reservation of rights in the Plan Supplement to change its treatment of Unexpired Leases even though the Amended Plan contemplates that proposed cure amounts in connection with the assumption or assignment of Unexpired Leases will be served “[a]t least fourteen days prior to the Confirmation Hearing,” with objections due at least three days prior to the Confirmation Hearing. See Amended Plan at Article V(E). No such proposed cure amounts have been provided to any counterparties to Executory Contracts or Unexpired Leases.

9. The process may be even further extended because not only does Article V.A of the Proposed Plan contemplate that Unexpired Leases may be assumed or assumed and assigned after the Confirmation Date so long as such proposed assumption or assignment is the “subject of a *pending motion* to assume such Unexpired Lease or Executory Contract *as of the Effective Date*” (emphasis added), Debtors purport to further reserve the right to assume and assign Unexpired

Leases “in connection with any sale transaction.” There is, however, no reference to the time any such assumption and assignment might occur.

10. While rejection, assumption, or assumption and assignment of a debtor’s unexpired leases of nonresidential real property can be effectuated through a Chapter 11 plan of reorganization (11 U.S.C. §1123(b)(2)), there is no authority for a reorganized debtor to assume or reject leases *following confirmation of a plan of reorganization*. Bankruptcy Code § 1123(b)(2) provides that “a plan may, *subject to Section 365* of this title, provide for the assumption, rejection or assignment of any executory contract or unexpired lease of the debtor not previously rejected under this section.” (Emphasis added.) Section 1123(b)(2) “does not provide a debtor with blanket authority to assume or reject executory contracts through a plan; whether an agreement may be assumed or rejected as an executory contract remains subject to the provisions of Bankruptcy Code § 365.” *In re Exide Techs.*, 378 B.R. 762, 765 (Bankr. D. Del. 2007). The authority to assume or reject leases is limited by the express terms of Section 365(a) to a trustee, which includes a debtor-in-possession by virtue of Section 1107(a), but does not extend to reorganized debtors. *See In re Grinstead*, 75 B.R. 2, 3 (Bankr. D. Minn. 1985) (“There is no debtor in possession status of a debtor post-confirmation.”).

11. Indeed, Debtors’ proposed schedule and apparent reservation of the ability to reject leases after confirmation of its Amended Plan are at odds with the plain language of Bankruptcy Code § 365(d)(4)(A), limiting the time to assume or reject to “the date of entry of an order confirming a plan,” not some later date (such as the Effective Date or, as proposed by Debtors here, perhaps even later).⁴ *See also In re J.M. Fields, Inc.*, 26 B.R. 852, 854 (S.D.N.Y. 1983)

⁴ It is also worth noting that there is no time limitation on the occurrence of the Effective Date, which could potentially occur beyond the limitations on Debtors’ time to assume or reject non-residential real property leases provided by Bankruptcy Code section 365(d)(4)(A)-(B). Landlord submits that this is among the reasons that

(“[P]ostconfirmation authority is restricted to only those matters pending at the time of confirmation.”); *In re Grayson-Robinson Stores, Inc.*, 227 F.Supp. 609, 613-15 (S.D.N.Y. 1964) (pre-Code case where court refused to permit rejection of an executory contract after plan confirmation). It is widely accepted that the purpose of Bankruptcy Code § 365(d)(4), added as an integral part of what are commonly referred to as the 1984 “Shopping Center Amendments,” was to prevent trustees and debtors in possession from taking too much time in deciding whether to assume, assume and assign or reject unexpired nonresidential real property leases. *See In re Channel Home Centers, Inc.*, 989 F.2d 682, 686 (3d Cir. 1993); *Sea Harvest Corp. v. Riviera Land Co.*, 868 F.2d 1077, 1079 (9th Cir. 1989). Here, Debtors’ Amended Plan seeks authority to do just that, contrary to the time limitations provided by Section 365(d)(4)(A), rendering this feature of the Amended Plan contrary to applicable law.

12. Moreover, the Debtors are currently conducting ongoing inventory liquidation and store closing sales, which are not scheduled to conclude until mid-September 2020. Yet the Debtors’ Amended Plan, as proposed, seeks to deem its Leases rejected as of the Effective Date. The Debtors have provided no solution to bridge the gap between the rejection of Unexpired Leases as of “the date of entry of an order confirming a plan” (as required by Section 365(d)(4)(A)(ii)) and their intention to continue to conduct liquidation sales at leased Premises (and presumably to continue operating at the Headquarters Premises) for another month.

13. Debtors also ignore the fact that, by operation of the plain language of Bankruptcy Code § 365(d)(4)(A)(ii), as of the Confirmation Hearing (not the Effective Date), Debtors will lose their ability to assume and assign any of their Unexpired Leases, thus foreclosing any further

Bankruptcy Code section 365(d)(4)(A) limits the time to assume or reject to “the date of the entry of an order confirming a plan.” Indeed, Debtors have not moved to extend the time to assume or reject leases and, absent a relief under Bankruptcy Code section 365(d)(4)(B), Debtors’ unexpired real property leases will be deemed rejected on September 8, 2020 (extended one day by the intervening Labor Day Holiday).

potential to conclude a “going concern” sale and save literally thousands of jobs. Simply put, there will be no opportunity under the Bankruptcy Code to “pivot” to a potential sale transaction that includes assignments of Unexpired Leases once Debtors confirm their Amended Plan. Indeed, Landlord is informed and believes that the negotiations for a potential sale transaction among the Debtors, the Committee, and Jetall Companies (“*Jetall*”) are continuing and a \$1 Million “skin in the game” payment (as described at the August 3, 2020 status conference) has been made. Under such circumstances, confirmation of the Amended Plan would prejudice such sale process and is premature.

14. By rushing to confirmation before the conclusion of its store closing sales and potential sale process with Jetall, Debtors also disenfranchise literally hundreds of its landlords (including Landlord) who have not yet filed what will be significant unsecured claims following rejection of their leases, by depriving them from timely voting to accept or reject the Plan. Under this Court’s prior *Order (I) Setting Bar Dates For Filing Proofs Of Claim, etc.* [Docket No. 478], entered June 18, 2020, landlords of Unexpired Leases did not need to file claims, even for prepetition arrearages, until thirty (30) days after entry of the order approving the Debtors’ rejection of the applicable executory contract or unexpired lease, here, presumably entry of the Confirmation Order. Yet landlords have no assurance that the store closing sales will conclude, and leased premises vacated (including the Headquarters Premises), within thirty (30) days following entry of the Confirmation Order. Article V.D. of the Amended Plan appears to modify this timeline to provide that potential lease rejection claims by providing the lease rejection claims may be filed as late as thirty (30) days after the Effective Date.

15. Landlord’s hypothetical unsecured claim in this case is estimated to be almost \$6.4 million, consisting of prepetition arrearages of \$592,468.75 and lease rejection damages, as limited

by Bankruptcy Code section 502(b)(6)(A), of \$5,800,633.04 (8 months at \$477,868.25 per month and 4 months at \$494,421.76).⁵ While this may be the largest unsecured claim of any landlord in these Chapter 11 cases, there are hundreds of other landlords whose leases have not yet been rejected and thus have not yet filed unsecured claims. In their attempt to proceed to confirmation before all leases are rejected, Debtors have made no proposal to preserve the voting rights of affected landlords disenfranchised by these circumstances.

III. THE RELEASES UNDER THE AMENDED PLAN ARE OVERBROAD AND PREMATURE AS THEY RELATE TO DEBTORS' CONTINUING OPERATIONS

16. As a threshold matter, the Fifth Circuit has rejected nonconsensual non-debtor releases as contravening Bankruptcy Code § 524(e). *See, e.g., In re Vitro S.A.B. de C.V.*, 701 F.3d 1031, 1061 (5th Cir. 2012); *In re Pacific Lumber Co.*, 584 F.3d 229, 251-253 (5th Cir. 2009); *Feld v. Zale Corp.*, 62 F.3d 746, 760 (5th Cir. 1995) (“Section 524(e) prohibits the discharge of debts of non-debtors.”); *accord In re Patriot Place, Ltd.*, 486 B.R. 773, 823 (Bankr. W.D. Tex. 2013) (denying confirmation where exculpation clause effected a non-consensual non-debtor release where the clause protected non-debtors against claims related to their participation in the bankruptcy case).

17. Under the Amended Plan, creditors may purportedly opt out of the release provided by Article VIII(D) either by returning an opt-out form by the applicable deadline or by objecting to the releases in the Plan. See Amended Plan Article I(A)(92) (providing that “Holders of Claims or Interests” may “opt out” of the releases provided by the Plan). By providing an opt-out option, the Debtors have purportedly presented the non-debtor releases in Article VIII(D) as consensual. But, in reality, those releases are involuntary and nonconsensual as a result of the injunction contained in Article VIII(F) of the Amended Plan.

⁵ Landlord has additional administrative priority claims for unpaid postpetition rent, including unpaid postpetition utilities and a substantial shortfall in the payment of May “stub rent” otherwise provided for by Paragraph 33 of the *Agreed Final Order (I) Authorizing Use Of Cash Collateral and Affording Adequate Protection, (II) Modifying The Automatic Stay, and (III) Granting Related Relief* [Docket No. 441].

18. Under Article VIII(F), creditors would be enjoined from, inter alia, “commencing or continuing in any manner any action or other proceeding” related to potential claims against non-debtors including in the definitions of Released Parties and Exculpated Parties a claim against a non-debtor released under Article VIII(D). Upon entry of the Confirmation Order (not the Effective Date), all Holders of Claims and Interests and their respective affiliates and representatives are deemed to have consented to the injunction provisions of the Amended Plan by being eligible to accept distributions, whether or not creditors had opted out of the releases in Article VIII(D). Effectively, then, Article VIII(F) transforms the allegedly consensual non-debtor releases in Article VIII(D) into impermissible, nonconsensual releases of non-debtors, in contravention of Pacific Lumber and other Fifth Circuit cases. As a result, the inclusion of these provisions renders the Plan unconfirmable, and the Court should deny confirmation on this basis.

19. How could landlords know of any potential claims against one or more of the Released Parties, including many of Debtors’ insiders, with respect to the Store Closing Sales and the Wind Down before they are concluded? This timing issue is not addressed by the Amended Plan. Similarly, potential third-party claims arising during the Store Closing Sales and Wind Down that are already covered by insurance would be released, contrary to the terms of the underlying leases. These “loopholes” demonstrate the premature nature of the Amended Plan and the proposed releases as they relate to Debtors’ continuing operations.

IV. OPT-OUT

20. For the avoidance of doubt, by this objection, Landlord objects to, and does not consent to, any of the release and other nonconsensual provisions of Article VIII of the Amended Plan and hereby opts out of all such provisions.

V. RESERVATION OF RIGHTS

21. Landlord reserves its respective rights to further object to confirmation of the Amended Plan based upon any amendments or modifications proposed to the Amended Plan, any new information provided by Debtors or upon any different relief requested by Debtors.

VI. JOINDER

22. To the extent not inconsistent with the foregoing, Landlords join in the objections to the confirmation of Debtors' Amended Plan filed by Debtors' other landlords and the Office of the United States Trustee.

VII. CONCLUSION

23. Many of the issues identified herein by Landlord could be most easily resolved by the passage of time. These Estates and the rights and interests of their numerous creditor constituencies are best served by permitting the Debtors' sale process to fully play out (as the only potential pathway to the assumption of numerous leases, including the Headquarters Lease, saving thousands of jobs, and continuing vital supply relationships with hundreds of vendors), as well as allowing the liquidation sales to naturally conclude and the leases to be rejected pursuant to the procedures already approved in these cases. If the Debtors are unwilling to take this most logical path, at a minimum, the critical deficiencies Landlord has identified herein must be modified prior to confirmation of the Amended Plan.

Dated: August 10, 2020

Respectfully submitted,

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By: /s/ Michael P. Cooley

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 10, 2020, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing (ECF) system on all parties registered to receive electronic notices in this case.

 /s/ Michael P. Cooley
Michael P. Cooley