

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
FRIENDLY ICE CREAM CORPORATION, <i>et al.</i> , ¹	:	Case No.11-13167 (KG) (Jointly Administered)
	:	
Debtors.	:	Hearing Date: October 24, 2011 at 3:00 p.m. (ET) Objection Deadline: October 17, 2011 at 4:00 p.m. (ET)
	:	
	:	Related to Docket No. 5
	:	

**LIMITED OBJECTION OF HOLYOKE MALL COMPANY, L.P., AVIATION MALL
NEWCO, LLC AND PCK DEVELOPMENT COMPANY, L.L.C. TO DEBTORS'
MOTION FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING
EXPEDITED PROCEDURES FOR (A) REJECTION OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (B) ABANDONMENT OF PERSONAL PROPERTY**

Holyoke Mall Company, L.P., Aviation Mall NewCo, LLC, and PCK Development Company, L.L.C. (the "Landlords"), by and through their attorneys, Menter, Rudin & Trivelpiece, P.C. and Ballard Spahr, LLP, respectfully submit this Limited Objection to the above captioned debtors' (the "Debtors") *Motion for Entry of an Order Authorizing and Approving Expedited Procedures for (A) Rejection of Executory Contracts and Unexpired Leases and (B) Abandonment of Personal Property.*

BACKGROUND

1. On October 5, 2011 (the "Petition Date"), the Debtors filed petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Friendly Ice Cream Corporation (3130); Friendly's Restaurants Franchise, LLC (3693); Friendly's Realty I, LLC (2580); Friendly's Realty II, LLC (2581); and Friendly's Realty III, LLC (2583). The location of the Debtors' corporate headquarters and the Debtors' service address is: 1855 Boston Road, Wilbraham, Massachusetts 01095.

States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors operate their business as debtors in possession pursuant to 11 U.S.C. § 1107(a) and 1108.

2. Holyoke Mall Company, L.P. leases nonresidential real property to one of the Debtors, Friendly Ice Cream Corporation, in the Holyoke Mall, located in Holyoke, Massachusetts.

3. Aviation Mall NewCo, LLC leases nonresidential real property to one of the Debtors, Friendly Ice Cream Corporation, in the Aviation Mall, located in Queensbury, New York.

4. PCK Development Company, L.L.C. leases nonresidential real property to one of the Debtors, Friendly Ice Cream Corporation, in the Hudson Valley Mall, located in Kingston, New York. The leases between the Landlords and the Debtors are collectively referred to as the “Leases.” The premises leased by the Landlords to the Debtors are collectively referred to as the “Premises.”

5. The Premises are each located within a “shopping center” as the term is used in § 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086–87 (3d Cir. 1990).

6. On October 5, 2011, the Debtors filed a motion for approval of procedures for the rejection of executory contracts and unexpired leases (the “Motion”) together with a proposed order (the “Proposed Order”). (Motion, D.I. 5)

Limited Objection

7. Bankruptcy Code § 365(a) states, in relevant part, that: “the trustee, *subject to the court’s approval*, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a) (emphasis added).

8. The Landlords object to the Motion as the proposed procedures do not require adequate notice to the Landlords and fail to ensure that the Landlords will have full dominion and control of the Premises upon any rejection of the Leases.

9. The Proposed Order provides that the effective date of the rejection (the “Rejection Date”) of an unexpired lease or executory contract may not be before the date of service of the Rejection Notice. (*See* Proposed Order, ¶ 2(a)(iii).) The Landlords are entitled to appropriate notice of the effective date of any rejection of the Leases. Rule 6006(a) of the Federal Rules of Bankruptcy Procedure provides that a proceeding to reject an unexpired lease is governed by Rule 9014. *See* FED. R. BANKR. P. 6006(a). Rule 9014(a) requires reasonable notice and opportunity for a hearing to the party against whom relief is sought. *See* FED. R. BANKR. P. 9014(a).

10. To ensure adequate notice, the Court should order that the Rejection Date may be no sooner than five days after the service and filing of the Rejection Notice. In addition, the Rejection Date should not occur until the Landlords have full dominion and control over the Premises in accordance with the Leases. Thus, the rejection should not be effective until the later of: (i) five days after the Rejection Notice is filed and served on the lease or contract counterparties and (ii) the date the Debtors relinquish full dominion and control of the Premises to the affected landlord through the Debtors’ providing written notice of relinquishment of the Premises and delivering all keys, key codes, and alarm codes to the affected landlord.

11. The Proposed Order also provides that if an objection to the rejection of an unexpired lease is overruled or withdrawn, the lease “shall be rejected with the Rejection Date to be set forth in the Rejection Notice or such other date to which the Debtors and the counterparty to such Contract(s) have agreed.” (Proposed Order, ¶ 2(e).) If an objection to a Rejection Notice

is filed, the effective date of rejection should be determined by the Court, unless the parties agree to a date.

12. The Proposed Order also provides that “[t]he Debtors are authorized, but not directed, prior to the Rejection Date of any rejected Contract, to remove any property from the premises that is the subject of such Contract consistent with the Debtors’ ownership rights or other property interests therein.” (Proposed Order, ¶ 4). The Debtors should be required to remove any hazardous materials from the Premises no later than the Rejection Date.

13. Finally, the Proposed Order provides that “[t]he Debtors are authorized, in their sole discretion, to abandon any personal property that may be located on Premises leased under a Contract rejected pursuant to the Rejection Procedures.” (Proposed Order, ¶5.) Any property left at the Premises as of the Rejection Date should be deemed abandoned as of the Rejection Date and the Landlords under the rejected contracts must be entitled to dispose of such property in their sole and absolute discretion without liability to any party. The Landlords should not need to seek relief from the automatic stay or abandonment of such property following rejection.

14. The Landlords join in the objections of other landlords to the Motion to the extent they are not inconsistent with this Objection.

WHEREFORE, the Landlords respectfully request that the Court deny Debtors’ Motion, or, in the alternative, enter an Order consistent with this Objection and grant the Landlords such other and further relief as the Court deems just and proper.

Dated: October 17, 2011
Wilmington, Delaware

Respectfully submitted,



Leslie C. Heilman, Esquire (No. 4716)
BALLARD SPAHR, LLP
919 N. Market Street, 11th Floor
Wilmington, DE19801
Telephone: (302) 252-4465
Facsimile: (302) 252-4466
E-mail: heilmanl@ballardspahr.com

-and-

Kevin M. Newman, Esquire
Adam F. Kinney, Esquire
MENTER, RUDIN & TRIVELPIECE, P.C.
308 Maltbie Street, Suite 200
Syracuse, New York 13204-1498
Telephone: (315) 474-7541
Facsimile: (315) 474-4040
E-mail: kneuman@menterlaw.com
akinney@menterlaw.com

*Attorneys for Holyoke Mall Company, L.P.,
Aviation Mall NewCo, LLC and PCK Development
Company, L.L.C.*