

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FRIENDLY ICE CREAM CORPORATION, <i>et al.</i> ,)	Case No. 11-13167 (KG)
)	(Jointly Administered)
Debtors.)	Obj. Deadline: 10/17/11 at 4:00 p.m.
)	Hearing Date: 10/24/11 at 3:00 P.m.
)	Related to Docket No. 7

**OBJECTION OF COVENTRY RETAIL, LP TO
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
AND APPROVING (A) REJECTION OF CERTAIN UNEXPIRED LEASES
AND (B) ABANDONMENT OF CERTAIN PERSONAL PROPERTY,
EACH EFFECTIVE AS OF VACATION OF THE PREMISES**

Coventry Retail, LP (“Coventry”), by and through its undersigned counsel, hereby objects to the *Debtors’ Motion for Entry of an Order Authorizing and Approving (A) Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property, each Effective as of Vacation of the Premises* [Docket No. 7] (“Rejection Motion”), and in support thereof, respectfully states as follows:

BACKGROUND

1. Coventry, as landlord, and one of the above-captioned debtors (collectively, “Debtors”), as tenant, are parties to an unexpired lease (“Lease”) of non-residential real property for premises that are located in Coventry Mall in Pottstown, Pennsylvania (“Premises”).

2. On October 5, 2011, the Debtors filed the Motion, in which they seek an order that (i) authorizes and approves the rejection of certain unexpired leases as of the date upon which the Debtors vacate the leased premises and (ii) to abandon personal property at the Premises as of the effective date of rejection.

3. Upon information and belief, the Debtors have ceased operations at the Premises as of October 6, 2011. As of the date of this Objection, the Debtors have not returned the keys to the Premises to Coventry or otherwise surrendered possession of the Premises to Coventry.

COVENTRY'S OBJECTIONS AND BASIS THEREFOR

4. Coventry objects to the relief requested by the Debtors in the Motion on the grounds that: (a) the rejection date of the Lease is not premised upon surrender of the Premises to Coventry, (b) the Debtors should not be permitted to abandon perishable food products at the Premises, (c) the proposed form of order that accompanies the Motion (the "Order") fails to adequately protect Coventry against third party claims and (d) the Order grants relief to the Debtors beyond the scope of the Motion.

5. Coventry respectfully submits that the effective date of rejection of the Lease should be the date upon which the Debtors surrender possession to Coventry, not the date upon which the Debtors vacate the Premises. The well-settled rejection procedures in this jurisdiction require the Debtors to vacate and surrender the leased premises to a landlord as a prerequisite to the rejection of a lease. Surrender requires the Debtors to return the keys (as well as any applicable access or alarm codes) to the landlord along with an unequivocal statement of surrender. In this case, the Debtors do not intend to surrender (and to date, have not surrendered) the Premises to Coventry prior to the rejection of the Lease.

6. The act of vacating the leased premises does not equate to a surrender of the leased premises to the landlord. Among other things, the simple act of vacating does not provide unequivocal notice of the Debtors' intent to contemporaneously surrender

and abandon the premises and remaining personal property to the landlord. The fact that a location is closed does not necessarily mean that the premises has been vacated. Indeed, debtors frequently abandon personal property, as the Debtors propose to do in this case, which makes it difficult to determine whether a location is closed or vacated. As a result, closure or the cessation of business operations does not provide reasonable or unequivocal notice of the surrender of the premises and the intended rejection of the lease. Accordingly, the date that the Debtors' vacate the Premises should not dictate the effective date of rejection of the Lease.

7. Coventry also objects to the Motion to the extent that it would permit the Debtors to abandon any perishable goods at the Premises. Coventry is concerned that the abandonment of perishable goods at the Premises by the Debtors will pose a health and safety risk to mall patrons as well as other tenants in the shopping mall. Coventry respectfully submits that any order that is entered approving the Motion should expressly require the Debtors to remove and dispose of all perishable goods prior to surrendering the Premises to Coventry.

8. Additionally, Coventry objects to the Motion because the Order (a) does not provide Coventry with sufficient protection from claims of third parties with respect to property that is abandoned by the Debtors and (b) only authorizes the Debtors to abandon property at the Premises and does not provide for the actual abandonment of personal property. The Order should provide that any personal property that remains at the Premises on the effective date of rejection is deemed abandoned by the Debtors. Further, the Order should be modified to provide that "any and all personal property remaining at a leased premises after the rejection date is abandoned free and clear of all

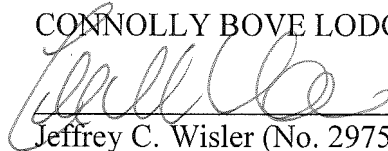
liens, claims, interests, and encumbrances, and that the landlords, in their sole discretion and without further notice, are authorized to dispose of any such property without incurring any liability to the Debtors or to any other person or entity claiming an interest in such property.”

9. Finally, Coventry objects to the form of Order because it provides for relief beyond the scope of the relief requested in the Motion. Specifically, the Order purports to address payments made pursuant to the Order and their status *vis a vie* the DIP Order. *See* Order, ¶7. Coventry submits that this language is irrelevant to the relief requested in the Motion, which deals only with the rejection of a lease and not the resulting claims. As a result, this language should be removed from the Order.

WHEREFORE, Coventry respectfully requests that the Court enter a modified form of order that is consistent with the objections raised herein. Coventry further respectfully requests that the Court grant it such further and additional relief as the Court may deem just and proper.

Dated: October 17, 2011

CONNOLLY BOVE LODGE & HUTZ LLP



Jeffrey C. Wisler (No. 2975)

Christina M. Thompson (No. 3976)

The Nemours Building

1007 N. Orange Street

P.O. Box 2207

Wilmington, Delaware 19801

(302) 658-9141

Attorneys for Coventry Retail, LP

#794738