

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re: | : | Chapter 11 |
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| SPORTS AUTHORITY HOLDINGS, INC., <i>et al.</i> , ¹ | : | Case No. 16-10527 (MFW) |
| | : | |
| Debtors. | : | (Jointly Administered) |
| | : | |
| | : | Objection Deadline: March 22, 2016 at 4:00 p.m. (ET) |
| | : | Hearing Date: March 29, 2016 at 1:00 p.m. (ET) |
| | : | |
| | : | Related to Docket No. 20, 157 |

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LIMITED OBJECTION OF BRIXMOR PROPERTY GROUP, INC., FEDERAL REALTY INVESTMENT TRUST, RICE LAKE SQUARE LP, RITE AID CORPORATION, SWEETBRIAR AUTHORITY LLC, UBS REALTY INVESTORS, LLC AND WMJK, LTD. TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362, 363 AND 364; (II) GRANTING LIENS AND SUPERPRIORITY CLAIMS TO POST-PETITION LENDERS PURSUANT TO 11 U.S.C. §§ 364 AND 507; (III) AUTHORIZING THE USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C §§ 361, 362, 363 AND 364, AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c) AND LOCAL RULE 4001-2

TO THE HONORABLE MARY F. WALRATH,
UNITED STATES BANKRUPTCY JUDGE:

Brixmor Property Group, Inc. ("Brixmor"), Federal Realty Investment Trust ("Federal"), Rice Lake Square LP ("Rice Lake"), Rite Aid Corporation ("Rite Aid"), Sweetbriar Authority LLC ("Sweetbriar"), UBS Realty Investors, LLC ("UBS") and WMJK, Ltd. ("WMJK") and together with Brixmor, Federal, Rice Lake, Rite Aid, Sweetbriar and UBS, the "Objecting Landlords", by and through their undersigned counsel, hereby files this limited objection (the "Objection") to *Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364; (II) Granting*

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.



Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. §§ 364 and 507; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Secured Parties and Modifying the Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 [D.I. 20] (the “DIP Motion”),² and respectfully represent as follows:

1. Objecting Landlords are the owners or the agents for the owners of certain shopping centers in which Debtors operate or previously operated retail stores pursuant to written leases (the “Leases”, and each a “Lease”), as more fully set forth below.

| SHOPPING CENTER | CITY/STATE | STORE # | LANDLORD |
|----------------------------|---------------------------|----------------|-----------------|
| Barrett Place | Kennesaw, GA | 427 | Brixmor |
| Ellisville Square | Ellisville, MO | 758P(759) | Brixmor |
| Mansell Crossing | Alpharetta, GA | 416 | Brixmor |
| The Market of Wolfcreek | Memphis, TN | 288 | Brixmor |
| Panama City Square | Panama City, FL | 292 | Brixmor |
| Whitehall Square | Whitehall, PA | 443 | Brixmor |
| Assembly Square | Somerville, MA | 174 | Federal |
| Brick Plaza | Brick, NJ | 471 | Federal |
| Crow Canyon | San Ramon, CA | 059 | Federal |
| East Bay Bridge | Emeryville, CA | 766 | Federal |
| Montrose Crossing | Rockville, MD | 517 | Federal |
| Rice Lake Square | Wheaton, IL | 588 | Rice Lake |
| Diagonal Plaza S.C. | Boulder, CO | 120 | Rite Aid |
| 3700 Tyrone Blvd. | St. Petersburg, FL | 382 | Sweetbriar |
| Canoga Park | Canoga Park, CA | 650 | UBS |
| Deerbrook Marketplace | Humble, TX | 229 | UBS |
| Mansfield Crossing | Mansfield, MA | 177 | UBS |
| Peninsula Center | Rolling Hills Estates, CA | 040 | UBS |
| Rancho San Diego Towne Ctr | Pico Rivera, CA | 079 | UBS |
| Towne Center at Laurel | Laurel, MD | 521 | UBS |
| Post Oak Shopping Center | Houston, TX | 225 | WMJK |

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion, the Closing Store Motion (defined below) or the Sale Motion, as applicable.

2. Except with regard to Store No. 383 (St. Petersburg, FL), all of Objecting Landlords' premises are premises located in shopping centers, as that term is used in 11 U.S.C. § 365(b)(3). *See In re: Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

Background

3. Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on March 2, 2016 (the "Petition Date") with the United States Bankruptcy Court for the District of Delaware (the "Court"). Since the Petition Date, Debtors have been operating and managing their businesses as debtors-in-possession. The Official Committee of Unsecured Creditors (the "Committee") was appointed on March 10, 2016. [*See* D.I. 262]

4. The Debtors filed the DIP Motion on the Petition Date, seeking, *inter alia*, authority to (i) obtain a post-petition Revolving DIP Facility of up to \$500 million in the aggregate principal amount and the FILO DIP Facility up to \$95,285,000 (collectively, the "DIP Facility") to roll-up in full all outstanding prepetition amounts under the pre-petition debt facilities, among other things, pursuant to the terms of the DIP Credit Agreement; (ii) use Cash Collateral; (iii) grant the DIP Liens and Adequate Protection Liens to the DIP Agent and the DIP Lenders; (iv) modify the automatic stay; and (v) grant other protections to the DIP Lenders including a waiver of any of the Debtors' rights or benefits of section 506(c) of the Bankruptcy Code (a "506(c) Waiver").

5. On March 3, 2016, the Court entered an order approving the DIP Motion on an interim basis [D.I. 157] (the "Interim Order"). The Interim Order excludes the Leases from the DIP Collateral, permitting DIP Liens only on the proceeds of the disposition of the Leases. *See* Interim Order, ¶9(c). Additionally, the Interim Order limits the DIP Lenders access

to the Premises in the event of a default under the DIP Credit Agreement to: (i) any rights that the DIP Lender and/or the DIP Agent have under applicable non-bankruptcy law; (ii) any such rights agreed to in writing by the applicable landlord; or (iii) as provided for in a further order of the Bankruptcy Court on motion and notice appropriate under the circumstance. *See* Interim Order, ¶ 41.

6. Also on the Petition Date, the Debtors filed an emergency motion [D.I. 15] (the “Closing Sale Motion”) to authorize the Debtors to assume that certain pre-petition store closing agreement dated February 17, 2016 (the “Closing Store Agreement”) by and among TSA Stores, Inc., and Gordon Brothers Retail Partners, LLC and Tiger Capital Group, LLC (collectively, the “Liquidation Consultant”) for the immediate commencement of store closing sales (the “Closing Sales”) at up to 200 store locations. The Closing Sale Motion was approved by the Court on an iInterim basis on March 3, 2016 [D.I. 156] (the “Closing Sale Order”). The Closing Sales have begun at approximately 142 locations of which approximately 87 are definite closing locations and the remainder are what the Debtors have termed “Bubble Stores.” It is contemplated that the Closing Sales may continue at certain locations until at least on or after June 7, 2016.

7. In addition, again on the Petition Date, the *Debtors’ Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, Fed. R. Bankr. P. 2002, 6003, 6004, 6006, 9007, 9008 and 9014 and Del. Bankr. L.R. 2002-1, 6004-1 and 9006-1, for Entry of (A) an Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (II) Scheduling an Auction for and Hearing to Approve Sale of Assets, (III) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale, (IV) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving Form and Manner of Notice Thereof, and (VI) Granting*

Related Relief; and (B) an Order Authorizing and Approving (I) the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests, (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Related Relief [D.I. 106] (the "Sale Motion") was filed proposing, *inter alia*, to sell some or all of Debtors' remaining assets through an auction process, subject to higher and better offers. A hearing on the proposed bidding procedures to govern the timeline and conduct of the auction and sale is scheduled to be held on March 29, 2016 at 1:00 p.m. (prevailing Eastern Time).

8. Despite the ability to conduct their businesses outside of the ordinary course of business, market the Leases, and conduct the Closing Sales, the Debtors have failed to pay rent for the period March 2, 2016 through March 31, 2016 (the "Stub Rent") to any of the Objecting Landlords for the use and occupancy of the Premises, nor to Objecting Landlords' knowledge has any provision been made in the Approved Budget for the payment of such Stub Rent.

OBJECTION

The Final Order Must Limit the Rights of DIP Lenders Consistent with Interim DIP Order

9. The limitations set forth in the Interim Order (and above) with regard to liens on the proceeds of the Leases and access rights to the Premises in the event of a default must extend to any Final Order, and the Court should not approve any form of final order that renders provisions of the Leases unenforceable as part of the Debtors' financing request.

The Court Should Deny 506(c) or 552(b) Waivers Unless Stub Rent is Paid

10. Additionally, through the DIP Motion, the Debtors intend to utilize the DIP Facility in order to operate outside of the ordinary course of business and sell their assets, including the Leases, and conduct the Closing Sales. In exchange for this post-petition financing arrangement, the Debtors and the DIP Agent have apparently agreed to an Approved Budget,

which, upon information and belief, does not provide for the payment of Stub Rent. Despite failing to provide for the payment of the Stub Rent in the Approved Budget, the Debtors seek the 506(c) Waiver and a section 552(b) waiver. The provisions of sections 506(c) and 552(b) of the Bankruptcy Code were enacted to prevent secured creditors from forcing unsecured creditors to pay for the liquidation of the secured lenders' collateral.

11. Here, the Debtors seek waivers of their rights under both sections 506(c) and 552(b) through the DIP Motion. *See* DIP Motion, ¶¶ 44, 45, 73, 74. Further, the Interim DIP Order provides for sections 506(c) and 552(b) waivers. *See* Interim DIP Order, ¶ 12. Objecting Landlords' oppose any order or budget which includes section 506(c) and 552(b) waivers and claims against the DIP Lenders, and does not expressly permit the immediate payment of Stub Rent and the timely payment of all ongoing rent to the Objecting Landlords.

12. Objecting Landlords do not object to Debtors' efforts to use Chapter 11 to maximize value for all creditors through a reasonable sale process with rational financing. *See In re Ames Department Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990) (post-petition financing should only be approved to the extent it is "in the best interests of the general creditor body.").

13. Debtors' shopping center landlords, including the Objecting Landlords, are involuntary creditors in this Chapter 11 case and bear the risk of administrative insolvency. Upon information and belief, the Approved Budget does not provide for the payment of Stub Rent. Neither the DIP Motion nor the Interim Order provides any assurance that the Debtors' estates will have sufficient funds to pay the Stub Rent. Unless and until the Debtors provide for the payment of the Stub Rent under their Leases, this Court should not approve any waiver of the estates' rights under Bankruptcy Code sections 506(c) and 552(b).

14. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself. 11 U.S.C. § 506(c). This provision ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured recoveries. *See, e.g., Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) (“[S]ection 506(c) is designed to prevent a windfall to the secured creditor”); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (stating that “the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs”).³ Similarly, the “equities of the case” exception in section 552(b) of the Bankruptcy Code allows a debtor, creditors’ committee or other party-in-interest to exclude post-petition proceeds from pre-petition collateral on equitable grounds.

15. The Court may require payment of stub rent under Section 506(c), as the premise underlying Section 506(c) is that the unsecured creditors should not be required to bear the costs of preserving a secured creditor's collateral. *See In re Evanston Beauty Supply Inc.*, 136 B.R. 171, 175 (Bankr. N.D. Ill. 1992). “Ample case authority exists which permits lessors to recover under Section 506(c) provided that the standards for recovery are met.” *In re World Wines, Ltd.*, 77 B.R. 653, 658 (Bankr. N.D.Ill.1987). Standards for recovery are that the services were necessary and beneficial to the lender. *Visual Ind., Inc.*, 57 F.3d at 325. The post-petition use of the Premises is necessary and beneficial to generating sales for the Debtors.

16. The Premises are being used to sell the secured lenders’ collateral, and the post-petition use of the Premises allows for the continuing operations of the Debtors to sell their

³ It is well-settled, however, that administrative claimants do not have an independent right to seek payment of otherwise unsatisfied claims under Section 506(c) from property encumbered by a secured creditor's lien since the statute reserves that right to a trustee (or debtor-in- possession). *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 46. S.Ct. 1942, 1947 (2000).

inventory and assets for the DIP Lenders' benefit. The Stub Rent owing to Objecting Landlords are reasonable and necessary to the preservation and disposal of DIP Lenders' collateral and provides a direct benefit to the Debtors and the DIP Lenders. Without it, the Debtors and their lenders would have to find other locations to store and liquidate the inventory (likely at a diminished price), and pay costs associated with removing the inventory and finding other locations. Moreover, allowing the lenders access to storage and preservation of collateral at no cost would "result in a windfall benefit to the secured creditor to the detriment of a third party." *In re So Good South Potato Chip Co.*, 116 B.R. 144, 146 (Bankr. E.D. Mo. 1990). Based on the above, the Court can and should require the payment of the Stub Rent for the preservation of DIP Lenders' collateral under Sections 506(c) and 552(b), and deny any request for such waiver in the DIP Motion until such Stub Rent is paid.

The Court Should Order the Debtors to Pay Stub Rent Immediately

17. While it is conceded that the law in this Circuit is that a debtor need not pay the Stub Rent when a debtor files its voluntary petition after the first of the month, Courts in this District have held that such Stub Rent is entitled to an administrative priority under Section 503(b) of the Bankruptcy Code. *See In re Goody's Family Clothing, Inc.*, 392 B.R. 604 (Bankr. D. Del. 2008). However, the Court has discretion to determine when an administrative expense will be paid. *In re Garden Ridge Corp.*, 323 B.R. 136 (Bankr. D. Del. 2005). In determining the timing for payment of an administrative expense, the Court will consider (1) prejudice to the Debtors, (2) hardship to the claimant, and (3) the potential detriment to other creditors. *Id.*

18. Based upon the information available to date, it is unclear whether Debtors' estates will be administratively solvent. There is almost always a prospect of administrative insolvency in retail bankruptcy cases. As indicated, the Debtors have not paid the Objecting Landlords the Stub Rent due under the Leases, and the Approved Budget does not

appear to provide for any payment of Stub Rent (nor does it clearly provide for the payment of ongoing rent),⁴ putting Objecting Landlords in the position of providing the Debtors with an involuntary, interest-free loan.

19. Notwithstanding, the Debtors seek to provide waivers of their rights under sections 506(c) and 552(b) to the DIP Lenders, seek to conduct the Closing Sales at the Objecting Landlords' Premises, and market the Leases through sale process to conclude within the first 60 days of the case. Although, the Closing Sales may continue until June 30, 2016. As the Debtors will receive a significant cash infusion from the Closing Sales, it is inequitable to allow the Debtors to use the Premises in a manner outside of the ordinary course of business, reaping an actual and necessary benefit to the estates, while not paying Stub Rent.

20. Accordingly, Objecting Landlords respectfully request that the Court, in an exercise of its discretion, order the Debtors to immediately pay all Stub Rent due and owing to the Objecting Landlords as a condition to granting the DIP Motion. In the alternative, the Court should at a minimum direct the Debtors to immediately pay all Stub Rent due under the Leases of stores where the Closing Sales are conducted.

21. Further, the Objecting Landlords are entitled to prompt payment of the Stub Rent as adequate protection of their interest in the Leases. Section 363(e) of the Bankruptcy Code states, in pertinent part, that adequate protection may be provided:

on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

⁴ The budget attached to the DIP Motion and Interim DIP Order includes categories of various disbursements but none are denominated as rent.

11 U.S.C. § 363(e).

22. Where an estate may be administratively insolvent, the court may provide Landlords with adequate protection under Section 363(e). *See In re Goody's Family Clothing, Inc.*, 610 F.3d 812, 819 (3d Cir. 2010). In such circumstances, it is appropriate for adequate protection to take the form of immediate cash payments for post-petition use of the Premises. *See* 11 U.S.C. § 361; *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 794 (Bankr. D. Del. 2002). Where there is a significant likelihood of administrative insolvency, as here, simply allowing an administrative expense claim for Stub Rent will not adequately protect Objecting Landlords. *See* 11 U.S.C. § 361(3). Only the payment of Stub Rent will adequately protect the Objecting Landlords, and the Court should require Debtors to pay Stub Rent as adequate protection for the continued use of the Premises.

RESERVATION OF RIGHTS

23. Objecting Landlords reserve the right to make such other and further objections as may be appropriate, and do not waive and hereby preserve all of their rights, remedies, and arguments with respect to the Leases.

JOINDER IN OTHER LANDLORD OBJECTIONS

24. Objecting Landlords hereby join in the objections filed by Debtors' other landlords to the extent that such objections are not inconsistent with the provisions hereof.

WHEREFORE, Objecting Landlords respectfully requests that the Bankruptcy Court grant relief consistent with the foregoing objections; and for such other and further relief as may be just and required under all of the circumstances.

Dated: March 22, 2016
Wilmington, Delaware

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CERTIFICATE OF SERVICE

Leslie C. Heilman, Esquire hereby certifies that on this 22nd day of March, 2016, a true and correct copy of the foregoing *Limited Objection Of Brixmor Property Group, Inc., Federal Realty Investment Trust, Rice Lake Square LP, Rite Aid Corporation, Sweetbriar Authority LLC, UBS Realty Investors, LLC And WMJK, Ltd. To Debtors' Motion For Interim And Final Orders (I) Authorizing Debtors To Obtain Post-Petition Secured Financing Pursuant To 11 U.S.C. §§ 105, 362, 363 And 364; (II) Granting Liens And Superpriority Claims To Post-Petition Lenders Pursuant To 11 U.S.C. §§ 364 And 507; (III) Authorizing The Use Of Cash Collateral And Providing Adequate Protection To Prepetition Secured Parties And Modifying The Automatic Stay Pursuant To 11 U.S.C §§ 361, 362, 363 And 364, And (IV) Scheduling A Final Hearing Pursuant To Bankruptcy Rules 4001(B) And (C) And Local Rule 4001-2* was served upon the addressees listed on the attached service list in the manner indicated.

Dated: March 22, 2016
Wilmington, Delaware

/s/ Leslie C. Heilman
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