

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)
	:	Extended to October 19, 2011 @4:00 p.m.
	:	
	:	Related to Docket No. 5 and 7

OMNIBUS LIMITED OBJECTION OF BRIXMOR PROPERTY GROUP, INC., FEDERAL REALTY INVESTMENT TRUST AND GGP LIMITED PARTNERSHIP AND JOINDER OF BRIXMOR PROPERTY GROUP, INC., FEDERAL REALTY INVESTMENT TRUST AND GGP LIMITED PARTNERSHIP IN OBJECTIONS OF THE MACERICH COMPANY AND HOLYOKE MALL COMPANY, L.P., ET AL. TO (1) 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 AND (2) 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 PREMISES

TO THE HONORABLE KEVIN GROSS,
UNITED STATES BANKRUPTCY JUDGE:

Brixmor Property Group, Inc. (“Brixmor”), Federal Realty Investment Trust (“Federal”) and GGP Limited Partnership (“GGP” and collectively, the “Objecting Landlords”), by and through their undersigned attorneys, hereby make this Omnibus Limited Objection and join in the objections of The Macerich Company and Holyoke Mall Company, L.P., *et al.* to

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.

Debtors'² (1) 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 and (2) 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 Premises (the "Rejection Motions"), and in support thereof aver:

1. Objecting Landlords are the owners or agents for the owners of various shopping centers or other properties in which Debtors operate retail stores pursuant to written leases (the "Leases" and each a "Lease") which are affected by the relief sought by the Motion.

2. 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). The premises affected by the Motion are:

LOCATION	CITY/STATE	LANDLORD
Cayuga Mall	Ithaca, NY	Brixmor
Dalewood Shopping Center	Hartsdale, NY	Brixmor
Enfield Square	Enfield, CT	Brixmor
Sunshine Square	Medford, NY	Brixmor
Dedham Plaza	Dedham, MA	Federal
Neshaminy Mall	Neshaminy, PA	GGP
White Marsh Mall ³	White Marsh, MD	GGP
Woodbridge Center	Woodbridge, NJ	GGP

² On October 14, 2011 Freeze, LLC and certain related entities filed petitions under Chapter 11 of the Bankruptcy Code (Case Nos. 11-13303-06-KK). These entities appear to be the direct or indirect parent entities for Debtors. It is unclear at this point what affect these filings may have on Debtors' cases in general or this Motion in particular.

³ This is a franchise location that may, nevertheless, be affected by the Motion.

3. By the Rejection Motions Debtors seek *inter alia*, to reject certain leases for closed locations as of the date that Debtors have vacated same and to establish procedures for the future rejection of leases and abandonment of *de minimus* property.

4. The Macerich Company (“Macerich”) and Holyoke Mall Company, L.P., *et al.* (“Holyoke”), have filed Limited Objections (See Docket No. 141 with regard to Macerich and Docket No. 139 with regard to Holyoke) to Debtors’ Rejection Motions. Those Limited Objections challenge, *inter alia*, the following issues:

- The failure to give sufficient notice of the rejection.
- The effective date of rejection.
- The abandonment of personal property and FF&E.

Objecting Landlords hereby join in the aforesaid Limited Objections and the pleadings filed with regard thereto as fully as though the allegations thereof were set forth at length herein.

Additional Objections

5. In addition to the allegations and arguments set forth by Macerich and Holyoke, Objecting Landlords set forth below certain additional, or expanded, objections to the Motion. Objecting Landlords note with appreciation that Debtors have circulated revised proposed orders which satisfactorily address most of Objecting Landlords’ and other landlords’ concerns.

Effective Date of Rejection – Property Remaining

6. The revised proposed order regarding the rejection of certain unexpired leases provides that a third party which has property remaining in any premises which is being

rejected will have seven days following the Rejection Notice in which to notify the parties that it has such property remaining and will have fourteen days from the date of the Rejection Notice to remove such property. If there is, indeed, a third party's property in any of Objecting Landlords' premises⁴ then the effective date of the lease rejection cannot be until the date that such third party removes its property from the premises. Until such date, the landlord does not have the full use of its premises, cannot turn it over to a new tenant and continues to suffer economic loss.

7. The Debtors are the only party with a relationship with any third parties which have property on the premises and are also the only parties who know if any such third party property exists in the first instance. It is now two full weeks since Debtors filed their voluntary petitions, the fourteen day period that the Debtors have built into the Rejection Order. The Debtors could have, indeed should have, notified any such third parties at the time of filing that the stores were closing and that they would have to remove their property. Indeed, the Debtors knew before the filing date that they would be closing these stores and could easily have made arrangements for the removal of third party property immediately following the filing. Any delay in the removal of property must fall squarely in the laps of the Debtors. Objecting Landlords should not be made to suffer any economic loss as a result of the Debtors' delay. To paraphrase another bankruptcy judge regarding DIP issues, the Debtors' procrastination is not the landlord's emergency. Accordingly, the rejection date of leases with property remaining therein must be the later of surrender of the premises by the Debtor or surrender of the premises and removal or abandonment of third party property.

⁴ Objecting Landlords are parties to four leases which are subject to the current Motion to Reject as of the vacation date.

Effective Date of Rejection – Non-Landlord Objection to Rejection

8. In the event that Debtors file a rejection notice and there is an objection to the rejection by a party other than the landlord of the premises, the effective date of the rejection cannot be any earlier than the date of entry of an order of the Court denying the objection or, if such objection is withdrawn, the date that notice is filed and served upon the landlord that the objection has been withdrawn. Until such date that an order is entered or the objection is withdrawn and the landlord notified, the landlord does not have the use of its premises through no fault of its own. Indeed, until the time that either of those events occur the landlord would be at risk if attempted to relet the premises since it is entirely possible that the Court could rule in favor of the objecting party in which case the lease would not be rejected and it would still be property of the Debtors' estate.

Reservation of Rights

9. Objecting Landlords reserve the right to make such other and further objections as may be appropriate once a procedures order has been entered.

Joinder in Other Landlord Objections

10. 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 pray for 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: October 19, 2011
Wilmington, Delaware

Respectfully submitted,

/s/ Leslie C. Heilman

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