

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

LILY ROBOTICS, INC.,

Debtor.¹

Chapter 11

Case No. 17-10426 (KJC)

Re: D.I. 8, 10 & 73

**DEBTOR’S REPLY TO LIMITED OBJECTION OF FIFTH HISTORIC PROPERTIES,
LLC TO MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING USE OF
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III)
SCHEDULING FURTHER INTERIM HEARING, AND (IV) GRANTING RELATED
RELIEF AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN
POSTPETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPER-
PRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) AUTHORIZING THE USE
OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V)
SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

The above-captioned Debtor and Debtor in Possession, by and through its proposed undersigned counsel, hereby files this Reply to the *Limited Objection to Motion For Entry of Final Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling Further Interim Hearing, and (IV) Granting Related Relief and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Liens and Providing Super-Priority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Dkt. No. 73] filed by Fifth Historic Properties, LLC (“Fifth Historic”). In support of its Reply, the Debtor relies upon, and incorporates by reference, the *Declaration of Curtis G.*

¹ The last four digits of the Debtor’s federal tax identification number are 8604. The Debtor’s headquarters and mailing address is 374 Harriet Street, San Francisco, California 94103.

Solsvig III in Support of Debtor's Chapter 11 Petition and First Day Relief [Dkt. No. 2] filed with the Court on February 27, 2017. In further support of the Reply, the Debtor respectfully represents as follows:

BACKGROUND

1. Fifth Historic and the Debtor are parties to a commercial lease dated as of July 9, 2015 (as amended, the "Lease") whereby the Debtor leased certain commercial property from Fifth Historic located at 724 Brannan Street and 374 Harriet Street in San Francisco, California. Pursuant to the Lease, the Debtor provided Fifth Historic with a security deposit of \$608,750.

2. Fifth Historic asserts that the Debtor owes it \$52,251.04 in post-petition rent for March 2017 and \$3,732.22 for the "stub" period of February 27-28, 2017.

REPLY

3. Fifth Historic's Limited Objection attempts to allow a claim for and compel the Debtor to pay post-petition rent. The Court should overrule this Limited Objection as it lacks any legal merit and is procedurally improper and premature.

4. The Debtor acknowledges that it has an obligation to pay post-petition rent to the extent it is owed. However, in these early days of the case, with a CRO hired shortly before the filing, the Company is still wrapping its arms around the nature and extent of its obligations – including any alleged post-petition rent owed to Fifth Historic. An objection to the DIP and cash collateral motions is not the appropriate procedural avenue to compel this payment.

5. Moreover, the Limited Objection lacks legal merit. The Debtor seeks approval of an order authorizing interim use of cash collateral and interim approval of DIP financing. Under section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral upon either the consent of an entity holding an interest in cash collateral or approval from the court in accordance with the provisions of section 363. *See* 11 U.S.C. § 363(c)(2). A court will authorize

a debtor to enter into a post-petition lending facility under section 364 of the Bankruptcy Code if, among other things, it “reflects sound and prudent business judgment” that is “reasonable under the circumstances and in the best interest of [the debtor] and its creditors,” *see In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994), and the proposed financing represents the best financing available, *see In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

6. Here, the Limited Objection is devoid of any discussion of the legal standards for the Debtor’s ability to use cash collateral or obtain post-petition financing under sections 363(c) and 364 of the Bankruptcy Code, respectively. Instead, Fifth Historic asserts that the “failure to include rent payments to [Fifth Historic] in its proposed DIP Financing is improper and materially unfair to [Fifth Historic].” Limited Obj. at ¶ 6. Fifth Historic’s objection does not in any way argue that the Debtor has failed to meet its burden under sections 363 or 364 of the Bankruptcy Code detailed above.

7. Rather, Fifth Historic’s submission is nothing more than a request to compel the Debtor’s payment of post-petition rent – a request Fifth Historic makes explicitly. *See* Limited Obj. ¶ 8. This request is procedurally faulty. If Fifth Historic wants to compel payment of a post-petition obligation, the Bankruptcy Code provides procedural mechanisms for Fifth Historic to bring this issue to the forefront. That will allow the Debtor time to evaluate the claim in full and determine how to proceed. Objecting to the post-petition financing and cash collateral motions is not one of them.

8. Even more problematic: Fifth Historic is seeking to compel this payment in the context of an interim order with just two days for the Debtor to respond. Although the Limited Objection asks that any final “DIP order and postpetition financing order” be conditioned upon

the Debtor immediately paying all post-petition rent, *see* Obj. at ¶ 8, the Debtor is seeking only interim relief at this time for the DIP financing described in the DIP Motion. Given this abbreviated timing, it is impossible for the Debtor to fully analyze and determine its obligations to Fifth Historic.

9. Accordingly, the Court should overrule this Limited Objection because it does not refute the Debtor's compliance with the applicable provisions of the Bankruptcy Code in order to obtain the relief requested in the underlying motions.

NOTICE

10. Notice of this Reply will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to any Committee, (iii) counsel to the DIP Lender; (iv) counsel to the Prepetition Secured Lender; (v) the parties included on the Debtor's consolidated list of thirty (30) largest unsecured creditors; (vi) the Internal Revenue Service; (vii) the United States Attorney for the District of Delaware and in California; (viii) all known parties that may be asserting a lien or interest against any of the assets; (ix) any party who has knowingly expressed an interest in purchasing the assets or the assets; (x) the Attorneys General for Delaware and California; (xi) all parties who have requested notice in this chapter 11 case pursuant to Local Rule 2002-1(b); and (xii) counsel to Fifth Historic. The Debtor submits that, in light of the nature of the relief requested, no other or further notice is necessary or required.

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WHEREFORE, the Debtor respectfully requests that the Court overrule Fifth Historic's Limited Objection and grant the relief requested in the Cash Collateral and DIP Motions and other and further relief as the Court may deem proper.

Dated: March 22, 2017
Wilmington, Delaware

Respectfully submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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