

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:

GENERAL WIRELESS OPERATION, INC.,
dba RADIOSHACK, et al.

Debtors.

Chapter 11

Case No. 17-10506-BLS

(Jointly Administered)

Ref. Docket Nos. 14, 76, 80 and 138

LIMITED OBJECTION OF ADOBE PLAZA, LLC TO DEBTORS' MOTION FOR ENTRY AND APPROVAL OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING USE OF CASH COLLATERAL AND AFFORDING ADEQUATE PROTECTION; (II) MODIFYING AUTOMATIC STAY; AND (III) SCHEDULING FINAL HEARING, PURSUANT TO SECTIONS 105, 362, 363 AND 507 OF TITLE 11 OF THE UNITED STATES CODE, RULES 2002 AND 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 4001-2 OF THE LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Adobe Plaza, LLC (the "Landlord"), by and through its counsel, hereby files the following Objection to the above-captioned Debtors' (the "Debtors") Motion, and respectfully represent as follows:

BACKGROUND

1. On March 8, 2017 (the "Petition Date"), the above captioned Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the Court.
2. Debtors operated their businesses as debtors-in-possession pursuant to § 1107(a) and 1108 of the Bankruptcy Code.
3. Landlord and at least one of Debtors are parties to an unexpired lease of

nonresidential real property, together with all modifications and extensions thereof (collectively the “Lease”) of premises at the following location (the “Premises”):

Adobe Plaza Shopping Center having an address of 7379 El

Camino Real Atascadero, California 93422 and also known as

RadioShack Store #3028 (“Store #3028”)

4. The Lease is a lease of “real property in a shopping center” as that term is used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F. 2d 1081, 1086 87 (3rd Cir. 1990).

OBJECTIONS

Stub Rent Should Be Paid

5. Debtors’ Motion seeks to use cash collateral, providing adequate protection to the senior and junior lien creditors to operate outside the ordinary course of business by selling assets and proceeding with store closing sales.

6. Upon information and belief, the budget apparently fails to provide payment of rent due and owing to Landlord for the stub rent – the amounts between March 8, 2017 through March 31, 2017 (the “Stub Rent”) until after June 2017.

7. This payment after June, 2017 will be well after the senior lien creditors are paid and without consent of the junior lien creditors.

8. Further, majority of the stores will be closed by April.

9. In addition, Debtors seek a waiver of the protection set forth in § 506(c) and 550(2)(b), which prevent secured creditors from forcing unsecured creditors, like Landlord to pay for the liquidation of secured creditors collateral.

10. Landlord demands that Debtors be required to pay Stub Rent under its Lease with

Landlord, immediately. Landlord should not have to wait until June 2017 for Stub Rent when there may not be any money left.

Oppose Waiver of §506(c) and 550(2)(b) Protections

11. In addition, Landlord opposes a waiver of § 506(c) and 550(2)(b). Currently, Debtors may be proceeding with the closing of Landlord's Premises, despite the fact that it was never listed on any of the store closings and without Landlord's permission. Debtors are basically using the Premises for their operations while they conduct store closings without obtaining approval from Landlord and/or the Court.

12. Debtors' estate is for all intensive purposes administratively insolvent, and there is not the payment of stub rent until June 2017. Landlord is effectively providing an interest-free loan to Debtors through Stub Rent. The court should not allow Debtors to place the financing of their case on the back of Landlord while using the Landlord's Premises.

Stub Rent as Adequate Protection

13. Landlord joins with others in the request that stub rent should be made as adequate protection for the condition of the sale that is involving the use of Landlord's Premises under Section 363(e). This section allows the granting of adequate protection to real property lessors, like Landlord. See, e.g., Matter of Cont'l Airlines, Inc., 154 B.R. 176, 180 (Bankr. D. Del. 1993) (adequate protection available under § 363(e) for a decrease in value due to the use, sale, or lease of an entity's interest in property); In re P.J. Clarke's Restaurant Corp., 265 B.R. 392, 404 (Bankr. S.D.N.Y. 2001) ("landlord's right to adequate protection seems to follow clearly from the language of Section 363(e)..."); In re Ernst Home Center, Inc., 209 B.R. 955, 966-67 (Bankr. W.D. Wash. 1997) (finding that adequate protection is available to real property lessors under Section 363(e)).

14. Here, 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).

JOINDER IN OBJECTIONS RAISED BY OTHER

LANDLORDS AND RESERVATION OF RIGHTS

15. To the extent consistent with the Objections expressed herein, Landlord also joins in the Objections of other shopping center lessors to Debtors' proposed relief. Further, Landlord reserves all rights to make further and future objections.

WHEREFORE, the Landlord respectfully requests that Stub Rent be paid immediately and the waivers under §506(c) and 550(2)(b) be denied, and for such other and further relief as this Court may deem just and proper.

Dated: March 28, 2017

Respectfully submitted:

CICONTE SCERBA & KERRICK, LLC

/s/ Daniel C. Kerrick

DANIEL C. KERRICK, DE Bar 5027

1300 King Street

Wilmington, DE 19801

302-658-7101

dkerrick@cskdelaw.com

and by

MIRMAN, BUBMAN & NAHMIA, LLP

/s/ Alan I. Nahmias

ALAN I. NAHMIA (CA SBN 125140)

21860 Burbank Boulevard, Suite 360

Woodland Hills, CA 91367

Telephone: 818-995-2555; Fax: 818-451-4620

Email: anahmias@mbnlawyers.com

ATTORNEYS FOR ADOBE PLAZA, LLC

Pending Pro Hac Vice Admission