

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

AA FLORIDA BRIDAL RETAIL
COMPANY, LLC, *et al.*,

Debtors.

Case No. 17-18864-PGH
Chapter 7

(Joint Administration Pending)

**RIVERSIDE HAMNER PROPERTIES, LLC'S OBJECTION
TO THE TRUSTEE'S OMNIBUS MOTION TO REJECT
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
NUNC PRO TUNC TO PETITION DATE; DECLARATION
OF DENNIS MORGAN IN SUPPORT THEREOF**

Riverside Hamner Properties, LLC (the "**Landlord**" or "**Riverside Hamner**") hereby submits this Objection to the Trustee's Omnibus Motion to Reject Executory Contracts and Unexpired Leases *Nunc Pro Tunc* to Petition Date [Docket No. 52] (the "**Omnibus Motion**") as follows:

Pursuant to a Lease dated August 13, 2007 (as amended from time to time, the "**Lease**"), the Landlord (Riverside Hamner) leased to the Debtor, Hacienda Brides, certain retail space located at 10300 Magnolia Avenue, Riverside, California 92505 (the "**Subject Property**").

The Debtor (along with its affiliated entities) filed for a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on July 14, 2017 (the "**Petition Date**"). However, the Debtor remained on the Subject Property beyond the Petition Date in order to, among other things, wind down its retail operations and return bridal dresses to its customers. *See* Declaration of Dennis Morgan attached hereto (the "Morgan Decl."), ¶¶ 6-8.

Although the Debtor continued to use, occupy, and possess the Subject Property beyond the Petition Date, in its Omnibus Motion, the Trustee improperly seeks to reject the Lease *nunc pro tunc* to the Petition Date.

However, it is well-settled that a debtor is not entitled to retroactively reject a lease as of the petition date if the debtor failed to surrender the premises as of the petition date. By way of example, in *In re Chi-Chi's, Inc.*, 305 B.R. 396 (Bankr. D. Del. 2004), the debtor filed for voluntary petition for relief on October 8, 2003, but did not surrender the premises until October 31, 2003. The debtor sought to retroactively reject the lease as of the petition date. The court denied the debtor's request for a retroactive rejection and instead held that the rejection date should be the later date of surrender of the premises to the landlord:

“Here, the Landlords take the position that rejection should not be deemed as of the Petition Date, since the Debtors had not surrendered the premises to the Landlords. The premises are subject to subleases/sub-subleases, and the current tenants remain on the premises. It was not until a few weeks after the order was entered that the Landlords were able to enter into agreements with the sublessees/sub-sublessees.

Based on the foregoing, **the Court finds that it will not exercise its equitable power to deem the Landlords' leases rejected as of the Petition Date. The more appropriate date is the day the Debtors surrendered the premises to the Landlords**, and the Landlords were able to enter into agreements with the current tenants. The rejection date thus should be at the earliest, October 31, 2003.

In re Chi-Chi's, Inc., 305 B.R. 396, 399 (Bankr. D. Del. 2004) (emphasis added).

In this case, Debtor Hacienda Brides has leased certain retail space in Riverside, California from the Landlord, Riverside Hamner. *See* Morgan Decl., ¶ 2-4. The Lease provides for monthly rental payments of \$12,683.00. The last full month's rental payment received under

the Lease was for the month of April 2017. *Id.* at ¶ 5. Following the July 14, 2017 Petition Date, the Debtor has continued its activities on the Subject Property. *Id.* at ¶ 6. The Landlord did not receive notice that the Trustee was surrendering the Subject Property until Friday, August 6, 2017. *Id.* at ¶ 7. From the July 14, 2017 Petition Date to the August 6, 2017 date of surrender, a total of \$9,410.00 in rent has accrued (23 days x \$409.13 daily rate). *Id.* at ¶ 10.

As such, the Trustee should not be entitled to retroactively reject the Lease as of the Petition Date when the Debtor continued to use the Subject Property after the Petition Date. The date of rejection should be on the date of surrender on August 6, 2017, at the earliest.

CONCLUSION

WHEREFORE, the Landlord, Riverside Hamner, respectfully submits that the Trustee's rejection of the Lease for the Subject Property located at 10300 Magnolia Avenue, Riverside, California 92505, should be conditioned upon the following:

- (a) The estate's full surrender of the Subject Property to the Landlord, including the abandonment of all personal property located thereon and providing that there are no liens of any of the Debtors' lenders upon any property located thereon;
- (b) Payment by the estate of all post-petition rents owed to the Landlord in the sum of \$9,410.00 (23 days x \$409.13 daily rate); and
- (c) Allowance of at least 30 days for the Landlord to file its rejection claim.

Dated: August 10, 2017

Respectfully submitted,

/s/ Theodore B. Stolman

Theodore B. Stolman, Esq.

(Visiting Attorney)*

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RIVERSIDE HAMNER PROPERTIES, LLC

* Theodore B. Stolman, Esq. is a visiting attorney making an appearance in a limited instance pursuant to Local Rule 2090-1(C)(1). Mr. Stolman is a member in good standing with the State Bar of California (CA State Bar No. 52099).

DECLARATION OF DENNIS MORGAN

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I, Dennis Morgan, declare as follows:

1. I am over eighteen years of age and I have personal knowledge of the statements set forth below except for those facts stated on information and belief, and as to those facts, I am informed and believe them to be true. If called upon to do so, I could and would testify competently to the matters stated in this Declaration because I know them of my own personal knowledge.

2. I am the President of IPA Commercial Real Estate ("IPA"). IPA is a full service commercial real estate brokerage firm located in Riverside, California. Among the services provided by IPA is the management of commercial real estate owned by IPA's clients. One of the commercial properties managed by IPA is that certain property commonly known as The Magnolia Tyler Center, located at 10300 Magnolia Avenue, Riverside, California 92505 and identified as Property No. 26 by the Debtor (the "Subject Property").

3. The Subject Property is owned by an entity known as Riverside Hamner Properties, LLC. As the President of IPA, I have final responsibility for overseeing IPA's management of the Subject Property, and as such, am familiar with the financial affairs of the Subject Property and qualified to submit this declaration.

4. The Subject Property was leased to Hacienda Brides, one of the Debtors in a pending chapter 7 bankruptcy proceeding pending in the U.S. Bankruptcy Court Southern District of Florida, West Palm Beach Division as Case No. 17-18864-PGH. The Lease was entered into on August 13, 2007 and was amended by the First Amendment of Lease dated as of December 10, 2010, and the Letter Agreement dated as of April 11, 2014 (as amended, the "Lease"). The Lease has been extended to September 3, 2019.

5. The Lease provides for monthly rental payments of \$12,683.00. The last full rental payment received under the Lease was for the month of April 2017.

6. Subsequent to the July 14, 2017 Petition Date, I have regularly visited the Subject Property and have observed business activity being conducted including the transfer of bridal

gowns to possible customers or interested parties. At the present time, the Subject Property continues to be occupied with items of personal property utilized in the business operations of the Debtor.

7. On at least one or more occasions, I sent an email and phone calls to a representative of the Chapter 7 Trustee requesting that IPA be provided access to the Property and to ask when the property would be vacated. IPA has had to use security services to safeguard the Subject Property and areas immediately outside the Subject Property. On more than one occasion, the Riverside Police Department Officers had to be called out to deal with angry customers who wanted their wedding dresses returned or delivered. In addition, IPA has had to provide security services to prevent store window damage and damage to the area immediately outside the storefront. I did not receive a response until Friday, August 6, 2017, when I received a letter from the Chapter 7 Trustee stating that the estate would surrender the Subject Property.

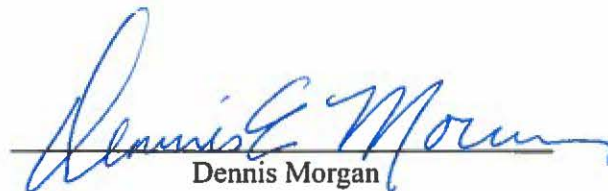
8. Prior to August 6, 2017, as a result of the continuing business operations at the Subject Property conducted after the Petition Date and the fact that the Subject Property had not been surrendered, IPA had been prevented from taking appropriate steps to have possession of the Subject Property and commence the process of remarketing and leasing the Subject Property.

9. The Trustee's Motion to Reject Executory Contracts and Unexpired Leases *Nunc Pro Tunc* to Petition Date, if granted, will create an unfair economic burden upon IPA and the owner of the Subject Property since the Subject Property was not surrendered to IPA but instead was utilized by the Trustee to carry on the operations of the Debtor after the Petition Date.

10. Instead, the Debtor's bankruptcy estate should be obligated for administrative rent from the Petition Date through the date the Subject Property was surrendered to IPA. Rent has and continues to accrue from the Petition Date at the monthly rate of \$12,683.00 or approximately \$409.13 per day utilizing 31 days for the months of July and August. From the July 14, 2017 Petition Date to the August 6, 2017 date of surrender, a total of \$9,410.00 in rent has accrued (23 days x \$409.13 daily rate).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 10, 2017, at Los Angeles, California.


Dennis Morgan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day by transmission of Notices of Electronic Filing generated by CM/ECF to those parties registered to receive electronic notices of filing in this case as listed in the attached service list.

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/s/ Denice Sanchez

Denice Sanchez