

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
CBCRC LIQUIDATING CORP., <i>et al.</i> , ¹)	Case No. 23-10245 (KBO)
Debtors.)	(Jointly Administered)
)	Obj. Deadline: April 25, 2024 at Noon ET ²
)	Hearing Date: April 30, 2024 at 11:00 a.m. ET
)	Relating to Docket Nos.: 1059

OBJECTION OF BRIXMOR OPERATING PARTNERSHIP L.P., EAGLE GREEN, LP, FEDERAL REALTY OP LP, GMV (MALL) OWNER LLC, SWC ARBROOK/157, LTD., AND TOWSON UE LLC TO THE MOTION OF DEBTORS FOR ENTRY OF AN ORDER: (I) APPROVING THE SETTLEMENT AGREEMENT IN CONNECTION WITH THE ASSET PURCHASE AGREEMENT BY AND AMONG THE DEBTORS AND SSCP RESTAURANT INVESTORS, LLP DATED JUNE 14, 2023; (II) AUTHORIZING THE DEBTORS TO CONVERT THESE CASES TO CASES UNDER CHAPTER 7; AND (III) GRANTING RELATED RELIEF

Brixmor Operating Partnership L.P. ("Brixmor"); Eagle Green, LP ("Eagle Green"); Federal Realty OP LP ("Federal Realty"); GMV (Mall) Owner LLC ("GMV"); SWC Arbrook/157 Ltd. ("Arbrook"); and Towson UE LLC ("Towson," and together with Brixmor, Eagle Green, Federal Realty, GMV and Arbrook, the "Landlords") by and through their undersigned counsel, hereby file this objection (the "Objection") to the *Motion of the Debtors for Entry of an Order: (I) Approving the Settlement Agreement in Connection with the Asset Purchase Agreement by and Among the Debtors and SSCP Restaurant Investors, LLP Dated June 14, 2023; (II) Authorizing the Debtors to Convert these Cases to Cases under Chapter 7; and (III) Granting Related Relief* (the "Settlement Motion") [D.I. 1059]. In support of this Objection, the Landlords respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBCRC Liquidating Corp. (0801), CBHC Liquidating Company (3981), and CBCCI Liquidating Inc. (1938). The Debtors' service address is Corner Bakery, c/o CR3 Partners, Attn: Greg Baracato, Chief Restructuring Officer, 13355 Noel Road, Suite 2005, Dallas TX 75240.

² Deadline extended by agreement of the Parties.



I. PRELIMINARY STATEMENT

1. Under the guise of a settlement motion brought pursuant to Bankruptcy Rule 9019, the Debtors and SSCP Restaurant Investors, LLP (“SSCP”) are attempting to orchestrate a structured conversion of these Chapter 11 Cases – all for the benefit of SSCP, who would receive *any surplus assets that can be recovered for the estate* and a *non-consensual release for all claims*. This result is, without question, untenable.

2. Under the opt-out framework provided by the Settlement Motion, creditors are left with a Sophie’s choice. All parties served with the notice of the Settlement Motion will be deemed to have released all rights, including rights to payment from the Debtors, their estates, SSCP, and the Remaining Cash if they do not act or object; however, if creditors file the Opt-Out Notice and Payment Request to request payment of their administrative claims, according to the language of the form itself, they will be giving up their right to receive any other recovery on account of their claims by “agree[ing] to accept and limit [their] recovery to [their] *pro rata* share of the remaining cash should the amount requested be accepted by the Debtors or SSCP or allowed by the Bankruptcy Court.” This egregious choice of terribles, that would foreclose recovery for creditors if there are additional assets to be recovered by the estates, is not supported by law or equity.

3. Throughout these Chapter 11 Cases, the Landlords have been uniquely and unfortunately situated as involuntary, unsecured, and interest-free lenders to the Debtors to the extent of administrative rent. The Debtors—for the benefit of SSCP—utilized the leased Premises (as defined below) post-petition to accomplish a sale of substantially all of the Debtors’ assets to SSCP. SSCP and the Debtors should not be permitted utilize the Settlement Motion to finalize and cement creditors’ treatment and to escape liability for their post-petition use and occupancy of the Premises, especially in these Chapter 11 Cases, where the responsibility and budgeting for administrative rent was a litigated issue from the first day of these cases through the approval of the Sale (as defined below).

4. Nor should the proposed releases release SSCP from any payment obligations that it is responsible for in connection with any assumed lease and/or any liability it assumed under the APA and/or TSA (each as defined below) following the Sale.

II. BACKGROUND

5. On February 22, 2023 (the “Petition Date”), CBC Restaurant Corp. and their affiliated debtor entities (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Debtors’ cases have been jointly consolidated for administrative purposes only.

6. The Debtors continued to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.³ No trustee or examiner has been appointed in the Chapter 11 Cases at this time.

A. The DIP Motion

7. On April 3, 2023, the Debtors filed *Debtors’ Emergency Motion for Entry of an Order: (A) Authorizing the Debtors to Obtain Postpetition Financing; (B) Authorizing the Debtors to use Cash Collateral; (C) Granting Liens and Superpriority Administrative Expense Claims; (D) Granting Adequate Protection to the Prepetition Secured Parties; (E) Modifying the Automatic Stay; and (F) Granting Related Relief* [D.I. 259] (the “DIP Motion”), pursuant to which the Debtors sought authority from the Court to obtain post-petition financing from SSCP acting as Senior DIP Lender and CB DIP LLC acting as the Junior Lender.

8. On April 6, 2023, the Court entered the *Interim Order: (I) Authorizing the Debtors to Obtain Junior Secured Postpetition Financing; (II) Granting Liens; (III) Scheduling a Final Hearing; (IV) Granting Related Relief* [D.I. 287] (the “Junior Interim Order”) and *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III)*

³ Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [D.I. 288] (the “Senior Interim Order” and collectively, the “Interim Orders”).

9. In connection with the Senior Interim Order, the Debtors and the SSCP included a budget for 3 months, extending through June 2023 (as subsequently amended, the “DIP Budget”) which contained a line item for “Rent.” At the interim hearing, Debtors recognized that certain lease obligations remained outstanding, including but not limited to the administrative rent for the Debtors’ post-petition use and occupancy of the Premises from the Petition Date through February 28, 2023 (the “Stub Rent”) and the DIP Budget failed to provide any budgeted amounts for payment of Stub Rent at any time. Moreover, based on representations made at a hearing on April 19, 2023, the Debtors’ DIP Budget failed to provide for payment of June rent, despite the fact that the Debtors’ bid procedures provided that a sale hearing will not be held until June and thus, it is not possible that a sale will close before June rent is due and owing in full under Section 365(d)(3). Further, as discussed at the interim hearing, the DIP Budget reflected that the Debtors would be cash-flow negative by more than \$3.7 million in the week ending May 7, 2023.

10. On April 19, 2023, certain of the Landlords and other similarly situated landlord entities filed a limited objection to final approval of the DIP Motion [D.I. 351].

11. Prior to the final hearing on the DIP Motion, the Landlords and other parties discussed their objections to the DIP Motion with the Debtors and SSCP, and were ultimately able to reach an agreement on the Final DIP Order in advance of the hearing.

12. At the final hearing on the DIP Motion, held on May 2, 2023, Debtors’ counsel represented and Greg Baracato made a proffer that there was the ability to pay June 2023 rent as part of the budget and would remain cash flow positive. Additionally, Debtors’ counsel stated that Stub Rent would be paid for all stores that were operating as of the Petition Date concurrently with the store closing, but no later than the second week of June. *See* Tr. of Hr’g May 2, 2023, pp. 4-8; 13, 22-23, a true and correct copy of which is attached hereto as **Exhibit 1**.

13. After discussions on the record at the final hearing, line items for the payment of the Stub Rent were added to the DIP Budget, which Stub Rent was to be paid for all restaurants that were to be rejected as of February 28, 2023 and after, including for any restaurant that may be closed following discussions with the ultimate buyer.⁴

14. Certain of the Landlords did not receive any payments for Stub Rent or June 2023 rent.

B. The Sale

15. On April 7, 2023, the Debtors filed the *Debtors' Motion for Entry of Orders: (I)(A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets; (B) Authorizing the Debtors to Enter into a Stalking Horse Agreement; (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (D) Approving Assumption and Assignment Procedures; and (E) Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief*, seeking, *inter alia*, approval of various procedures, including bid and assumption and assignment procedures (the "Bidding Procedures") to govern the sale (the "Sale") of substantially all of the Acquired Assets (as such term is defined in the Sale Motion), pursuant to Section 363, to a bidder that submits the highest and best bid for the Acquired Assets following an Auction.

16. On June 9, 2023, the Court entered an order authorizing the Sale of the Acquired Assets to SSCP [D.I. 609] (the "Sale Order"), which Sale closed on June 14, 2023.

⁴ In addition, in the event no sale was ever consummated, language was added to paragraph 48 of the Final DIP Order [D.I. 427] to reflect that Stub Rent would be paid for all rejected leases no later than the second week of June from the amounts budgeted, which provides as follows:

Stub Rent Settlement. Notwithstanding anything to the contrary herein, in the event that: 1) the Auction scheduled to be conducted on May 30, 2023 in connection with the sale of all or substantially all of the Debtors' assets does not occur, and 2) the Debtors seek to reject all or substantially all of their unexpired leases of non-residential real property effective prior to June 1, 2023, the Debtors shall be authorized and directed to utilize amounts budgeted in the Approved Budget on account of rent for the month of June 2023 as necessary to satisfy outstanding stub rent obligations for the February 22 - February 28, 2023 period. See Final DIP Order, ¶ 48.

17. The Asset Purchase Agreement between the Debtors and SSCP (the “APA”) was attached as Exhibit A to the Sale Order. The APA provides that among the “Assumed Liabilities of SSCP as the buyer include, *inter alia*, “[l]iabilities under the Transferred Contracts (including the Cure Claims, which are payable by Buyer pursuant to Section 2.6 and 2.12)...” and “up to \$3,000,000 with respect to allowed Claims arising under Section 503(b)(9) of the Bankruptcy Code (in addition to any Cure Claims assumed...)” See APA, §2.3. The APA defines “Cure Claims” as:

[A]mounts that must be paid and obligations that otherwise must be satisfied, pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and assignment of the Transferred Contracts (including allowed Administrative Claims for “stub rent” pursuant to Section 363 of the Bankruptcy Code) to be assumed and assigned to the Buyer.

See id. at Art. I.

18. Further, SSCP assumed the responsibility for and was obligated to pay any and all amounts arising or otherwise due under any Potential Contract, and to perform any obligations of the Debtors under such Potential Contracts for the 90 day designation period following the Closing until such time as a Potential Contract was either assumed or rejected, in accordance with the terms of the APA, and the procedures established by the TSA (the “Post-Closing Lease Obligations”). See APA, § 2.12(b).

19. Finally, notwithstanding that SSCP was contractually obligated and did assume responsibility for the payment of the Cure Claims for Transferred Contracts, including any unpaid Stub Rent, and the administrative Post-Closing Obligations for Potential Contracts until such time as such Potential Contracts became a Transferred Contract or was rejected, nothing in the Sale Order or APA, relieved the Debtors of their obligations under the unexpired real property leases pursuant to Section 365(d)(3) of the Bankruptcy Code prior to and through the effective date of any assumption and assignment or rejection of such leases. Sale Order ¶ 39.

20. Similar to the nonpayment of the Stub Rent, certain Landlords have also not received payment for certain Post-Closing Obligations.

C. The Settlement Motion

21. Following the closing of the Sale, disputes arose between the Debtors and SSCP, which prompted the Debtor to file the *Motion of the Debtors for Entry of an Order: (A) Enforcing the Order Authorizing CBC Restaurant Corp. and Its Affiliated Debtors to (I) Sell Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, and Interests, (II) Authorizing and Approving the Debtors' Performance Under the APA, (III) Authorizing and Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts, Unexpired Leases, and Permits Related Thereto, and (IV) Granting Related Relief; and (B) for Related Relief* [D.I. No. 853] (the "Enforcement Motion") on September 5, 2023. In the Enforcement Motion, the Debtors sought, *inter alia*, an order directing SSCP to comply with the Sale Order given SSCP's (a) failure to satisfy \$723,000 in postpetition accounts payable as of the closing and \$376,000 in liabilities with respect to allowed claims that are secured by PACA Liens; (b) withholding of \$450,000 in royalties that were to be retained by the estates; (c) failure to turn over remittance to state taxing agencies for \$150,000 in trust fund taxes, and (d) demands for the Debtors to turn over \$185,000 in cash that was retained by the Debtors pursuant to the APA.

22. On October 13, 2023 SSCP filed *SSCP Restaurant Investors, LLC's (I) Supplemental Response to the Debtors' Motion to Enforce the Sale Order and (II) Cross-Motion to Enforce the Sale Order* [D.I. No. 954] (the "SSCP Response"), which sought to compel the Debtors' compliance with the terms of the APA and Sale Order and to compel the Debtors to (a) remit \$185,000 for post-closing collection of accounts receivables and \$633,000 for

marketing and advertising fees collected from the franchisees post-petition to SSCP, and (b) provide SSCP with immediate access to QuickBooks and the Debtors' Instagram account.

23. The Debtors and SSCP negotiated these disputes, with the assistance of a mediator, and on March 11, 2024, the Debtors filed the Settlement Motion, seeking entry of an order approving a settlement that would (a) assign the remainder of the Professional Fee Reserve to SSCP, and waive further payment to CR3 Partners, LLC ("CR3") and Culhane Meadows, PLLC ("Culhane," and together with CR3, the "Debtor Professionals") from the Wind Down Fund, SSCP, or the Debtors' estates; (b) provide that all claims and causes of actions of the Debtors, their estates, or SSCP to seek recovery from the Debtors' D&O policy and its proceeds will survive entry of the Settlement Order and any order approving CR3's fees on a final basis; (c) provide that all claims and causes of action against SSCP related to these cases and the APA are released; and (d) implement a mechanism for establishing whether there are any outstanding Allowed Administrative Expenses to Disputed Vendors that were provided for under the Wind Down Budget and providing for their payment from the Wind Down Fund (net of the Professional Fee Reserve), with any Excess Cash to be distributed to SSCP. Settlement Motion, ¶ 28.

24. On March 27, 2024, the Debtor filed an *Errata to Notice of (I) Motion of the Debtors for Entry of an Order: (I) Approving the Settlement Agreement in Connection with the Asset Purchase Agreement by and Among the Debtors and SSCP Restaurant Investors, LLP Dated June 14, 2023; (II) Authorizing the Debtors to Convert these Cases to Cases under Chapter 7; and (III) Granting Related Relief and (II) Procedures for Filing and Opt-Out Notice and Payment Request* (the "Notice of the Settlement Motion") [D.I. 1070], which attached a corrected copy of the Opt-Out Notice and Payment Request (the "Opt-Out Notice and Payment

Request”). According to the Notice of the Settlement Motion, the Opt-Out Notice and Payment Request was to be filed by Disputed Vendors with respect to asserted amounts owed by the Debtors owed for goods or services provided between the Petition Date and June 14, 2023.

25. The Opt-Out Notice and Payment Request provides that:

THE PARTY ASSERTING A CLAIM CERTIFIES UNDER THE PENALTY OF PERJURY THAT (A) THE GOODS AND SERVICES THAT FORM THE BASIS OF THE REQUEST WERE PROVIDED TO THE DEBTORS BETWEEN FEBRUARY 22, 2023 AND JUNE 14, 2023 AND ARE WORTH THE VALUE REQUESTED, (B) THE AMOUNT REQUESTED IS UNPAID AND HAS NOT BEEN RECEIVED OR RECOVERED BY OTHER MEANS OR FROM OTHERS, (C) ***IT AGREES TO ACCEPT AND LIMIT ITS RECOVERY TO ITS PRO RATA SHARE OF THE REMAINING CASH SHOULD THE AMOUNT REQUESTED BE ACCEPTED BY THE DEBTORS OR SSCP OR ALLOWED BY THE BANKRUPTCY COURT,*** AND (D) IT SUBMITS TO THE BANKRUPTCY COURT’S JURISDICTION TO DETERMINE THE VALIDITY OF ANY SUCH REQUEST.

See Opt-Out Notice and Payment Request (emphasis added).

D. The Leases

26. The Debtors leased retail space (the “Premises”) from the Landlords pursuant to unexpired leases of nonresidential real property (individually, a “Lease,” and collectively, the “Leases”) at the commercial and shopping center locations (the “Centers”). Certain of the Leases were assumed by SSCP and certain of the Leases were rejected. Those rejected Leases with unpaid administrative claims are set forth in more detail below.⁵

LANDLORD	CENTER/ STORE NO.	LOCATION	REJECTION DATE
Brixmor Brea Gateway LLC	Brea Gateway (211)	Brea, CA	08/31/2023
Eagle Green, LP	613 W. Lancaster Ave. (308)	Wayne, PA	02/28/2023

⁵ Each 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 (3d Cir. 1990).

LANDLORD	CENTER/ STORE NO.	LOCATION	REJECTION DATE
SWC Arbrook/157, Ltd.	Arbrook Oaks Shopping Center (184)	Arlington, TX	08/31/2023

27. The Lease between the Debtor and Brixmor was initially the subject of the *Second Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property Nunc Pro Tunc Effective as of May 31, 2023; and (2) Granting Related Relief* [D.I. 433] (the “May Rejection Motion”) filed on May 8, 2023, which was subsequently withdrawn on May 28, 2023 [D.I. 536]. Notwithstanding the withdrawal of the May Rejection Motion, and that the Debtor/SSCP as the buyer operated in the Premises through August 31, 2023, at which time the Lease was rejected [D.I. 847], the Debtor failed to pay rent for June, July and August, 2023, as well as the administrative rent for the Stub Rent.

28. On May 18, 2023, Eagle Green filed an administrative claim motion [D.I. 467] in the amount of \$2,398.75 in connection with the Debtor’s Lease for the Premises, which Lease rejected effective February 28, 2023 [D.I. 248]. The administrative claim amount of \$2,398.75, solely relates to the Stub Rent, which amount pursuant to the DIP Order was to be paid no later than the second week of June. The administrative claim motion remains pending.

29. The Lease between the Debtor and Arbrook was rejected effective as of August 31, 2023 [D.I. 847]. However, a number of post-petition, pre-rejection date billed obligations under the Lease remain unpaid, namely the 2022 Tax and Water reconciliation billings billed on April 26, 2023 as well as August water charges due on August 1, 2023 pursuant to Section 365(d)(3). In addition, the Debtor as tenant is an annual tax payer, so that portion of the post-petition, pre-rejection date tax bill for the period from the Petition Date through the Rejection

Date is entitled to administrative priority pursuant to Section 503(b) as a result of the Debtors' actual use and occupancy of the Premises during this period.

30. The Landlords brought these payment deficiencies to the attention of the Debtors and SSCP in October 2023, but received no substantive response from either the Debtors or SSCP.

31. On March 29, 2024, the Landlords each filed an Opt-Out Notice and Payment Request [D.I. 1078, 1079, 108]. Although the Landlords filed these Opt-Out Notice and Payment Requests, the Landlords do not agree to accept or limit their recovery to a *pro rata* share of the remaining cash.

32. Since the filing of the Settlement Motion, the Landlords have been in discussions with the Debtors and SSCP in an effort to resolve the Landlords' objections raised in this Objection; and have proposed language for inclusion in the form of order to, among other things, preserve the Landlords rights and claims for (i) any and all unpaid administrative claims, including Cure Claims, Stub Rent and any Post-Closing Lease Obligations that remain unpaid, (ii) the Landlords' general unsecured claims under rejected Leases; and (ii) SSCP's liabilities under Assumed Leases. As of the filing of this Objection, however, no substantive resolution has been reached, thus necessitating the filing of this Objection. Landlords will continue to work with SSCP and the Debtors

III. OBJECTION AND ARGUMENT

33. The Landlords object to the Settlement Motion as it is inequitable to allow these Chapter 11 Cases to be in essence structurally converted under guise of a 9019 motion brought for the sole benefit of SSCP that purports to establish the equivalent of an administrative claims bar date and to grant SSCP—who knowingly assumed liability under the Final DIP Order and

the Sale Order for the administrative obligations under the Leases—broad releases from without a true opt-out mechanism.

34. Administrative rent was required to be paid when due under the Leases, pursuant to Section 365(d)(3) and to the extent not paid, as here, is entitled to administrative expense priority pursuant to both Sections 365(d)(3) and 503(b). Further, Stub Rent was budgeted and should have been paid pursuant to the Final DIP Order and the Sale Order.

35. Administrative expense claims, like those of the Landlords, are entitled to the same administrative priority as the administrative claims of other similarly situated administrative creditors in these cases, including the professionals, and therefore should be paid to the same extent as other administrative claimants are paid to the extent there is a pool of funds to do so. The Settlement Motion attempts to circumvent these priorities and provide SSCP with any surplus assets that would come into the estates.

36. Furthermore, the mechanism for the requesting payment and providing releases that is established under the Settlement Motion is unworkable. If parties do not file an Opt-Out Notice and Payment Request they are releasing their claims; however, if they file the Opt-Out Notice and Payment Request given the release that is built into the form, they are agreeing to limit their recovery, including as to their general unsecured claims. Claimants should not be forced to accept less than they are entitled to under the Bankruptcy Code or grant a release outside of a plan of their claims, especially where a case is converting to a chapter 7.

37. Finally, in no event should SSCP be relieved from responsibility for assumed liabilities, including Cure Claims, post-sale obligations under Assumed Leases, and those obligations for Potential Contracts and the Stub Rent. Any order approving the Settlement

Motion should be appropriately modified to preserve these assumed liabilities and the Court's prior orders.

IV. JOINDER

38. To the extent consistent with the issues expressed herein, Landlords join in the objections of other creditors and the objection filed by the United States Trustee on April 3, 2024 [D.I. 1091]. Additionally, this Objection is without prejudice to Landlord's ability to raise other or further issues at the hearing hereon.

V. RESERVATION OF RIGHTS

39. The Landlords reserve all rights to raise further or other objections as may be necessary, and to the final form of order approving the Settlement once such documents are filed of record with the Court.

VI. CONCLUSION

40. To protect the interests of the Landlords, the Court should modify any proposed order to incorporate the objections raised above, and grant such further relief as the Court deems proper.

Respectfully submitted,

Dated: April 25, 2024
Wilmington, Delaware

/s/ Leslie C. Heilman

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Towson UE LLC*

EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
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CBC RESTAURANT CORP., . Case No. 23-10245 (KBO)
et al., .
. (Jointly Administered)
. .
. Courtroom No. 3
. 824 Market Street
. Wilmington, Delaware 19801
Debtor. .
. Tuesday, May 2, 2023
. 1:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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INDEX

MOTIONS:

PAGE

Agenda

Item 1: Debtors' Emergency Motion for Entry of an Order: (A) Authorizing the Debtors to Obtain Post-Petition Financing; (B) Authorizing the Debtors to Use Cash Collateral; (C) Granting Liens and Superpriority Administrative Expense Claims; (D) Granting Adequate Protection to the Prepetition Secured Parties; (E) Modifying the Automatic Stay; and (F) Granting Related Relief
[Filed: 4/3/23] (D.I. No. 259)

4

Court's Ruling:

25

EXHIBITS:

PAGE

Debtor's Exhibits 1 through 3: Cash flow budgets

15

1 (Proceedings commence at 1:20 p.m.)

2 THE COURT: Good afternoon. Please be seated.

3 Ms. Kurth.

4 MS. KURTH: Thank you, Your Honor. Mette Kurth
5 with Culhane Meadows, on behalf of Corner Bakery.

6 Your Honor had asked for a more fully consensual
7 hearing in this case, at the last hearing. I am pleased to
8 say, I believe, we are actually at that point with the DIP
9 financing.

10 So, thank you for allowing this to be continued to
11 give Mr. Baracato some more time with his family right now
12 and --

13 THE COURT: Absolutely.

14 MS. KURTH: -- thank you for the additional time in
15 the hallway to work some things out.

16 THE COURT: Wonderful.

17 MS. KURTH: I am going to try to go through where
18 we are. There has been a lot of movement this morning. So,
19 I am going to try to capture everything and try to capture it
20 accurately, but people may have notes, and emails, and things
21 that they need to chime-in on. I will walk you through it.

22 THE COURT: Okay.

23 MS. KURTH: So, a number of things have been
24 resolved. We do also have some exhibits. Mr. Baracato is
25 here in the Courtroom today. So, we are also going to

1 proffer his testimony and share those exhibits to satisfy
2 some of the landlord concerns and the party concerns, and
3 questions that Your Honor may have. So, I am going to take
4 you through what we have resolved and then move into the
5 evidence if that works for you.

6 THE COURT: That would be fine.

7 MS. KURTH: So, the first and the simplest is we
8 have confirmed, I believe we confirmed it with all of the
9 landlords, we certainly confirmed it with many of the
10 landlords, that the interim order language that provides for
11 protections of the landlords with respect to the proceeds of
12 the leases and access rights to the premises in the event of
13 a default have been carried through into the final order to
14 their satisfaction.

15 So, I believe that, everybody, that order has been
16 on the docket since Thursday or Friday. I believe everybody
17 has seen it, touched it, and is comfortable that those
18 concerns are addressed.

19 The big issue that we have before us in front of
20 the Court were the questions about a potential budget
21 shortfall. So, I will proffer Mr. Baracato's testimony with
22 respect to that when we go through everything that has been
23 wrapped up, but what we are doing to address the landlord
24 concerns, with respect to the June rent, as the proffer will
25 show, is that we do have the ability to pay that June rent

1 and we will still be cash flow positive that first week of
2 June after we do that. So, we are comfortably within budget
3 and able to, and, in fact, confirm that we will pay timely
4 rent.

5 There was another question with respect to stub-
6 rent which gets a little more complicated, that is what we
7 were talking about in the hallway. There were, roughly, 15
8 stores that were closed in, I say loosely, February, a few of
9 them were closed on March 1st. Most, but not all of them,
10 were operating as of the petition date. I believe two were
11 not actually ever opened.

12 So, with respect to operating stores, which we do
13 not dispute benefited the estate, that were closed in that
14 February 1st, March 1st window, which is approximately 12
15 stores, we would propose to pay stub-rent to those landlords
16 no later than the second week of June. Again, we are eying
17 the cash flow so that we can pay them on the first week of
18 June or earlier we will, but no later than the second week of
19 June.

20 We will be filing a motion, on regular notice, to
21 the omnibus hearing seeking authority, in advance, to
22 potentially reject an additional, we're estimating, 15 stores
23 in May. This is the result of the discussions we just had. I
24 will actually probably expand that to include a request for
25 authority to close all stores in May in case our auction

1 collapses for any reason.

2 THE COURT: Okay.

3 MS. KURTH: But our expectation is that there could
4 be subject to consultation with the committee and SSCP some
5 additional store closures. So, the line item -- we would
6 include a line item in the budget for the payment of the
7 existing stub-rent for the currently closed stores.

8 We would include another line item for stub-rent
9 with respect to any more stores that are closed in May. That
10 could be up to another projected \$45,000 line item. So, if
11 they're closed, they will contemporaneously get that stub-
12 rent payment.

13 THE COURT: Okay.

14 MS. KURTH: In case there are additional stores
15 that are rejected and they're foreclosed as a result of buyer
16 negotiations in the auction for whatever reason, we are
17 included another line item as a contingency. We don't expect
18 the store closings to go past 30, but we're putting another
19 \$45,000 line item in there as a contingency. So, if there
20 are more that fall out of the sale, we will have that line
21 item available to pay stub-rent for those. With respect to
22 everything else the expectation is that those stores will be
23 assumed and assigned and the cure costs would cover stub-
24 rent.

25 The last piece of the puzzle is we have gone

1 through our rent line items and we do have a 15 percent
2 variance with respect to our rent budget. So, if the sale
3 collapses and we do end up closing all of the stores and
4 rejecting all of the leases we have confirmed that it would
5 be within our existing budget line item for rent and the
6 existing variances to be able to pay the remainder of the
7 stub-rent for those -- for all of the stores in May or --

8 THE COURT: What is the number -- what is the total
9 number for that bucket?

10 MS. KURTH: 65 or 67, 67.

11 THE COURT: 67, okay.

12 MS. KURTH: So, that would be within our budget
13 variance and we would then pay the stub-rent for all of the
14 stores if it came to that. People can correct me if I've
15 misstated anything, but I believe that is where we landed
16 with respect to the stub-rent issues and the landlord issues.

17 With respect to the committee, the committee's
18 concerns have also been satisfied and we will proffer that
19 testimony, but they are comfortable that we are able to
20 operate within our budget and our forecasts. So, that has
21 resolved their objections. And I am going to let Mr. Torf
22 speak to exactly what the conditions were of their resolving
23 their objection because there were some things that he had
24 negotiated and I don't want to misstate anything on that
25 point.

1 With respect to Ms. Casey, I believe that the
2 proffer of evidence -- she has not -- well, she hasn't heard
3 the proffer, so she hasn't confirmed that yet. I believe
4 that the proffer will satisfy her concerns regarding the
5 estate's ability to operate. So, I am hopeful that that is
6 also resolved.

7 With respect to the concerns that she had raised
8 regarding the scope of the release language there has been
9 some discussion that she understands that the committee has
10 the challenge rights and given that they have the challenge
11 rights, and we went through some of our responses to the
12 release issues, we have agreed to a much more limited -- just
13 a limited change to the release language.

14 So, there would be a language change to limit the
15 releases to representatives, directors, officers, employees,
16 independent contractors, attorneys, and agents, and that has
17 changed. Ms. O'Neil has the most recent version of it. So,
18 it would be the release would state subject to the challenge
19 period, as a condition to obtaining financing under the
20 senior DIP facility, the consensual use of cash collateral,
21 and the consent of the priming liens, each of the debtors, in
22 their own right and on behalf of the estates. We will be
23 striking representatives, directors, officers. Debtors post-
24 petition professionals have been added. I can't speak to
25 everyone, but for myself I am fine. We would be deleting

1 employees, independent contractors, attorneys, and agents,
2 and their successors and assigns. So, we would be striking
3 representatives, employees, independent contractors,
4 attorneys and agents, but including debtors post-petition
5 professionals.

6 THE COURT: Okay.

7 MS. KURTH: So, I believe that encompasses the
8 universe of changes that we're making and agreements that we
9 have made. So, I could go into Mr. Baracato's proffer or if
10 I misstated anything or missed anything we could open it up;
11 whatever is most helpful to the Court.

12 THE COURT: Okay. That was a high-level summary of
13 the changes, which I appreciate. Why don't we hear the
14 evidence and then I will hear from other parties in interest,
15 and if we need to walk through a new form of order, you can
16 do that or I can wait to see the resolutions through
17 certification of counsel.

18 MS. KURTH: We are going to be updating the budget
19 that goes with the orders, so, yeah, it will come later.

20 THE COURT: Okay.

21 MS. KURTH: Thank you. So, Mr. Baracato is here
22 with me again in the Court. He is our CRO. I have previously
23 proffered evidence regarding his background and
24 qualifications, so I would just ask the Court to take
25 judicial notice of that.

1 THE COURT: We will incorporate those. We have a
2 transcript from those hearings.

3 MS. KURTH: Thank you, Your Honor.

4 THE COURT: Happy to do so.

5 MS. KURTH: So, Mr. Baracato is here and he would
6 testify that the debtor's financial performance is continuing
7 to exceed the original conservative estimates that were
8 included in our 4.6.23 DIP budget which was approved in
9 connection with the interim financing order. He would
10 testify that based on the company's better than forecast
11 operations, together with some more precise timing
12 projections with respect to professional fee statements, the
13 projected negative \$1.2 million shortfall in the budget,
14 during the week of 6.4, has been eliminated.

15 I should pause. I have three exhibits I wanted to
16 admit into testimony and I should probably do that now --
17 into evidence and do it now so that you have them.

18 THE COURT: Why don't you just hand them up and
19 then you can move them in after.

20 (Pause)

21 THE COURT: Okay. I'm all set. Thank you.

22 MS. KURTH: Thank you, Your Honor.

23 So, Exhibit 1, which we would move into evidence,
24 is a current cash flow estimate as of May 1st, 2023. Mr.
25 Baracato would proffer that this indicates that the company

1 is anticipated to have a \$155,000 cash balance remaining the
2 week of 6.4 after fully paying June rent. So, that is a
3 material improvement over the original projected \$1.2 million
4 shortfall and will cover it.

5 Mr. Baracato would testify that the key drivers for
6 that variance are, as shown in Exhibit 3, which we would also
7 move into evidence, the variance report, the net cash flow as
8 of 4.23 is \$2.2 million better than our original projections.
9 Some of that is due to timing fluctuations, but Mr. Baracato
10 would further testify that overall sales trends have been
11 positive during this case and, in fact, net sales for last
12 week, which are not yet reflected on the variance reports or
13 cash flow forecasts, were approximately \$3.1 million as
14 compared to projected sales of \$2.47 million.

15 So, there will be additional food costs associated
16 with those higher sales figures, but he would testify that
17 this is a very positive and continuing trend for the
18 business.

19 In addition, Mr. Baracato would testify that Corner
20 Bakery's franchisees are also reporting material positive
21 variances in their sales. So, that translates to a material
22 positive variance in royalty payments for the company as
23 well, specifically the debtor's March royalties for \$475,000
24 compared to a budget projection of \$347,000.

25 The other impasse comes from budgeting and Mr.

1 Baracato would testify that the original accrued professional
2 fees for the week of 6.4 have been moved in the budget to the
3 week of 6.11 which would be after the June 1st rent payments,
4 which better reflects the fact, the reality that
5 professionals cannot be paid for the prior month until fee
6 applications have processed.

7 So, in addition, Mr. Baracato would testify that
8 the debtors estimate that up to an additional 15 stores could
9 be closed in May and we have agreed that in the event stub-
10 rent will be paid to those effective landlords concurrently
11 with the store closings, as I have indicated, the total stub-
12 rent payments, he would testify, are estimated not to exceed
13 \$90,000 for the existing store closures and the May store
14 closures. Mr. Baracato would further testify that there is
15 cash in the cash flow forecast to fund those payments.

16 Questions have been raised with respect to the
17 scope of 503(b)(9) claims. Mr. Baracato would testify that
18 it is his personal experience, which he further confirmed in
19 consultation with the company's investment banker, that those
20 claims are ordinarily assumed by purchasers in connection
21 with 363 restaurant sales. He would testify that, in his
22 experience, major food suppliers, such as Sysco, typically
23 require their customers to enter into long-term contracts
24 with their customers due to the proprietary nature of each
25 restaurant's recipes and the specific needs for those custom

1 food products. If there's even a minor change in flavor and
2 product that it can be very problematic for the business.

3 So, for those same reasons he would testify that in
4 his experience it is very difficult for restaurant buyers to
5 change food vendors, especially key suppliers such as Sysco.
6 In fact, the CRO would testify that he has reviewed the
7 debtor's books and records and also conferred with Sysco, and
8 that he believes the debtors are, in fact, a party to a long-
9 term contract with Sysco.

10 Based on the CRO's experience and, again, after
11 consultation with the investment banker, the CRO believes it
12 is highly likely that the Corner Bakery buyer will need to
13 assume the Sysco relationship. He would further testify that
14 the 503(b) claims in this case are estimated to be roughly
15 \$2.6 million. Roughly, that amount -- 90 percent of that
16 amount comprises the Sysco claims which are anticipated to be
17 cured through the assumption of this contract.

18 The CRO would further testify that food vendors
19 other than Sysco were, as of the petition date, owed roughly
20 \$500,000. The budget approved on April 6th, which was
21 Exhibit 2, already includes payments of \$278,000 to certain
22 of those vendors because there is overlap between the
23 universe of PACA and 503(b)(9) claims.

24 He would further testify that, like Sysco, it is
25 likely that any remaining 503(b)(9) claims for the non-Sysco

1 vendors will also be assumed. He would further testify that
2 with the projected cash balance of \$1.65 million at the end
3 of the budget period, he believes that there are ample funds
4 available for post-sale wind-down costs.

5 That would be his testimony.

6 THE COURT: Thank you very much.

7 Does anyone object to the admission of the three
8 exhibits that were referenced during the proffer?

9 (No verbal response)

10 THE COURT: I am not hearing any objection. Those
11 exhibits are admitted into evidence.

12 (Debtor Exhibits received into evidence)

13 THE COURT: Does anyone wish to cross-examine Mr.
14 Baracato on the substance of his proffered testimony today?

15 (No verbal response)

16 THE COURT: Okay. I am not hearing anyone.

17 Thank you, Mr. Baracato. I have no questions
18 regarding the testimony. I appreciate his time and attention
19 to this matter.

20 MS. KURTH: Then I would cede the podium to anyone
21 else who wants to address the Court, unless you have
22 questions for me.

23 THE COURT: I do not at this time. Thank you very
24 much.

25 MS. KURTH: Thank you.

1 THE COURT: Please, go ahead.

2 MR. MOORE: Thank you, Your Honor. Mark Moore on
3 behalf of SSCP, the prepetition lender and the senior DIP
4 lender.

5 We wanted to make one clarification, Your Honor.
6 The budget that was just handed up, that is dated cash flow
7 estimate as of 5.1.23, we understand that this budget has
8 been offered as an exhibit to help show that the debtor has
9 successfully bridged the gap or projects to successfully
10 bridge the gap in the first week of June and then end the
11 last week of the 25th of June with a positive cash flow
12 balance. This budget was just provided to us, so we don't
13 want there to be any ambiguity that we have not approved this
14 budget to be attached to a proposed -- or the proposed final
15 senior DIP order.

16 What we have suggested, and I think the debtors are
17 in alignment with us on this, is there are actuals now for
18 through the week ending 4.30 that my understanding of what
19 the debtors had proposed was to take the budget that was
20 filed with the interim DIP order, update it through the
21 actuals as of the week of 4.30, include this proposed stub-
22 rent line item that has \$90,000 -- then \$45,000 and then
23 update it through the time period and that should still be
24 sufficient to bridge the gap. I don't think that the
25 testimony is at all ambiguous about that.

1 We just wanted to make sure that the Court
2 understood if you get the proposed final DIP order under COC
3 with a different budget, it's because those adjustments had
4 been made.

5 THE COURT: Understood. Thank you.

6 MR. TORF: Good afternoon, Your Honor. Jason Torf,
7 appearing on behalf of the unsecured creditors committee.

8 We have agreed to withdrawal our objection to the
9 proposed DIP financing subject to a couple of things that
10 SSCP, we understand, has agreed to do, just to give the Court
11 a little context.

12 First, I want to offer an apology to the Court for
13 not being able to notify the Court sooner than just before
14 the hearing that we thought we would have a consensual
15 hearing. We were negotiating until moments before the
16 hearing, but we would certainly always endeavor to let the
17 Court know as early as possible. So, apologies for any
18 significant prep time Your Honor undertook.

19 Be that as it may, some of our objections include,
20 for instance, Your Honor, an objection to a lien on avoidance
21 actions and an objection to the proposed rollup. Other
22 context is important here, Your Honor. One of the defaults,
23 in the interim DIP order, is a final DIP order being entered
24 that SSCP does not consent to. And through the course of
25 discussions, we were reminded of that provision, that

1 default, in the interim DIP order.

2 So, you know, at the end of the day it was the
3 committee's determination that the result, if we prevail on
4 our objections today, would be worse for the case and worse
5 for unsecured creditors than the result if we strike this
6 deal that we believe we have struck with SSCP which results
7 in the committee withdrawing its objection and allowing the
8 case to proceed and allowing the sale process to proceed,
9 Your Honor.

10 So, the deal that we believe we have reached, Your
11 Honor, and, I believe, Ms. O'Neil and Mr. Moore will make a
12 representation to the Court shortly, we asked for
13 confirmation regarding the application of proceeds in the
14 event of a successful sale. I think we're all on the same
15 page that the application of proceeds would be according to
16 the bankruptcy waterfall such that the first dollars that get
17 repaid will be the DIP loan, followed by diminution in value,
18 followed by the prepetition claim. We believe that is a
19 matter of law and a matter of the existing DIP financing
20 order that is already in place in this case, Your Honor, due
21 to the DIP lien being a priming lien.

22 That being said, we just want confirmation of that
23 so that there are no issues beyond today, Your Honor. And
24 for the interest of -- in the interest of clarity, Your
25 Honor, I want to explain why we have sought that from SSCP.

1 We don't have a problem with SSCP taking a lien on avoidance
2 actions today provided there is a clear understanding that
3 the first application of proceeds is to the DIP loan because
4 once the DIP loan is repaid that is the loan that is secured
5 by the avoidance actions, not the prepetition claim. That
6 would then free-up avoidance actions, again, for the estate
7 and theoretically for unsecured creditors.

8 So, again, I believe, Ms. O'Neil will make a
9 representation and subject to that representation being made
10 and -- one other thing, we would withdraw our objection. The
11 other component, Your Honor, is that we have asked SSCP to
12 affirmatively indicate its consent to the proposed final DIP
13 order that would be submitted to the Court. The reason we
14 have asked for that is also to avoid an issue beyond today,
15 Your Honor.

16 We don't want to withdraw the objection and walk
17 into a situation where SSCP then turns around a day or two
18 later and says, well, we didn't consent to that form of final
19 DIP order which would constitute a default under the interim
20 DIP order. We don't anticipate that they would do that. The
21 parties have been negotiating the final DIP order, but we
22 just want clarity on that, Your Honor, so we don't walk into
23 any issues in the next couple of days.

24 So, with those couple of considerations, Your
25 Honor, the committee has determined that it would withdraw

1 its objection. So, I will cede to Ms. O'Neil or anybody else
2 who wants to speak at this point, Your Honor. Thank you.

3 THE COURT: Okay. Thank you very much. I
4 appreciate the insight.

5 Ms. O'Neil.

6 MS. O'NEIL: Thank you, Your Honor. Good
7 afternoon. Holly O'Neil on behalf of SSCP.

8 I will take Mr. Torf's comments in reverse order.
9 Obviously, the parties heavily negotiated the final order and
10 if the Court agrees with the proposed final order, as we have
11 presented, then we agree with the entry of the final order.
12 So, its maybe a little cart before the horse, but if there
13 are no other changes, maybe said a little more
14 simplistically, then we would consent to the entry of the
15 final order as we have negotiated leading up to our
16 presentation to the Court today, Your Honor.

17 If I may, just for clarity, as Mr. Torf said, we do
18 believe that the waterfall of application of credit bid or
19 cash is already set, effectively, by the terms of the DIP as
20 well as applicable law. The specific language we agreed to,
21 just so the record is really clear, is consistent with what
22 Mr. Torf said, but if I may just read for clarity because my
23 client had signed off on this language.

24 THE COURT: Okay.

25 MS. O'NEIL: The terms of the DIP and applicable

1 law would result in the proceeds of the sale of the debtor's
2 assets, whether it be a cash bid or a credit bid, get applied
3 according to the bankruptcy waterfall, DIP first, diminutions
4 second, prepetition secured claim third.

5 That is the language that we just agreed to read
6 into the record, Your Honor. It won't necessarily be
7 reflected in the order, but parties have agreed to that
8 stipulation in the record. So, with that I think we are in
9 agreement to proceed with -- if there are no other changes,
10 again, to the terms of the final order then we would agree to
11 the entry of the final order.

12 THE COURT: Thank you very much.

13 MS. O'NEIL: Thank you.

14 THE COURT: Mr. Torf.

15 MR. TORF: Your Honor, Jason Torf, again, for the
16 committee.

17 Just for the record, based on those
18 representations, and if there are no other changes to the
19 order, based on SSCP's consent, then we would withdraw our
20 objection, Your Honor.

21 THE COURT: Okay.

22 MR. TORF: Thank you.

23 THE COURT: Happy to hear from other parties in
24 interest. I see Ms. Heilman come onto the screen. Do you
25 wish to be heard?

1 MS. HEILMAN: Yes, Your Honor. Good afternoon.

2 Thank you for allowing me to participate from Zoom today.

3 Your Honor, for the record, Leslie Heilman, Ballard

4 Spahr, on behalf of various landlords including Brixmor

5 Operating Partnership as reflected in our objection to the

6 DIP financing -- entry of the final order on the DIP

7 financing.

8 Your Honor, we have had considerable discussions

9 with both the debtors and SSCP in advance of this hearing

10 today and those discussions were very amicable and we did

11 reach a consensual resolution, I believe, right before the

12 hearing as reflected on the record today.

13 The one thing I did not hear, and we were in

14 discussion of this right before the hearing, was I believe

15 there will be a change to the order to make the

16 representation that in the event of a failed sale, pre-

17 auction, that there will be authorization to pay the stub-

18 rent for the remaining stores from the projected June rent

19 budget.

20 I believe we spoke out it on the record, Ms. Kurth

21 did, but I believe there will be a change to the order to

22 have that representation in the order since it's not budgeted

23 funds specifically for stub-rent.

24 THE COURT: Thank you very much.

25 Ms. Kurth is shaking her head, but why don't you

1 confirm for the record.

2 MS. KURTH: Yes, Your Honor. I confirm for the
3 record that that agreement was reached. And I apologize to
4 Ms. Heilman for overlooking that.

5 THE COURT: Okay. Mr. Moore.

6 MR. MOORE: Your Honor, I will also confirm on
7 behalf of SSCP. And I think that the needle we were trying
8 to thread was if the sale failed for some reason pre-June
9 1st, then I think the probable sequence of events would be
10 that the debtor would then file a motion to reject all the
11 leases because you're not going forward with the sale.

12 The question arose then, okay, for the stores that
13 you have not already closed or that you are not projecting to
14 close before that time, which is, I think, Mr. Baracato said
15 about 67 stores, what happens for stub-rent for those stores.
16 The agreement that we reached was that stub-rent for those
17 stores would or could be paid out of what would be budgeted
18 for June rent for those stores that now would not be paid
19 because you are rejecting the stores.

20 Since the debtor already has that liquidity in the
21 budget, already has that allowance in the budget, we're
22 comfortable that if the worse happens, which nobody wants to
23 happen, and the sale falls apart, that stub-rent that was
24 already incurred could be paid out of that first week in
25 June.

1 THE COURT: Understood. That is helpful. Thank
2 you.

3 Ms. Heilman, does that satisfy your concerns with
4 respect to the DIP?

5 MS. HEILMAN: It does, Your Honor.

6 THE COURT: Thank you very much.

7 MS. HEILMAN: Thank you.

8 THE COURT: Would anyone else like to be heard in
9 connection with the final DIP? Ms. Casey.

10 MS. CASEY: Good afternoon, Your Honor. Linda
11 Casey on behalf of the U.S. Trustee. I also thank Your Honor
12 for allowing me to appear via Zoom today.

13 Your Honor, we had filed an objection. The release
14 language has resolved that portion of the objection. I will
15 not push the administrative insolvency given that the parties
16 have agreed to it. The U.S. Trustee is concerned about this
17 case and hopes that the parties will continue to work forward
18 with an appropriate wind-down and an appropriate exit to this
19 case.

20 THE COURT: I appreciate you confirming the
21 resolution of your objection and your concerns about the
22 insolvency of the case. Thank you for appearing today and I
23 hope you feel much better in the future.

24 MS. CASEY: Thank you.

25 THE COURT: Anyone else?

1 (No verbal response)

2 THE COURT: Do you -- Ms. Kurth, I'm not hearing
3 anyone else that wishes to be heard. Do you need to walk me
4 through any additional changes to the order or should I just
5 want to receive the order under certification of counsel?

6 MS. KURTH: I would -- I think we would submit it
7 under certification of counsel. Yes, we would submit it under
8 certification of counsel.

9 MR. MOORE: Your Honor, I'm happy to point out any
10 changes that we made between interim and final. I think there
11 was a couple of informal comments that we received. I'm
12 happy to put it up on the screen and we can talk through
13 those issues.

14 THE COURT: Are they reflected in the redline that
15 was already filed?

16 MR. MOORE: They are, Your Honor. They are not
17 incremental since then.

18 THE COURT: Okay.

19 MR. MOORE: I think it was related to a PACA
20 settlement and then similar tax issue; something along those
21 lines.

22 THE COURT: Okay. I don't need to see that then
23 because I did see the form of order already.

24 Thank you very much. I commend all the parties for
25 reaching a resolution to the final DIP. I think, obviously, a

1 lot of work needed to be done and you achieved that,
2 including garnering more confidence in the process and with
3 each other. So, I very much appreciate the advancements made.

4 I will go ahead and say, essentially, that subject
5 to seeing the order and the revisions I am happy to approve
6 the order and the approval of the final DIP. Of course, I
7 need to see the revisions, but I don't anticipate taking
8 issue with anything that is reflected in the resolutions that
9 were presented on the record today. As Mr. Moore said, you
10 don't anticipate any further changes that are in line with
11 the agreements already reached by the parties.

12 I find that the relief is necessary and
13 appropriate, and absolutely warranted given the solvency
14 issues in this case for the DIP financing. So, if you
15 present an order to me that represents the resolutions
16 reached amongst the parties, I would be happy to enter it.
17 So, I will wait to receive a certification of counsel with
18 the further redline to the proposed form of order.

19 Ms. Kurth, I assume you will be sharing it with all
20 the parties including a budget. So, do you have a timeframe
21 of when you anticipate you would submit the order? Would it
22 be today or is it more likely tomorrow?

23 MR. MOORE: Your Honor, we have a milestone that is
24 tomorrow. Obviously, we have some parties that need to see
25 some things. So, I would anticipate it's going to be

1 tomorrow. Also, we have a projection issue where projections
2 need to be redone and provided to SSCP and the parties. So,
3 I would expect it would be tomorrow.

4 THE COURT: Okay. So long as the order is filed by
5 4 o'clock tomorrow and Chambers is notified that it's been
6 filed then I can guarantee that it will get put on the
7 docket. If you are going to run past 4 o'clock I can't
8 guarantee, from my end, that it will be reflected on the
9 docket. So, I assume the parties would just agree to a
10 milestone extension which I wouldn't need to see.

11 Just keep my Chambers in the loop if there are
12 delays. And then, of course, inform us as its filed so we
13 can review it and get it put on the docket.

14 MS. KURTH: Thank you very much, Your Honor.

15 THE COURT: Thank you.

16 Is there anything else on our agenda today or was
17 this the --

18 MS. KURTH: No. We resolved the utilities motion.

19 THE COURT: As I knew you would. Excellent.

20 All right. Well, thank you all very much. We will
21 stand adjourned. I wish you all a good rest of your day.
22 Thank you.

23 MS. KURTH: Thank you, Your Honor.

24 (Proceedings concluded at 1:53 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Mary Zajaczkowski

May 3, 2023

Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

CERTIFICATE OF SERVICE

I, Leslie C. Heilman, hereby certify that, on this 25th day of April 2024, I caused a true and correct copy of the foregoing *Objection of Brixmor Operating Partnership L.P., Eagle Green, LP, Federal Realty OP LP, GMV (Mall) Owner LLC, SWC Arbrook/157 Ltd., and Towson UE LLC to the Motion of Debtors for Entry of an Order: (I) Approving The Settlement Agreement in Connection with the Asset Purchase Agreement By and Among the Debtors and SSCP Restaurant Investors, LLP Dated June 14, 2023; (II) Authorizing the Debtors to Convert these Cases to Cases Under Chapter 7; and (III) Granting Related Relief* to be served via CM/ECF on all parties who have registered for electronic service in these cases, and upon the parties on the attached service list in the manner indicated.

Dated: April 25, 2024
Wilmington, Delaware

/s/ Leslie C. Heilman
Leslie C. Heilman (DE No. 4716)
BALLARD SPAHR LLP

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