

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:)
) Chapter 11
LaVie Care Centers, LLC, *et al.*,¹)
) Case No.: 24-55507 (pmb)
)
Debtors.) (Jointly Administered)
)

**RESPONSE OPPOSING DEBTORS’ MOTION FOR ENTRY OF ORDER EXTENDING
TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(d)(4)**

COMES NOW Jacksonville Nursing Home, LTD. (“Landlord”), and files this response opposing *Debtors’ Motion for Entry of Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(4)* [Doc. 436] (the “Motion”), respectfully showing the Court as follows.

I. Background

1. Pursuant to a Lease Agreement dated August 10, 2017 (the “Lease”), Landlord leases to debtor Epsilon Health Care Properties, LLC (“Lessee”), commercial real property located at 11565 Harts Road, Jacksonville, Florida 32218 (the “Property”).²

2. Lessee subleases the Property to debtor 11565 Harts Road Operations, LLC (“Tenant”), where Tenant operates a skilled nursing facility commonly known as “Harts Harbor Health Care Center.”

¹ There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only.

² A true and correct copy of the Lease is attached to Landlord’s Proof of Claim [Claim No. 2096], filed August 27, 2024, as well as to Landlord’s Objection to Debtor’s (i) Notice of Contract Parties and (ii) Joint Plan of Reorganization [Doc. 351], filed August 27, 2024.



3. By virtue of the Lease, LaVie Care Centers, LLC (“Guarantor,” and collectively with Lessee and Tenant, the “Debtors”) executed a guaranty (the “Guaranty”) absolutely unconditionally and irrevocably guarantying performance under the Lease, in favor of Landlord.

4. On June 2, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

5. On June 10, 2024, Debtors filed their *Motion for Entry of an Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* [Doc. 104] (the “Bidding Procedures Motion”).

6. On June 27, 2024, the Court entered the Order approving the Bidding Procedures Motion.

7. On July 23, 2024, Debtors filed their Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Doc. 273] (the “Plan”) and a Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases [Doc. 274] (the “Assumption & Cure Notice”).

8. The Plan provides for the possible assumption and assignment of the Lease. *See* Plan, Article VII. The Assumption & Cure Notice includes the Lease in a “Schedule of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases,” with a proposed cure amount of \$0.

9. On August 27, Landlord filed an objection to the Plan and Assumption & Cure Notice. *See* Doc. 351 (the “Objection”). As noted in the Objection, and as set forth in Landlord’s

Proof of Claim, Lessee is in default of its monetary and non-monetary obligations under the Lease.

10. On September 16, 2024, Debtors filed the Motion, seeking to extend the period within which they may assume or reject nonresidential real property leases. The 120-day period provided for by 11 U.S.C. § 365(d)(4) will expire September 30, 2024, and Debtors seek a 90-day extension through and including December 30, 2024.

II. OPPOSITION TO EXTENSION OF TIME

11. As Landlord previously explained in the Objection, both prepetition and postpetition, Lessee has failed and is currently failing to maintain the Property in compliance with the Lease.

12. Pursuant to Section 6 of the Lease, Lessee's maintenance obligations include the following:

Lessor and Lessee Responsibility. During the term of this Lease, Lessee shall maintain the property covered by said Lease from a structural standpoint, including foundation, exterior doors and walls, all plate glass, roof and parking lot. Further, Lessee shall be responsible for repairs to and replacement of plumbing, heating and air conditioning equipment, water and sewer systems and all moveable equipment. Lessee shall do such painting or decorating as is required and keep the plumbing and floor covering on the interior of the building in a good state of repair and shall maintain and replace when necessary all mechanical equipment, including air conditioning and heating units, and electrical equipment. Lessee in all respects shall keep and maintain the Demised Premises in the condition received, ordinary wear and tear excepted. Lessor shall have the right to inspect the Demised Premises during reasonable hours of the day. Lessee shall pay all operating expenses.

13. Landlord has identified numerous property-maintenance deficiencies, raising numerous safety and patient-care concerns. These deficiencies include (among others) the following:

- The asphalt parking lot is severely damaged and in need of repair, with problems including pot holes, cracking, ponding, and loss of color;
- The parking striping is faded in all 120 parking spaces, and in need of restriping, including handicap spaces;
- Many areas of the sidewalks are busted, cracked and uneven causing potential trip hazards (the majority of the sidewalks are used as emergency egress paths exiting the building);
- Approximately 25 exterior lights and emergency egress exit lighting fixtures around perimeter of building are damaged or non-functioning, presenting, among other things, a life safety hazard;
- Every resident bed's base frame, bed grate, and supporting legs show signs of rust; this rust has caused sharp metal edges and chips, presenting wound hazards, and has caused floor tile damage;
- Numerous active roof leaks are present inside the facility and resident rooms;
- Due to the high humidity present inside the building and the active roof leaks, several sections of the textured ceiling are deteriorating, chipping, and falling;
- The resident windows are in poor and/or non-operational condition; 95% of windows are stained, not properly sealed, have microbial growth present, are not operating properly; and have screens missing or torn;
- Most resident rooms have water intrusion at the exterior walls;
- Due to lack of proper insulation, the A/C system struggles to maintain CMS-required temperatures inside facility;
- Countless patches, pin leaks, PVC sections, unsecured drops, and non-insulated sections are present in the plumbing; and
- Damaged, bent, and clogged gutters prevent adequate roof drainage, including several sections where rain and condensation drain down the walls, rather than the gutter, causing microbial growth on the stucco and concrete.

14. After an unannounced Fire and Life Safety Recertification survey was conducted at the Property from June 26, 2024 through June 27, 2024, the Property was determined not be in compliance with various fire protection requirements for nursing homes.

15. Although the debtor subsequently corrected the cited deficiencies and certification of such correction was provided after a Fire and Life Safety Recertification revisit survey was

conducted on August 23, 2024, Landlord contends the earlier deficiencies are evidence of the overall systemic maintenance issues at the Property.

16. Landlord submits that, as to the Lease and the Property, an extension of time is neither warranted nor appropriate.³

17. Courts generally look at any relevant factor in determining whether “cause” exists to extend the time to assume or reject under 11 U.S.C. § 365(d)(4).⁴

18. Whether viewed in the context of the larger, consolidated bankruptcy case, or whether viewed at the debtor-by-debtor level, an extension of time should not be granted as to the Lease.

19. As to the only debtor with whom Landlord has a Lease—i.e., the Lessee—the bankruptcy case obviously cannot be described as complex. The Property is the only real property Lessee leases, and its interest in the Property is the Lessee’s primary asset. Four months is sufficient time to decide whether to assume or reject an unexpired lease for a primary asset.

20. As to the broader context of the consolidated cases of all debtors, the Lease is merely one of numerous unexpired leases of real property subject to assumption or rejection. The

³ Landlord opposes the Motion only as it pertains to the Lease. Landlord does not oppose the Motion as to the numerous other unexpired “Real Property Leases” (as that term is defined in the Motion).

⁴ These factors include, but are not limited to, the following: whether the lease is the primary asset of the debtor; whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; whether the debtor has had time to intelligently appraise its financial situation and potential value of its assets in terms of the formulation of a plan; whether the lessor continues to receive the rent required in the lease; whether the lessor will be damaged beyond the compensation available under the Bankruptcy Code due to the debtor's continued occupation; whether the case is exceptionally complex and involves a large number of leases; whether the need exists for a judicial determination of whether the lease is a disguised security interest; whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so; and any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. *See, e.g.*, NORTON BANKR. L. & PRAC. 3d § 46:41 & n.4; *Key Plaza I, Inc. v. Kmart Corp.*, No. 02 C 4086, 2003 WL 115240, at *4–5 (N.D. Ill. Jan. 13, 2003) (listing 9 factors, including “[a]ny other factors bearing on whether debtor has had a reasonable amount of time to decide to assume or reject”).

Lease it not the “primary asset” and cannot be described as vital to a plan of reorganization that includes 282 bankruptcy debtors and dozens of unexpired leases of real property.

21. Landlord submits that the most important factor is Lessee’s failure to maintain the Property. Three *additional* months is unacceptable. The maintenance issues need to be addressed now rather than three months from now.

22. The Property is a nursing home that houses and serves frail individuals, and the lack of maintenance poses various safety risks to residents and visitors.

23. If Lessee intends to assume the Lease, Lessee’s ability to “promptly” cure the maintenance deficiencies requires action now.

24. If Lessee intends to reject the Lease, Landlord may be at risk of suffering non-compensable damage that could have been mitigated with a timelier decision to reject. For example, if Debtor waits three months, fails to address the maintenance issues, and then rejects the Lease, Landlord may be left with an unmarketable facility and an inability to re-let the Property in a reasonable amount of time or at a reasonable rent.

25. For all the foregoing reasons, Landlord opposes the Motion.

26. Landlord respectfully requests that the Court deny the Motion as to the Lease. Alternatively, should the Court grant the Motion as to the Lease, Landlord respectfully requests that the extension of time be limited to a period of less than 90 days.

/s/ Kathleen G. Furr

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This is to certify that on this day, I electronically filed the foregoing *Response Opposing Debtors' Motion for Entry of Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(4)* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties receiving electronic notice and the following parties in interest:

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