

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: §
§ Chapter 11
IEH AUTO PARTS HOLDING LLC, *et* §
al.,¹ § Case No. 23-90054 (CML)
§
§ (Jointly Administered)
Debtors.

OBJECTION OF RPT HIALEAH I, LLC
TO THE DEBTORS' FOURTH OMNIBUS MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING REJECTION OF
CERTAIN UNEXPIRED LEASES OF NON-RESIDENTIAL REAL
PROPERTY, (B) THE REJECTION OF CERTAIN EXECUTORY
CONTRACTS, AND (C) ABANDONMENT OF CERTAIN PERSONAL
PROPERTY, IF ANY, EACH EFFECTIVE AS OF THE RESPECTIVE
EFFECTIVE REJECTION DATE, AND (II) GRANTING RELATED RELIEF
[ECF 734]

RPT Hialeah I, LLC (“RPT Hialeah” or “Landlord”), by and through its undersigned counsel, files this Objection of RPT Hialeah to the Debtors’ Fourth Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Certain Unexpired Leases of Non-Residential Real Property, (B) the Rejection of Certain Executory Contracts, and (C) Abandonment of Certain Personal Property, if any, Each Effective

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



as of the Effective Rejection Date, and (II) Granting Related Relief (the “Objection”) and in support respectfully states as follows:

1. On January 31, 2023, IEH Auto Parts Holding, LLC and certain of its affiliates, including IEH Auto Parts LLC, filed voluntary petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (collectively, the “Debtors”), which cases have been jointly administered (collectively, the “Bankruptcy Cases”). The Debtors continue to operate their businesses as debtors and debtors-in-possession pursuant to 11 U.S.C. § 1107(a) and 1108. No trustee has been appointed in the Bankruptcy Cases.

2. RPT Hialeah is the landlord and Debtor IEH Auto Parts LLC (“IEH” or “Lessee”) is the tenant pursuant to a non-residential real property lease (as amended and assigned, the “Lease”) for approximately 57,000 square feet of space in a building located at 3510 N.W. 60th Street in Miami, Florida (the “Leased Premises”).

3. Section 24A of the Original Lease (dated March 1, 2005) provides:

Upon the expiration of the Lease Term or the earlier termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Lessee's right to possession of the Leased Premises, Lessee will at once, and without demand, surrender and deliver up the Leased Premises, together with all fixtures therein and improvements thereon, to Landlord in good condition and repair, reasonable wear and tear and damage excepted. Such fixtures and improvements shall include all plumbing, lighting, light fixtures, water heater (if any), electrical, heating, cooling and ventilating fixtures and equipment and air conditioning, together with all duct work. Except as otherwise specifically herein provided, all additions and all improvements (other than removable trade fixtures), temporary or permanent, placed in or upon the Leased Premises by Lessee shall become Landlord's property and shall remain upon the Leased Premises upon such expiration or

termination of this Lease, without compensation or allowance or credit to Lessee, **unless Landlord requests their removal in writing at or before the time of such termination of this Lease. If Landlord requests the removal of Lessee's improvements or fixtures, Lessee shall repair any injury or damage to the Leased Premises which may result from such removal.** (Emphasis added)

4. Section 24C of the Lease provides:

Unless otherwise requested by Landlord in writing, upon the expiration or earlier termination of this Lease and subject to Lessee completing the repairs required to be made by it as provided in paragraphs 10 and 11 above, **Lessee shall return the Leased Premises to Landlord in the condition they were in at the commencement of this Lease** ordinary wear and tear excepted, **with all of Lessee's personal property and the personal property of any third person or entity** (other than Landlord's personal property) **removed. If Lessee fails to so deliver the Leased Premises and if Landlord has to remove any of Lessee's and/or any third person's or entity's personal property or make any repairs which were the obligation of Lessee, or if Landlord has to undertake any maintenance or repair work because of the omission, negligence or willful act of Lessee or of any of its invitees, employees, or agents, Lessee shall pay to Landlord the costs thereof.** (Emphasis added)

5. By letter dated February 27, 2019, Landlord advised Lessee that it must remove its alterations upon its surrender of the Premises when the Lease expires, as follows:

- Metal mezzanine / second floor, including but not limited to restoration of all attachment points and penetrations;
- Racking system, inclusive of removal and flush restoration of any anchor or attachment points;
- Conveyor belts, inclusive of removal and flush restoration of any anchor or attachment points; and
- Any other personal property, machinery, or equipment that is particular to Tenant's business

6. This requirement was further memorialized in Section 7 of the Fourth Amendment to Lease (dated May 16, 2019) which provides, in pertinent part:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY. (Emphasis in original)

7. On June 16, 2023, the Debtors filed the Debtors' Fourth Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Certain Unexpired Leases of Non-Residential Real Property, (B) the Rejection of Certain Executory Contracts, and (C) Abandonment of Certain Personal Property, if any, Each Effective as of the Effective Rejection Date, and (II) Granting Related Relief [ECF No. 734] (the "Fourth Motion to Reject"). The Fourth Motion to Reject seeks to reject the Lease effective as of July 31, 2023.

8. IEH employees at the Leased Premises informed Landlord's property management representative on July 25, 2023 that they estimated it would take IEH another 60 to 90 days to complete the move out of the Leased Premises.

9. The Proposed Order attached to the Fourth Motion to Reject proposes that any personal property located at the leased location be deemed abandoned effective on the day following the Effective Rejection Date. See Fourth Motion to Reject Proposed Order at ¶ 2. [ECF 734-1]

10. Pursuant to an agreement between the undersigned counsel and Debtors' counsel, the Debtors extended the time in which RPT Hialeah may file a response to the Fourth Motion to Reject through July 26, 2023.

11. As of the date hereof, Lessee continues to occupy the Premises.

12. Lessee constructed and installed alterations consisting of a metal mezzanine that spans a good portion of the Premises, akin to a catwalk, along with a conveyor belt system to move inventory and products within the warehouse. Both systems are attached to the floor of the Lease Premises. In addition, there is considerable racking and shelving that was installed by Lessee (or its predecessor(s) in interest under the Lease) at the Leased Premises. These installations will hereafter be referred to collectively as the "Alterations". Landlord's attempts to ascertain Lessee's intentions with respect to removal of the Alterations when it vacates have, to date, been met with silence.

OBJECTION

Rejection Cannot Become Effective Until the Premises are Surrendered to Landlord in the Conditions Required by the Lease

13. Landlord is not opposed to the rejection of the Leases. However, Landlord objects to the proposed effective rejection date of the Leases. The Leases' effective rejection date should not occur until (a) all personal property and the Alterations are removed from the Leased Premises as required by the Lease, (b) the Leased Premises are restored to the condition in which they were delivered as required by the Lease and (c) possession of the Leased Premises is surrendered to Landlord by Lessee returning all sets of keys to the Premises to Landlord.

14. During Lessee's installation of the mezzanine in 2017, the Miami Dade County Fire Marshal issued a violation after determining that the mezzanine, as constructed, did not provide the "headroom" required by the applicable fire safety code(s):


Violation: NFPA 101 7.1.5.1 Means of egress shall be designed and maintained to provide headroom in accordance with other sections of this Code, and such headroom shall be not less than 7 ft 6 in. (2285 mm), with projections from the ceiling not less than 6 ft 8 in. (2030 mm) with a tolerance of -¾ in. (-19 mm), above the finished floor, unless otherwise specified by the following:

- (1) In existing buildings, the ceiling height shall be not less than 7 ft (2135 mm) from the floor, with projections from the ceiling not less than 6 ft 8 in. (2030 mm) nominal above the floor.
- (2) Headroom in industrial equipment access areas as provided in 40.2.5.2 shall be permitted.

Correction: Provide headroom not less than 7 ft 6 in. (2285 mm), with projections from the ceiling not less than 6 ft 8 in. (2030 mm) nominal above the finished floor, unless otherwise specified in 7.1.5.1.1 and 7.1.5.1.2. Approvals and building permits required for any modifications, additions or changes to structure.

Comments: PROVIDE PROPER HEADROOM THROUGHOUT WAREHOUSE BENEATH 2ND STORY.

Lessee requested a waiver of the violation on the ground that “the configuration of all the electrical systems, lighting and sprinkler system is all anchored to the same mezzanine.”



MIAMI-DADE FIRE RESCUE DEPARTMENT
FIRE PREVENTION DIVISION

REQUEST FOR CODE

MODIFICATION EQUIVALENCY WAIVER

PROPERTY NAME: Auto Plus Auto Parts DATE: 3.13.17

PROPERTY ADDRESS: 3510 NW 60 Street

BUILDING BUILT DATE: _____ LIFE SAFETY PERMIT #: _____

HAVE ANY MODIFICATIONS TO THE BUILDING BEEN MADE? YES NO

IF SO, PLEASE EXPLAIN: We are requesting this waiver be approved due to the current configuration that was previously approved by Miami Dade Fire Marshal. The area in quest. is not in a normal egress path + during operations has never presented an issue.

BEING THE OWNER OR A LAWFUL AGENT OF THE OWNER, I REQUEST A CODE MODIFICATION FROM THE

Also, the configuration of all the electrical systems, lighting, + sprinkler system is all anchored to the same mezzanine, raising the mezzanine would not be feasible w/out the complete demolition + complete reconstruction.

The Fire Marshal issued a waiver of the violation, concluding that it was “technically infeasible to correct the violation while maintaining the sprinkler protection and lighting.”

Recommendation:

Approve.

Justification:

The violation was caused in part by installing the fire sprinklers as requested and approved by Miami- Dade Fire Rescue Department. It is technically infeasible to correct this violation while maintaining the sprinkler protection and lighting.

Requirement(s) for approval:

If any renovation, modifications, reconstruction, change of use, change of classification or addition is done on the occupancy, this equivalency/modification is nullified and the occupancy must comply with the adopted fire and life safety code.

Returning the Leased Premises to the condition required by the Lease will require the mezzanine’s demolition and removal, which in turn will require those portions of

the electrical and fire safety systems anchored to the mezzanine and serving the Leased Premises to be replaced and all floor penetrations to be repaired.

15. The conveyor belt and racking systems installed at the Leased Premises are extensive and their removal would require Landlord to incur considerable expense to remove and then repair the damage their removal will cause. Landlord anticipates that the expense of repairing the floor penetrations once the mezzanine and conveyor belt system are removed will be significant.

16. Landlord should not be required to bear the expenses associated with removal of Alterations and the restoration of the affected systems and flooring when the Lease places those burdens on Lessee. Landlord is prejudiced if the Leased Premises are surrendered with the Alterations in place. The relief requested by the Debtors, if approved, would effectively force Landlord to remove the Alterations and store any other personal property rent-free. Moreover, it is inequitable for the estate to reap the benefit of the inventory sold at the Leased Premises but require the Landlord to incur the cost to remove the very Alterations in which the inventory was moved and stored. Allowing Lessee to abandon such property on the Premises is not effective turnover of possession to Landlord, nor is it compliant with the Lease in numerous respects.

17. Section 365(d)(3) of the Bankruptcy Code requires the Debtors to “timely perform all the obligations . . . arising from and after the order for relief under any unexpired lease of nonresidential property, until such lease is assumed or rejected, notwithstanding Section 503(b)(1).” 11 U.S.C. 365(d)(3). “The clear and express

intent of § 365(d)(3) is to require the [debtor] to perform the lease in accordance with its terms.” *Centerpoint Properties v. Montgomery Ward Holding Corp.* (In re Montgomery Ward Holding Corp.), 268 F.3d 205, 209 (3d Cir. 2001). Thus, the effective date of rejection should not occur unless and until Lessee leaves the Leased Premises in the same condition as at the commencement of the Lease, as required by the Lease, which will not occur unless and until Lessee removes the Alterations and all remaining personal property from the Leased Premises and performs all repairs and restoration work necessitated by their removal.

18. Lessee should be obligated to continue to pay rent to Landlord until the Alterations and all personal property is removed from the Premises and until all repairs and restorations required as a result of the removal of the Alterations has been performed. Landlord will not be able to re-lease the Leased Premises until the Alterations are removed and the Leased Premises restored to the condition required by the Lease.

19. Landlord also objects to any provision in an order approving the Fourth Motion to Reject that would (a) release Lessee or the Debtors’ estates from paying rent while the Alterations remain at the Leased Premises, (b) release Lessee or the Debtors’ estates from any costs incurred by Landlord for removing and disposing of any personal property, including the Alterations, and for repair and restoration costs necessitated by their removal; and (c) allow Lessee to reject the Lease and abandon the Alterations (or other personal property) that remain on the Leased Premises.

RESERVATION OF RIGHTS AND JOINDER

20. RPT Hialeah reserves its rights to supplement this Objection and make additional objections as it deems necessary and appropriate as information is obtained concerning the Premises prior to any final determination by the Court regarding the Fourth Motion to Reject.

21. This reservation of rights is not intended to be, nor should be construed as a waiver by RPT Hialeah of any of its rights under the Lease, the Bankruptcy Code, or applicable law, including seeking administrative status for any claims RPT Hialeah has pursuant to the Lease.

22. RPT Hialeah hereby joins in any other objections and responses to any motions to reject non-residential leases to the extent such objections are not inconsistent with the objections set forth herein.

23. **WHEREFORE**, RPT Hialeah respectfully requests that the Court condition any approval of the Fourth Motion to Reject upon granting the relief requested in this Objection and grant such other and further relief as the Court deems just, equitable, and proper.

Dallas, Texas
Dated: July 26, 2023

/s/ Jennifer A. Gehrt
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ATTORNEYS FOR RPT HIALEAH I, LLC

CERTIFICATE OF SERVICE

I certify that on July 26, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jennifer A. Gehrt
Jennifer A. Gehrt