

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
(NASHVILLE DIVISION)

GENERAL ELECTRIC CAPITAL CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-cv-01229
)	
VIVID RESTAURANT CONCEPTS, LLC,)	Judge Aleta Trauger
)	
Defendant.)	

OBJECTION OF CORONA DEVELOPMENT, LLC, TO PRIVATE SALE

Corona Development, LLC, a Tennessee limited liability company ("Corona"), by and through counsel, hereby respectfully objects to the proposed private sale of certain assets of the Vivid Restaurant Concepts, LLC receivership estate ("Vivid") for grounds that the sale procedure employed by the Receiver is unfair to Corona and it does not fully account for the assets and obligations of the Vivid receivership estate, specifically, the lease for the Knoxville, Tennessee, Amerigo location, which was adopted by the Receiver. In support of this Objection, Corona would show as follows:

1. It is readily acknowledge by all parties that this Honorable Court holds broad equitable authority and discretion in receivership proceedings generally and specific oversight of judicial sales of personalty. Receivership is an equitable proceeding.

2. In the Order of January 12, 2009, appointing the Receiver, there was no express provision relating to the Receiver's process of adopting or rejecting leases. While Section 2(k) granted the Receiver the power to ratify or terminate leases, the reasonable time period to exercise such power was not established. [See Amended Order for Appointment of Receiver].

3. Vivid tendered a rent check in the amount of \$8,000.00 to Corona as payment of the January 2009 installment of rent on the Knoxville, Tennessee Amerigo lease (the "Knoxville lease"). The Receiver took over the bank account from which the check was drafted, and the check was returned for insufficient funds. This non-payment of rent is an event of default for which Corona has now filed a claim in this matter against Vivid.

4. Corona demanded the January 2009 rent for the Knoxville lease from the Receiver. The Receiver never paid the January rent for the Knoxville lease, despite using it for the benefit of the receivership estate.

5. After the January default, the Receiver continued to operate the Knoxville Amerigo location through April 28, 2009, and paid rent for February, March and April 2009.

6. The Receiver has never communicated any form of an election to reject the Knoxville lease to Corona, but instead operated under it for the benefit of the receivership estate for over 106 days.

7. Corona avers that the Receiver, by his conduct, adopted the Lease Agreement and First Amendment to the Lease Agreement, attached as Exhibits 1 and 2 to Corona's Complaint is this cause.

8. In considering whether or not the Receiver adopted the Knoxville lease by his conduct, the Court should consider the totality of the circumstances in considering whether or not 106 days is a reasonable amount of time to reject a lease. By contrast, such a lease must be adopted or rejected within sixty (60) days in a bankruptcy proceeding. In this case, since there has not been an express rejection of the Knoxville lease to date, then the Knoxville lease is still an asset of Vivid's receivership estate and should be included in the sale.

9. Corona objects to the sale of less than all of the assets of the estate, as such a sale unfairly ignores the lease obligations of Vivid to Corona. Furthermore, should this Court find that Corona is presently owed monies as claimed, then this claim would be against the assets of the receivership estate – and the Receiver should not be allowed to sell the lease assets free and clear of all liens, claims, encumbrances and interests. Indeed, Corona has an interest *pendente lite*.

10. Furthermore, Corona has a claim against the assets of Vivid and its Receiver for failing to pay the 2008 Knox County and City of Knoxville property taxes in the amount of \$19,955.80, which became due and payable on October 1, 2008, and became delinquent on March 1, 2009. At all times, the premises leased from Corona was being occupied and used for the benefit of

Vivid. This should be treated as an operating expense that is immediately due and payable from the operating assets of the receivership estate.

Corona respectfully requests that the Order authorizing the sale in this matter command the Receiver to satisfy the claims of Corona from the operating assets of the receivership estate prior to the sale of the lease assets to a third party purchaser. In the alternative, Corona respectfully requests that the Court balance the equities in this case and adjust the contractual relationships of the parties, specifically with regard to GE Capital who stands to consume all sale proceeds, in order to account for and satisfy the claims of Corona.

Respectfully submitted this the 22nd day of June, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's CM/ECF electronic system to:

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on this 22nd day of June, 2009.

s/ Daniel J. Morse
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