

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	
)	Chapter 11
)	
COMMERCECONNECT MEDIA HOLDINGS, INC., <u>et al.</u> , ¹)	Case No. 09-12765 (BLS)
)	
Debtors.)	Jointly Administered
)	
)	Related Documents: 112, 160
)	Hearing Date: November 20, 2009 at 10:30 a.m. (EST)

**REORGANIZED DEBTORS' REPLY TO 3HQ OPERATING LLC'S LIMITED
OBJECTION TO THE DEBTORS' MOTION FOR AN ORDER (I) AUTHORIZING
(A) REJECTION OF CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND (B) ABANDONMENT OF CERTAIN
RELATED PERSONAL PROPERTY OF *DE MINIMIS* VALUE AND
(II) FIXING LEASE REJECTION DAMAGE CLAIMS**

The above-captioned reorganized debtors and debtors-in-possession (collectively, the "Reorganized Debtors" or "Cygnus") hereby respond (the "Reply") to the limited objection (the "Objection") filed by 3HQ Operating LLC ("3HQ") to the *Debtors' Motion for an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Nonresidential Real Property and (B) Abandonment of Certain Related Personal Property of De Minimis Value and (II) Fixing Lease Rejection Damage Claims* [Docket No. 112] (the "Motion").

Background

1. On August 3, 2009, Cygnus commenced its respective bankruptcy cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of title of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").
2. On September 4, 2009, Cygnus filed the Motion.

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: CommerceConnect Media Holdings, Inc. (1749), Cygnus Business Media, Inc. (0832), Cygnus New Business Launches, Inc. (0713) and Cygnus Interactive New Business Launches, Inc. (1283). The address for each of the Reorganized Debtors is: 1233 Janesville Avenue, Fort Atkinson, WI 53538.

3. On September 9, 2009, the United States Bankruptcy Court for the District of Delaware (this “Court”) entered an order confirming the *Prepackaged Joint Plan of Reorganization of CommerceConnect Media Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* [Docket No. 119]. The effective date of the Plan occurred on September 21, 2009.

4. On November 2, 2009, 3HQ filed the Objection.

5. No objection or response was received from Bagnato Realty Services d/b/a NAI Long Island, Cygnus’ subtenant (the “Subtenant”) under the Lease (as defined below).²

6. As described in further detail in the Motion and Objection, 3HQ and Cygnus Business Media, Inc. (“CBM”), one of the Reorganized Debtors, are parties to that certain Agreement of Lease dated as of September 30, 2004 (the “Lease”) pursuant to which CBM leases certain office and storage space from 3HQ.

Reply

A. THE PREMISES WILL BE VACATED AS OF THE EFFECTIVE DATE OF THE REJECTION

7. Cygnus is still occupying a portion of the Premises³ by invitation and with permission from 3HQ while Cygnus and 3HQ continue to negotiate the terms of a prospective new lease and settlement of 3HQ’s damages, if any, resulting from Cygnus’ rejection of the Lease.

8. Although it appears that those negotiations may not bear fruit, the parties are continuing to negotiate various terms that appear capable of being resolved by parties negotiating in good faith. Cygnus will notify the Court promptly if a settlement is ultimately achieved prior

² The balance of the Premises that are not occupied by Cygnus are occupied by the Subtenant.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

to the hearing on the Motion. If, however, no agreement is reached prior to the hearing on the Motion, then Cygnus will seek an order providing that the rejection of the lease shall be effective as of the date Cygnus vacates the Premises, which will be a date certain that will be stated at the hearing on the Motion and be no later than February 1, 2010. During this time, of course, Cygnus will be responsible for paying the applicable rent.

9. This is consistent with the Motion which contemplated the possibility that CBM may still be in possession of the Premises as of the hearing date on the Motion and that in such case CBM would state on the record at the hearing the date upon which it would vacate the Premises and the rejection of the Lease would become effective. Obviously, Cygnus is not asking for this Court to rewrite the law in any way with respect to the interplay between lease rejection and vacancy under the Bankruptcy Code.

B. LEASE REJECTION DAMAGES CLAIM

10. The landlord bears the burden of proving its damages under section 502(b)(6) of the Bankruptcy Code. *See In re Blatstein*, 1997 U.S. Dist. LEXIS 13376 (E.D. Pa. Aug. 26, 1997) (stating that the landlord bears the burden of proof under section 502(b)(6) of the Bankruptcy Code).

11. Pursuant to section 501 of the Bankruptcy Code, a creditor may file a proof of claim in a debtor's bankruptcy cases. As of the date of the filing of this Reply, 3HQ has not filed any proof of claim in the Chapter 11 Cases which is not surprising because the Lease has not yet been rejected. 3HQ suggests in its Objection that it is premature to determine the amount of any rejection damages claim it may have. Accordingly, if and when 3HQ does file a proof of claim, Cygnus will then seek to work together with 3HQ to resolve any disputes and Cygnus will object to the claim and the Bankruptcy Court will adjudicate any such dispute in the event the parties

cannot reach agreement about the appropriate amount, if any, in which any such claim should be allowed.⁴

Conclusion

WHEREFORE, for the reasons asserted herein, the Reorganized Debtors respectfully request that the Court overrule the Objection, grant the relief in the Motion and grant such other and further relief as is just.

⁴ In CBM's view, \$1,066,656 is the maximum damages claim to which 3HQ could possibly be entitled, subject to reduction based on evidence of mitigation, discounting to present value, setoff, counterclaim and other adjustments. In this regard, for example, any claim to which 3HQ may be entitled would be reduced by the \$188,964 amount of CBM's security deposit which 3HQ is continuing to hold. *See In re PPI Enters. (U.S.)*, 324 F.3d 197, 208 (3d Cir. Del. 2003) (adopting the prevailing view that once the section 502(b)(6) calculation is complete, any security deposit held by a landlord should be deducted from the § 502(b)(6) cap of a landlord's claim). Such claim must also reflect the landlord's mitigation of its damages. *See In re Child World, Inc.*, 161 B.R. 349, 352 (Bankr. S.D.N.Y. 1993) (the amount landlord received from new tenant will reduce the landlord's total lease rejection damages).

Dated: November 17, 2009
Wilmington, Delaware

Respectfully submitted,



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