

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

In re:)	Chapter 11
)	
ART VAN FURNITURE, LLC et al ¹)	Case No. 20-10553 (CSS)
)	
)	(Jointly Administrated)
Debtors.)	
)	Hearing Date: April 27, 2020 at 2:00 p.m. EDT
)	Objection Deadline: April 20, 2020 at 4:00 p.m. EDT
)	
)	

**MOTION OF SOUTH LINDBERGH PROPERTY, LLC, JS WESTFLO, LLC,
ROTHMAN-O’FALLON, LLC AND O’FALLON MISSOURI PROPERTIES, LLC FOR
RELIEF FROM THE AUTOMATIC STAY**

South Lindbergh Property, LLC, JS Westflo, LLC, Rothman-O’Fallon, LLC and O’Fallon Missouri Properties, LLC (collectively the “Landlords”), by and through its undersigned counsel, submits this motion (the “Motion”) for entry of an order granting the Landlords relief the automatic stay under section 362(d)(2) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) to authorize each of the Landlords to exercise its rights. In support of this Motion, the Landlords respectfully state as follows:

PRELIMINARY STATEMENT

1. The Landlords are landlords at four separate real property commercial premises which debtor, Art Van Furniture, LLC (“Debtor”), has leased as a tenant pursuant to separate lease agreements entered into with each of the Landlords (collectively “Premises”).

¹The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, where applicable are: Art Van Furniture, LLC (9205); AVF Holding Company, Inc. (0291); AVCE, LLC (2509); AVF Holdings I, LLC (2537); AVF Holdings II, LLC (7472); AVF Parent, LLC (3451); Levin Parent, LLC (8052); Art Van Furniture of Canada, LLC (9491); AV Pure Sleep Franchising, LLC (8968); AVF Franchising, LLC (6325); LF Trucking, Inc. (1484); Sam Levin, Inc. (5198); Comfort Mattress, LLC (4463).

2. Subsequent to Debtor's bankruptcy filing, Debtor vacated each leased Premises and turned over to Landlords the keys and codes to the Premises. Accordingly, the Landlords respectfully request that they be granted such relief pursuant to section 362(d)(2) of the Bankruptcy Code. In that regard, Debtor does not have any equity in the Premises and they cannot be necessary for an effective reorganization as they were vacated by Debtor and turned over to the Landlords.

3. This Motion is supported by the Declaration of Jay Steinberg, managing member of each of the Landlords (the "Steinback Decl."), attached hereto as **Exhibit A**.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)², and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 101 and 362 and Federal Rules of Bankruptcy Procedure 4001.

RELEVANT BACKGROUND

A. The Lease Agreements

5. On January 15, 2019, Landlord South Lindbergh Property, LLC and Debtor entered into a Lease Agreement with Debtor as tenant (the "Lindbergh Lease"), a copy of which is attached to the Steinback Decl. as **Exhibit 1**, for the real property, improvements and fixtures thereon, located at 5711 South Lindbergh Blvd, St. Louis, Missouri (the "Lindbergh Premises") for an initial term of 60 months. Lease, §§ 1.01. The rent for the initial term consisted of \$29,776.07 per month of base rent, plus such other "Additional Rent" required under the Lease

² Pursuant to Local Rule 9013-1(f), the Landlord hereby confirms its consent to the entry of a final order by this Court in connection with this Motion only, if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

(including real property taxes and assessments and all charges related to the provision or use of utilities to the Lindbergh Premises), payable on the first day of each month.

6. On January 15, 2019, Landlord JS Westflo, LLC and Debtor entered into a Lease Agreement with Debtor as tenant (the "Westflo Lease"), a copy of which is attached to the Steinback Decl. as **Exhibit 2**, for the real property, improvements and fixtures thereon, located at 925 Northwest Plaza, Bridgeton, Missouri (the "Westflo Premises") for an initial term of 60 months. Lease, §§ 1.01. The rent for the initial term consisted of \$32,475.03 per month of base rent, plus such other "Additional Rent" required under the Lease (including real property taxes and assessments and all charges related to the provision or use of utilities to the Westflo Premises), payable on the first day of each month.

7. On January 15, 2019, Landlord Rothman-O'Fallon, LLC and Debtor entered into a Lease Agreement with Debtor as tenant (the "Rothman Lease"), a copy of which is attached to the Steinback Decl. as **Exhibit 3**, for the real property, improvements and fixtures thereon, located at 1776 West Highway 50, O'Fallon, Illinois (the "Rothman Premises") for an initial term of 60 months. Lease, §§ 1.01. The rent for the initial term consisted of \$29,333.08 per month of base rent, plus such other "Additional Rent" required under the Lease (including real property taxes and assessments and all charges related to the provision or use of utilities to the Rothman Premises), payable on the first day of each month.

8. On January 15, 2019, Landlord O'Fallon Missouri Properties, LLC and Debtor entered into a Lease Agreement with Debtor as tenant (the "O'Fallon Lease"), a copy of which is attached to the Steinback Decl. as **Exhibit 4**, for the real property, improvements and fixtures thereon, located at 2101 East Terra Lane, O'Fallon, Missouri (the "O'Fallon Premises") for an initial term of 60 months. Lease, §§ 1.01. The rent for the initial term consisted of \$42,146.58

per month of base rent, plus such other “Additional Rent” required under the Lease (including real property taxes and assessments and all charges related to the provision or use of utilities to the O’Fallon Premises), payable on the first day of each month.

9. Under each of the aforementioned four Leases, an “Event of Tenant Default” would occur if, among other instances, “Failure on the part of Tenant to make payment of Rent or any other monetary amount due under this Lease within five (5) days after Landlord has sent to Tenant notice of such default.” *Id.*, § 17.01.

B. Debtor’s Anticipatory Breach, Termination and Vacating Premises

10. After Debtor filed its Bankruptcy petition, Debtor turned over the keys and codes for the Premises to Landlords’ managing member, vacated each of the Premises and further advised Landlords’ managing member that Debtor will not be paying rent at any of the Premises. (See Steinberg Decl.) .

11. Accordingly, as a result of Debtor’s actions it has breached each of the leases or at a minimum committed an anticipatory breach of each lease. Further, Debtor has failed to make the lease payments on each of the leases due April 1, 2020 as well as the lease payments due pre-petition on March 1, 2020.

ARGUMENT

The Landlords are entitled relief from the automatic stay

12. The Landlords respectfully submit that they are entitled to immediate relief from stay in accordance with section 362(d)(2) of the Bankruptcy Code.

13. Section 362(d)(2) of the Bankruptcy Code provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided

under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—

* * *

(2) with respect to a stay of an act against property under subsection (a) of this section, if

(A) The debtor does not have an equity in such property; and

(B) Such property is not necessary to an effective reorganization.

11 .S.C. § 362(d)(2).

14. The party requesting relief from stay under § 362(d)(2) has the burden of proof as to the debtor's equity. *Wilmington Trust Co v. Aardvark, Inc. (In re Aardvark, Inc.)*, No. 96-412-SLR, 1997 U.S. Dist. LEXIS 3304 (D. Del. Mar. 4, 1997) (citing 11 U.S.C. § 362(g)). On all other issues, including the feasibility of reorganization, the debtor must shoulder the burden of proof. *See id.*

15. The language of § 362(d)(2) is mandatory, when both factors necessary for relief under section 362(d)(2) are met “the court shall grant relief.” *Nantucket Investors II v. California Fed. Bank (In re Indian Palms Assoc.)*, 61 F.3d 197, 208 (3d Cir. 1995) (quoting 11 U.S.C. § 362(d)(2)).

16. The classic test for determining equity under § 362(d)(2) focuses on a comparison between the total liens against the property and the property's current value. *See id.* (quoting 11 U.S.C. § 362(d)(2)). The classic test, however, assumes that the Debtor owns the respective property and compares value to the total amount of liens.

17. In this instance, however, Debtor's lack of equity comes not from the amount of liens compared to value, but rather from the fact that the premises are leased and therefore the Debtor has no ownership interest in the four Premises at issue.

18. As to the second factor, it is undisputed that the Premises to which Movant seeks to have the automatic stay lifted is not necessary to an effective reorganization when Debtor has

vacated the four Premises, turned over the keys and codes and indicated that it has no intention of paying any rent. Accordingly, Debtor cannot be contemplating a reorganization involving the four Premises which are the subject matter of this motion.

CONCLUSION

WHEREFORE, the Landlords respectfully request that this Court enter an Order, substantially in the form attached hereto, (a) granting the Landlords relief from the automatic stay so that they may proceed with all state law remedies to recover, as needed, the four Premises, lease or sell the four Premises, and dispose of any property remaining at the four Premises; and (b) granting the Landlords such other and further relief as this Court may deem is just and proper.

Dated: April 2, 2020
Wilmington, Delaware

BAYARD, P.A.

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