

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

CBL & ASSOCIATES
PROPERTIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 20-35226 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION OF ATC TO NOTICE OF CURE AMOUNTS WITH RESPECT
TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF DEBTORS**

ATC Indoor DAS LLC, on behalf of itself and any of its applicable affiliates (collectively, “ATC”), as a creditor and party-in-interest in the above-captioned, jointly administered bankruptcy cases (the “Bankruptcy Cases”), hereby files this objection (the “Objection”) to the *Notice of Cure Amounts With Respect to Executory Contracts and Unexpired Leases of Debtors* [Docket No. 1317] (the “Cure Notice”). In support of this Objection, ATC respectfully represent as follows:

BACKGROUND

1. Beginning on November 1, 2020 (the “Petition Date”) CBL & Associates Properties, Inc. together with its affiliated debtors (collectively, the “Debtors”) each filed a voluntary petition for relief under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”) commencing these jointly administered chapter 11 cases (the “Chapter 11 Cases”).

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

2. ATC is a tenant of certain of the Debtors pursuant to certain individual leases and a master license agreement under which ATC leases separate premises in certain retail shopping centers from one or more of the Debtors (and certain non-debtor affiliates, where applicable) for the installation, operation and maintenance of distributed antenna systems. Additionally, ATC, CBL & Associates Management, Inc. (“CBL”) and CBL’s affiliates that are landlords to ATC under the referenced leases are party to a settlement agreement dated as of March 20, 2020 (the leases together with the settlement agreement are referred to herein as the “ATC Assumed Agreements”), pursuant to which, among other things, the CBL and its affiliates make certain payments to ATC.

3. On March 25, 2021, ATC filed 17 timely proofs of claim in the Debtors’ chapter 11 cases (collectively, the “Proofs of Claim”). *See, e.g.*, Claim No. 20623 filed against CBL & Associates Properties, Inc.

4. Each of ATC’s proofs of claim asserted rights of setoff, recoupment, and other equitable rights to the fullest extent available. The proofs of claim reserve all of ATC’s rights and preserve all defenses in connection therewith.

5. On May 25, 2021 the Debtors filed the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors* [Docket No. 1163] (as amended, the “Plan”) and the related *Disclosure Statement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors* [Docket No. 1164] (the “Disclosure Statement”).

6. On May 26, 2021, the Court entered an order [Docket No. 1168] (the “Disclosure Statement Order”) approving the adequacy of the Disclosure Statement and authorizing the Debtors to commence solicitation of acceptances and rejections to the Plan.

7. The Plan provides that all executory contracts and unexpired leases will be assumed unless such executory contracts or unexpired leases are listed on a *Schedule of Rejected Contracts*. See Plan, § 8.1.

8. On July 19, 2021, the Debtors filed the *Notice of Filing of Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Debtor Affiliates* [Docket No. 1315] which contained the *Schedule of Rejected Contracts*.

9. None of the ATC Assumed Agreements were listed on the Schedule of Rejected Contracts, and, accordingly, each of the ATC Assumed Agreements will be assumed under the Plan.

10. On July 19, 2021, the Debtors filed the *Notice of Filing of Cure Notice* [Docket No. 1317] and attached the Cure Notice as Exhibit A thereto.

11. The Cure Notice reiterated that the Plan provides for the assumption of all executory contracts and unexpired leases that are not rejected, and attached a schedule listing the cure amount for particular executory contracts or unexpired leases where the Debtors believe such amounts to be owing. The Cure Notice also stated that any executory contracts or unexpired leases not included on the schedule to the Cure Notice would be assumed with a \$0.00 cure amount.

12. None of the ATC Assumed Agreements were listed on the schedule to the Cure Notice, and accordingly, the Debtors are proposing a cure amount for each of the ATC Assumed Agreements in the amount of \$0.00.

CURE OBJECTION

13. As of July 20, 2021, certain amounts are owed to ATC under particular leases as detailed in the table below:

Lease	Site Name	Site Number	Amount Owed to ATC
834407	GREENBRIER MALL	344553	\$29,496.77
834408	VALLEY VIEW MALL	344556	\$5,400.00
834409	WEST TOWNE MALL	344560	\$5,400.00
834412	CROSS CREEK MALL	344527	\$7,200.00
834443	BURNSVILLE CENTER	344522	\$21,190.34
Grand Total			\$68,687.11

Of these amounts, \$13,296.77 is a stub pre-petition amount owing in connection with the lease for Greenbrier Mall. The remainder of the amounts owing have been incurred after the Petition Date. Additionally, ATC is continuing to investigate amounts owing to it, and thus submits this objection to preserve its rights to these and other amounts (the “True Cure Amount”). ATC expects the True Cure Amount to be paid in order to assume the ATC Assumed Agreements.²

14. As noted, ATC is continuing to investigate the amounts and obligations that are due and owing and/or continuing to accrue, and ATC reserves all of its rights, including without limitation, to amend this Objection to reflect additional amounts owed that comprise the True Cure Amount.

15. Section 365(b) allows a debtor to assume and assign a lease or other executory contract only if “at the time of assumption of such contract or lease, the [debtor] . . .

² ATC acknowledges that certain of the CBL landlords under the leases with ATC are non-debtors.

compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default.” 11 U.S.C. § 365(b)(1)(B). Therefore, ATC is entitled to receive the True Cure Amount if the above referenced leases are to be assumed in connection with the Debtors’ Plan. Further, ATC expressly reserves all rights of setoff and/or recoupment, and object to the extent the Cure Notice proposes to limit or abridge those rights.

RESERVATION OF RIGHTS

16. ATC reserves the right to amend and/or supplement this Objection and to raise other and further objections with respect to the Debtors’ Plan and the Cure Notice.

17. Moreover, ATC reserves the right to amend and/or supplement this Objection to claim any additional amounts it discovers owing, or which are continuing to accrue, to ATC under any agreements proposed to be assumed under the Plan and to which ATC is entitled in order to cure the Debtors’ default. Finally, ATC reserves the right to object based on the Debtors’ inability to provide adequate assurance of future performance on the part of the Debtors and/or any proposed assignee as required by section 365(f)(2) of the Bankruptcy Code if and when the Debtors provide such information.

CONCLUSION

18. For the foregoing reasons, ATC objects to the Cure Notice and reserves its rights, as set forth herein.

DATED: July 28, 2021

Respectfully Submitted,

/s/ Stephen J. Humeniuk

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**ATTORNEYS FOR ATC INDOOR DAS LLC,
ON BEHALF OF ITSELF AND ANY OF ITS
APPLICABLE AFFILIATES
(COLLECTIVELY, “ATC”)**

CERTIFICATE OF SERVICE

The undersigned certifies that on July 28, 2021, true and correct copies of the foregoing were forwarded to all parties receiving electronic notification in this case from the Court's electronic case filing (ECF) system.

/s/ Stephen J. Humeniuk _____

Stephen J. Humeniuk