

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

In re:

CONN'S, INC., *et al.*,<sup>1</sup>

Debtor.

Chapter 11

Case No. 24-33357

(Jointly Administered)

**Re: Doc. 459**

**LIMITED OBJECTION OF VARIOUS LANDLORDS TO DEBTORS' NOTICE OF  
PROPOSED STALKING HORSE DESIGNATION [DOC. 742]**

KRG Lake Worth Towne Crossing, LLC and International Speedway Square Ltd. (each a "Landlord") and, collectively, the "Landlords"), by and through undersigned counsel, hereby submits their limited objection (the "Objection") to Debtors' *Notice of Filing of Stalking Horse Designation* [Doc. 742] (the "Notice"). In support of its Objection, Landlords respectfully state as follows:

**Background**

1. On July 23, 2024 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court"), which cases have been jointly consolidated for administrative purposes only (the "Bankruptcy Cases"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-

---

<sup>1</sup> The Debtors in these chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Conn's, Inc. (2840); Conn Appliances, Inc. (0706); CAI Holding, LLC (2675); Conn Lending, LLC (9857); Conn Credit I, LP (0545); Conn Credit Corporation, Inc. (9273); CAI Credit Insurance Agency, Inc. (5846); New RTO, LLC (6400); W.S. Badcock LLC (2010); W.S. Badcock Credit LLC (5990); and W.S. Badcock Credit I LLC (6422). The Debtor's service address is 2445 Technology Forest Blvd., Suite 800, The Woodlands, TX 77381.

possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed in the Bankruptcy Cases.

2. Debtor Conn Appliances, Inc. leases retail space (the “ISS Premises”) from International Speedway Square Ltd. (“ISS”) pursuant to an unexpired lease of nonresidential real property (the “ISS Lease”) at the International Speedway Square shopping center in Daytona, Florida.

3. Debtor Conn Appliances, Inc. also leases retail space (the “KRG Premises”) from KRG Lake Worth Towne Crossing, LLC (“KRG”) pursuant to an unexpired lease of nonresidential real property (the “KRG Lease” and together with the ISS Lease, collectively, the “Leases”) at the Lake Worth Towne Crossing shopping center in Lake Worth, TX.

4. Each of the Leases is a lease “of real property in a shopping center,” as that term is used in 11 U.S.C. § 365(b)(3). *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

5. On August 20, 2024, this Court entered its *Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief* [Doc. 370] (the “Bid Procedures Order”).

6. On August 30, 2024, the Debtors filed the *Debtors’ Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts* [Doc. 459] (the “Notice of Potential Assumption”).

7. The ISS Lease and the KRG Lease were both included in the Notice of Potential Assumption with an asserted cure amount of \$0.00.

8. On September 12, 2024, KRG filed its reservation of rights with respect to the Notice of Potential Assumption [Doc. 584], and ISS filed its objection to the Notice of Potential Assumption [Doc. 582] (collectively, the “Cure Objections”).

9. On October 2, 2024, the Debtors filed their *Notice of Filing of Stalking Horse Designation* [Doc. 742] (the “Stalking Horse Notice”). A proposed Stalking Horse APA is attached as Exhibit B to the Stalking Horse Notice [Doc. 742-2] (the “Stalking Horse APA”).

10. The *Notice of Hearing* [Doc. 761], filed on October 3, 2024, states that the deadline to file objections to designation of the Stalking Horse Bid, approval of the Bid Protections, and entry into the Stalking Horse APA must be filed by October 8, 2024, at 4:00 p.m. (CT).

11. The *Notice of Revised Bidding Procedures Timeline* [Doc. 779], filed on Sunday, October 6, 2024, also states that the deadline to file objections to the Stalking Horse Designation, Bid Protections, and Stalking Horse APA falls on Tuesday, October 8, 2024, at 4:00 p.m. (CT).

12. This Objection is timely filed.

### **Objection**

13. Subject to certain exceptions not applicable to the Leases, the Stalking Horse APA incorporates the Notice of Potential Assumption by reference. Stalking Horse APA at Schedule 4.3(a).

14. Therefore, in an overabundance of caution, each of the Landlords hereby restates and incorporates its objection and reservation of rights to the assumption of the Leases on the grounds set forth in as set forth in the previously filed Cure Objections to the Notice of Potential Assignment.

15. The Proposed Cure Payments set forth in the Notice of Potential Assumption do not include all pre- and post-petition arrearages owed to Landlords pursuant to the terms of each

of their respective Leases. Therefore, the Debtors do not propose to cure all existing monetary defaults under each of the respective Leases as required by the Bankruptcy Code.

16. Moreover, the Stalking Horse APA appears to contemplate an extension of the assignment period beyond the 210-day limit imposed by the Bankruptcy Code. Specifically, the Stalking Horse APA contemplates an impermissible re-writing of the statutory requirements of section 365(d)(4) of the Bankruptcy Code, which provides that:

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

17. The Bankruptcy Code is clear that subsequent extensions beyond the aggregate 210-day period contemplated above require “prior written consent of the lessor in each instance.” 11 U.S.C. § 365(d)(4)(B)(ii).

18. Section 4.3 of the Stalking Horse APA describes the process by which the Purchaser may identify the executory contracts and unexpired leases that it wishes the Debtors to assume and assign to it. The deadline for the Purchaser to make that election is the “Determination Date”—a date that may be no later than “three (3) Business Days prior to the Closing.” (Stalking Horse APA, § 4.3(a), at pg. 40). The date upon which Closing is to occur is not expressly set forth in the Stalking Horse APA.

19. Rather, the outer boundary for the timing of Closing may be inferred from Section 8.1 of the Stalking Horse APA, which addresses the conditions under which the APA may be terminated. In that regard, Section 8.1(h) of the Stalking Horse APA provides as follows:

8.1 ***Events of Termination.*** This Agreement may be terminated, and the Transactions may be abandoned, at any time prior to the Closing as follows:

\*\*\*

(h) by Purchaser or Conn's (on behalf of the Sellers), by written notice to the other, if the Closing has not occurred on or before 5:00 p.m. Eastern Time on February 20, 2025 (the "***Outside Date***"); *provided, however*, that neither Purchaser, on the one hand, or Conn's (on behalf of the Sellers), on the other hand may, exercise the right to terminate this Agreement pursuant to this Section 8.1(h) if Purchaser (in the case of a termination by Purchaser) or any Seller (in the case of a termination by Conn's on behalf of the Sellers) is in material breach of this Agreement and such material breach has been the principal cause of the failure of the Closing to occur on or before the Outside Date.

(Stalking Horse APA, § 8.1(h), at pg. 62.)

20. A closing date of February 20, 2025, would put the outer boundary for the Determination Date at February 17, 2024. While the latter date falls within the statutory deadline for the election to assume and assign leases, the proviso clause that immediately follows contemplates a date after the deadline mandated by section 365(d)(4)(B)(ii) of the Bankruptcy Code. The invocation of a Section 8.1(h) termination event is limited by the possibility that either counterparty to the Stalking Horse APA may argue that the inability to close by February 20, 2024, was caused by a "material breach" of the other.

21. However, what is or is not "material" is in the eye of the beholder and that determination, in the first instance, is left up to the Debtors and the Purchaser and the vagaries of litigation over that determination.

22. To the extent that such ambiguity gives rise to a Determination Date that falls after February 18, 2025, the Landlords object to the extent that the Stalking Horse APA can be used a

mechanism to bypass the written consent requirement for assumptions and assignments beyond the 210-day deadline mandated by the Bankruptcy Code. Neither of the Landlords is a party to the Stalking Horse APA and neither has had a voice in the negotiation and drafting of this document.

23. While the flexibility to alter a closing date is common practice for transactions occurring outside of bankruptcy, it is not permissible for transactions that materially affect third party rights pursuant to sections 363 and 365 of the Bankruptcy Code. Such optionality may not run roughshod over statutorily mandated protections afforded to commercial lease counterparties under the Bankruptcy Code.

**Joinder in Objections Raised by Other Landlords**

24. To the extent consistent with the objections expressed herein, the Landlords also join in the objections of any other shopping center lessors to the Debtors' proposed relief.

**Reservation of Rights**

25. Nothing in this Objection is intended to be, or should be construed as, a waiver by either of the Landlords of any of its respective rights under the Leases, the Bankruptcy Code, or applicable law, including other orders of this Court entered herein. Each of the Landlords expressly reserves all such rights, including, without limitation, the right to: (i) supplement and/or amend this Objection and to assert additional objections to assumption and/or assignment of the Leases on any and all grounds; (ii) assert additional non-monetary defaults under the Leases; (iii) assert any rights for indemnification or contribution against the Debtors arising under the Leases; and (iv) assert any further objections as it deems necessary or appropriate.

Dated: October 8, 2024.

**SPENCER FANE LLP**

/s/ Megan F. Clontz

Megan F. Clontz

State Bar No. 24069703

5700 Granite Parkway, Suite 650

Plano, TX 75024

(972) 324-0300 – Telephone

(972) 324-0301 – Facsimile

Email: mclontz@spencerfane.com

-and-

Mark Bogdanowicz *admitted pro hac vice*

Missouri Bar No. 75399

1000 Walnut Street, Suite 1400

Kansas City, MO 64106

(816) 474-8100 – Telephone

(816) 474-3216 – Facsimile

Email: mbogdanowicz@spencerfane.com

-and-

Camber M. Jones *admitted pro hac vice*

Missouri Bar No. 71026

2144 East Republic Road, Suite B300

Springfield, MO 65804

(417) 888-1000 – Telephone

(417) 881-8035 – Facsimile

Email: cjones@spencerfane.com

**COUNSEL FOR KRG LAKE WORTH  
TOWNE CROSSING, LLC AND  
INTERNATIONAL SPEEDWAY  
SQUARE, LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 8, 2024, a copy of the foregoing was filed electronically through the Court's CM/ECF system and served electronically on all parties registered to receive service of electronic notice, and was also served via First Class, U.S. Mail and electronic mail on the counsel listed below:

**Sidley Austin LLP (Counsel to Debtor)**

Attn: Duston K. McFaul, Jackson T. Garvey, Jeri Leigh Miller, and Maegan Quejada  
1000 Louisiana St., Suite 6000

Houston, Texas 77002

**E-mail:** [dmcfaul@sidley.com](mailto:dmcfaul@sidley.com); [jgarvey@sidley.com](mailto:jgarvey@sidley.com); [jeri.miller@sidley.com](mailto:jeri.miller@sidley.com); [mquejad@sidley.com](mailto:mquejad@sidley.com)

Attn: Michael Sabino

787 Seventh Avenue

New York, NY 10019

**E-mail:** [msabino@sidley.com](mailto:msabino@sidley.com)

**Office of the United States Trustee for the Southern District of Texas**

Attn: Jayson B. Ruff and Jana Smith Whitworth

515 Rusk Street, Suite 3516

Houston, Texas 77002

**E-Mail:** [jayson.b.ruff@usdoj.gov](mailto:jayson.b.ruff@usdoj.gov); [jana.whitworth@usdoj.gov](mailto:jana.whitworth@usdoj.gov)

**Pachulski Stang Ziehl & Jones LLP (Counsel to Committee)**

Attn: Theodore S. Heckel, Michael D. Warner, and Benjamin L. Wallen

700 Louisiana St., Suite 4500

Houston, Texas 77002

**E-mail:** [mwarner@pszjlaw.com](mailto:mwarner@pszjlaw.com); [bwallen@pszjlaw.com](mailto:bwallen@pszjlaw.com); [theckel@pszjlaw.com](mailto:theckel@pszjlaw.com)

Attn: Robert J. Feinstein, Bradford J. Sandler, and Paul J. Labov

780 Third Ave., 34<sup>th</sup> Fl.

New York, NY 10017

**E-mail:** [rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com); [bsandler@pszjlaw.com](mailto:bsandler@pszjlaw.com); [plabov@pszjlaw.com](mailto:plabov@pszjlaw.com)

Attn: Shirley Cho and Cia H. Mackle

10100 Santa Monica Blvd, 13<sup>th</sup> Fl.

Los Angeles, CA 90067

**E-mail:** [scho@pszjlaw.com](mailto:scho@pszjlaw.com); [cmackle@pszjlaw.com](mailto:cmackle@pszjlaw.com)

/s/ Megan F. Clontz

Megan F. Clontz