

**IN THE UNITED STATES BANKRUPTCY COURT
for the SOUTHERN DISTRICT of TEXAS
(HOUSTON)**

In re:	:	Chapter 11
CONN'S, Inc., et als	:	
	:	No. 24-33357 (arp)
Debtors	:	

OBJECTION to ASSIGNMENT of LEASE

FNRP Realty Advisors, LLC as asset manager for **Tropicana Centre LV LLC, and Tropicana Centre LV TIC 1 LLC through Tropicana Centre LV TIC 11 LLC** (collectively the “**Landlord**”), by its undersigned counsel, hereby objects to the assignment of the Lease (defined below) to Burlington Coat Factory Warehouse Corporation (or to any other entity affiliated therewith, or related thereto; collectively, “**Burlington**”) for the operation of a “Burlington” store¹ in the leased premises, as follows:

1. The Landlord is the lessor of Conn’s location #140, located at 3185 E. Tropicana, Las Vegas, NV 89121 (the “**Location**”).

2. On October 17, 2024, the Debtors served a document entitled “Notice of Successful Bidders as to Certain Lease Transactions” (D.I. #853), which – among other things – advised that Burlington was the successful bidder for purchase of the Lease for the Location (the “**Conn’s Lease**”), presumably to operate a “Burlington” store at the Location.

3. The Location is within a “Shopping Center” as that term is used in 11 U.S.C. §365.

4. Ross Dress for Less, Inc., or an affiliate thereof (collectively, “**Ross**”) already operates a “Ross Dress for Less” store in the same Shopping Center as the Location under the terms of a written Lease (the “**Ross Lease**”).

¹ For the meaning of the term “Burlington Store”, please see www.burlington.com; the reference is to any store of substantially similar character to those described on the website.

5. On October 5, 2018, Ross caused a Memorandum of the Ross Lease (the “**Memorandum**”) for its store in the Shopping Center² to be recorded in Clark County, NV, as instrument number 20181005-0000279. A copy of it is attached as **Exhibit “A”**.

6. Paragraph 4 of the Memorandum incorporates by reference Paragraph 15.3 of the Ross Lease (among others) which reads as follows:

“15.3 Protection. Without the prior written consent of Tenant, which consent may be withheld in the absolute and sole discretion of Tenant, no tenant or occupant of Landlord’s Parcel (other than Tenant) may use, and Landlord, if it has the capacity to do so, shall not permit any other tenant or occupant of Landlord’s Parcel to (a) use its premises for the Off Price Sale (as hereinafter defined) of merchandise, or (b) with the exception of Fallas Paredes and Burke’s (and their like kind replacements in the same space), use more than ten thousand (10,000) square feet of Leasable Floor Area of its premises for the sale of apparel (except for discount department stores in excess of eighty five thousand (85,000) square feet of Leasable Floor Area), or (c) use in excess of one thousand five hundred (1,500) square feet of Leasable Floor Area of its premises primarily for the rental or sale of prerecorded audio or video merchandise or electronic games software and technological evolutions thereof, or (d) use in excess of two thousand five hundred (2,500) square feet of Leasable Floor Area of its premises for the sale of any of the other types of merchandise specified in Section 15.1 above. For purposes of this Section 15.3, “Off Price Sale” shall mean the retail sale of merchandise on an everyday basis at prices reduced from those charged by full price retailers, such as full price department stores; provided, however, this definition shall not prohibit sales events by a retailer at a price discounted from that retailer’s everyday price. (As of the Effective Date, examples of Off Price Sale retailers include such retailers as T.J. Maxx, Marshalls, HomeGoods, Sierra Trading Post, Homesense, Fallas Paredes, Nordstrom Rack, Factory 2U, Burlington Coat, Steinmart, Filene’s Basement, Gordmans, Gabe’s and Beall’s Outlet.) Notwithstanding the foregoing, so long as Landlord complies with the provisions of Section 1.6 with regard to a lease to TJX, the foregoing shall not prohibit Landlord from leasing to TJX.”

7. Burlington (then known as “Burlington Coat Factory”) is mentioned in Paragraph 4 of the Memorandum as an example of an “Off Price Sale retailer”. This disqualifies Burlington

² The counterparty to the Memorandum of Lease is Arilex Tropicana Associates, LLC, the Landlord’s predecessor-in-interest. A copy of the Deed transferring ownership of the Shopping Center from Arilex to the Landlord, recorded in Clark County, NV on November 2, 2022 as instrument number 20221102-0000173, is attached as **Exhibit “B”**.

as a tenant in the Location according to clause (a) of Paragraph 15.3 of the Ross Lease.

8. Clause (b) of Paragraph 15.3 of the Ross Lease prohibits the use of more than 10,000 square feet of Leasable Floor Area of the Location “for the sale of apparel (except for discount department stores in excess of 85,000 square feet of Leasable Floor Area).”

9. The approximate size of the Location is 50,150 square feet.

10. Therefore, assuming that a Burlington store would be considered a “discount department store” it could not satisfy clause (b) of Paragraph 15.3 of the Ross Lease because the Location would not accommodate an 85,000 square foot discount department store.

11. Clause (c) of Paragraph 15.3 of the Ross Lease prohibits the use of more than 1,500 square feet of Leasable Floor Area “primarily for the rental or sale of prerecorded audio or video merchandise or electronic games software and technological evolutions thereof...”; hereinafter, **“Electronic Merchandise”**.

12. If Burlington used a portion of the Location for Electronic Merchandise in excess of 1,500 square feet, it would violate clause (c) of Paragraph 15.3 of the Ross Lease.

13. Similarly, clause (d) of Paragraph 15.3 of the Ross Lease prohibits the use of more than 2,500 square feet of Leasable Floor Area of the Location for the sale of certain types of merchandise specified in Paragraph 15.1 of the Ross Lease, reproduced below:

“15.1. Tenant’s Business.

Tenant’s intended use of the Store shall be as a full line department store including, at its option, the sale of soft goods merchandise, including men’s, women’s and children’s apparel, shoes, accessories, such as jewelry and cosmetics, health and beauty aids and related sundries, domestics and linens, housewares, art, pictures, posters, frames, artificial flora, office supplies, sporting goods, furniture and lamps, window and floor coverings, electronics, prerecorded audio and video merchandise and electronic games software and technological evolutions thereof, books, toys, party goods, pet supplies, luggage, packaged foods, including whole bean and ground coffee and packaged teas and tea leaves, and such other items as are sold in Tenant’s similarly merchandised stores”

14. The Landlord believes that a Burlington Store would violate the restrictions

contained in Paragraph 15.3(d) of the Ross Lease, as it would likely use more than 2,500 square feet of Leasable Floor Area for the sale of items described in Paragraph 15.1 of the Ross Lease.

15. Section 1.1(r) of the Conn's Lease contains, in pertinent part, the below provision:

In addition, Tenant shall have the right to use the Premises for any other retail use ("Other Retail Use") without any requirement to obtain the written consent of the Landlord, so long as said uses do not violate any use restriction set forth in any recorded agreement in effect as of the date of any such Other Retail Use or any Prohibited Uses (as defined below) or Restricted Uses (as defined below).

16. Section 1.1(r) of the Conn's Lease does not authorize the operation of a Burlington store at the Location because the restrictions contained in the Ross Lease, which are set forth in the recorded Memorandum, were in effect before Burlington acquired the Conn's Lease.

17. Further, the parties have not yet reached agreement on the amount that must be paid to cure rent defaults under the Conn's Lease.

18. The Landlord incorporates by reference the Cure Objection that it filed on September 9, 2024, at D.I. #546.

19. The Landlord avers that the amount that the Debtors must pay to the landlord to bring the Conn's Lease fully current (the "**Total Correct Cure Amount**") is no less than \$7,155.98.

20. The Landlord objects to any assumption of the Conn's Lease unless the Total Correct Cure Amount is paid.

21. The Landlord objects to the assignment of the Conn's Lease to Burlington and to the operation (by Burlington or anyone else) of a Burlington store, or a retail store substantially similar thereto, or any other store that would violate the restrictions in the Ross Lease.

22. The Ross Lease provides, at Paragraph 6.3(c), the following:

(c) Secondary Reduced Occupancy Period. If a Reduced Occupancy Period occurs at any time after the Commencement Date and after the satisfaction of the Co-Tenancy Conditions set forth in Section 1.7.1 and Section 1.7.2, and such Reduced Occupancy Period is not the result of an Exempted Discontinuance as hereinafter defined ("Secondary Reduced Occupancy Period"), commencing on the first day after the third (3rd) month of the Secondary Reduced Occupancy Period, Tenant's total obligation for Rent shall be replaced by Substitute Rent which shall be payable within fifteen (15) days after the close of each calendar month during the Secondary Reduced Occupancy Period and continuing until the expiration of the Secondary Reduced Occupancy Period (or earlier if Tenant terminates this Lease as hereinafter provided in this Section 6.1.3(c)). If the Secondary Reduced Occupancy Period continues for a period of twelve (12) consecutive calendar months (except in the event of an Exempted Discontinuance), then in addition to Tenant's right to pay Substitute Rent during the Secondary Reduced Occupancy Period, Tenant shall have the ongoing right to terminate this Lease upon giving Tenant's Reduced Occupancy Termination Notice to Landlord, provided Tenant's Reduced Occupancy Termination Notice is given prior to the expiration of the Secondary Reduced Occupancy Period. The provisions of this Section 6.1.3(c) shall apply to any subsequent Secondary Reduced Occupancy Period.

23. Section 2 of the Ross Lease defines "Substitute Rent" as follows:

Substitute Rent. Substitute Rent shall mean the lesser of (a) Minimum Rent, or (b) two percent (2%) of Tenant's Gross Sales during the preceding month. Substitute Rent, where applicable in this Lease, shall be paid in lieu of Minimum Rent and Reimbursements.

24. The current Minimum Rent payable under the Ross Lease is \$23,833.33 monthly.

25. In order for Substitute Rent to equal Minimum Rent (without including CAM, Real Estate Taxes or other elements of Additional Rent payable in addition to Minimum Rent), the Gross Sales of the Ross Store would have to equal \$1,191,666.50 each month, an amount that appears unachievable and (if achievable) unsustainable.

26. The triggering of Substitute Rent that would occur as a result of a Burlington store being operated in the Shopping Center (and the violation of the restrictions in the Ross Lease that such operation would represent) would significantly harm the Landlord, by steeply reducing the amount of rent payable by Ross, in violation of 11 U.S.C. §365(b)(3)(C).

27. The Landlord specifically reserves its right to object to any other relief sought by the Debtors in connection with the assumption or assignment of the Lease, including, but not limited to, claiming any additional amounts coming due under the Lease after the filing of this

Objection.

28. Full electronic copies of the documents to which this Objection refers will be provided, without charge, to any interested party requesting them.

WHEREFORE, the Landlord objects to the assignment of the Conn's Lease to Burlington.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: /s/ William J. Levant, Esquire
William J. Levant, Esquire (admitted *pro hac vice*)
Kaplin Stewart Meloff Reiter & Stein, P.C.
910 Harvest Drive; P.O. Box 3037
Blue Bell, PA 19422
Phone: (610) 941-2474
Facsimile: (610) 684-2020
wlevant@kaplaw.com
Attorneys for Landlord

Date: October 23, 2024

**IN THE UNITED STATES BANKRUPTCY COURT
for the SOUTHERN DISTRICT of TEXAS
(HOUSTON)**

In re:	:	Chapter 11
CONN'S, Inc., et als	:	
	:	No. 24-33357 (arp)

CERTIFICATION of SERVICE

I, William J. Levant, Esq. do hereby certify that on October 23, 2024, I (or the ECF system) caused a true and correct copy of the foregoing objection to be sent to each of the following persons, by email and to their firms by first class mail:

(1) Counsel to the Debtors:

Sidley Austin LLP, 1000 Louisiana St., Houston, TX 77002
Duston McFaul (dmcfaul@sidley.com),
Jackson Garvey (jgarvey@sidley.com),
Jeri Leigh Miller (jeri.miller@sidley.com),
Maegan Quejada (mquejada@sidley.com),
Michael Sabino (msabino@sidley.com)

(2) Office of the United States Trustee:

515 Rusk St., Suite 3516, Houston, Texas 77002
Jayson B. Ruff (jayson.b.ruff@usdoj.gov)

(3) Counsel to the Creditors' Committee:

Pachulski Stang, Ziehl & Jones LLP, 780 Third Avenue, New York, NY 10017
Bradford J. Sandler (bsandler@pszjlaw.com)
Paul J. Labov (plabov@pszjlaw.com)
Robert J. Feinstein (rfeinstein@pszjlaw.com)

(4) Counsel for Burlington:

Jackson Walker, LLP
Attn: Kristhy M. Peguero, Esquire (kpeguero@jw.com)
1401 McKinney Street, Suite 1900, Houston, TX 77010

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: /s/ William J. Levant, Esquire
William J. Levant, Esquire (admitted *pro hac vice*)
Kaplin Stewart Meloff Reiter & Stein, P.C.
910 Harvest Drive; P.O. Box 3037
Blue Bell, PA 19422
Phone: (610) 941-2474 / Facsimile: (610) 684-2020
wlevant@kaplaw.com
Attorneys for Landlord