IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TUPPERWARE BRAND CORPORATION, *et al.*,[1] Debtors.	Chapter 11 Case No. 24-12156 (BLS)
PARTY PRODUCTS, LLC, Plaintiff, v. SPIRIT REALTY, L.P., Defendant.	Adv. Pro. No. 25-50062 (BLS) Re: Docket No. 15

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT SPIRIT REALTY, L.P.'S MOTION TO DISMISS

Dated: June 20, 2025

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[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tupperware Brands Corporation (2333); Dart Industries Inc. (5570); Deerfield Land Corporation (0323); Premiere Products Inc. (4064); Tupperware Brands Latin America Holdings, L.L.C. (0264); Tupperware Home Parties LLC (1671); Tupperware International Holdings Corporation (8983); Tupperware Products AG (6765); Tupperware Products, Inc. (8796); and Tupperware U.S., Inc. (2010). The location of the Debtors' service address in these Chapter 11 cases is: 14901 South Orange Blossom Trail, Orlando, FL 32837.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

TABLE OF AUTHORITIES (cont'd)

Treatises

Defendant Spirit Realty, L.P. ("Spirit"), by its undersigned counsel, respectfully submits this reply memorandum of law in further support of its motion to dismiss Plaintiff Party Products, LLC's ("Party Products") Amended Complaint (the "Amended Complaint" or "Compl.").

I. PRELIMINARY STATEMENT[2]

Party Products' Amended Complaint asks this Court to do two things that *no* court has done before: *first*, to apply Section 502(b)(6) of the Bankruptcy Code to allow a non-debtor third party to recover proceeds that a landlord drew down on a letter of credit; and *second*, to invalidate a contract provision based on arguments advanced by a non-party to the contract. Party Products does not cite any authority to support these unprecedented requests. Nor can it, because binding authority precludes the relief Party Products seeks.

First, by its terms, Section 502(b) of the Bankruptcy Code provides a *defense* to a *claim against the bankruptcy estate*. Thus, the 502(b)(6) Cap serves one purpose: limiting a landlord's filed *claim against the estate.* It may not be used *offensively* by *any* party—let alone a non-debtor third party—to recover the proceeds of a validly drawn letter of credit.

Contrary to Party Products' assertion, moreover, the Third Circuit's decision in *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197 (3d Cir. 2003) does not hold otherwise. In *PPI*, the landlord filed a claim against the debtor. The Court applied the 502(b)(6) Cap to that *claim* and reduced the claim by the amount the landlord had already drawn down from the letter of credit. The Court did *not* apply the 502(b)(6) Cap to limit the landlord's draw on the letter of credit or to grant an affirmative recovery against the landlord of any amounts drawn down on the letter of credit—nor has *any* court done so.

[2] Capitalized terms used herein that are otherwise undefined are defined in the Memorandum of Law in support of Spirit's Motion to Dismiss, Dkt. 19.

Party Products claims that the rationale underlying *PPI* nevertheless warrants application of Section 502(b)(6) to Spirit's draw down on the Letter of Credit—arguing that a contrary result would expose Tupperware to liability in excess of the 502(b)(6) Cap given Party Products' purported subrogation right against Tupperware. But even assuming the validity of Party Products' subrogation argument, what Party Products is advocating for is contrary to the terms of the Bankruptcy Code. Whether the 502(b)(6) Cap *should* apply here, as Party Products argues, is beside the point—because it does *not*. And no policy argument—nor any appeal to the reasoning underlying *PPI*—is sufficient to overcome the statute's plain language. That is precisely what the Fifth Circuit held in *In re Stonebridge Techs., Inc.*, 430 F.3d 260 (5th Cir. 2005), when it declined to apply the 502(b)(6) Cap to limit a landlord's draw on a letter of credit. And importantly, the Fifth Circuit reached that holding notwithstanding that the *trustee* was seeking to apply the 502(b)(6) Cap. As a non-debtor third party, Party Products has *no* basis to seek this relief.

Nor is Party Products' claim against Tupperware "on behalf of Spirit" sufficient to change this analysis. Party Products had *no* basis to file *any* claim on Spirit's behalf, and certainly had no basis to file a claim seeking the Letter of Credit proceeds—which are not property of Tupperware's estate as a matter of law.

Second, under Florida law, only a party or an intended third party beneficiary of a contract may seek to invalidate it. Party Products is neither. Thus, even if Party Products' allegations concerning the purported unenforceability of the Liquidated Amount were sufficient—which they are not—Party Products lacks standing to assert this claim.

Party Products claims that the law of subrogation grants it standing to exercise Tupperware's contractual rights under the Lease. But it does not. Rather, subrogation allows the subrogee to step into the shoes of a *creditor* to compel payment of an obligation by the party who

should be responsible for that payment. Thus, even if subrogation allows Party Products to step into the shoes of *Spirit* to collect payment from *Tupperware*, it does not allow Party Products to step into the shoes of *Tupperware* to invalidate the Lease.

Party Products' assertion that it should be granted all the same rights as a "guarantor" under the Lease is also unsupported. Unlike a guarantor, Party Products owes no obligation to Spirit. Rather, Party Products is a party to a *separate contract* with Wells Fargo under which it agreed to reimburse Wells Fargo for any draws on the Letter of Credit. It would be contrary to the fundamental tenets of freedom of contract if Party Products—who has *no* contractual or business relationship with Spirit, whose existence was not contemplated under the Lease, and who is not an assignee of the Lease—could invalidate a provision in the Lease, merely because of a separate agreement between Party Products and Wells Fargo. As an equitable doctrine, subrogation should not be applied to produce such an inequitable result. Moreover, even if Party Products were, in fact, a guarantor under the Lease, it would be unable—as a non-debtor third party—to apply the 502(b)(6) Cap to limit its liability.

In any event, even if Party Products had standing to assert this claim, this Court lacks jurisdiction to adjudicate it because the claim does not *directly* impact Tupperware's estate. Rather, any purported impact is (i) *indirect*, because it depends on Party Products' *separate* claim in the Bankruptcy Proceeding, and (ii) *hypothetical*, because while this action may impact the size of Party Products' *claim*, it is speculative as to whether it will impact Party Products' *recovery* against Tupperware—which may be limited for reasons that have nothing to do with this action.

Accordingly, and for the reasons discussed below, Party Products' Amended Complaint should be dismissed in its entirety.

II. ARGUMENT

A. THE COURT SHOULD DISMISS PARTY PRODUCTS' CLAIM SEEKING A DECLARATION THAT THE DRAW REQUEST EXCEEDS THE 502(b)(6) CAP

1. The 502(b)(6) Cap Does Not Apply to the Draw Request Because Spirit Has Not Filed a Claim Against Tupperware's Estate

Section 502(b) states that if an "objection to a *claim* is made, the court … shall allow *such claim* in such amount," subject to certain exceptions—including the 502(b)(6) Cap. 11 U.S.C. § 502(b) (emphasis added). Thus, as the Fifth Circuit instructed in *In re Stonebridge Techs., Inc.*, "[b]y its terms, § 502(b) applies only to *claims against the bankruptcy estate*." 430 F.3d 260, 269 (5th Cir. 2005) (emphasis added). Here, Spirit did not file a claim in the Bankruptcy Proceeding because it seeks only to draw down from the Letter of Credit—which is *not* property of the debtor's estate as a matter of law. *See In re Stone & Webster, Inc*., 547 B.R. 588, 607 (Bankr. D. Del. 2016). Accordingly, the 502(b)(6) Cap does not apply.

Despite the express language of Section 502(b), Party Products argues that the Third Circuit's holding in *PPI* requires this Court to apply the 502(b)(6) Cap to Spirit's draw on the Letter of Credit. Dkt. 22 at 7-9. And Party Products urges this Court to reject the ruling in *Stonebridge*—claiming that it "conflicts" with *PPI*. *Id.* at 9-10. But this argument rests on a misrepresentation of both cases.

Contrary to Party Products' assertion, the Third Circuit in *PPI* did not hold that the 502(b)(6) Cap "applies to letter-of-credit transactions when … the letter of credit is provided as security under a lease." *Id.* at 7. Rather, the Third Circuit held that "[landlord]'s *claim* was subject to the statutory cap of 11 U.S.C. § 502(b)(6)," and it "reduced [the amount of that *claim*] by application of the letter of credit." *PPI*, 324 F.3d at 202 (emphasis added). Neither the Third Circuit nor *any court* has held that Section 502(b) may limit the landlord's recovery under a letter of credit—which would violate the plain language of the statute.

Party Products' assertion that *Stonebridge* "conflicts" with *PPI* is also false. Unlike the landlord in *PPI*, the landlord in *Stonebridge* did not file a claim against the bankruptcy estate; it merely sought to draw down on letter of credit. 430 F.3d at 264. The Fifth Circuit held that, under that circumstance, the 502(b)(6) Cap did not limit the landlord's recovery because the "plain language of § 502(b)(6) [] allows only one thing—disallowance of the *filed claim* to the extent that it exceeds the statutory cap." *Id.* at 270 (emphasis added) (internal citation omitted). The Court noted that "there is no provision of the Bankruptcy Code that allows a party to 'sue a lessor for receiving property, even property of the estate, merely because it exceeds the lease cap of Section 502(b)(6).'" *Id*. The Court explained further:

> When the Bankruptcy Code intends to create an avoidance power, it does so expressly in the language of the provision. *See, e.g*., 11 U.S.C. § 547(b); *see also Union Bank v. Wolas*, 502 U.S. 151, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991) (interpreting the scope of a trustee's avoidance powers provided under § 547). [Debtor]'s argument draws an implicit analogy between the power of trustees to avoid certain preferential transfers for the benefit of the estate and the statutory cap imposed on a lessor's lease-rejection damages claim under § 502(b)(6) that simply cannot be squared with language in the Bankruptcy Code.

Id. Importantly, the Court reached this determination notwithstanding that the party seeking to apply the Section 502(b)(6) Cap was the *trustee of the debtor.* Party Products' assertion that, as a *non-debtor third party*, it should be able to raise Section 502(b)(6) as a defense to its own payment obligation is even *less* supported.

Thus, *Stonebridge* does not "conflict" with *PPI*; it addresses a distinct scenario—one that is identical to the scenario at issue here. And it does no more than apply the plain language of Section 502(b). Indeed, far from conflicting with *PPI*, the Fifth Circuit in *Stonebridge* expressly distinguished *PPI* on the ground that the landlord in *PPI* "filed a claim against the bankruptcy estate." 430 F.3d at 271.

Party Products' assertion, moreover, that Spirit improperly avoided filing a claim to evade the 502(b)(6) Cap is false. The Lease *requires* Spirit to draw down from the Letter of Credit before it can seek recovery from Tupperware. Compl. Ex. A § 19.09. Accordingly, Spirit is prohibited from filing a claim in the Bankruptcy Proceeding unless and until it exhausts the Letter of Credit proceeds. Nor is there any basis for Spirit to file a claim seeking the Letter of Credit proceeds themselves. Those proceeds are not property of Tupperware's estate, and therefore cannot form the subject of a valid proof of claim.

Party Products' assertion that, even absent a claim by Spirit, the Third Circuit's "rationale" in *PPI* still applies, Dkt. 22 at 8, is also unsupported. Party Products claims that "principles of subrogation" permit Party Products to seek reimbursement from Tupperware in the amount of Spirit's draw down—meaning that, if not capped, Spirit's draw on the Letter of Credit exposes Tupperware to liability in excess of the 502(b)(6) Cap. Compl. ¶ 18. And Party Products filed a Proof of Claim "as subrogee of Spirit" seeking that reimbursement—citing Sections 5-117(a) and (b) of the Delaware Uniform Commercial Code in an effort to support that claim. Dkt. 22 at 8; *see also* Dkt. 16, Ex. E. But Party Products' claim against Tupperware is insufficient to subject Spirit's Draw Request to the 502(b)(6) Cap.

As an initial matter, Party Products fails to establish the validity of its claim. Section 5-117(a) of the U.C.C. provides that "[a]n issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary … and of the applicant." 6 Del. C. § 5-117(a). And Section 5-117(b) provides that "[a]n applicant that reimburses an issuer is subrogated to the rights of the issuer." 6 Del. C. § 5-117(b). Party Products appears to argue that: (i) because it assumed Tupperware's obligation to reimburse Wells Fargo, it is the "applicant that reimburses [the] issuer" and can therefore subrogate to the rights of Wells Fargo (the issuer); and (ii) once subrogated to

the rights of Wells Fargo, it can in turn subrogate to the rights of Spirit (the beneficiary). But Party Products is not the "*applicant* that reimburse[d] [the] issuer" because it did not "request" that the issuer "issue [the] letter of credit." 6 Del. C. § 5-102. Indeed, Party Products does not cite a single case suggesting that a third-party that reimburses an issuer may subrogate to the rights of the beneficiary. Party Products also fails to explain why subrogation—which is an *equitable* principle—should permit it to seek recovery from Tupperware, notwithstanding that Tupperware *assigned* to Party Products its obligation to reimburse Wells Fargo and thereby *divested* itself of any payment obligation.

But in any event, even if Party Products' claim were valid, that claim is insufficient to overcome the plain language of Section 502(b)(6). As discussed above, Section 502(b)(6), by its terms, merely provides a *defense* to *claim* in a bankruptcy proceeding. Spirit has not filed a claim and has no basis to file a claim for purposes of maintaining its right to the validly drawn Letter of Credit proceeds. Accordingly, the 502(b)(6) Cap does not apply.

2. Party Products' Proof of Claim, Purportedly Filed on Behalf of Spirit, is Impermissible Under the Bankruptcy Code

After Spirit moved to dismiss Party Products' initial complaint—and in an improper attempt to overcome the plain language of Section 502(b)—Party Products purported to file a proof of claim "*on behalf of Spirit*," in addition to the claim it filed as "subrogee of Spirit." Compl. ¶ 24. And as support for its alleged authority to file that claim, Party Products cites Section 501(b) of the Bankruptcy Code, which provides that "[i]f a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim." 11 U.S.C. § 501(b). Party Products claims that section 501(b) applies here because (i) Party Products "secured the Debtors' obligation to Landlord by assuming the reimbursement obligation to Wells Fargo"; and (ii) having allegedly "secured" that

obligation, Party Products is a "secondary obligor under the Lease" "as a matter of subrogation law." Dkt. 22 at 11-12. These arguments are unsupported.

First, Section 501(b) does not apply because Spirit did not fail to "timely file a proof of [] claim." Rather, Spirit *chose* not to file a proof of claim because it seeks only to draw down from the Letter of Credit—not to recover funds from Tupperware's estate. And as noted above, the Lease *requires* Spirit to draw down from the Letter of Credit before seeking recovery from Tupperware.

Second, the phrase "or that has secured such creditor" in Section 501(b)—which Party products appears to rely on—applies where the claimant "has acted as a surety or otherwise obligated itself personally to pay the debt in question *to the creditor*, if the Debtor fails to do so." *In re Halabu*, 501 B.R. 685, 696 (Bankr. E.D. Mich. 2012) (emphasis added). Party Products did not "obligate itself" to pay any debt *to Spirit*. That obligation rests with Wells Fargo. And even if Party Products owed some obligation to Spirit as a guarantor, as Party Products claims—which it does not—"the liability of a nondebtor guarantor … is not limited or altered by section 502(b)(6)." 4 Collier on Bankruptcy § 502.03; *see also In re Mod. Textile, Inc*., 900 F.2d 1184, 1191 (8th Cir. 1990) (holding that Section 502(b)(6) does not limit liability of non-debtor guarantor).[3]

Third, Party Products' assertion that by assuming Tupperware's obligation to reimburse Wells Fargo, it became a "secondary obligor under the Lease" "as a matter of subrogation law," Dkt. 22 at 12, is unsupported for the reasons discussed above: there is no authority granting "secondary obligor" status to a third-party that reimburses an issuer, nor any authority suggesting that Tupperware remained "primarily" liable notwithstanding its assignment to Party Products. But even if Party Products were a secondary obligor under the Lease, its subrogation rights would

[3] Party Products' reliance on *Matter of Penrod*, 50 F.3d 459 (7th Cir. 1995) is misplaced. The Court there held that a creditor may be "dragged into the bankruptcy proceeding involuntarily" by a party who is "liable *to the [] creditor*." *Id*. at 462 (emphasis added). Party Products is not liable to Spirit. And even if it were, a claim "on behalf of Spirit" seeking the Letter of Credit proceeds is improper for the reasons discussed above.

merely allow it to subrogate to the rights of Spirit to seek payment from Tupperware to satisfy its debt to Wells Fargo. Party Products' subrogation rights would *not* permit it to file a proof of claim "on behalf of Spirit" pursuant to Section 501(b) for purposes of limiting Spirit's recovery. And even if Party Products *could* file a proof of claim on Spirit's behalf, the proof of claim Party Products filed is improper because, as noted above, it seeks payment of proceeds under the Letter of Credit—which are not property of Tupperware's estate.

Accordingly, Party Products' proof of claim filed "on behalf of Spirit" is unsupported and improper. That claim is thus insufficient to subject Spirit's Draw Request to the 502(b)(6) Cap.

B. THE COURT SHOULD DISMISS PARTY PRODUCTS' CLAIM SEEKING A DECLARATION THAT THE LIQUIDATED AMOUNT CONSTITUTES AN UNENFORCEABLE PENALTY

1. This Court Lacks Jurisdiction Over This State Law Contract Claim

Party Products' assertion that this Court may adjudicate this claim pursuant to 28 U.S.C. § 1334(b) because the claim is "'related to' the bankruptcy proceeding" Dkt. 22 at 16, is unsupported.

Under the *Pacor* test, "[a]n action is 'related to' a bankruptcy proceeding if 'the outcome of that [action] could conceivably have any effect on the estate being administered in bankruptcy.'" *In re Am. Home Mortg. Holding*, 477 B.R. 517, 528 (Bankr. D. Del. 2012) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). The Third Circuit has "confirmed that the *Pacor* test requires the conceivability of a *direct* impact upon the estate." *Id.* (emphasis added). "Thus, if it is impossible for a collateral dispute between third-parties to directly impact the estate, the bankruptcy court will lack 'related to' jurisdiction." *Id.*

Here, this action has no *direct* impact on Tupperware's estate because any impact depends on Party Products' *separate* claim in the Bankruptcy Proceeding. Moreover, while the outcome of this action may impact the size of Party Products' *claim*, as it alleges, it is speculative as to whether

this action will impact Party Products' *recovery* against Tupperware's estate. Indeed, Tupperware's liability to Party Products may be limited or extinguished for reasons that have nothing to do with this action. Accordingly, Party Products cannot satisfied the *Pacor* test.[4]

2. Party Products Lacks Standing to Invalidate a Contract to Which is Not a Party

Products claims that—although it is not a party or an intended third-party beneficiary to the Lease—it has standing to challenge the enforceability of the Liquidated Amount because to hold otherwise would be to "elevate[] form over substance" and would "ignore[]" Party Products' alleged "subrogation rights" and the terms of the APA. Dkt. 22 at 18. These arguments are unsupported.

***First*,** contractual standing is a fundamental tenet of contract law; it does not "elevate[] form over substance." And in any event, that "form" is binding law, and the Court must follow it. Indeed, courts routinely dismiss contract claims for lack of standing even where, as here, the plaintiff claims to have been directly impacted by the enforcement or breach of the contract. *See, e.g., Sun Commodities, Inc. v. C.H. Robinson Worldwide, Inc.*, 2012 WL 602616, at *2-4 (S.D. Fla. Feb. 23, 2012); *H & H Laundry Corp. of Orlando v. TheLaundryList.com, Inc.*, 2010 WL 3119896, at *3 (M.D. Fla. Aug. 6, 2010).

***Second*,** Party Products fails to establish that any purported subrogation rights, or the terms of the APA, would grant Party Products standing to invalidate the Lease. "[S]ubrogation occurs where one party, by virtue of its payment of another's obligation, steps into the shoes of the party who was owed the obligation for purposes of getting recompense for its payment." *In re Pihl, Inc*., 560 B.R. 1, 9 (Bankr. D. Mass. 2016); *see also In re Stone & Webster, Inc*., 373 B.R. 353, 363

[4] Because the Bankruptcy Proceeding is post-confirmation, Party Products may even be required to satisfy the heightened standard requiring a "close nexus" to the bankruptcy plan or proceeding for purposes of "related to" jurisdiction. *In re Am. Home Mortg. Holding*, 477 B.R. at 529. The "close nexus" test "limit[s] jurisdiction to those proceedings that are 'integral to the restructuring process,'" *id.*—which Party Products cannot establish here.

(Bankr. D. Del. 2007) ("[O]ne who has been compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other."). Thus, at most, Party Products may subrogate to the rights of *Spirit* (the creditor) for purposes of seeking payment from *Tupperware* (debtor) to satisfy its debt to Wells Fargo. Party Products may not subrogate to the rights of *Tupperware* for purposes of invalidating Tupperware's contract with Spirit.

Party Products' reliance on cases concerning the rights of "guarantors" to step into the shoes of the original debtor is also misplaced. *See* Dkt. 22 at 18 n. 6. Party Products is not a "guarantor" under the Lease, nor does it owe any obligation at all to Spirit. To the extent there is a guarantor here, it is Wells Fargo. Party Products merely owes an obligation *to Wells Fargo* pursuant to *a separate contract* that has nothing to do with Spirit.

Party Products' reliance on the Delaware U.C.C. is also misplaced because, as discussed above, the pertinent U.C.C. provisions do not apply here. But even if they did, the U.C.C. "does not *grant* any right of subrogation"; it merely "remove[s] an impediment" to subrogation in the context of letters of credit and permits parties to exercise the equitable subrogation rights they would otherwise possess. 6 Del. C. § 5-117 Cmt. 1. And "[a]s an equitable doctrine, subrogation should only be applied in the exercise of a proper equitable discretion, with a due regard for the legal and equitable rights of others*." In re Stone & Webster*, 373 B.R. at 363. There is nothing equitable about what Party Products seeks to do here. Taken to its extreme, Party Products is suggesting that—in the absence of any contractual assignment—a party with a contractual payment obligation could unilaterally enter into a separate contract with a third-party requiring reimbursement of that payment obligation, and in doing so, vest that third-party with all of its rights and obligations as if it were a party to the original contract. That is an outrageous position

that would violate the fundamental principles of freedom of contract—which grant contracting parties the right to structure their relationships as they wish without the threat of third-party interference. If credited, Party Products' position would also allow parties to use subrogation as an "offensive weapon," which the U.C.C. *prohibits.* 6 Del. C. § 5-117 Cmt. 2. In this regard, Party Products' assertion that by assuming Tupperware's obligation to reimburse Wells Fargo *subject to Tupperware's defenses,* Party Products somehow obtained standing to invalidate the Lease, is misguided. The only defenses Party Products may have assumed are defenses pursuant to Tupperware's credit agreement with Wells Fargo. Those defenses have nothing to do with the Lease, or with Spirit.

Simply put, Party Products is a stranger to the Lease and under undisputed Florida law, it lacks standing to invalidate the Lease's liquidated damages provision.

3. Party Products Fails to Plausibly Allege that the Liquidated Amount Constitutes an Unenforceable Penalty

Party Products also fails to plausibly allege that the Liquidated Amount constitutes an unenforceable penalty.

First, Party Products argues that the Liquidated Amount is a penalty because the Lease allegedly allows Spirit to recover that amount "while seeking to continue exercising all of its other rights under the Lease." Dkt. 22 at 14. In particular, Party Products claims that the Lease terminates only if the Landlord provides *written notice* of the Material Default—meaning that, absent *written notice*, the Landlord may receive the Liquidated Amount without terminating the Lease. *Id.* at 19. Party Products is wrong.

Section 19.09 of the Lease plainly contemplates that payment of the Liquidated Amount will be accompanied by a termination. And both parties to the Lease understood as much. After Spirit issued the Draw Request, it did not seek Tupperware's continued performance under the

Lease, nor did Tupperware take any action consistent with an understanding that the Lease would continue. Rather, Tupperware voluntarily *vacated* the premises and *rejected* the Lease. Thus, Party Products' assertion that the Lease permitted Spirit to receive the Liquidated Amount without terminating the agreement is not only hypothetical, but it is also inconsistent with the contracting parties' course of conduct. As a non-party to the Lease, Party Products' interpretation of the Lease terms should not govern.

Second, Party Products contends that the Lease gives Spirit the "option to choose liquidated damages or to sue for action damages." Dkt. 22 at 14. But that is false. The Liquidated Amount is Spirit's "*sole and exclusive remedy*" for a Material Default within the first five years of the Lease term. Compl. Ex. A § 19.09. Thus, under no circumstance may Spirit sue for actual damages in the event of a Material Default during that time period.

Third, Party Products claims that if Spirit's Draw Request triggered a termination of the Lease, "then [Spirit]'s conduct would have violated the automatic stay, rendering all of its conduct void." Dkt. 22 at 20. But Party Products has not filed a claim seeking to void a termination of the Lease. And although it initially asserted a claim seeking a declaration that Spirit violated the automatic stay, it subsequently *withdrew that claim*. In any event, whether Spirit was entitled to terminate the Lease notwithstanding the automatic stay is immaterial because Tupperware *voluntarily vacated* the premises and *rejected* the Lease.

Finally, Party Products claims that the Liquidated Amount is "arbitrary" insofar as it "applies only during the first five years of the 11-year Lease." Dkt. 22 at 21. In particular, Party Products argues that "[w]ith respect to the last six years of the Lease, … the parties agreed that, in the event of a breach, [Spirit] would be able to recover its actual damages"—which Party Products claims is "inconsistent" with a finding that damages are *not* readily ascertainable during the first

five years of the Lease. *Id.* This argument makes no sense.

There is nothing "arbitrary" about the inclusion of a liquidated damages provision applicable to only the first five years of the Lease term. It is incontrovertible that a Material Default during the earlier portion of the Lease term would expose Spirit to greater risk and monetary loss. In any event, the fact that the parties did not *also* negotiate a liquidated damages provision applicable to the last six years of the Lease term does not have any impact at all on the enforceability of the Liquidated Amount. Rather, the pertinent question is whether the breach *at issue* results in damages that were readily ascertainable at the time of contracting. Party Products fails to allege that it does. Indeed, Party Products does not offer *any* explanation for how the parties would have gone about ascertaining Spirit's foreseeable losses. Nor would any such allegations be plausible because (i) the contracting parties expressly agreed that "it would be difficult (if not impossible) to determine Landlord's actual damages," Compl. Ex. A § 19.09; (ii) as a non-party to the Lease, Party Products has no basis to dispute or undermine the contracting parties' determination concerning the ascertainability of Landlord's foreseeable losses; and (iii) numerous Florida courts have held that damages for the loss of a real estate opportunity are *not* readily ascertainable. *See, e.g., Liork, LLC v. BH 150 Second Avenue, LLC*, 241 So.3d 920, 924 (Fla. App. 2018); *Hyman v. Cohen*, 73 So. 2d 393, 401 (Fla. 1954).

4. Party Products Fails to Allege that Spirit's Recovery of the Liquidated Amount Violates the 502(b)(6) Cap

Finally, Party Products' assertion that Spirit is seeking to "escape the effect of Section 502(b)(6) by simply attaching the label 'liquidated damages' to what [is] clearly damages for lost rent," Dkt. 22 at 15, is unsupported. Section 502(b)(6) does not apply to Spirit's Draw Request—regardless of whether the proceeds Spirit seeks are "damages for lost rent"—because those proceeds are not property of Tupperware's estate nor the subject of a claim in the Bankruptcy

Proceeding. Party Products' assertion that "[t]his precise issue was addressed in *In re Premier Ent. Biloxi, LLC*, 413 B.R. 370 (Bankr. S.D. Miss. 2009)" is false because that case did not involve a letter of credit. Party Products' reliance on *In re Builders Transort, Inc.*, 471 F.3d 1178 (11th Cir. 2006) is also misplaced. In *Builders Transport*, the Court noted that because the lessor's damages were "less than" the amount permitted under Section 502(b)(6), there was no need to even address whether the 502(b)(6) Cap applied. *Id.* at 1192.

C. THE COURT SHOULD DISMISS PARTY PRODUCTS' UNJUST ENRICHMENT CLAIM

Party Products' unjust enrichment claim should be dismissed for lack of subject matter jurisdiction and because it is entirely derivative of its meritless claim for violation of the 502(b)(6) Cap. Party Products' arguments to the contrary are unsupported for the reasons discussed above. Moreover, a plaintiff may not pursue an unjust enrichment claim where, as here, "an express contract exists concerning the same subject matter." *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696, 697 (Fla. Dist. Ct. App. 2008).

III. CONCLUSION

For the foregoing reasons, Spirit respectfully requests that the Court: (a) dismiss the Complaint with prejudice; (b) award Spirit its attorneys' fees and costs; and (c) grant such other and further relief as the Court deems just and proper.

Dated: June 20, 2025

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