

1 WILLIAM W. HUCKINS (Bar No. 201098)
IVAN M. GOLD (Bar No. 121486)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
4 Phone: (415) 837-1515
Fax: (415) 837-1516

5 Attorneys for Landlord-Creditors
6 GGP and Taubman Landlords

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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re
12 B&B LIQUIDATING, LLC,
13 Debtor and Debtor in Possession.

Case No. 2:18-bk-11744-NB
Chapter 11

**RESPONSE OF GENERAL GROWTH AND
TAUBMAN LANDLORDS TO SIENA
LENDING GROUP, LLC'S MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

Hearing Date: September 4, 2018
Time: 10:00 a.m.
Place: Courtroom 1545
Edward R. Roybal Federal Building
and U.S. Courthouse
255 East Temple Street
Los Angeles, CA 90012

21 Landlords affiliated with GGP, Inc. ("GGP") and The Taubman Company, LLC
22 ("Taubman") (collectively, the "Responding Landlords") hereby submit their response to the
23 *Notice of Motion and Motion for Relief from the Automatic Stay* [Docket No. 205] ("Motion For
24 Relief From Stay"), filed August 8, 2018 by secured lender Siena Lending Group, LLC ("Siena").

25 **I. FACTUAL AND PROCEDURAL BACKGROUND**

26 1. On February 6, 2018 (the "Petition Date"), debtor B&B Liquidating, LLC
27 ("Debtor") filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States
28 Code (the "Bankruptcy Code"). No trustee or examiner has been appointed and Debtor continues

1 to operate its business and manage its properties as a debtor-in-possession pursuant to Bankruptcy
2 Code sections 1107 and 1108.¹

3 2. Responding Landlords are the lessors or former lessors of Debtor with respect to
4 four (4) locations, as follows:

- 5 • Great Lakes Crossing, Auburn Hills, Michigan
- 6 • Mayfair Mall, Milwaukee, Wisconsin
- 7 • Stonbriar Centre, Frisco, Texas
- 8 • Twelve Oaks Mall, Novi, Michigan

9 3. There should be no serious question that each of Debtor's leases with the Objecting
10 Landlords was for a "lease of real property in a shopping center" as that term is used in
11 Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3d Cir. 1990).

12 4. While Debtor's leases at Great Lakes Crossing, Mayfair Mall and Stonebriar Centre
13 have been previously rejected [Docket Nos. 145 and 180], Debtor's store remains open and
14 operating at Twelve Oaks Mall, apparently one of three remaining stores operated by Debtor.

15 5. By this Court's *Order Granting Motion for: (1) Extension of Time In Which To*
16 *Assume or Reject Unexpired Leases of Nonresidential Real Property Through September 14,*
17 *2018; and (2) Extension of Term of Store Closing Sales Through September 14, 2018* [Docket No.
18 186] ("Extension Order"), the time to assume or reject the Mayfair Mall lease under Bankruptcy
19 Code section 365(d)(4) expires September 14, 2018.

20 6. Siena's Motion For Relief From Stay acknowledges that Debtor "is in the final
21 stages of its store closing sales" (Supplemental Declaration of Steven Sanicola supporting Motion
22 for Relief From Stay [Docket No. 205-1] at ¶ 16.) There has been little doubt since the filing of
23 this Chapter 11 case that Debtor's inventory liquidation has been conducted for the benefit of
24 Siena. Responding Landlords do not dispute that there is no possibility of a reorganization here *in*
25 *a conventional sense* (i.e., as a "going concern"). Siena's Motion For Relief From Stay is silent,
26

27 _____
28 ¹ As the Court is aware, Debtor's Chapter 11 case was filed only months after the conclusion of
a prior Chapter 11 case, In re B&B Bachrach, LLC, U.S. Bankruptcy Court (C.D. Cal.) Case
No. 2:17-bk-15292-NB.

1 however, on the potential value of litigation and other claims that have been identified that might
2 form the basis for recovery to unsecured creditors, including the landlords of Debtor's rejected
3 leases, under a liquidating Chapter 11 plan. *See Opposition To Siena Lending Group, LLC's*
4 *Motion For Relief From The Automatic Stay* [Docket No. 212] ("Committee Opposition") filed by
5 the Official Committee of Unsecured Creditors (the "Committee") at 3: 2-10. As also noted in the
6 Committee Opposition, Siena previously committed to pay, and has been paying, Debtor's post-
7 petition rent obligations but, in many cases, has failed to do so, resulting in unsatisfied
8 administrative expense claims (including sums due to Responding Landlords).² Siena's Motion
9 For Relief From Stay is silent on whether Siena intends that the stay relief requested "cut off" any
10 such funding commitment.

11 7. The Motion For Relief From Stay also fails to address the impact of the relief
12 requested on the conclusion of the Debtor's store closing sales, including at Mayfair Mall, and the
13 imminent expiration of the Section 365(d)(4) deadline to assume or reject Debtor's remaining
14 leases on September 14, 2018. Does Siena intend to cause the store closing sales to immediately
15 cease and remove unsold retail inventory and store fixtures, "to be disposed of through wholesale
16 channels" (Motion For Relief From Stay at 3: 19-21), prior to September 14th? Or does Siena
17 intend to "squeeze" a few more days of store closing sales at the remaining locations, potentially
18 jeopardizing Debtor's ability to "immediately surrender" possession of the leased premises upon
19 the deemed rejection of the store leases on that date? *See, e.g., Anderson v. Elm Inn, Inc. (In re*
20 *Elm Inn, Inc.)*, 942 F.2d 630, 633 (9th Cir. 1991) ("By operation of law, the debtor's possessory
21 interest in the lease terminated on [the date of rejection], and the lessor's right to immediate
22 surrender of the property simultaneously accrued."); *In re Ames Department Stores, Inc.*, 306 B.R.
23 43, 52 (Bankr. S.D.N.Y. 2004) ("[A]fter rejection, the debtor has no right to continued occupancy
24 of the premises it occupied under the now-rejected lease."). Absent landlord consent, Siena cannot
25 use and occupy Debtor's premises before or after September 14, 2018. *See, e.g.*, 11 U.S.C.
26 § 365(d)(4)(B)(ii) (extensions of time to assume or reject more than 210 days from petition date
27

28 ² Responding Landlords reserve their rights to separately move to compel payment of unpaid
post-petition lease obligations under Bankruptcy Code section 365(d)(3).

1 require prior written consent of affected landlord); *In re Antwerp Diamond, Inc.*, 138 B.R. 865,
2 867 (Bankr. N.D. Ohio 1992) (third party purchaser of assets not permitted to conduct liquidation
3 sales in debtor's leased premises absent assumption and assignment of leases).

4 8. There are numerous examples of bankruptcy courts examining the potential impact
5 on other creditors in consideration of whether to grant stay relief. *See, e.g., In re Wrobel*, 197
6 B.R. 289, 296 (Bankr. N.D. Ill. 1996). Here, Siena should be required to clarify the timing and
7 scope of the relief requested so the potential impact on other parties may be determined before any
8 relief is granted.

9 **II. JOINDER**

10 To the extent not inconsistent with the foregoing, Responding Landlords join any other
11 responses and objections to Siena's Motion For Relief From Stay filed by the Committee [Docket
12 No. 212] and Debtor's other landlords, including The Forbes Company [Docket No. 211].

14 Dated: August 23, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

16 By: /s/ William W. Huckins
17 William W. Huckins
18 Attorneys for GGP and Taubman Landlords

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Three Embarcadero Center, 12th Floor, San Francisco, CA 94111

A true and correct copy of the foregoing document entitled (*specify*): Response of General Growth and Taubman Landlords to Siena Lending Group, LLC's Motion for Relief from the Automatic Stay

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) August 23, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Charla L Brown charla.brown@cpa.texas.gov
- Shirley Cho scho@pszjlaw.com
- Brian L Davidoff b davidoff@greenbergglusker.com, calendar@greenbergglusker.com;
jking@greenbergglusker.com
- John P Dillman houston_bankruptcy@publicans.com
- Jeffrey W Dulberg jdulberg@pszjlaw.com
- Brian D Huben hubenb@ballardspahr.com, carolod@ballardspahr.com
- Courtney J Hull bk-chull@oag.texas.gov, sherri.simpson@oag.texas.gov
- Lillian Jordan enotices@donlinrecano.com, rmapa@donlinrecano.com
- Dare Law dare.law@usdoj.gov
- Leo D Plotkin lplotkin@lsl-la.com, hpetrilli@lsl-la.com, dsmall@lsl-la.com
- Hamid R Rafatjoo hrafatjoo@venable.com, DGlge@venable.com; bclark@venable.com; kkhoang@venable.com
- Martin W Taylor martin.taylor@troutman.com, anabel.pineda@troutman.com
- Ronald M Tucker rtucker@simon.com, cmartin@simon.com; psummers@simon.com; Bankruptcy@simon.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Elizabeth Weller dallas.bankruptcy@publicans.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) August 23, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Overnight Mail

The Honorable Neil W. Bason
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Ste. 1552
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 23, 2018
Date

Cynthia D. Lynch
Printed Name

/s/ Cynthia D. Lynch
Signature