

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:	)	CASE NO. 18-05837-hb
	)	
CAFE HOLDINGS CORP., et al. <sup>1</sup>	)	CHAPTER 11
	)	
Debtors.	)	
	)	

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**OBJECTION OF OLD MILL STREAM, LLC; MRB, LLC;  
AND M&R INVESTORS, LLC TO CURE AMOUNTS**

NOW COME Old Mill Stream, LLC; MRB, LLC; and M&R Investors, LLC (the “Landlord Parties”) and object to the *Notice of Cure Amounts and Proposed Assumption and Assignment of Executory Contracts and Leases* (Docket No. 355, the “Cure Notice”) and represent as follows:

**BACKGROUND**

1. The Landlord Parties are lessors of real property under eight prepetition leases with the Debtors (the “Leases”), pursuant to which the Debtors lease restaurant space from the Landlord Parties at eight locations in North Carolina, South Carolina, and Georgia (the “Leased Premises”).<sup>2</sup>

2. Prior to the Petition Date, the Debtors defaulted under each of their Leases and, as a result, the Landlord Parties commenced eviction proceedings in each of the counties in which the Leased Premises are located (the “Eviction Proceedings”).

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<sup>1</sup>The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863).

<sup>2</sup> The Leased Premises include the Debtors’ restaurant space located at: (a) 2007 W. Lucas Street, Florence, SC 29501; (b) 1430 E. Main Street, Lincolnton, NC 28092; (c) 5 Spartan Lane, Asheville, NC 28806; (d) 206 Highway 515 E., Blairsville, GA 30512; (e) 464 North Belair Road, Evans, GA 30809; (f) 5051 Calhoun Memorial Highway, Easley, SC 29640; (g) 1925 Boiling Springs Road, Boiling Springs, SC 29316; and (h) 6750 Pottery Road, Spartanburg, SC 29303.

3. The Debtors filed their voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”)<sup>1</sup> on November 15, 2018 (the “Petition Date”), which, among other things, stayed the Eviction Proceedings.

4. On November 28, 2018, the United States Trustee appointed an Official Committee of Unsecured Creditors of the Debtors.

5. On November 30, 2018, the Debtors filed a motion seeking (a) approval of bidding and sale procedures in connection with the sale of substantially all of the Debtors’ assets, (b) authorizing the assumption and assignment of certain of the Debtors executory contracts and unexpired leases, and (c) authorizing the sale of the Debtors’ assets free and clear of liens (Docket No. 106, the “Sale Motion”).

6. On January 10, 2019, the Court entered its *Order Regarding Bid and Auction Procedures, Establishing Deadlines and Scheduling Sale Hearing*, which, among other things, established procedures for bidding on the Debtors’ assets and the sale thereof, as well as the procedures pursuant to which counterparties to the Debtors’ leases could object to the Debtors’ proposed cure amounts for assumption of such leases under § 356.

7. On January 15, 2019, the Debtors filed the Cure Notice, which proposes the following cure amounts for the following of the Landlord Parties’ leases (the “Cured Leases”):

<b>Contract Counterparty</b>	<b>Description of Lease</b>	<b>Proposed Cure Amount</b>
Manios, James Rogers and Louis <sup>2</sup> 340 North Main St. Greenville, SC 29601	Real Property Lease Location #0001 Waccamaw, SC	\$191,781.65
MRB, LLC 1249 S. Pleasantburg Dr.	Real Property Lease Location #0005	\$47,687.50

<sup>1</sup> Subsequent references to the Bankruptcy Code are by section number only.

<sup>2</sup> M&R Investors, LLC is the successor in interest to the original lessors on this lease, James B. Rogers and Louis C. Manios.

Greenville, SC 29605	Easley, SC	
MRB, LLC 1249 S. Pleasantburg Dr. Greenville, SC 29605	Real Property Lease Location #0013 Boiling Springs, SC	\$197,880.00
Old Mill Stream, LLC 491 Connecticut Ave. Spartanburg, SC 29302	Real Property Lease Location #0015 Asheville, NC	\$166,258.90
Old Mill Stream, LLC 491 Connecticut Ave. Spartanburg, SC 29302	Real Property Lease Location #0024 Lincolnton, NC	\$159,725.30
Old Mill Stream, LLC 491 Connecticut Ave. Spartanburg, SC 29302	Real Property Lease Location #0025 Florence, SC	\$158,650.61
Old Mill Stream, LLC 491 Connecticut Ave. Spartanburg, SC 29302	Real Property Lease Location #0026 Evans, GA	\$178,778.30
TOTAL		\$1,100,762.26

8. As of the date of this Objection, the actual monetary amounts required to cure the amounts owed under the Cured Leases are as follows:

<b>Lessor</b>	<b>Debtors' Description of Lease</b>	<b>Cure Amount</b>
M&R Investors, LLC	Lease Location #0001 Waccamaw, SC	\$307,802.36
MRB, LLC	Lease Location #0005 Easley, SC	\$57,054.70
MRB, LLC	Lease Location #0013 Boiling Springs, SC	\$285,724.11
Old Mill Stream, LLC	Lease Location #0015 Asheville, NC	\$230,504.84
Old Mill Stream, LLC	Lease Location #0024 Lincolnton, NC	\$217,840.87
Old Mill Stream, LLC	Lease Location #0025 Florence, SC	\$247,217.37
Old Mill Stream, LLC	Lease Location #0026 Evans, GA	\$241,717.20
TOTAL		\$1,587,861.45

9. The Cure Notice does not include a proposed cure amount for the Debtor's eighth location owned by a Landlord Party, 206 Highway 515 E., Blairsville, GA 30512 (the "Blairsville Location"). As of the date of this Objection, the amount necessary to cure the

monetary default under the Blairsville Location lease is \$244,983.08. Itemizations of the cure amounts for all of the Landlord Parties' leases are listed in Exhibit A attached hereto.

### **OBJECTION**

Section 365(b)(1) provides that if there has been a default under an unexpired lease, the default must be cured in order for the lease to be assumed. While the Landlord Parties do not object to the assumption and cure of the Cured Leases, as set forth above, the current proposed cure amounts totaling \$1,100,762.26 are insufficient to cure the full amount of the monetary defaults under the Cured Leases, which totaled \$1,587,861.45 as of this Objection. As such, the Landlord Parties must object to the assumption of the Cured Leases in the absence of the total amount required to cure the monetary defaults under such leases being paid in full.

### **BLAIRSVILLE LOCATION**

As noted above, the Cure Notice does not set forth a proposed cure amount with respect to the Blairsville Location. In discussions with the Landlord Parties, the Debtors have thus far taken the position that the Blairsville Location lease was terminated prepetition, notwithstanding the Debtors' continued occupation of the Blairsville Location premises throughout the course of these chapter 11 cases. Old Mill Stream, LLC, the lessor under the Blairsville Location lease, remains willing to entertain the assumption of the said lease notwithstanding the fact that the Debtors did not timely list a cure amount for the lease on their Cure Notice; however, the Debtors cannot have it both ways. If the Debtors maintain the position that the lease for the Blairsville Location is terminated and do not dispute the termination, they should stipulate to relief from stay, and the premises should be immediately vacated. If, instead, the Debtors contend that the Blairsville Location lease was not terminated and thus can still be assumed and assigned, the Debtors can only do so if the cure amount of that lease is paid in full, and Old Mill

Stream, LLC, reserves any and all rights to dispute any assumption of the Blairsville Location lease in the absence of receiving payment in full of all cure amounts related thereto.

**CONCLUSION**

The cure amounts set forth in the Cure Notice are insufficient to cure the existing monetary defaults under the Cured Leases. As such, the Landlord Parties request that, in the absence of the cure amounts being paid in the actual amount necessary to cure the existing defaults, the relief sought by the Debtor be denied.

Respectfully submitted,

**MOORE & VAN ALLEN PLLC**

/s/ David B. Wheeler \_\_\_\_\_

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ATTORNEYS FOR OLD MILL STREAM, LLC;

MRB, LLC; AND M&R INVESTORS, LLC

February 1, 2019  
Charleston, SC

EXHIBIT "A"

<b>OLD MILL STREAM, LLC</b>						
Outstanding as of 1/31/2019						
	<u>Asheville</u>	<u>Blairsville</u>	<u>Evans</u>	<u>Florence</u>	<u>Lincolnton</u>	<u>Total</u>
Rent	171,048.24	199,528.44	184,256.10	167,036.55	165,285.34	887,154.67
Property Tax	36,181.92	20,377.49	32,681.19	56,387.05	29,797.81	175,425.46
Late Fees	14,301.62	15,429.13	15,173.21	13,789.07	13,896.55	72,589.58
Interest	8,973.06	9,648.03	9,606.70	10,004.70	8,861.17	47,093.65
<b>Total</b>	<b>230,504.84</b>	<b>244,983.08</b>	<b>241,717.20</b>	<b>247,217.37</b>	<b>217,840.87</b>	<b>0.00</b>
						<u>1,182,263.36</u> <b>Math Check</b>

<b>MRB, LLC</b>			
Outstanding as of 1/31/2019			
	<u>EASLEY</u>	<u>BOILING SPRGS</u>	<u>Total</u>
Rent	57,054.70	206,868.75	263,923.45
Property Tax		55,570.16	55,570.16
Late Fees		23,285.20	23,285.20
Interest			0.00
<b>Total</b>	<b>57,054.70</b>	<b>285,724.11</b>	<b>0.00</b>
			<u>342,778.81</u> <b>Math Check</b>

<b>M &amp; R INVESTORS, LLC</b>			
Outstanding as of 1/31/2019			
	<u>WACCAMAW</u>		<u>Total</u>
Rent	236,983.00		236,983.00
Property Tax	47,987.03		47,987.03
Late Fees	22,832.33		22,832.33
Interest			0.00
<b>Total</b>	<b>307,802.36</b>	<b>0.00</b>	<b>0.00</b>
			<u>307,802.36</u> <b>Math Check</b>

<b>TOTAL ALL PROPERTIES</b>	<u><b>1,832,844.53</b></u>
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**CERTIFICATE OF SERVICE**

I, David B. Wheeler, do hereby certify that on February 1, 2019, I served the below-named document upon the parties listed below by electronic mail and/or facsimile:

**OBJECTION OF OLD MILL STREAM, LLC; MRB, LLC;  
AND M&R INVESTORS, LLC TO CURE AMOUNTS**

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All parties requesting electronic notification

<sup>1</sup>The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863).



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