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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
Quebecor World (USA) Inc., <u>et al.</u> ,	:	Case No. 08-10152 (JMP)
	:	Jointly Administered
Debtors.	:	
	:	Honorable James M. Peck

**MOTION BY BANC OF AMERICA LEASING & CAPITAL, LLC
(I) TO COMPEL DEBTOR, PURSUANT TO SECTION 365(D)(5) OF THE
BANKRUPTCY CODE, TO PERFORM ITS OBLIGATIONS UNDER
A CERTAIN LEASE AGREEMENT, AND (II) GRANTING BANC OF AMERICA
LEASING & CAPITAL, LLC AN ADMINISTRATIVE EXPENSE CLAIM**

The Movant, Banc of America Leasing & Capital, LLC ("BALC"), by and through its attorneys, Benanti & Associates, hereby moves for an order compelling Quebecor World (USA) Inc. (the "Debtor") to perform obligations under a certain lease agreement, and granting BALC an administrative expense claim. In support of this Motion, BALC respectfully represents and alleges as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. As a contested matter, Bankruptcy Rules 4001(a) and 9014 also apply. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

2. Venue of this contested matter is proper pursuant to 28 U.S.C. §1408.

3. The statutory predicates for the relief requested herein are Sections 365(d)(5) and 503 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

Background

4. On January 21, 2008 (the "Petition Date"), the Debtor filed a voluntary Chapter 11 petition under Title 11 of the Bankruptcy Code.

5. Since the Petition Date, it is believed that the Debtor is presently operating its business and managing its property as a debtor-in-possession.

6. BALC is a Delaware limited liability company.

7. World Color Press, Inc. ("World Color") executed and delivered to NationsBanc Leasing Corporation of North Carolina ("NationsBanc") a certain Lease Agreement, together with Lease Supplement No. 1 thereto, each dated as of February 25, 1994, plus certain schedules, documents, agreements or instruments executed and/or delivered in connection therewith (said Lease Agreement, Supplement No. 1, together with any schedules, documents, agreements or instruments executed and/or delivered in connection therewith sometimes hereinafter collectively referred to as the "Lease"). Pursuant to the Lease, World Color leased from NationsBanc a certain Cerutti Flexographic Press and related equipment as described in the Lease (collectively, the "Press"). A copy of the Lease is attached hereto as Exhibit A, incorporated herein and made a part hereof.

8. World Color merged into and with the Debtor and, as a result of the same, the Debtor succeeded to any of World Color's right, title and interest in and to the Lease and the Press.

9. BALC succeeded to all of the right, title and interest of NationsBanc in and to the Lease and the Press. As a result, BALC is the owner and holder of the Lease, and the lessor of the Press.

10. The Lease expired or terminated by its terms on August 24, 2008 (the "Lease Termination Date").

11. Under the Lease, the Debtor was obligated to pay to BALC semi-annual rent payments of \$740,744.67 (at a per diem rate of \$4,115.24) on each of February 24, 2008 and July 24, 2008. The portion of the foregoing rent payments owed to BALC from the Petition Date through the sixtieth date following the Petition Date (the "Sixty-Day Date") is \$246,914.89 (the "Sixty Day Rent"), and the portion of the rent payments owed to BALC after the Sixty-Day Date and through and including the Lease Termination Date is \$724,282.24 (the "Post Sixty-Day Rent").

12. Section 15 of the Lease provides, among other things, that upon the Lease Termination Date, unless the Debtor exercises its option to purchase the Press as provided in the Lease, the Debtor shall "surrender, at its own expense, possession of the [Press] to Lessor or Lessor's transferee or assignee at the location specified in Annex A of the relevant Lease Supplement [the "Surrender Location"]...in the condition required to be maintained under Section 7 hereof (which shall include the repair by Lessee of any damage to the [Press] or any part caused by a severable modification or the removal thereof) and prepared for shipment..." The Surrender Location, as specified in Annex A of the Lease, is 2201 Cooper Avenue, Merced, California. Section 15 of the Lease also provided that the obligations of the Debtor under said Section 15 survived the termination of the Lease.

13. Upon information and belief, after the Petition Date¹, the Debtor used the Press in the day-to-day conduct of its business operations as a debtor-in-possession; however, the Debtor failed (i) to pay to BALC any sums on account of such use of the Press during the pendency of the within bankruptcy case, and/or (ii) commencing after the Sixty-Day Date to timely perform all of its obligations arising under the Lease.

14. Moreover, the Debtor failed as of the Lease Termination Date to either exercise its option to purchase the Press in accordance with the terms of the Lease or to surrender the Press, prepared for shipment and in the condition required by the Lease, to BALC at the Surrender Location as required under the Lease.

RELIEF UNDER 11 U.S.C. §365(d)(5)

15. Paragraphs 1 through 14, hereinabove, are hereby incorporated, restated and realleged.

16. Section 365(d)(5) (formerly Section 365(d)(10)) provides, inter alia, as follows:

The trustee shall timely perform all of the obligations of the debtor ... first arising from or after 60 days after the order for relief in a case under chapter 11 ... under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise....

This provision was first added to the Bankruptcy Code in 1994 "to protect the interests of equipment lessors in chapter 11 cases." In re Eastern Agri-Systems, Inc., 258 B.R. 352, 354 (Bankr. E.D.N.C. 2000). Section 365(d)(5) allows the debtor a limited, sixty (60) day "breathing period" within which to make an informed decision concerning the assumption or rejection of a

¹ BALC was informally advised by the Debtor that at some point during this bankruptcy case it intended to cease using the Press during its daily business operations; however, BALC never received confirmation that the Debtor ever ceased use of the Press.

lease. In Re Elder-Beerman Stores Corp., 201 B.R. 759, 763 (Bankr. S.D. Ohio 1996). After such period, the debtor is required to timely perform all of its obligations under an unexpired lease. See In re Magnolia Gas Company, L.L.C., 255 B.R. 900, 917 (Bankr. W.D.Okla. 2000); In Re Eastern Agri-Systems, Inc., 258 B.R. at 355; In Re Elder-Beerman Stores Corp., 201 B.R. at 763 (lessor of personal property is automatically entitled to rent payments after the expiration of the sixty (60) day post-petition period).

17. The Sixty-Day Date passed approximately five (5) months ago, yet the Debtor has failed to timely pay BALC any of the Post Sixty-Day Rent. Moreover, despite the passing of the Lease Termination Date and the Debtor's failure to exercise its option under the Lease to purchase the Press, the Debtor failed to surrender the Press, prepared for shipment and in the condition required by the Lease, to BALC at the Surrender Location.

18. BALC requests that this Court order the Debtor to perform all of its obligations that have arisen under the Lease, including, without limitation, paying the Post Sixty-Day Rent and surrendering the Press to BALC, prepared for shipment and in the condition required by the Lease, at the Surrender Location.

RELIEF UNDER 11 U.S.C. §503

19. Paragraphs 1 through 14, hereinabove, are hereby incorporated, restated and realleged.

20. Section 503(b)(1)(A) of the Bankruptcy Code provides that the actual, necessary costs and expenses of preserving the Debtor's estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. Under Section 503, the debtor must pay to the lessor a reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. See In re Patient Education Media, Inc., 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 531 (1986) ("If the

debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services...). The Second Circuit has also recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor for use of leased property. See Farber v. Wards Co., 825 F.2d. 684, 689-90 (2d Cir. 1987); In re ICS Cybernetics, Inc., 111 B.R. 32 (Bankr. N.D.N.Y. 1989).

21. The use of the Press by Debtor after the commencement of the within Chapter 11 case was necessary to preserve, and provided a benefit to, the Debtor's estate.

22. The fair and reasonable aggregate value of the Debtor's use of the Press from the Petition Date through the Sixty-Day Date is \$246,914.89, and BAL is entitled to an administrative expense claim for this amount.

23. BALC requests that the Court order the Debtor to pay BALC forthwith as administrative expenses, the amount of \$246,914.89 for the Debtor's use of the Press from the Petition Date through the Sixty-Day Date.

24. The relief requested herein has not been previously requested of this or any other Court.

WHEREFORE, for all of the foregoing reasons, BALC respectfully requests that the Court issue an order:

1. Compelling the Debtor to perform all of its obligations arising under the Lease, including, without limitation, paying the Post Sixty-Day Rent and surrendering the Press to BALC, prepared for shipment and in the condition required by the Lease, at the Surrender Location;

2. Compelling the Debtor to pay BALC forthwith as administrative expenses, the amount of \$246,914.89 for the Debtor's use of the Press from the Petition Date through the Sixty-Day Date; and

3. Granting BALC such other and further relief as the Court deems just.

Dated: Stamford, Connecticut
September 16, 2008

BANC OF AMERICA LEASING &
CAPITAL, LLC

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