

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

WORDSWORTH ACADEMY, *et al.*¹,

Debtors.

Chapter 11

Case No. 17-14463 (AMC)

**RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO THE DEBTORS' MOTION TO ASSUME HENRY AVENUE LEASES**

The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the cases (the "**Cases**") of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), by and through its counsel, submits this response to the *Motion of Debtors for Entry of an Order Authorizing Assumption of Certain Unexpired Leases for 3300 Henry Avenue* [Docket No. 281] (the "**Motion**") and respectfully represents as follows:

INTRODUCTION

1. On June 30, 2017 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "**Bankruptcy Code**") with the United States Bankruptcy Court for the Eastern District of Pennsylvania.
2. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. On July 14, 2017, the United States Trustee for Region 3 appointed the Committee.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

BACKGROUND

4. One of the Debtors, Wordsworth Academy (“**Wordsworth**”), leases its headquarters space at 3300 Henry Avenue, Philadelphia, Pennsylvania pursuant to three (3) separate leases covering the first and sixth floors, second floor, and a storage area (collectively, the “**Leases**”).

5. The lease for the first and sixth floors expires in June 2023. The rent under that lease is \$39,557.31 per month and escalates to \$46,168.56 per month in the final year. The lease for the second floor expires in February 2021. The rent under that lease is \$26,875.50 per month and escalates to \$28,997.25 per month in the final year. The storage area is utilized by Wordsworth under a license agreement under which it pays \$515 per month. Thus, the total amount of rent due under the Leases – currently and in the future – is significant.

6. On September 12, 2017, the Debtors filed the Motion, through which they seeking to assume the Leases pursuant to section 365 of the Bankruptcy Code on the grounds that the use of the premises is necessary for the Debtors’ operations. Assumption of the Leases may also facilitate a landlord waiver in connection with the Siena DIP Loan.

7. The Debtors have circulated a joint Chapter 11 Plan to the Committee, and have received the Committee’s preliminary comments to the proposed Plan. The Committee understands that modifications to the Plan will be made and that the Debtors intend to file it and a Disclosure Statement sometime during the week of October 2, 2017. The Committee has not yet been provided with a copy of a revised Plan.

ASSUMPTION OF THE LEASES IS PREMATURE

8. The Committee does not oppose the Debtors’ assumption of the Leases. However, the Committee believes any assumption to be premature given that a process to confirm a Plan is about to commence. Accordingly, the Committee submits that the Debtors’

assumption of the Leases should be accomplished in the Plan confirmation context. To enable the Debtors to seek the assumption of the Leases through the confirmation process, the Committee also submits that the Debtors' time to assume the Leases, which currently expires on October 30, 2017, should be extended.

9. Assuming the Leases requires the Debtors to immediately cure all arrears. It is the Committee's understanding that there is presently a dispute as to the amount needed to cure arrears. Nevertheless, curing any arrears will have a meaningful economic impact on the Debtors. Moreover, if after assumption, the Debtors find themselves unable to successfully emerge from bankruptcy, the landlord could assert an unlimited claim with administrative priority. *See, e.g., Nostas v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 28 (2d Cir. 1996); *Fago v. Two Anco Drive Assoc.*, 2015 WL 5665623 *2 (D.N.J., Sept.25, 2015); *In re Juvnelliano*, 464 B.R. 651, 654 (Bankr. D. Del. 2011) ("This Court agrees with the case law holding that damages resulting from the post-confirmation breach of an assumed lease give rise to an administrative expense claim."); *In re Vision Metals, Inc.*, 311 B.R. 692, 699 (Bankr. D. Del. 2004); *In re Pearson*, 90 B.R. 638 (Bankr. D.N.J. 1988).

10. The Committee is mindful of the Debtors' position that assumption of the Leases will facilitate obtaining a landlord waiver in connection with the Sienna DIP Loan. That, however, is only one aspect of assumption to be considered by the Debtors in the exercise of their fiduciary duties. Another is the potential detrimental impact on the estates and creditors by a premature assumption. This is not a situation where confirmation is months or years away. As stated above, it is believed that a Plan will be filed before the expiration of the current week, and that the Debtors will request that the Court schedule a hearing to confirm the Plan in late November or early December. Thus, the landlord will not be prejudiced by delaying assumption for a couple of months. However, it is possible that a premature assumption will significantly

harm the Debtors' creditors. While the Committee is not suggesting that the Debtors will not be able to ultimately confirm a Plan, in no chapter 11 case is confirmation of a plan assured. If a Plan is not confirmed in this case, and the Leases are ultimately rejected, the significant administrative claim that could be asserted by the landlord would impact distributions to unsecured creditors. As a result, the Committee believes that it is premature for the Debtors to assume the Leases.

11. Based on the foregoing, the Committee requests that the assumption be effectuated as part of the Plan process, and that the Debtors' time to assume the Leases be extended through a confirmation hearing. Alternatively, the Committee requests that any order authorizing the Debtors' assumption of the Leases be effective at the same time as the effective date of a Plan that is confirmed by the Court, and of no effect if a Plan is not ultimately confirmed.

Respectfully submitted,

Date: October 3, 2017

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