

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:) Chapter 11
))
CBC RESTAURANT CORP., et al.¹) Case No. 23-10245 (KBO)
))
Debtors.) (Jointly Administered)
))
) Re: Docket Nos. 361, 418, 469, 521, 549
))
) **Post-Auction Objection Deadline:**
) **June 1, 2023 @ 1:30p.m.**
) **Hearing: June 1, 2023 @ 1:30p.m.**

**SUPPLEMENTAL OBJECTION
AND RESERVATION OF RIGHTS OF HALF BAKED, LLC TO THE (I) NOTICE OF
POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT TO EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS AND (II) PROPOSED
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS**

Half Baked, LLC (“HB”), by and through the undersigned counsel, files this supplemental objection and reservation of rights (the “Supplemental Objection”) to the *Notice of Possible Assumption and Assignment with Respect to Executory Contracts and Unexpired Leases of the Debtors* [D.I. 418] (the “Notice”), and the proposed sale of the Debtors’ assets pursuant to the *Order (I) Approving Bidding Procedures In Connection With The Sale Of Substantially All Of Debtors’ Assets, (II) Scheduling Bid Deadlines And The Auction, (III) Approving Form And Manner And Notice Thereof, And (IV) Granting Related Relief* [D.I. 361] (the “Bid Procedures Order”). In support thereof, HB respectfully states:

BACKGROUND

1. HB is a franchisee, and a counter-party to Debtor, CBC Restaurant Corp. pursuant to: (1) that certain Corner Bakery Cafe® Franchise Agreement dated March 28, 2014, for a

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown, PA 18940.



franchise location in Bowling Green, Kentucky (the “Bowling Green Agreement”); and (2) that certain Corner Bakery Cafe® Franchise Agreement dated June 11, 2018, for a franchise location in Nashville, Tennessee (the “Nashville Agreement” and together with the Bowling Green Agreement, the “HB Franchise Agreements”).

2. On May 24, 2023, HB filed its *Objection and Reservation of Rights to Notice of Possible Assumption and Assignment with Respect to Executory Contracts and Unexpired Leases of the Debtors and (II) Proposed Sale of Substantially All of the Debtors’ Assets* [D.I. 521].

3. On May 26, 2023, HB received a confidential letter from the Debtors concerning purported adequate assurance information from SSCP Restaurant Investors, LLC (“SSCP”), as a prospective bidder in the Auction (the “SSCP Adequate Assurance Letter”).

4. Pursuant to the Bid Procedures Order², as soon as is reasonably practicable following the conclusion of the Auction but no later than May 31, 2023, at 8:00 a.m. (prevailing Eastern Time), the Debtors were to file a notice of the Auction results and serve such notice by electronic mail (if known), or otherwise by overnight mail, on Counterparties, and their counsel, if known, and any other parties that have requested service pursuant to Bankruptcy Rule 2002.

5. It is understood that the Auction continued in a multi-day session. An Amended Notice of Agenda of Matters Scheduled for Hearing on June 1, 2023 at 1:30p.m. ET was filed [Docket Nos. 549] referencing SSCP as the Successful Bidder (the “Amended Agenda”). However, as of the filing of the Amended Agenda, no notice was filed identifying the Auction results or Successful Bidder, and HB did not receive any notice by electronic mail. The Amended Agenda notes generally that the Debtors and Successful Bidder seek to adjourn “cure” objections to the next omnibus hearing.

6. Pursuant to the Bid Procedures Order, objections to the selection of the Successful

² Terms not defined herein shall have the meaning ascribed to them in the Bid Procedures Order.

Bidder, or to Successful Bidder's ability to demonstrate adequate assurance of future performance under the Potential Assumed Contracts may be made at the Sale Hearing (the "Post-Auction Objection Deadline").

7. HB hereby supplements its Objection as provided herein in connection with the Post-Auction Deadline and to the extent objections to adequate assurance of future performance are not actually heard at the Sale Hearing.

SUPPLEMENTAL OBJECTION

The SSCP Adequate Assurance Letter Is Woefully Insufficient to Provide Adequate Assurance of Future Performance

8. While the Debtors are focused on obtaining entry of an order approving the Sale, HB cannot simply stand by and wait for the adjournment of the Debtors' responsibilities under the HB Franchise Agreements or to provide adequate assurance of future performance until the next omnibus hearing. While HB awaited the Sale Hearing, HB has been clear and frankly emphatic that it cannot afford to go forward, that operating its locations are an ongoing "dumpster fire" given the Debtors' ongoing defaults under the HB Franchise Agreements, and that staggering losses exceeding \$475,000 per annum (specifically, 2022 losses being \$183,182.19 at Bowling Green and \$305,150.24 at Nashville) simply cannot be sustained. HB cannot bang the drum loud enough here and is at a loss as to the inclusion of such locations in the Notice for possible assumption and assignment. In short, HB respectfully submits that the Debtors' inaction torpedoed their locations beyond repair, and that bringing in someone new – with all due respect to the Successful Bidder – is not going to change the outcome. To that end, HB requests that the Debtors and Successful Bidder remove the HB Franchise Agreements from the list of potential assignees and reject such agreements. HB should not be left in the lurch for another 30 plus days for the Successful Bidder to "potentially" designate the assumption/assignment of franchise locations that can and will

shutter.

9. HB further opposes the assumption and assignment of the HB Franchise Agreements on the basis that the Debtors and now Successful Bidder have still not met the requirements of Section 365(b)(1)(C), as the Debtors have yet to provide actual evidence to demonstrate adequate assurance of future performance by the Successful Bidder. The SSCP Adequate Assurance Letter provided nothing more than a cursory overview of biographies of personnel and background on affiliated entities of SSCP. The SSCP Adequate Assurance Letter was void of any demonstration of the financial wherewithal (i.e., capitalization, cash reserves, etc.) of the Successful Bidder to perform the duties and obligations of a franchisor under the HB Franchise Agreements or the Successful Bidder's capitalization of operations on a go-forward basis. It was clearly a "check the box" letter that leaves potential assignees wanting or waiting for further information.

10. In accordance with section 365 of the Bankruptcy Code, HB must be provided with sufficient information with respect to adequate assurance of future performance prior to potential assumption and assignment of the HB Franchise Agreements. At a minimum, the Debtors must provide to contract counter-parties (such as HB) adequate assurance that the Successful Bidder: (a) has or promptly will cure any and all defaults under the HB Franchise Agreements; (b) has sufficient experience to support a nationally franchised brand in the restaurant industry; (c) demonstrate a financial condition and operating performance that can satisfy the obligations of the HB Franchise Agreements; and (d) has the financial wherewithal to operate and support any assumed liabilities contemplated in the Sale. The Successful Bidder has not provided such evidence to date, and HB should simply not be left in purgatory on its franchise agreements until the next omnibus hearing.

RESERVATION OF RIGHTS

11. Nothing in this Supplemental Objection is intended to be, or should be construed as, a waiver by HB of any of its rights under either of the HB Franchise Agreements, the Bankruptcy Code, or applicable law. HB expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Supplemental Objection concerning SSCP's purported adequate assurance of future performance, the Sale, or a proposed Sale Order; (b) assert further nonmonetary defaults under the HB Franchise Agreements; and/or (c) assert any further objections as it deems necessary or appropriate.

CONCLUSION

WHEREFORE, HB requests that the Court: (a) sustain the Objection and Supplemental Objection; and (b) grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

CAROTHERS & HAUSWIRTH LLP

Dated: June 1, 2023

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