

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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IN RE:

CASE NO.: 20-14695-LMI

CINEMEX USA REAL ESTATE
HOLDINGS, INC., CINEMEX
HOLDINGS USA, INC., and CB
THEATER EXPERIENCE, LLC,

Chapter 11

(Jointly Administered)

Debtors.

**LIMITED OBJECTION OF 400 EAST 62ND PROPERTIES, LLC TO THIRD
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

400 East 62nd Properties, LLC (the “**62nd Street Landlord**”), a creditor and former landlord herein, by and through its undersigned counsel, files this Limited Objection (the “**Limited Objection**”) to the *Third Amended Joint Chapter 11 Plan of Reorganization of Cinemex USA Real Estate Holdings, Inc., Cinemex Holdings USA, Inc. and CB Theater Experience LLC* [ECF No. 772] (the “**Plan**”), and in support thereof states as follows:

PRELIMINARY STATEMENT

The 62nd Street Landlord was formerly the Debtors’ landlord for premises located in New York City. In a pending motion to be heard some time after confirmation, the 62nd Street Landlord seeks an administrative claim against the Debtors in the amount of \$373,500.00. Since the Plan is unclear as to who will be responsible for satisfying such claim upon allowance, or whether there will be funds available to satisfy such claim, the Debtors should be required to escrow an amount equal to the 62nd Street Landlord’s administrative claim pending allowance by this Court.

BACKGROUND AND ARGUMENT

1. The 62nd Street Landlord is the owner and lessor of certain non-residential real property located at 400 East 62nd Street, New York, New York (the “**Premises**”) pursuant to a certain Lease Agreement dated as of October 1, 2016 by and between Landlord and Cinemex East 62nd St., LLC (the “**Lease**”). On January 22, 2019, the 62nd Street Landlord was provided a Notice of Assignment by Merger assigning the Lease to CB Theatre Experience, LLC (the “**Debtor**”).

2. Pursuant to the Lease, the Debtor was obligated to remit Fixed Rent (as defined in the Lease) at the rate of \$1,800,000.00 per year, or \$150,000.00 per month. In addition, the Debtor was obligated to pay Additional Rent (defined in the Lease as Percentage Rent, Tax Payments and other amounts that became due and payable under the Lease).

3. The Debtors rejected the Lease, although an open issue remains the effective date of rejection.¹

4. On September 25, 2020, the 62nd Street Landlord filed its *Motion of 400 East 62nd Street Properties, LLC for Allowance of Administrative Expense Claim* [ECF No. 614] (the “**Administrative Claim Motion**”). The Debtors filed a response to the Administrative Claim Motion on October 1, 2020 [ECF No. 678].

5. Pursuant to the Administrative Claim Motion, the 62nd Street Landlord asserts a post-petition claim against the Debtors in the amount of \$373,500.00 (the “**62nd Street Landlord Claim**”), which includes rent through the effective date of rejection and the balance as a use and occupancy claim through the date the Debtors finally removed their personal property and vacated the Premises.

¹ See ECF Nos. 72, 373 and 518. The 62nd Street Landlord stipulated that the outside effective date of rejection is June 8, 2020.

6. By Order dated October 8, 2020 [ECF No. 696], the Administrative Claim Motion was abated until confirmation of the Debtors' Plan.

7. The Debtors' Plan provides that a holder of Allowed General Administrative Claim² will receive Cash equal to the amount of such Claim either on the Effective Date or 60 days after such Claim becomes Allowed by a Final Order [Plan at p. 16]. However, the Plan is unclear as to who will be responsible for such payment (i.e., the Debtors or the Reorganized Debtors), and whether there will be funds available or otherwise set aside for payment of such Claims.

8. While the Plan creates a special Professional Fee Escrow Account to ensure that the \$10.5 million plus sought by the professionals in this case will be satisfied and paid at confirmation [Plan at p. 17], no such mechanism is set up for the benefit of Administrative Claims that might not be allowed until sometime after the Effective Date.

9. Section 1129(a)(11) requires that confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtors or Reorganized Debtors.

10. Given that the Administrative Claim Motion will likely not be resolved for a period of time, the 62nd Street Landlord requests that as part of confirmation of the Plan, the Debtors be required to escrow an amount equal to the 62nd Street Landlord Claim pending resolution of such claim.

² Capitalized terms not defined herein shall have the meaning ascribed in the Plan.

WHEREFORE, 400 East 62nd Properties, LLC respectfully requests that the Court enter an Order sustaining this Limited Objection and granting any other relief the Court deems just and proper.

Respectfully submitted on November 18, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification upon all interested parties registered to receive electronic notification (which is incorporated herein by reference) on this on this 18th day of November, 2020.

By: /s/ Glenn D. Moses
Glenn D. Moses, Esq.