

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

THE PRESENT CO., INC.

Case No. 91-23618 K

Debtor

MEMORANDUM OF DECISION

The Court is in full accord with those cases holding that the Court has discretion, under 11 U.S.C. § 365(d)(4), to grant successive extensions of time to assume or reject a lease. The Court is particularly persuaded by the learned analysis set forth by the District Court of the Eastern District of New York.<sup>1</sup>

I conclude that authority exists for the extension of time here. However, I find that where, as here, the leased property is vacant and the "cause" for which the debtor seeks an extension is simply to attempt to find a buyer for the leasehold (to the exclusion of similar efforts by the landlord), an extension would not comport with Congress' intention (as manifested in

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<sup>1</sup>*TIGR Restaurant, Inc. v. Rouse S.I. Shopping Center, Inc.*, 79 B.R. 954 (E.D.N.Y. 1987).

Senator Hatch's comments)<sup>2</sup> to avoid "long-term vacancy of space by a bankrupt tenant." As stated by Senator Hatch, when "tenant space has been vacated for extended periods of time before the bankruptcy court forced the trustee to decide whether to assume or reject the lease ... the other tenants of the shopping center [or of the plaza or vicinity] are hurt because of the reduced customer traffic in the shopping center [or locale]."

The case at bar is a liquidating Chapter 11 case; therefore the countervailing goal of encouraging reorganization and rehabilitation is not frustrated by the debtor's loss of the lease. It must be recognized that what is to be balanced is the debtor's right to decide whether to assume or reject, on the one hand, and the lessor's (and other neighboring businesses') right to be free from undue uncertainty on the other hand.<sup>3</sup> Protection of the debtor's right to decide whether to assume or reject ought not to necessitate granting time to try to find a buyer on terms at which assumption (and assignment) would be desirable for the estate, and sustainable over the objection of the landlord. A contrary

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<sup>2</sup>130 Cong. Rec. S8891 (daily ed. June 29, 1984) (statement of Sen. Hatch).

<sup>3</sup>*TIGR Restaurant*, 79 B.R. at 960.

conclusion would be irreconcilable with the notion of protecting the landlord from undue uncertainty.

The debtor is hereby granted only 10 days from the date of this Order in which to file and serve a motion to assume or to reject the lease, said motion to be returnable at the earliest available return date in Buffalo, so that this matter need not await the Court's September 25, 1992 Rochester calendar.

SO ORDERED.

Dated: Buffalo, New York  
August 19, 1992

**/S/ MICHAEL J. KAPLAN**

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U.S.B.J.