

The Honorable Karen A. Overstreet
Chapter: 11
Hearing Date: March 22, 2013
Hearing Time: 9:30 a.m.
Hearing Location: Seattle
Response Date: March 20, 2013

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re
WEST SEATTLE FITNESS, LLC,
Debtor.

NO. 12-18818-KAO

OBJECTION TO MOTION FOR ORDER
(1) APPROVING SALE OF ASSETS
FREE AND CLEAR OF LIENS
PURSUANT TO SECTION 363; AND
(2) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT, AND REJECTION
OF CERTAIN EXECUTORY
CONTRACTS PURSUANT TO
SECTION 365

GRE 509 Olive LLC (“GRE”) objects to the Motion for Order (1) Approving Sale of Assets Free and Clear of Liens Pursuant to Section 363; and (2) Authorizing the Assumption and Assignment, and Rejection, of Certain Executory Contracts Pursuant to Section 365 (the “Motion”).

GRE is scheduled as a secured creditor of West Seattle Fitness, LLC (the “Debtor”) as being owed approximately \$2.5 million. As the Trustee acknowledges in the Motion, GRE filed a UCC financing statement in November 2009, which covers virtually all assets of the Debtor. A copy of the financing statement is attached as **Exhibit A**. In support of its objection, GRE states as follows:

OBJECTION TO MOTION FOR ORDER - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 1. The Sale Generates No Value to the Estate. The Trustee proposes to sell all of the
2 fitness equipment, fixtures, furniture, inventory and certain intangible personal property that
3 includes customer lists for a mere \$75,000. GRE has a security interest in all of these assets.
4 Unless the Trustee can avoid GRE's lien or obtain a section 506(c) surcharge, none of the
5 proceeds will go to the estate. GRE will oppose any efforts to invalidate the lien or impose a
6 surcharge, so even if the Trustee succeeds the monies will be reduced by the costs of litigation.
7 Two other secured creditors have been identified in the Motion, so the Trustee will need to incur
8 additional legal fees to avoid those liens or impose a surcharge. And the Trustee acknowledges
9 that any remaining sale proceeds will be used only to pay costs of administration—there will be
10 no money to pay any unsecured claims. The Court should not approve a sale that may pay, at the
11 very best, some administrative expenses.

12 2. No Evidence the Buyer Can Perform. According to the Motion, an important
13 aspect of the proposed sale is the Buyer's assumption of month-to-month memberships in good
14 standing and all post-petition prepaid Club memberships (the "Assigned Contracts"). But no
15 information about this Buyer is presented, and there is no evidence that the Buyer will be able to
16 successfully operate and perform in the future. The Court should be aware that the principal of
17 the Buyer is subject to a non-compete agreement with GRE, and it appears that his acquisition
18 and operation of the Club will violate that agreement. See Section 5 of the Agreement
19 Regarding Health Club Lease, a true and correct copy of which is attached as **Exhibit B**. If this
20 Buyer fails, there will be defaults under all of the Assigned Contracts that the Trustee has
21 assumed.

22 3. No Evidence a Significant Condition will be Satisfied. One significant condition
23 to closing is the Buyer must execute a new real property lease with the landlord. There is no
24 evidence that the proposed Buyer can accomplish this task or, if so, when that will happen. If the
25 Court is inclined to approve the sale, there should be a drop dead date in the order for the Buyer
26 to execute a new lease.

OBJECTION TO MOTION FOR ORDER - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

For these reasons, the Court should deny the Motion.

DATED this 20th day of March, 2013.

FOSTER PEPPER PLLC

/s/ Christopher M. Alston
Christopher M. Alston, WSBA #18823
Attorneys for GRE 509 Olive LLC