

FILED
JEANNE A. NAUGHTON, CLERK

MAY 18 2018

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY *[Signature]* **DEPUTY**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:

ORAMA HOSPITALITY GROUP, LTD.,

Debtor.

Case No.: 17-21720 (JKS)

Chapter 11

Judge: Hon. John K. Sherwood

ORDER DENYING DEBTOR'S MOTION TO ASSUME SUBLEASE OF NON-RESIDENTIAL REAL PROPERTY LOCATED AT 595 RIVER ROAD, EDGEWATER, NEW JERSEY 07020

The relief set forth on the following pages, numbered two (2) through four (4), is hereby **ORDERED.**

Dated: May 18, 2018.

[Signature]
HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

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Debtor: Orama Hospitality Group, Ltd.

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WHEREAS:

1. Orama Hospitality Group, Ltd. ("Debtor") filed a Chapter 11 Voluntary Petition on June 6, 2017 (ECF No. 1).
2. On October 25, 2017, pursuant to 11 U.S.C. § 365(d)(B)(i), the Court entered an Order Extending Time to Assume or Reject Unexpired Sublease of Non-Residential Real Property located at 595 River Road, Edgewater, New Jersey 07020 to January 2, 2018 (ECF No. 52).
3. On December 28, 2017, the Court entered a Consent Order between the Debtor and Mitsuwa Corporation (the "Landlord") further extending the time for the Debtor to assume or reject the sublease to January 15, 2018 (ECF No. 58).
4. On January 13, 2018, the Debtor filed the instant Motion to Assume Sublease of Non-Residential Real Property (ECF No. 61). The Debtor seeks to assume the sublease at 595 River Road, Edgewater, New Jersey 07020 so it may continue operating a restaurant at that location. The sublease terminates as of August 31, 2020 and contains three conditional extensions totaling an additional 20 years. The Debtor also holds a liquor license in connection with a promissory note held by the Landlord and incorporated into the sublease. The Debtor asserts that the arrearages for rent and interest on the promissory note amount to \$250,000 and proposes to cure this amount by making additional monthly payments of \$8,333.33 until paid in full.
5. The Landlord filed opposition to the Debtor's motion on February 20, 2018 (ECF No. 66; ECF No. 67; ECF No. 68) and provided evidence that the cure amount is at least \$2,622,867.42 based on a state court judgment for \$1,142,224.64 (ECF No. 66, Ex. C), of which the Debtor has

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paid \$26,685.67, a second state court order granting an additional \$548,433.68 (ECF No. 66, Ex. D), and unpaid interest pursuant to the sublease totaling \$958,894.77. The Landlord asserts that because the Debtor proposes to pay only \$250,000, which is a mere fraction of the amount due, the Debtor has not met the requirements that it cure any existing default or provide adequate assurance of a prompt cure pursuant to 11 U.S.C. § 365(b)(1).

6. A hearing on Debtor's contested motion was held on March 20, 2018. The Court carried the motion to May 1, 2018 and ordered the parties enter mediation on the condition that the Debtor make its April rent payment to the Landlord in the amount of \$31,295.29. Payment was made and the parties agreed to Anthony Sodono, III, Esq. as mediator (ECF No. 72). Per the Mediation Report, a settlement of this matter was not reached at mediation (ECF No. 77).

7. On May 1, 2018, a second hearing on the Debtor's contested motion was held and, at the request of the parties, the Court reserved decision pending further confirmation that they were unable to settle. Counsel for the Landlord has confirmed to the Court, with notice to Debtor's counsel, that there will be no settlement and requested a decision.

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NOW, THEREFORE, IT IS ORDERED:

1. Pursuant to 11 U.S.C. § 365(b)(1):

“If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default ...;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.”

2. The Debtor fails to provide any evidence that would justify a \$250,000 cure amount or refute the Landlord's well supported claim that the cure amount is at least \$2,622,867.42. Based on the evidence provided by the Landlord, it is clear to the Court that the cure amount is substantially greater than \$250,000 and is likely over \$2 million. As a result, the Debtor is unable to show it can provide a reasonably prompt cure of the default and fails to satisfy § 365(b)(1)(A).
3. For the reasons set forth on the record and above, the Court denies the Debtor's Motion to Assume Sublease of Non-Residential Real Property.