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IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

In re:)	Chapter 11
)	
LAKE DEARBORN, LLC, <i>et al.</i> , ¹)	Case No. 13-36813 (JPC)
)	
Debtors.)	Honorable Jacqueline P. Cox

Doc#: 1526716063 Fee: \$80.00
 RHSP Fee: \$9.00 RPPF Fee: \$1.00
 Karen A. Yarbrough
 Cook County Recorder of Deeds
 Date: 09/24/2015 04:12 PM Pg: 1 of 7



**Judgment Order Allowing in Part and Disallowing in Part
 the Proof of Claim #8-1 of Luna Hospitality, Inc.
 f/k/a R.O.C. Hospitality Group, d/b/a Pueblo**

This matter came before the Court at evidentiary hearings conducted on May 27, 28 and 29, 2015, on the objection by Garvey Court, LLC and its affiliates² (“Garvey Court”) to the claims for rejection damages filed by Dyeung Hean Lee d/b/a Green Apple Grill & More; Hwani, Inc., d/b/a K-Kitchen; Luna Hospitality, Inc. f/k/a R.O.C. Hospitality Group, d/b/a Pueblo; Noorul Amin Khowaja/E-Doing, Inc. d/b/a Dunkin’ Donuts; Seedays (Illinois), LLC; Shahaamir, Inc., d/b/a Wing Kingz; Windy City Finest, Inc., d/b/a Robinson’s #1 Ribs Store 3; The Works North Loop, Inc.; and Latanya Winfield d/b/a Harold’s Chicken Shack #84.

The Court has considered the Proof of Claim filed by Luna Hospitality, Inc. f/k/a R.O.C. Hospitality Group, d/b/a Pueblo (“Luna”), the Objections filed by Garvey Court, the testimony of the witnesses, the admitted evidence, other motions and documents filed on the docket in this case, and the arguments of counsel. Based on all of the foregoing, the Court filed and entered a Memorandum Decision on July 14, 2015 (Docket 321), and on the same date, for the reasons set forth in the Memorandum Decision, filed and entered an Order Allowing in Part and Disallowing

¹ The debtors in these chapter 11 cases included: Lake Dearborn, LLC; Dearborn Residential, LLC; Dearborn Retail, LLC; DR Dearborn Investment, LLC; 800 South Wells Phase II, LLC; La Salle Commercial, LLC; and Invsco Employee Services, Inc. (the “Debtors”)

² Garvey Court Holdings, LLC, Bighorn Capital, Inc. and their various affiliates that have submitted themselves to the jurisdiction of this Court.



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in Part the Proof of Claim #8-1 of Luna Hospitality, Inc. f/k/a R.O.C. Hospitality Group, d/b/a Pueblo (Docket 320).

On July 24, 2015, Luna and the other lease rejection claimants filed the Rejection Claimants' Joint Motion to Modify the Orders of July 14, 2015 and for Entry of Judgment (the "Motion"). The Court has considered the briefs submitted by counsel for the parties in support of and in opposition to the Motion and on September 2, 2015, heard and considered arguments of counsel. Based thereon, the said Order of July 14, 2015 (Docket 320) is hereby modified by replacing it with the order set forth below:

The Court has determined that Luna is allowed an unsecured priority claim in the amount of \$322,078. Luna's allowed claim consists of the following:

Relocation Damages

New Location Build-Out		
Pueblo (150 sq. ft. x \$154/sq. ft.) ³	\$23,100	
Pies on Clark	<u>129,000</u>	\$ 152,100
201 N. Clark Build-Out ⁴		98,269
New Equipment Purchase/Reinstallation ⁵		21,500
Moving Costs		19,400

Replacement Rent (Balance of Lease)

Replacement Rent		
(\$8,807.50 ⁶ x 24 mos.)	\$211,380	
Existing Rent ⁷	<u>(162,171)</u>	49,209

³ The new location for Pueblo is not comparable to the space at 201 N. Clark. Mr. Luna testified that the new location is 1,656 sq. ft., more than ten times the size of the current space and will be a full service restaurant, versus the current location that is simply a window to serve food prepared at a commissary. The Court will allow the price per square foot for the current 150 square foot space.

⁴ Mr. Luna has not presented any case law that allows for recovery for build-out costs as both the 201 N. Clark location and the new locations.

⁵ Mr. Luna testified on direct that he needed new equipment because there will be two new non-contiguous locations, as Pueblo will move to 23 E. Adams and Pies on Clark will move to Glenview. The split new locations are not comparable to the two contiguous spaces at 201 N. Clark. Mr. Luna's decision to move to two separate new locations is neither the proximate result of the lease rejection nor reasonably contemplated by the parties upon signing the lease. Therefore, the Court will award the \$21,500 agreed to by Garvey Court for new equipment for a single location.

⁶ Replacement rent is allowed for the new downtown Pueblo location only, not the Pies on Clark Glenview location.

⁷ Reflects the annual increase of 2.5% for minimum annual rent on Aug. 31, 2014 on the Pueblo space.

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Advertising ⁸			0
Less Unpaid Rent			
Unpaid Rent			
Pueblo (5 mos. ⁹ @ \$1,700)	\$ 8,500		
Pies on Clark (5 mos. @ \$5,000)	25,000	\$33,500	
Security Deposit		(15,100)	(18,400)
Total			<u>\$ 322,078</u>

IT IS HEREBY FURTHER ORDERED THAT:

1. Judgment is entered in favor of Luna and against Garvey Court, LLC, Garvey Court Holdings, LLC, and Bighorn Capital, Inc., jointly and severally, in the amount of \$178,725, plus post-judgment interest.

2. Payment of the amounts awarded herein shall be made not later than the expiration of the period for appeal of this Order as set forth in Federal Rule of Bankruptcy Procedure 8002.

3. For each month or portion thereof that Luna remains in possession of its leased space after May 31, 2015, rent shall continue to accrue at the rate of \$6,700 per month (subject to any rental escalation or other rent increase provisions in the Lease, as that term is defined in the Proof of Claim), prorated on a daily basis for any partial months, and said rent shall be applied as a credit and partial satisfaction of the judgment.

4. Luna shall vacate and surrender possession of its leased space within fourteen (14) days from the receipt of full payment of the judgment awarded herein or pursuant to further order of the Court.

Dated: September 8, 2015

ENTER:

J. Cox *Jacqueline P. Cox*

 Jacqueline P. Cox
 U.S. Bankruptcy Judge

⁸ Luna Hospitality submitted a claim for advertising for the new location only. On cross-examination, Mr. Luna testified that he did no advertising for Pueblo before opening the business at 201 N. Clark. Therefore, no Award is made for advertising at the new location at 23 E. Adams, also a downtown location.

⁹ Mr. Luna testified that he stopped paying rent beginning in January 2015 for both Pueblo and Pies on Clark spaces.

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EXHIBIT A

Legal Description

PARCEL 1A:

ALL OF SUBLOTS 1 TO 7 AND THE ALLEY IN THE ASSESSOR'S DIVISION OF LOT 5 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO;

ALSO,

LOT 6 (EXCEPT THE EAST 20.00 FEET THEREOF) IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, ALL IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AREA = 20,752.3 SQUARE FEET OR 0.5460 ACRES

PARCEL 1B:

THAT PART OF THE EAST 1/2 OF LOT 7, (AS SUCH EAST 1/2 IS MEASURED ALONG THE SOUTH LINE THEREOF), IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, LYING EAST OF A LINE 82.0 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF NORTH DEARBORN STREET, IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH ALL OF SUBLOTS 1 TO 8 IN SUBDIVISION OF LOT 8 IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, AFORESAID;

LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +482.00 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

AREA = 11,946.6 SQUARE FEET OR 0.2743 ACRES

PARCEL 2:

THAT PART OF THE EAST 1/2 OF LOT 7, (AS SUCH EAST 1/2 IS MEASURED ALONG THE SOUTH LINE THEREOF), LYING WEST OF A LINE 82.0 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF NORTH DEARBORN STREET, IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO, IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN;

LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +99.75 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

AREA = 5,680.5 SQUARE FEET OR 0.1304 ACRES

PARCEL 2A:

THE EAST 20.00 FEET OF LOT 6 AND THE WEST 1/2 OF LOT 7, (AS SUCH WEST 1/2 IS MEASURED ALONG THE SOUTH LINE OF LOT 7), IN BLOCK 17 IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN;

LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +29.00 FEET CHICAGO CITY DATUM, IN COOK COUNTY, ILLINOIS.

AREA = 8,871.4 SQUARE FEET OR 0.2037 ACRES

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PARCEL 3:

PERPETUAL EASEMENTS BY AND SET FORTH IN QUIT CLAIM DEED IN TRUST DATED MAY 1, 1987 FROM CITY OF CHICAGO, AS GRANTOR, IN FAVOR OF AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 26, 1985 AND KNOWN AS TRUST NUMBER 66121 RECORDED AS DOCUMENT 87254850 ON MAY 12, 1987 WITH THE COOK COUNTY RECORDER OF DEEDS ESTABLISHING WHICH EASEMENTS ARE IDENTIFIED IN 'EXHIBIT B' OF SAID DEED AND ARE AS FOLLOWS:

1. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A SERVICE DRIVE AND LOADING BERTH ON, OVER, UNDER, ACROSS AND ALONG THAT PORTION OF WEST HADDOCK PLACE IN COOK COUNTY, CITY OF CHICAGO, STATE OF ILLINOIS, LYING WEST OF THE WEST LINE OF NORTH DEARBORN STREET AND EAST OF THE EAST LINE OF GARVEY COURT LOCATED APPROXIMATELY AS SHOWN ON SHEET A1-2PL ("SITE PLAN PARCELS") REVISED TO FEBRUARY 3, 1987 PREPARED BY LISEC & BIEDERMAN AS JOB NUMBER 1173;
2. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A WALL AND FOOTINGS ACROSS IN THAT PORTION OF WEST HADDOCK PLACE IN COOK COUNTY, CITY OF CHICAGO, STATE OF ILLINOIS, LYING EAST OF THE EAST LINE OF GARVEY COURT IN THE CITY OF CHICAGO, COOK COUNTY, STATE OF ILLINOIS, AND WEST OF THE WEST LINE OF NORTH DEARBORN STREET IN THE CITY OF CHICAGO, COOK COUNTY, STATE OF ILLINOIS, LOCATED APPROXIMATELY AS SHOWN ON SHEET A1-2PL ("SITE PLAN PARCELS") REVISED TO FEBRUARY 3, 1987 PREPARED BY LISEC & BIEDERMAN AS JOB NUMBER 1173;
3. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF CAISSONS, CAISSON BELLS AND CAISSON SHAFTS IN THE FOLLOWING AREAS LOCATED APPROXIMATELY AS SHOWN ON SHEET A1-2PL ("SITE PLAN PARCELS") REVISED TO FEBRUARY 3, 1987 PREPARED BY LISEC & BIEDERMAN AS JOB NUMBER 1173:
 - A) IN THAT PORTION OF THE SOUTH 1/2 OF WEST HADDOCK PLACE LYING WEST OF THE WEST LINE OF NORTH DEARBORN STREET AND EAST OF THE EAST LINE OF NORTH CLARK STREET, IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS;
 - B) IN THAT PORTION OF THE NORTH 7.00 FEET OF WEST LAKE STREET, LYING WEST OF THE WEST LINE OF NORTH DEARBORN STREET AND EAST OF THE EAST LINE OF NORTH CLARK STREET, IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS;
 - C) IN THAT PORTION OF THE EAST 1/2 OF NORTH GARVEY COURT, LYING NORTH OF THE NORTH LINE OF WEST LAKE STREET AND SOUTH OF THE SOUTH LINE OF WEST HADDOCK PLACE, IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS;
4. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A WALL IN THAT PORTION OF THE EAST 1/2 OF GARVEY COURT LYING NORTH OF THE NORTH LINE OF WEST LAKE STREET AND SOUTH OF THE SOUTH LINE OF WEST HADDOCK PLACE, IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, LOCATED APPROXIMATELY AS SHOWN ON SHEET TS-1PL PREPARED BY LISEC & BIEDERMAN ENTITLED "CAISSON AND BASEMENT PLAN, CAISSON SCHEDULE AND DETAILS" REVISED TO FEBRUARY 3, 1987 AS PART OF JOB NUMBER 1173;

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5. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A WALL AND FOOTINGS IN THAT PORTION OF NORTH DEARBORN STREET LYING SOUTH OF THE SOUTH LINE OF WEST HADDOCK PLACE AND NORTH OF THE NORTH LINE OF WEST LAKE STREET IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, LOCATED APPROXIMATELY AS SHOWN ON SHEET TS-1PL PREPARED BY LISEC & BIEDERMAN ENTITLED "CAISSON AND BASEMENT PLAN, CAISSON SCHEDULE AND DETAILS" REVISED TO FEBRUARY 3, 1987 AS PART OF JOB NUMBER 1173;

6. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A WALL AND FOOTINGS IN THAT PORTION OF THE NORTH 3.00 FEET OF WEST LAKE STREET LYING EAST OF THE EAST LINE OF NORTH CLARK STREET AND WEST OF THE WEST LINE OF NORTH DEARBORN STREET IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, LOCATED APPROXIMATELY AS SHOWN ON SHEETS A1-2PL ("SITE PLAN PARCELS"), TS-1PL ("CAISSON AND BASEMENT PLAN, CAISSON SCHEDULE AND DETAILS, TS-1PL ("FRAMING PLAN-LEVEL 1") AND CS-1PL ("SLAB OR GRADE AND FOUNDATION PLAN") PREPARED BY LISEC & BIEDERMAN REVISED TO FEBRUARY 3, 1987 AS PART OF JOB NUMBER 1173;

7. AN EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF FOOTINGS IN THE FOLLOWING PROPERTY:

A) THE EAST 3.00 FEET OF NORTH CLARK STREET LYING SOUTH OF THE SOUTH LINE OF WEST HADDOCK PLACE AND NORTH OF THE NORTH LINE OF WEST LAKE STREET TO BE LOCATED APPROXIMATELY AS SHOWN ON SHEET CS-1PL ("SLAB ON GRADE AND FOUNDATION PLAN") PREPARED BY LISEC & BIEDERMAN REVISED TO FEBRUARY 3, 1987 AS PART OF JOB NUMBER 1173;

B) THAT PORTION OF WEST HADDOCK PLACE LYING WEST OF THE WEST LINE OF NORTH DEARBORN STREET AND EAST OF THE EAST LINE NORTH GARVEY COURT, IN THE CITY OF CHICAGO, COUNTY OF COOK, AND STATE OF ILLINOIS LOCATED APPROXIMATELY AS SHOWN ON SHEETS A1-2PL ("SITE PLAN PARCELS"), TS-1PL ("CAISSON AND BASEMENT PLAN, CAISSON SCHEDULE AND DETAILS, TS-4PL ("FRAMING PLAN-LEVEL 1) AND CS-1PL ("SLAB ON GRADE AND FOUNDATION PLAN") PREPARED BY LISEC & BIEDERMAN REVISED TO FEBRUARY 3, 1987. (MARCH 27, 1987 FOR A1-2PL) AS PART OF JOB NUMBER 1173;

8. AN NON-EXCLUSIVE EASEMENT FOR THE CONSTRUCTION, INSTALLATION, SUPPORT, REMODELLING, USE, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF TWO (2) "SIAMESE" WATER PIPE CONNECTIONS IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, ONE (1) LOCATED IN THE NORTH 1/2 OF THAT PORTION OF WEST LAKE STREET LYING WEST OF THE WEST LINE OF NORTH GARVEY COURT AND EAST OF THE EAST LINE OF NORTH CLARK STREE, AND THE OTHER LOCATED IN THE EAST 1/2 OF THAT PORTION OF NORTH CLARK STREET LYING NORTH OF THE NORTH LINE OF WEST LAKE STREET AND SOUTH OF THE SOUTH LINE OF WEST HADDOCK PLACE, TO BE LOCATED APPROXIMATELY AS SHOWN ON SHEET A1-2PL ("SITE PLAN PREPARED BY LISEC & BIEDERMAN AS PART OF JOB NUMBER 1173 (REVISED TO MARCH 27, 1987).

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PARCEL 4 INTENTIONALLY OMITTED

PARCEL 5:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AND OTHER PROPERTY FOR INGRESS, EGRESS, USE AND ENJOYMENT, AS CREATED BY AND SET FORTH IN THE EASEMENT AGREEMENT FOR 200 DEARBORN, CHICAGO, ILLINOIS, RECORDED FEBRUARY 25, 2008 AS DOCUMENT 0805641067, IN COOK COUNTY, ILLINOIS.

PARCEL 6 INTENTIONALLY OMITTED

PARCEL 7:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL ¹¹² AS CREATED BY EASEMENT AGREEMENT RECORDED AS DOCUMENT 91591893 FOR THE PURPOSE OF INGRESS, EGRESS, USE, CONSTRUCTION AND ENJOYMENT.

PARCEL 8:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 4 AS CREATED BY EASEMENT AGREEMENT RECORDED AS DOCUMENT 92199746 FOR THE PURPOSE OF INGRESS, EGRESS, USE, CONSTRUCTION AND ENJOYMENT.

PINS: 17-09-422-008-0000; 17-09-422-009-0000; 17-09-422-010-0000; 17-09-422-011-0000; 17-09-422-012-0000

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Property Address: 201 N. Clark Street, Chicago, Illinois 60601