UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 21-12075-dsj

- x

In the Matter of:

JPA NO. 111 CO., LTD.,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

March 18, 2022

11:00 AM

B E F O R E :

HON DAVID S. JONES

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Oral Ruling

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning, everyone. It's Judge Jones. We're here on JPA. We have everyone's appearances through the Zoom sign-in process so I don't need to take appearances today. Let me thank you all for appearing on fairly short notice. The purpose of today's proceeding is for me to provide my oral ruling on Debtors' motion for approval of a proposed sale of their aircraft and associated lease rights to a stalking horse purchaser, a Court-approved auction process, having yielded no qualifying higher and better bids.

I also will issue a partially dispositive ruling with respect to Debtors' motion for an order determining or estimating the amounts owed to secured creditors and specifically FitzWalter while reserving other issues for further proceedings that may involve the presentation of additional evidence. After I rule, I will want to briefly discuss procedural next steps.

As you know, these interrelated motions were properly noticed and were heard during a nearly eight-hour hearing on March 14th, so four days ago. During the hearing, 129 exhibits were introduced. These included witness declarations and deposition transcripts or excerpts. There was no live testimony. We proceeded pursuant to an evidentiary and procedural stipulation that was stated on

the record pending final Court approval of a written version of the stipulation which also had some other provisions, that written version having been filed on notice of presentment as to which the objection deadline had not yet passed.

I have considered the entirety of the evidentiary record, the parties' written submissions which are outlined and listed in the agenda filed in anticipation of the March 14th hearing, the arguments and facts advanced during the March 14th hearing, and the entirety of the case's proceedings up to this point. Familiarity with all these things is assumed and will not be recapped, at least not in detail, in this oral ruling.

First, I'm going to say slightly more about what's before me and provide a somewhat general orientation to this complex matter. There are two Debtors before me, each with its own bankruptcy case with the two cases jointly administered, but not substantively consolidated. Each debtor entity is referred to as JPA plus an identifying number. I'll call them generically JPA or Debtors.

Each JPA debtor entity is privately held and organized under the laws of Japan. Their common parent is referred to as JPL. The JPA entities are financed in relevant part by secured debt. Under governing agreements, the interests of secured lenders are the responsibility of

an entity known as the security agent. The security agent originally was an affiliate of the French bank, Credit Agricole. That entity is referred to as CACIB. In early December 2021, an entity known as FitzWalter Capital Management, which had acquired a substantial amount of the secured debt, succeeded CACIB as security agent under the relevant transaction documents.

There are additional holders of debt, but FitzWalter in its capacity as security agent, is authorized to act on behalf of all holders of JPA debt under these transactions and the governing agreements. A substantial junior position is held by an entity referred to as Mizuho Leasing and additional debt is held by Sumitomo Mitsui Trust Bank.

Each JPA entity is essentially a single purpose entity and each was created and exists to own and lease a single Airbus A350 commercial airliner. Each aircraft is leased directly from the JPA entity to an entity that originally was also created and owned by the JPL parent. I'll refer to those two entities as the intermediate lessors. The intermediate lessors are organized in Ireland or under Irish law. The intermediate lessors, in turn, lease the aircraft to a commercial airline, namely Vietnam Airlines, which is also referred to as VNA.

I am told and no one has disputed that the reason

for this structure is to avoid certain adverse tax or other legal consequences that might arise if the JPA entity directly leased the aircraft to VNA. I'm told this -- that this structure was intended to establish the intermediate lessors as pass-through entities that do not engage in independent activities other than to serve as a link in a leasing chain, receive rents or lease payments from VNA, and in turn pass those on to the appropriate JPA entity.

The JPA entities, in turn, were expected to use these same rent proceeds to satisfy their obligations to secured lenders, again now in charge of FitzWalter as security agent. Thus, Debtors' assets include their respective aircraft as is undisputed, and also what are referred to as lease assets, which refer to entitlements to revenues and other contractual rights relating to the leases of the aircraft. The lease assets are treated differently in some ways than the aircraft themselves as I'll discuss shortly.

Among other things, the aircraft are financed pursuant to a mortgage or mortgage-like instrument that is governed by New York law with a New York forum selection requirement. The lease assets, at least allegedly, are subject to English law and subject to possible foreclosure or security enforcement provisions that are available in England; although the status of and legal framework

governing the lease assets is complex and subject to debate. Reportedly, the transaction and lease arrangements functioned well as intended for a period as VNA stayed current on its lease payment obligations until the COVID pandemic began.

Thereafter, VNA became unable to meet its lease obligations as passenger loads and revenue declined steeply. Although JPA made some payments during the pandemic, evidently its decreased revenue caused a revenue shortfall to the intermediate lessors and thence to the JPA entities and ultimately to the secured lenders. The prior security agent, CACIB, did not take enforcement action in light of the lack of timely payment for a considerable time.

In early December 2021, several things happened in quick succession. CACIB declared a default. FitzWalter assumed at least a majority of the secured debt and was designated as the new security agent. And FitzWalter pursued a variety of enforcement efforts. Immediately, FitzWalter -- or I should say, essentially immediately, FitzWalter commenced a foreclosure sale of the lease assets with the sale scheduled to occur on or about December 17th, 2021, seemingly with no notice given to JPA or its affiliates.

Debtors assert that they were unaware of this effort until on or about December 14th which, based on a

prior hearing, I conclude may have actually occurred in substance on December 13th. I have seen no evidence of any earlier notice to JPA or its affiliates of FitzWalter's foreclosure effort as to the lease assets. Debtors filed their petitions to commence these cases on December 17th, before the foreclosure sale of the lease assets was consummated.

At that time, and still as of today, no foreclosure has been attempted of the aircraft themselves. Debtors promptly stated their intention to proceed with an asset sale that would result in full payment to all parties in interest. FitzWalter objected that the filing was a bad faith effort to frustrate FitzWalter's lawful pursuit of foreclosure remedies which FitzWalter had commenced in England as to the lease assets, but not the aircraft themselves.

Debtors promptly filed a motion seeking approval of bid procedures and of a stalking horse bidder in connection with their anticipated sale. FitzWalter opposed and moved to dismiss the bankruptcy essentially as a bad faith filing. JPA, of course, opposed FitzWalter's motion. JPA's position was supported by other parties including JPA's parent JPL, Mizuho and Sumitomo based on their desire to secure full payment resulting from the proposed sale, notwithstanding that FitzWalter is the security agent, and

seemingly correctly asserts that it is empowered to speak and act for all holders of debt or at least secured debt, and also at a later stage, the proposed purchaser of Debtors' assets.

Following discovery and an earlier evidentiary hearing, the Court denied FitzWalter's motion to dismiss in an opinion that I incorporate by reference herein. I viewed it as prudent to resolve that motion before determining whether to approve the bid procedures motion and launching a sale process that would require the estate to commit to a breakup fee and other expenses if the sale were not consummated.

One key issue was a challenge by FitzWalter to JPA's ability to convey title to the assets that the proposed sale purported to convey. Specifically, FitzWalter argued that as a matter of English law, the security provisions of operative agreements gave secured lenders an absolute assignment of title to the lease assets, albeit explicitly by way of security, not a mere charge as that word is used in English law. A key feature of the bid procedures order was the approval of a stalking horse bidder that was committed to proceed with a purchase subject to any higher and better offers that came in through an auction process.

The order included specific provisions to make

sure that FitzWalter or any holder of secured debt would have a full opportunity to credit bid and thus emerge with the assets through a competitive process if FitzWalter so desired and offered the estate superior value to that offered by the stalking horse bidder.

Ultimately, the auction was conducted according to the court ordered procedures. No qualified bids -- excuse me, qualifying bids were received. FitzWalter opted not to pursue a credit bid. I therefore now am faced with Debtors' motion approve the asset sale that is to follow from the auction's conduct as a result of which the stalking horse bidder was determined to have made the best and highest offer for the assets, in fact, the only qualifying offer.

That offer consists of payment of $5 million in cash plus -- meaning on top of -- payment of an unquantified amount that is sufficient to allow repayment of the full amount of principal and interest outstanding on the secured debt plus certain additional allowable costs of the secured lenders which may themselves be limited to reasonable amounts for non-bankruptcy law reasons and further, which are allowable here, only to the extent those costs are deemed reasonable pursuant to Section 506(b) of the Bankruptcy Code.

There is substantial dispute as to what constitutes reasonable and allowable costs that form part of

FitzWalter's entitlements under the governing transactions and transaction documents. The parties propose putting funds in escrow to cover potential future fact-dependent determinations of some of those amounts; although the movants ask me to disallow various asserted entitlements as a matter of law without delay.

At the hearing, the stalking horse bidder offered to escrow up to $2.2 million in cash in support of that process. Thus, interrelated with the sale motion, is Debtors' motion asking the Court to determine or estimate the value of FitzWalter's claim. This is necessary to ensure that the sale of encumbered assets either fully pays or otherwise adequately protects FitzWalter's entitlements as a holder of an interest in the property to be sold.

Let me turn to the governing legal framework. In the interests of time, I will state some of my relevant findings and conclusions as I go through some of the links in the legal chain that governs the decision I have to make today. I'll also note that during the March 14th hearing, I articulated my understanding of the overall applicable legal framework and asked if I had it wrong. No one offered any correction or modification.

In essence, I need to decide whether Debtor owns that which the purport to sell -- I should say, Debtors own that which they purport to sell, or at least have a

sufficient property interest to support the proposed sale. I further need to decide whether the sale meets the requirements for sales of estate property, particularly pursuant to Section 363 of the Bankruptcy Code and I need to determine whether the proceeds will either fully pay FitzWalter or otherwise adequately protect FitzWalter's security interests.

Debtors say they are entitled to sell all their right, title, and interest in estate property free and clear of liens or other interests and they say that's all they're doing for the consideration described above. Estate property is defined by Section 541 of the Bankruptcy Code. As noted, there has been substantial discussion about whether what Debtor purports to sell here is all property of the estate. I discussed that in some more detail below but to cut to the chase, my conclusion is that the answer is yes, Debtor has sufficient property interests in all assets being conveyed to satisfy Section 541.

Subject to additional requirements, the code lets Debtors sell estate property if they show that there is a legitimate business justification for the sale. See Section 363(b)(1) of the code and In re: Mannone, 512 B.R. 148 at 153 (Bankr. E.D.N.Y. 2014). See also In re: GSC, Inc., 543 B.R. 132 at 155 (Bankr. S.D.N.Y. 2011). If the Debtor or Trustee makes such a showing, the Court should give that

judgment proper deference. See Mannone.

Here, I conclude that Debtors have more than established that there is a legitimate business justification for the sale and that they have appropriately executed commercial judgment that is entitled to deference. And even if no deference were due or extended, the justification presented is ample. In essence, Debtors hold a bundle of entitlements to aviation assets and the revenue and the ultimate lessee's revenues have been severely compromised by COVID's impact on air travel.

Both pre-bankruptcy and today, Debtors have focused on achieving a restructuring of lease provisions so that VNA can continue to operate and the leases remain in effect with the controlling entities and debt holders ultimately to be repaid in full.

Setting aside the broad social constructiveness of this approach, this also is reasonably calculated to maximize the estate's recoveries as lessors of the aircraft, particularly given testimony that I credit from Heinrich Loechteken from earlier stages of the case that the market for commercial aircraft and aircraft leases is unsettled and depressed. It is unclear if a suitable replacement lease could be negotiated on viable terms and transition and transaction costs are very high if one wishes to change from one lessee to another.

Thus, Debtors have made a persuasive showing that at a minimum they have formed a reasonable judgment and legitimate business justification for the course they are pursuing here. This conclusion is buttressed by the reality that all parties in interest not affiliated with FitzWalter, including Mizuho and Sumitomo, support the sale and no one other than FitzWalter and an affiliate oppose the sale. In addition, the Court must determine that there was adequate notice of the sale. Here there was, by virtue of Debtors' showing that they adhered to Court procedures.

The auction must determine that the purchase price is fair and reasonable and I conclude yes, it is, as established by the conduct of a well-constructed auction process, among other considerations, and the Court also must conclude that the purchaser is proceeding in good faith. See In re: MF Global, Inc., 467 B.R. 726 at 730 (Bankr. S.D.N.Y. 2012).

The issue of the purchaser's good faith was discussed during the March 14th hearing and including for reasons stated on the record, I am satisfied that that good faith is present here. The purchaser is not a related entity to Debtor or its affiliates. The negotiation involved -- consisted of arm's length negotiations. Both sides are represented by skilled counsel and the bona fides of the proposed deal were tested and established by the

conduct of an auction process aimed at seeing if any superior offers might come forward. None did.

And again, I note this includes specifically that FitzWalter did not come forward with a better offer, despite opportunity to do so under a process that robustly protected FitzWalter's ability to credit bid. See generally, discussion in 3 Collier Paragraph 363.02. One other pertinent consideration is that the sale cannot be a sub rosa plan, meaning one that would determine matters properly left for a plan under the Bankruptcy Code, but the objector must properly articulate specific Chapter 11 rights or protections that the sale denies. Again, see generally Collier Paragraph 363.02.

Here, as discussed during the hearing, during the prior hearing, I don't believe the sale constitutes a sub rosa plan. FitzWalter has not credibly shown that it is a sub rosa plan. The proposed sale provides $5 million in cash beyond that needed to satisfy secured creditors which gives the estate flexibility in devising a future plan or other resolution of the case and nothing in the sale or the proposed sale order purports to dictate how the estate will be resolved as the case goes forward after the proposed sale.

One further requirement applies here because when, as is the case here, the estate proposed to sell assets that

are subject to a lien or a security interest, Code Section 363(e) requires the Court to condition any sale of any property subject to an interest held by another as is necessary to provide adequate protection of such interest. That language comes from Section 363(e) of the code.

In order to ensure that that requirement is met here, I look to Code Section 506(b) which requires that to the extent the value of estate property subject to a security interest exceeds the secured claim amounts, the claim of the holder of security shall be allowed in an amount that includes interest and "reasonable fees, costs, or charges provided for under the agreement or state statute under which such claim arose." 11 USC Section 506(b). That is a mandatory provision.

So here, I need to value the amount to which FitzWalter is entitled as a secured claim so as to ensure that its interests in the property sold will be adequately protected in satisfaction of Section 363(e) either by full payment or some other method, such as a sufficient escrow. At times, the entitlements of secured creditors are limited by an insufficiency of value of their collateral, but here, that does not come into play for purposes of my decision today.

Rather, the negotiated consideration for the sale essentially requires the conclusion, at least for purposes

of today, that the assets conveyed are worth more than the secured claim amounts, because the purchase price is set at the total of the outstanding principal and interest on the debt plus reasonable and allowable costs plus $5 million in cash above that amount. Ordinarily, an asset value can be most reliably determined by reference to a prevailing auction price and no one has tried to persuade me that that's not the case here.

So I conclude that FitzWalter holds an interest in property worth less than the proposed purchase price, such that FitzWalter is entitled to reasonable expenses to the extent allowed or allowable under Section 506(b). The only limiting factor is that if the secured claim amount including disputed amounts is set too high, the buyer may refuse to close on the transaction which would be a market indicator that the resulting price in light of those asserted secured claim components did exceed the market price.

FitzWalter at times suggests that's the case here by questioning whether it is receiving full payment even as it demands full allowance of all its asserted entitlements under Section 506(b). That possible complication is for another day, if at all. FitzWalter asserts very high levels of entitlements to payment as "Secured Obligations" under the governing transaction documents above and beyond the

principal and interest outstanding in secured debt. These asserted amounts were provided in a February 28th accounting by FitzWalter filed as Exhibit 6 to ECF No. 107 which was the declaration of Jared Borriello and they also are listed among other places at Pages 5 to 6 of Debtors' motion for an order determining the secured claims and for other relief. That's docketed at ECF 136 in the main case.

These asserted obligations include, among other things, over $21 million in lease payments that FitzWalter says are due to it or its designee, since a default was declared with respect to the leases, an additional $1.8 million described as other alleged breaches of head lease claims, approximately $318,000 in costs from asserted breaches of parent support letters, now unknown amounts on account of certain loan transaction breach, and defamation/anti-yakuza claims -- that's spelled Y-A-K-U-Z-A -- more than $4 million in asserted management fees on the part of FitzWalter which are being charged at rates of up to $50,000 per day for certain high level persons, legal fees in excess of $4.6 million, and other charges including auctioneer expenses in excess of $400,000 and $75,000 in insurance costs.

I'll return to these later. Court approval of -- oh, I'm sorry. Let me add that all of those asserted amounts due occur against a backdrop of an approximate

purchase price as contemplated by the stalking horse purchaser of roughly $210 million.

Court approval of proposed estate sales of assets also must satisfy one or more of five requirements enumerated in Bankruptcy Code 363(f)(3). I'll also talk about those requirements in more detail slightly later. So to recap, if I am to grant Debtors' motions, I need to determine the following. One, does the estate indeed hold sufficient right, title, and interest to property to legally permit the sale that it proposes? In other words, is what is purported to be sold in fact estate property? The properties seemingly agree that I should not or cannot approve a sale of assets that are not property of the estate or in which the estate does not have an interest sufficient to support the proposed sale.

Two, are the ordinary procedural and business judgment requirements for asset sales met? I have already held today that the answer to that question is yes. Three, does the sale satisfy the requirement that assets subject to security interests or other property interests adequately protect those interests and/or directly pay them in full? Four, are the requirements of Section 363(f) met so as to authorize the proposed sale on a free and clear basis?

Five, if the answer to those four questions is yes, then I need to determine or adequately protect the

entitlements of FitzWalter as secured creditor so as to ensure that FitzWalter's interests are not improperly diminished by the sale order. And finally six, I also need to decide whether it is permissible for the sale price to be satisfied by direct payment to parties in interest including the owners of junior debt or other participating syndicate participants, at least as requested by the motion, because under the terms of the transaction, documents, payment is to be directed to FitzWalter and then distributed according to a negotiated so-called waterfall. I will address these questions in order.

First, yes, Debtor hold sufficient right, title, and interest ion the property being conveyed by the proposed sale. There is no dispute that Debtors own the aircraft themselves. There are several objections concerning the lease assets, but I reject those for the following reasons. FitzWalter insists that the governing agreements absolutely conveyed the lease assets to it because those lease interests were absolutely assigned by way of security to it or its predecessors in interest and FitzWalter insists that strips Debtors of title and renders them unable to sell the property until and unless they retire their obligations to FitzWalter.

It is hotly disputed whether FitzWalter holds title absolutely albeit by way of security as the

transaction documents state or merely holds a charge, roughly the same as a lien, in English legal parlance. This question has been the subject of extensive opining and testimony by learned experts in English law.

However, just as I concluded in connection with the prior motion to dismiss and bid procedures motion, I don't need to decide whether an absolute assignment was effected as a matter of English law, because all parties agree that the borrowing or pledging party retains a so-called equity of redemption associated with the property even if title were absolutely conveyed.

And I credit expert testimony that any purported attempt by a secured lender to unilaterally extinguish such a right would be invalid as a matter of English law, based on the testimony of expert Mr. Tregear at the prior hearing. His name is spelled T-R-E-G-E-A-R. FitzWalter's expert Mr. Shah either conceded this or did not effectively dispute it.

Further, an equity of redemption can be a sufficient property interest of the estate to give rise to an ability to sell the associated property free and clear if all legal requirements to such a sale are satisfied. See cases cited at Pages 8 to 10 of Debtors' omnibus reply on the motion, including the Whiting Pools, South Side House, Inc., and Brynn Athyn Investments Limited. Bryn Athyn is B-R-Y-N, A-T-H-Y-N.

I have not identified anything compelling a contrary conclusion in any source of potentially relevant law that the parties have identified, even if an owner finances by secured debt that formally vests title in the lender the owner/borrower is entitled to sell the asset subject to meeting repayment obligations on account of the secured debt.

As a commercial and practical matter, this conclusion is reenforced by discussion during the March 14th hearing in which the purchaser's counsel stated its willingness to close based on an order that did not make a finding that an absolute assignment had not occurred or that Debtor had full title to the property conveyed, so long as the order made clear that the purchaser was acquiring free and clear title through the sale.

FitzWalter makes a separate argument that these considerations are insufficient to permit the sale here. Because the equity of redemption in connection with the lease assets is held by the intermediate lessors rather than the Debtors, so the Debtors cannot enter a sale based on the equity of redemption property interest, because no such interest belongs to the Debtors. However, the intermediate lessors by their then authorized directors, entered an agreement that conveys all interests of the intermediate lessors in the lease assets to the Debtors.

During the March 14th hearing, counsel for the intermediate lessors, who after that agreement was entered had prior leadership removed at FitzWalter's direction and now have a single assertedly independent director installed at the request of or assuredly with the support of FitzWalter, objected that the conveyance is void or invalid due to various deficiencies. Again, that objection comes from counsel for the newly aligned with FitzWalter intermediate lessors.

Counsel for the intermediate lessors, however, identified no law or argument that overcame the controlling agreement's plain language that the relevant agreement effect a full transfer. Arguments based on the articulated capacity in which the signatories were acting do not alter the clear language used reflecting an absolute conveyance. Thus, any argument premised on the idea that the estate does not hold an equity of redemption as to the lease assets is incorrect. And thus, I reject the contention that the proposed sale should be rejected on the ground that Debtors are purporting to sell assets that are not property of the estate.

The second link in the analytical progression is whether the proposed sale meets applicable requirements such as a sufficient business justification, notice and procedural regularity, and the like. Earlier in my remarks,

I found that these requirements are met and I will not repeat or expand on that finding now, except to emphasize that this is a properly noticed sale that was subjected to an auction process that would have generated better offers if any were forthcoming.

The consideration has not been challenged as commercially unreasonable. FitzWalter could have but did not credit bid and could have but did not present valuation evidence to challenge the proposed transaction. And the consideration amount locks in significant benefit to the estate at an economically challenging time for the transportation industry in particular. I'm going to briefly defer discussion of the third analytical link which is the large topic of whether secured interests will be paid in full and/or adequately protected.

The fourth question I must answer is whether Debtors meet the requirements imposed by Code Section 363(f) on approvals of sales free and clear of interests held by other parties, such as FitzWalter. I conclude that Debtors do meet those requirements. Section 363(f) requires that Debtors satisfy at least one of five enumerated alternative considerations that will justify a free and clear sale. The statute states them very clearly, so I won't read them into the record here, but my decision on this question results from direct application of these clearly worded provisions.

First, the intermediate lessors, now that they are directed by a FitzWalter allied director, seem to have objected that Section 363(f) is not satisfied as to them. First, I have held that the intermediate lessors validly conveyed all their interests in the lease assets to Debtors such that they don't have an interest requiring satisfaction of Section 363(f).

Second, even if that were not true, Section 363(f)(2) is satisfied as to the intermediate lessors because the security notice agreement that conveyed title was for the purpose of facilitating the sale and thus conveys the intermediate lessor's consent to the sale adequately. In addition, findings I'll make under other sub-prongs of Section 363(f) likewise also, certainly including a full payment finding also include -- cover the intermediate lessors.

FitzWalter undisputedly holds security interests in the assets to be sold and so Section 363(f) must be satisfied as to them. Multiple subparts of Section 363(f) are satisfied as to FitzWalter. First, because the sale proceeds and escrowed amounts will exceed the amount of principal, interest, and reasonable costs and charges on account of FitzWalter's interests, the transaction satisfies Section 363(f)(3) as against FitzWalter. Discussion of the proper amount of such interests will follow shortly.

Second, Section 363(f)(1) is satisfied because applicable non-bankruptcy law permits a free and clear sale. I have already explained why I reject arguments to the contrary based on the intermediate lessors' asserted ownership of lease assets. Section 9-623 of the New York UCC gives the right to redeem collateral to a debtor, any secondary obligor, or any other secured party or lien holder. New York UCC law, Section 9-623 (McKinney).

Official Comment 2 to that provision states that under this subsection, as under former Section 9-506, the debtor or another secured party may redeem collateral so long as the secured party has not collected Section 9-607, disposed of or contracted for the disposition of Section 9-610, or accepted Section 9-620 the collateral. And other applicable bars secured lenders from preventing a sale by a borrower who possesses a sufficient ownership interest in the property to be sold.

I credit testimony from Debtors' English law expert, Mr. Tregear, that attempts to prevent an owner subject to secured debt from selling the property in questions are invalid as a matter of English law. These considerations are reinforced by the Cape Town Treaty extensively briefed and discussed by the parties, which has been ratified by the United States, England, Ireland, and Vietnam.

I credit counsel for JPL's assertion at the sale hearing that the Cape Town Treaty precludes restrictions on a Debtor's right of redemption and its associated right to sell the collateral. See sale hearing transcript at page 260 Line 18 through Page 271 Line 10. See also e.g. Cape Town Convention Articles 9(4), 15, Official Commentary Part 4, Comment 4.128.

Any or all of these additional grounds demonstrate that non-bankruptcy law permits a free and clear sale. Accordingly, Section 363(f)(1) is satisfied here. Third, there is substantial likelihood that Section 363(f)(5) is also satisfied because FitzWalter could be compelled in a legal or equitable proceeding to accept a money satisfaction of its interest. The Debtors' English law expert testimony establishes that to the extent English law applies, Debtors hold at least an equity of redemption in the encumbered property as well as an equitable right to redeem the property in qualifying circumstances.

That expert testimony further establishes that under English law Debtors are allowed to bring redemption actions and that under certain circumstances, which the Court does not conclude exist or don't exist here, such a proceeding could result in Court direction of a sale of the collateral with proceeds paid to satisfy the secured creditors' interest against the wishes of the holder of such

security interest.

Thus, the requirements of Section 363(f)(5) may be satisfied because a legal or equitable proceeding could be employed to compel FitzWalter to honor the equitable rights held by Debtors to redeem their property at least in connection with a sale or satisfaction in full of FitzWalter's entitlements. Satisfaction of any one of Section 363(f)'s subsections is sufficient under the code. I therefore needn't reach the other subsections, but I pause to observe that in my view, Subsection (f)(2) is not satisfied as to FitzWalter because FitzWalter does not consent and Subsection (f)(4) may well not be satisfied because, although the extent of FitzWalter's interest is disputed, there is no dispute that FitzWalter holds some form of security interest in property to be conveyed.

The fifth and major and somewhat complicated issue I must decide is the extent of FitzWalter's reasonable entitlements as secured lender to amounts beyond principal and interest because such an assessment is necessary to determine whether the proposed transaction will adequately protect FitzWalter's interests and/or permit their satisfaction in full. Because there is no basis to believe the property in question is worth less than the amount of FitzWalter's claims, the transaction must satisfy the requirements of Code Section 506(b) which allows the holders

of secured claims principal plus "interest on such claim and any reasonable fees, costs, or charges provided for under the agreement or state statute under which such claim arose."

Thus, I need to assess what fees, costs, or charges are reasonable and provided for under relevant agreements or statutes. The procedural posture, again, is that the parties have stipulated that I will only decide these issues to the extent I can do so as a matter of law, based on submissions made to date, some of which are factual in nature. To the extent additional evidence or a factual hearing is necessary, the parties will conduct discovery as needed -- if and as needed, and a subsequent evidentiary hearing will be conducted.

The parties agree that an escrow mechanism is the likely appropriate way to facilitate a closing if a sale is authorized with subsequent proceedings to conclusively determine any remaining disputed obligations owed to FitzWalter and then any resulting excess escrowed amounts to be released to the estate or some other appropriate recipient.

The stalking horse bidder agreed on the hearing's record on March 14th to provide additional funds to be escrowed in an amount up to $2.2 million. There is no guarantee that the purchaser will be willing to escrow more

than that amount. FitzWalter asserts entitlements under the transaction documents that govern the respective rights of participants in the two transactions at issue here. Section 506(b) tells us that such entitlements are to be awarded as, if nothing else, charges provided for under the agreement, but only to the extent those charges are reasonable within the meaning of Section 506(b).

The key contractual language defining what charges are provided for under the agreement is part of the defined term Secured Obligations appearing at Annex A, which is a definition section of the proceeds agreement set forth adhering Exhibits 8 and 15, also docketed at ECF No. 23, Exhibits 7 and 14.

That provision says, "Secured Obligations means any and all monies, liabilities, and obligations, whether actual or contingent, whether nor existing or hereafter arising, whether or not for the payment of money, and including without limitation any obligation or liability to pay damages from time to time owing to any of the financed parties by any obligor pursuant to any transaction document notwithstanding that the recourse of the financed parties against any person may be limited in recourse."

Debtors requested and FitzWalter provided an accounting of amounts that FitzWalter asserts are due as of February 28th, so 18 days ago, obviously with additional

amounts accruing since then. These amounts are set forth among other places at Exhibit 6 to ECF No. 137, the declaration of Jared Borriello. They also are summarized at Pages 5 to 6 of Debtors' motion for an order determining the value of FitzWalter's secured claim and that motion is docketed at ECF No. 136 in the main bankruptcy case and ECF No. 7 in Debtors' adversary proceeding against FitzWalter.

Reviewing those items as follows, I determine as follows about each category asserted. One, unpaid rent under the two head leases, one of which is held by one Debtor and the other of which is held by the other Debtor, in the total asserted amount of $21,125,396.42. This amount is disallowed as unreasonable or possibly simply not due because it is entirely duplicative of the payment of principal and interest that the sale will cause to occur.

The entire premise of the underlying transactions is that rent payments were and are intended to flow through the intermediate lessors to the Debtors, to the ultimate secured lender now represented by FitzWalter in satisfaction of the secured lender's entitlements. Further, FitzWalter's entitlement at its election to take over entitlement to rent payments reflects the exercise of a security protection that it enjoyed under the governing agreements.

Thus, the payment in full of amounts due will satisfy those obligations and discharge what would be

duplicative recoveries via direct enforcement of lease payment obligations. FitzWalter's right to assert a direct entitlement to lease payments is a form of security for payment of the underlying debt, but it is not a license to recover twice over on account of that debt. This reasoning is supported by the waterfall contained in Clause 8 of the proceeds agreement as well as Clauses 11.2.1A and B. See ECF No. 136, Paragraphs 22 to 25 and Notes 11 to 15.

In short, under the terms transaction documents, rental payments under the head leases constitute collateral that secures the secured obligations, essentially JPA's debts to FitzWalter, not amounts that constitute additional secured obligations. Thus, because the sale provides for payment in full of the secured obligations, an additional amount -- excuse me, an additional provision for payment of unpaid rent would be duplicative.

Two, other alleged breaches of head lease claims in the -- asserted in the amount of $1,842,148.42 plus unliquidated claims listed by Debtors as Categories IV and V of FitzWalter's demands on Page 6 of Debtors' claim determination motion. As I understand it, these appear to be claims against JPA's parent JPL, and possibly others, arising from alleged breaches of agreements relating to Debtors plus unliquidated claims in connection with litigation that FitzWalter commenced against non-debtor

parties in England.

A, first with respect to claims pending in England against -- asserting breach of contractual obligations centering on anti-yakuza -- again, that's Y-A-K-U-Z-A -- aspects of the contracts that FitzWalter contends were breached and further give rise to secured obligations and thus to secured claims against the estate. Both parties' English law experts agree that under English law, which presumably governs the lawsuit pending in England entirely against non-debtor entities, one construes the relevant agreement as a whole and takes into account the agreement's context in determining its total meaning.

FitzWalter isolates the word "defame" in asserting that claims against Mr. Loechteken and others for conduct and actions relating to them violate the governing contracts but they draw from terms governing antisocial conduct -- that's a quote, so "antisocial conduct" and so-called anti-yakuza provisions that cannot plausibly be construed as extending as sweepingly as FitzWalter asserts to encompass commercial speech and negotiations unrelated to organized criminal activity or terrorism.

Further, even if this impediment did not exist, given the reality that Debtors are not a defendant in the English action, there is an insufficient tie to Debtors to deem FitzWalter's claims against others for conduct not at

the behest of Debtors to give rise to secured claims against Debtors' estate.

This result also is supported by a third reality that FitzWalter takes an inherently unreasonable position that no sale could ever close because their adequate protection cannot be guaranteed while these claims are unliquidated and unresolved. This position cannot be squared with the English law's bar on "fetters" -- F-E-T-T-E-R-S, and "clogs on alienation." For all these reasons, I estimate the value of these claims as against the estate as zero dollars as a matter of law.

B, the other head lease claim demand for $1.82 million also is met with Debtor arguments that FitzWalter may be manufacturing impediments to the sale rather than engaging in good faith vindication of its rights. Be that as it may, I don't perceive a basis as a matter of law to disallow or estimate at zero these claims at the present state of the case.

Contractual issues are complex and FitzWalter does raise concerns about JPL's possible violation of pledges not to cause or support a bankruptcy filing, although further litigation may show that damages are minimal to nonexistent given the full pay course of the bankruptcy case. But I am not prepared to adjudicate these issues today, particularly given the somewhere cursory briefing on this point and the

lack of factual development at this time. I therefore am going to direct that any sale that goes forward provide for the escrow of the $1.842 million amount associated with these claims without prejudice to further legal or factual arguments that may result in a release of this portion of the escrowed funds or a reduction in the required escrow amount if there is a delay in closing on the proposed transaction.

Three, costs from breaches of parent support letters demanded in the amount of $318,277.84. This demand is for asserted damages resulting from an alleged breach by JPA's parent JPL of obligations or refusals to comply with the demand to, among other things, ensure that the JP entities remain solvent and not be liquidated or reorganized. There are serious questions whether any damages flow from this alleged breach given the full pay resolution being achieved.

Further, it is not entirely clear to me that claims against JPL are properly chargeable against the estate. Nevertheless, because I am not entirely confident I have a sufficient basis to rule on this issue, I will direct a slightly discounted escrow of $300,000 as protection for FitzWalter in the event further litigation reveals any viability to this claim as it is directed against the estate.

Four, costs to retain Airborne as marketing -- that's an entity name, A-I-R-B-O-R-N-E -- costs to retain Airborne as marketing agent in connection with FitzWalter's prepetition pursuit of foreclosure remedies in the amount of -- asserted in the amount of $406,302.30. I am not persuaded, based on the current record, that the costs of retaining Airborne as FitzWalter's agent for the purpose of pursuing foreclosure remedies were excessive or commercially unreasonable, despite Debtors' minimization of the degree of effort expended by Airborne.

FitzWalter contends that the rate negotiated is commercially advantageous compared to a percentage fee structure that FitzWalter says some sales agents charge. Accordingly, and notwithstanding the argument that portions of Airborne's fee are for services that have not yet been rendered subject to possible further fact-specific challenge and possible resulting reductions, I decline to disallow any of the asserted Airborne fees at this time.

Five, FitzWalter insurance costs of approximately $75,000. Debtors argue these payments are duplicative, but FitzWalter argues that changes in ownership of lease assets created uncertainty as to the applicability of prior insurance which created a risk that had to be eliminate through the acquisition of additional insurance coverage. I cannot reject this contention as a matter of law and so

presented decline to disallow the insurance expense, again subject to possible fact-based challenge and requested reductions at a later time, and I therefore will direct that the precise figure asserted which is $75,021 be escrowed on account of the insurance costs.

Six, FitzWalter's management costs for which FitzWalter asserted $4,090,000 was due were extraordinarily high. At the March 14th hearing, Debtors agreed to reduce the management fee, the requested management fee amount to $500,000. Debtors object that even this amount still grossly exceeds the $25,000 per year total amount charged by CACIB in management fees in an assertedly equivalent role. Debtors further argue that applicable contracts bar an increase in management fees based solely on a change in the identity of the security agent.

FitzWalter responds that increased fees are not due to the change in the security agent's identity but rather result from the intensification of security agent activity since FitzWalter decided to pursue more aggressive enforcement remedies as opposed to merely owning the assets and pursuing renegotiation. I may ultimately conclude that notwithstanding FitzWalter's arguments, the role played by the new managing agent is essentially unchanged such that the bar on increased fees by virtue of a change in security agent applies.

However, in the posture of the case, including the parties' reservation of issues -- excuse me, reservation of issues requiring factual development for a later date, and given the reality that a decision not to reserve funds makes later collection of greater amounts unlikely, I will direct an escrowing of funds to preserve FitzWalter's potential entitlement of up to $500,000 in management fees that it now seeks.

Seven, FitzWalter's legal fees. As to FitzWalter's legal fees, which were roughly $4.6 million as of February 28th, the Court notes that FitzWalter had taken an extraordinarily aggressive stance in this case, vigorously and extensively contesting every conceivable issue even those as to which in my view there is little objective room for dispute, such as whether Debtors satisfied the Section 109 eligibility requirement based on the deposit of funds for legal services in their counsel's New York bank account and quite possibly as to other issues.

Further, Debtors object that FitzWalter's conduct in the face of a promised full pay resolution that is consented to by all parties in interest other than FitzWalter shows that FitzWalter is acting not in a capacity as a lender seeking to ensure that it is repaid, but rather as an aggressive, self-interest actor looking to leverage its position for what it hopes will be higher return than

mere repayment of what it is owed.

The Court and caselaw that both parties cite is of the view that secured creditors such as FitzWalter are entitled to vigorously defend their interests and are entitled to leeway to do so as they think best to some reasonable degree. This well serves the adversary process. At the same time, however, the Court credits Debtors characterization of FitzWalter's approach to this case which has been obstructionist and overly oppositional at times and which has unquestionably generated unreasonably high professional expenses.

There is a serious argument that FitzWalter's fees are categorically unreasonable, beginning when it became clear that Debtors had a viable path to an on-consent asset sale that would fully pay outstanding secured debt such that fees after that point were inherently unreasonable and not incurred in a good faith attempt to protect FitzWalter's interests as a secured creditor and security agent. Rather, those fees served -- may reasonably ultimately be concluded to have served independent and self-interested profit maximizing objectives of FitzWalter.

The problem the Court faces is that it is hard to quantify what degree of fee discount or disallowance should result, especially in the current posture of the case. I have not seen a breakdown of fees by date, task, or

objective and I am not confident that I can rule as a matter of law that all fees incurred by FitzWalter after a date certain are categorically disallowable, at least not on the current record. Moreover, the $4.6 million figure quoted was as of February 28th, and additional fees have doubtless accrued since then because the past 18 days have seen intense legal activity.

At the same time, however, I am certain that a significant discount ultimately will need to be applied. Accordingly, and in the interest of protecting what I consider FitzWalter's maximum likely reasonable fee recovery while avoiding imposing an excessive burden on the costs of this transaction, I direct an escrowed reserve of $4.1 million on account of FitzWalter's legal fees.

That reflects an approximately 10 percent reduction of the amounts assertedly due as of February 28th, and that is a conservative approximation of a reduction that I am confident I will set, likely in a significantly greater amount, upon more detailed presentations from the parties. I am not rejecting contentions based on suggested cutoff dates by when the proposed sale's full pay outcome allegedly appeared likely, but I do note that FitzWalter identifies other cases turning on much more substantial equity cushions than exist here.

My intention in requiring a reserve in this amount

is to ensure that FitzWalter's potential rights with regard to fees are adequately protected and also as a practical matter to establish an additional monetary cushion to provide adequate protection as to any entitlement whatsoever as -- of FitzWalter's.

Thus, for now, if the parties wish to proceed with the transaction without any further prior order of the Court, I direct that funds be escrowed to cover an ultimate determination up to the amount of the sum of $4.1 million to cover potentially allowable legal fees plus $500,000 to cover potentially allowable management fees plus $406,302.30 as to the Airborne costs plus $75,021 as to -- relating to insurance costs plus $1,842,148.42 for what has been termed other alleged breaches of head lease claims plus $300,000 in connection with parent support letter breach claims.

I'm going to not state a total because I tweaked one thing and I don't want to mess up my math, but those are the components and what I intend to allow and require as an escrow for the sale to go forward is the sum of those amounts that I just stated.

I do note specifically that this conclusion is without prejudice to all contentions of the parties including the possibility that the amounts charged are entirely or partly unreasonable or are not unreasonable, the possibility that certain demands should be disallowed as

they related to steps taken that were invalid as violations of the automatic stay, and the contention of Debtors that the management fees violate Section 2.15.7 of the Proceeds Agreement by having a change in security agent result in imposing on obligor, meaning the Debtor entities, having to make any increased payment or perform any increased obligations under the transaction documents.

Finally, FitzWalter challenges a provision of Debtors' proposed order that payment of proceeds of the sale shall be made directly to lenders including Mizuho and Sumitomo, notwithstanding the requirement of the underlying documents that all funds shall flow through the security agent for distribution according to the proceeds agreement. That argument, counsel for Mizuho declined to argue that the proceeds agreement should be set aside partly because Mizuho is bound by that agreement.

It is unusual to deviate from the parties' negotiated payment distribution scheme and Code Section 510(a) instructs that subordination agreements are enforceable in bankruptcy cases. I nevertheless conclude that in the circumstances of this case, the requested payment of obligations is an appropriate exercise of discretionary authority at least under Code Section 105 and possibly under other law. Given the extraordinarily contentious nature of the proceeding and FitzWalter's

assertion that it is entitled to compensation for proceedings in multiple jurisdictions, other lenders are at risk of not receiving the benefit of the full pay outcome that this transaction is designed to yield and does yield.

The Court concludes that in the circumstances, a deviation from the parties' negotiated payment mechanism is appropriate to protect the interest of all parties in interest. Such a provision will not harm FitzWalter because it will ensure the effectuation of their payment obligations to other lenders while guarding against FitzWalter's attempt or possible attempt to divert estate funds for unreasonable and self-interest purposes and will serve the interests of Debtors and the estate by ensuring that all secured creditors are in fact paid in full as the result of this beneficial transaction.

If this requirement were to be deemed improper, I would entertain a subsequent request for an order directing FitzWalter to pay other holders of debt the amounts of principal and interest that they are due on account of the debt that those parties hold.

I'm going to circle back to the escrow amount, just to state that my staff has helpfully added up the numbers that I recited earlier and comes up with a total escrow amount that I'm directing of $7,223,471.72. I will note that if that happens to include a mathematical error,

what I intend to be controlling is the specific set of dollar amounts that I stated on the record a few moments ago.

Two important, but I believe less controversial issues remain. First, Debtors and the stalking horse purchaser request a specific determination that the purchaser is a good faith purchaser entitled to the protections of Bankruptcy Code Section 363(m). I made such a finding earlier in this ruling and stated the reasons for it. I reiterate that finding here now and expressly link it to a finding and determination that the purchaser is entitled to a finding of good faith under Section 363(m).

And second, given the contentiousness of this case and the reality that it affects strenuously asserted objections of a major secured lender, I voiced discomfort at the hearing with Debtors' request that I waive the 14-day stay of sale orders that is automatically imposed by the bankruptcy rules, unless the Court directs otherwise. Debtors and the stalking horse purchaser expressed concern that t 14-day delay would be commercially problematic, especially in these uncertain economic and geopolitical times.

The rules impose a 14-day stay of sale orders, again as I just noted, unless the Court orders otherwise, so I have discretion whether to eliminate or modify such a

stay. I am sympathetic to the deal proponents' commercial observations, but I am unwilling to expose FitzWalter to a risk that their likely appeal will be equitably mooted by a rushed closing. I also am unwilling to impose on the district court an emergency demand for immediate relief without some minimal degree of breathing room for that court, which I am confident is likely to occur if I did not impose some degree of delay in the effectiveness of the Court's order.

I therefore will shorten but not eliminate the effective date of the order to seven days from the 14 ordinarily provided under the rules, commencing on the date of entry of an order in connection with this oral ruling. That concludes my intended remarks. Let me just ask Debtors counsel if they believe I either omitted or misstated anything that requires correction or supplementation.

MR. ORTIZ: Good afternoon, I guess now, Your Honor. Kyle Ortiz of Togut, Segal and Segal for the Debtors. I do not believe so, Your Honor.

THE COURT: Okay, thank you. Then I'm going to just say a very few words by way of recap and then we'll talk about procedural next steps.

In sum, for the reasons I've just stated on the record, the motion is granted and the relief for claim determination is resolved as stated herein. Debtors are to

submit an order on notice. I will note that I was largely okay with the proposed order submitted in support of the motion, subject mainly to a modest number of modifications and issues that were discussed during the March 14th hearing. I may have some other concerns, but they're relatively minor and don't require discussion today.

That proposed order, of course, will need to be further modified in light of today's ruling and so I'll look to Debtor to generate and submit a proposed version in Word to chambers for entry. Of course, that needs to be on notice to all parties and it will be helpful for you to provide it both with -- track changes reflecting all changes to the proposed order most recently submitted in support of your motion and then also in clean for us to be able to easily manipulate.

I will give you a practical heads up about my own schedule. Obviously, I'm working today. I have work travel next week Monday through Thursday to attend judicial training in Washington, but I will be sort of in connection with chamber and able to deal with things, but you may encounter some slight delays in processing resulting from that. I know this is time sensitive and I'll try to minimize delay.

While I'm disclosing things, I'll share with you that I'm also traveling Monday through Wednesday of the

following week, so -- and I may have another conflict on Friday of next week, so bottom line, my availability is very tight, as a practical matter, much of next week, but -- or maybe all of next week but with some ability to tend to things while I'm also doing other things and then the following week, Monday through Wednesday I'm out of pocket but again able to be reached and deal with things.

Okay. So that concludes my ruling and gives you a preview on next steps with regard to the proposed order. Now I'm going to just turn briefly to next steps in any procedural or scheduling matters that need to be addressed. I know under the parties' stipulation, there's a contemplation of further discovery and an ensuing hearing date. I suspect that it's premature to do all that on the spot, that you all will want to process the ruling I just made and if so, that's fine and you would be welcome to confer and then come to me with a proposed -- any proposed case management or scheduling issues that you need me to approve and/or you can just come to chambers with a request for a follow-up date.

However, if people think that discussion right now would be helpful, I'm happy to engage that. So let me ask, I guess I'll start with Debtor, how they want to proceed with determining next steps in the case procedurally.

MR. ORTIZ: Good afternoon again, Your Honor.

Kyle Ortiz of Togut Segal for the Debtors. I think Your Honor's instinct is likely right that it's a lot to process for all the various parties and I think it probably makes sense for us, unless there's some adamant disagreement among the parties on the phone, to have us all kind of collectively regroup and come up with scheduling, Your Honor, that works for everybody.

THE COURT: Okay. That sounds right to me. I don't want to put people on the spot and I also don't want to have -- immediately and I don't think that would be productive or fair, so let's do the following. You all can confer among yourselves. I'm available easily the rest of the day and if you want to come back to me and ask for a conference where we can reconvene and just hash through any disagreements about whatever they may be. I anticipate you might -- I know you had some differences about possible discovery schedules following on.

I'm available. I also don't insist that you come to me. I'd be fine letting you go at whatever pace you collectively are comfortable with and then just coming to me if and as needed at a later time. Does that work?

MR. ORTIZ: I think it makes perfect sense, Your Honor, and we'll try to let you know either way so if folks aren't coming back, you'll -- won't be waiting up on a Friday.

THE COURT: Okay. Thank you very much --

MR. WINSTON: Your Honor?

THE COURT: Yes.

MR. WINSTON: Eric Winston of Quinn Emanuel on behalf of FitzWalter. May I be heard?

THE COURT: Yes, you may. Of course.

MR. WINSTON: Okay. In light of Your Honor's rulings, I guess we'll need to hear from the buyer if they intend to proceed given the escrow that Your Honor imposed. If the buyer is prepared to proceed and the Debtors are prepared to close, Your Honor, we certainly understand that you have imposed the seven-day stay as opposed to what the rules provide. As a matter of formality, we make an oral motion for a stay pending appeal so that at least until the district court has had an opportunity to actually rule on that we not face an equitable mootness argument.

I'm prepared to explain why under the Second Circuit standards we think we are entitled to a stay pending appeal, but I also am quite aware that you've actually already reduces what the statute provides, so I don't want to waste your time if you're just going to deny it.

THE COURT: Yeah --

MR. WINSTON: -- move on.

THE COURT: Mr. Winston, thank you for raising that. At this time, I'll deny any further application for

an emergency stay or other -- or an extension of the 14-day period as a matter of law. I do -- I will just say a word more, that I credit contentions that have been stated that the transaction is time sensitive and the other -- the deal proponents wanted me to absolutely eliminate any stay. I think that's unreasonable, both to FitzWalter and to the court -- the district court, because it is -- it really hamstrings their ability, but I think a seven-day is -- delay in effectiveness of the order is reasonable and gives sufficient protection at this time.

And I'll just say specifically that that determination as of now is without prejudice to further applications either to this court or the district court as needed, but for my intention and hope is that what I've done adequately lets people look after their interests and gives a little breathing room for the district court as well.

I'll just further note that the -- as I'm sure you absorbed, the date's going to -- the seven-day period will run commencing with entry of the order, not with this oral ruling, so if there's ambiguity of that, I have just eliminated that possible concern. I think that's about what I need to say. I guess I should just say a bit more, that -- yeah, I don't consider the standard for emergency injunctive relief or stays to be met here in the circumstances of this case, but that's without prejudice to

further argument if anyone wants to make it. Okay?

MR. WINSTON: If I could just have -- sorry.

THE COURT: Yeah, go ahead, Mr. Winston.

MR. WINSTON: I just want to make -- because I know you talked about the order and it sounds like the parties need to at least look at some changes to it, but just to confirm, since the order approved the asset purchase agreement, I'm assuming Your Honor is approving the one that was filed on March 11th, Docket 159-2? There's not going to be any further changes to that?

MR. GREISSMAN: The --

THE COURT: Say your name, Mr. Greissman.

MR. GREISSMAN: Sorry. Scott Greissman, White and Case. There were provisions in the asset purchase agreement that we specifically identified would be dependent on the Court's ruling. We'll of course circulate to anybody any changed pages before signing. We're still a few days away. Mr. Winston doesn't need to worry too much about equitable mootness, with or without the Court's stay and we're not looking to jam anyone or slam dunk this on anyone and so, you know, we'll be in touch, I'm sure immediately.

THE COURT: Yeah, let me also just say a few -- thank you, Mr. Greissman, and let me just say a few more words. I was hesitating a moment ago trying to formulate this thought and I just want to say it. First off, I want

to thank and compliment everyone on their advocacy, notwithstanding some of the tough comments I made about the positions being advanced by FitzWalter.

I'm very impressed by the -- everyone's professionalism and from everything I can see, everyone's working together in a professional manner. I will urge that to continue and specifically keep FitzWalter apprised of what the expected pace is and, you know, just give them fair notice as to the best of your ability about what's coming down the pike and try to engage constructively just in terms of logistics and what's coming. You know, there's -- if you are going to have expedited further litigation, that puts a lot of strain on everybody and just try to make the process as livable as possible.

I will also say if -- I'm not asking for even a hint from the prospective purchaser, but if the prospective purchaser concludes that it actually wants to hold off on closing it should just tell the parties in interest that as soon as they can from that sense because that may mean that the litigation pace can slow down if the purchaser concluded that it wants to wait to see the final outcome of escrow requirements pending, you know, following a further hearing.

So I don't want the Court to be an impediment of closing if people are ready to go forward, but if everything is going to slow down anyway, be kind to one another and

allow each other to know that so that, you know, people aren't doing superhuman things unnecessarily.

MR. GREISSMAN: Duly noted, Your Honor, and we'll report back. We, obviously, the seller and the buyer have to circle up and just take stock of what you've ruled.

THE COURT: Okay. Great. Thank you very much. Mr. Winston, anything else we need to cover today? I don't mean to give you the bum's rush at all. You can raise anything else you like.

MR. WINSTON: No. You're fine. I just wanted to go through the formality of getting denied, so thank you.

THE COURT: I will assure you, in the course of my ruling, I'm familiar with the requirements for a stay and I gave serious thought to it and I think I've reasonably balanced the need to protect your party's interests with the need to make sure that the conduct of this case doesn't cause commercial harm and harm flowing the other way. Okay?

MR. WINSTON: Understood.

THE COURT: So thank you all very much and good day and I'll be available to the maximum extent possible, if and when you need me. Take care. We're adjourned.

MR. GREISSMAN: Thank you, Your Honor.

MR. WINSTON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:21 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: March 19, 2022

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