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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
**ART AND ARCHITECTURE BOOKS
OF THE 21ST CENTURY,**

Debtor.

Case No. 2:13-bk-14135-RK
Chapter 11

**ORDER RULING ON COMPETING
FORMS OF JUDGMENT ON DEBTOR'S
REQUEST FOR RELIEF FROM
FORFEITURE AND MOTION TO
ASSUME LEASE AND RESETTING
STATUS CONFERENCE AND HEARING
ON MOTION OF GRANTING AERC
DESMOND'S TOWER, LLC FOR
IMMEDIATE PAYMENTS PURSUANT TO
11 U.S.C. § 365(d)(3)**

CURRENT DATE: October 29, 2014
NEW DATE: November 12, 2014
TIME: 11:30 a.m.
PLACE: Courtroom 1675
255 E. Temple St.
Los Angeles, CA 90012

Pending before the court are competing forms of order and judgment on the request of Debtor Art and Architecture Books of the 21st Century ("Debtor") and its motion to assume lease submitted by the parties after the court issued its memorandum decision on September 18, 2014, indicating that the court will deny the request for relief from

1 forfeiture and motion to assume lease (ECF 664). On September 23, 2014, AERC
2 Desmond's Tower, LLC ("Landlord") lodged a proposed order and judgment with respect
3 to Debtor's request for relief from forfeiture and motion to assume lease (ECF 670).
4 Debtor filed an objection to Landlord's proposed judgment with an alternative proposed
5 order and judgment on September 24, 2014 (ECF 672 and 673). The Official Committee
6 of Unsecured Creditors ("Creditors' Committee") filed a joinder to the Debtor's objection
7 on September 24, 2014 (ECF 674).

8 The court conducted a hearing on the competing forms of order and judgment on
9 October 14, 2014. After considering the briefing and oral arguments made by the parties
10 at the October 14, 2014, hearing, the court adopts the form of order and judgment
11 proposed by Landlord. The court does so for the following reasons. The court
12 determines that "expired" and "terminated" are not synonymous and agrees with the
13 interpretation and analysis of those statutory terms found in 11 U.S.C. § 365 by the court
14 in *In re Morgan*, 181 B.R. 579, 583-584 (Bankr. N.D. Ala. 1994)(although interpreting
15 lease governed by Alabama law, the analysis of the terms "expired" and "terminated" in
16 the lease and the statute, 11 U.S.C. § 365 is based on plain meaning of the words as
17 defined in general reference works, including Black's Law Dictionary and Webster's II
18 New Riverside University Dictionary). Thus, the lease will be deemed rejected upon
19 entry of the order denying Debtor's motion to assume the lease based on the Ninth
20 Circuit's opinion in *In re Cukierman*, 265 F.3d 846, 848 (9th Cir. 2001)(stating that denial
21 of a bankruptcy debtor's motion to assume a lease "amounted to a rejection of the
22 lease"). Moreover, the court determines that Landlord's right to immediate surrender of
23 the property accrues upon the deemed rejection of Debtor's motion to assume the lease
24 based on the Ninth Circuit's opinion in *In re Elm Inn, Inc.*, 942 F.2d 630, 633-634 and n. 3
25 (9th Cir. 1991)(stating that "the lessor's right to immediate surrender of the property
26 simultaneously accrued" when the lease was deemed rejected under 11 U.S.C. §
27 365(d)(4)).

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1 The court also continues the Chapter 11 case management and status conference
2 in this bankruptcy case and the further hearing on Landlord's Motion to Compel
3 Immediate Payments, currently set for October 29, 2014, at 11:00 a.m. and 11:30 a.m.,
4 because the court is further deliberating on the immediate payments motion in that it is
5 still working on its written decision on the motion. These hearings are therefore
6 continued to November 12, 2014 at 11:30 a.m.

7 The proposed form of order and judgment submitted by Landlord will be approved
8 as that of the court.

9 **IT IS SO ORDERED.**

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24 Date: October 27, 2014



Robert Kwan
United States Bankruptcy Judge