

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

In re: Corporate Colocation, Inc.,
Debtor.

Case No.: 2:21-bk-12812-ER
Chapter: 11

**MEMORANDUM OF DECISION
DENYING DEBTOR’S MOTION FOR AN
EXTENSION OF ITS DEADLINE TO
ASSUME OR REJECT UNEXPIRED
LEASES**

[RELATES TO DOC. NO. 202]

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local Bankruptcy
Rule 9013-1(j)(3)]

Before the Court is the motion of Corporate Colocation, Inc. (the “Debtor”) to extend its deadline to assume or reject unexpired leases between the Debtor and 530 6th Street, LLC (the “Landlord”). *See* Bankr. Doc. No. 202 (the “Assumption/Rejection Motion”). The Assumption/Rejection Motion is opposed by the Landlord. Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),¹ the Court finds this matter to be suitable for disposition without oral argument. For the reasons set forth below, the Assumption/Rejection Motion is **DENIED**,² and the hearing on the Assumption/Rejection Motion, set for March 22, 2022 at 10:00 a.m., is **VACATED**.

¹ Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

² The Court reviewed the following pleadings in adjudicating this matter:

I. Background

The Debtor filed a voluntary Chapter 11 petition on April 7, 2021 (the “Petition Date”). The Debtor owns and operates a server farm that provides website services to approximately 25 customers. The Debtor operates its business from space leased from the Landlord located at 530 West Sixth Street, Los Angeles, CA 90014 (the “Property”).

On November 11, 2009, the Debtor and the Landlord executed (1) a lease for Suite 510 at the Property (the “510 Lease”) and a lease for Suite 502 at the Property (the “502 Lease,” and together with the 510 Lease, the “Leases”). The Debtor and the Landlord subsequently executed four amendments to the 510 Lease and three amendments to the 502 Lease.³ Amendments to the 510 Lease were executed to accommodate the Debtor’s need for additional space; extend the term of the 510 Lease; modify the rent and common area maintenance charges; and alter the Landlord’s obligations with respect to the provision of power, fire suppression, and other services. As of the third amendment to the 510 Lease, the space occupied by the Debtor under the 510 Lease included Suites 501, 503, and 701/710⁴ in addition to Suite 510. Amendments to the 502 Lease served similar purposes as the amendments to the 510 Lease, except that no additional space was added under the amendments to the 502 Lease.

Subsequent to the Petition Date, the Debtor and the Landlord entered into three stipulations, all of which were approved by the Court, to extend the Debtor’s deadline to assume or reject the Leases (the “Assumption/Rejection Deadline”). As set forth in the most recent stipulation⁵ and order thereon,⁶ the current Assumption/Rejection Deadline is March 24, 2022.

The Debtor seeks a further 90-day extension of the Assumption/Rejection Deadline, to and including June 22, 2022. The Landlord opposes the Assumption/Rejection Motion. The Landlord notes that under § 365(d)(4), the Assumption/Rejection Deadline may not be extended to a date beyond 300 days subsequent to the Petition Date without the Landlord’s express written consent. The 300-day deadline elapsed on February 1, 2022, and the Landlord states that it does not consent to any further extension. The Debtor argues that the Landlord should be equitably estopped from opposing the Assumption/Rejection Motion because it allegedly breached the Leases by, among other things, overcharging the Debtor for electricity, failing to bill electricity usage to the correct suite, and failing to respond to the Debtor’s demand for records substantiating the electricity usage charged to the Debtor.

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- 1) Amended Motion for Order Extending Time to Assume or Reject Executory Contracts (Real Estate Leases) [Bankr. Doc. No. 202] (the “Assumption/Rejection Motion”);
 - 2) Opposition to [Assumption/Rejection Motion] [filed by the Landlord] [Bankr. Doc. No. 213];
 - a) Evidentiary Objections to Declaration of Victor Goodman in Support of [Assumption/Rejection Motion] [Bankr. Doc. No. 214].

³ The Leases and the amendments thereto are set forth in Bankr. Doc. No. 162.

⁴ The parties sometimes referred to the space on the seventh floor as “Suite 701” and at other times as “Suite 710.”

⁵ Bankr. Doc. No. 167.

⁶ Bankr. Doc. No. 174.

II. Findings of Fact and Conclusions of Law

Section 365(d)(4) provides:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

- (i) the date that is 210 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

(B)

- (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 210-day period, for 90 days on the motion of the trustee or lessor for cause.
- (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

“[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made.” *Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 237 (B.A.P. 9th Cir. 1988), *aff’d*, 875 F.2d 1380 (9th Cir. 1989).

The plain language of the statute provides that the Assumption/Rejection deadline can be extended beyond a date that is 300 days after the Petition Date only upon the Landlord’s written consent. Here, the 300-day deadline was February 1, 2022. The Landlord has stipulated to extend the Assumption/Rejection Deadline to March 24, 2022, but does not consent to any further extensions.

There is no merit to the Debtor’s contention that the Landlord should be equitably estopped from opposing a further extension of the Assumption/Rejection Deadline. The Debtor asserts that *In re Northwest Territorial Mint LLC*, 2017 WL 3841750 (Bankr. D. Wash. 2017) stands for the proposition that a lessor may be equitably estopped from contesting an extension of the Assumption/Rejection Deadline. The Debtor mischaracterizes the holding of *Northwest Territorial Mint*. In *Northwest Territorial Mint*, the Chapter 7 Trustee sought to assume a real property lease, and argued that the landlord should be estopped from arguing that various repairs needed to be completed in order to cure defaults under the lease. *Id.* at *11. The court rejected the Chapter 7 Trustee’s estoppel argument because it was the Trustee who had persuaded the landlord to not file a list of the needed repairs. *Id.* The holding of *Northwest Territorial* with respect to estoppel has nothing to do with the Assumption/Rejection Deadline.

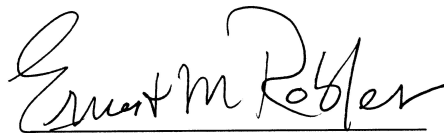
The language of § 365(d)(4) is clear and unambiguous: unless a lessor provides written consent, the Assumption/Rejection Deadline may not be extended to a date beyond 300 days subsequent to the Petition Date. Nothing within the statute provides any exception to this firm deadline, and the Debtor has cited no authority in which the deadline was extended over a lessor’s objection. “[D]eadlines are often the terrible anvil on which a legal result is forged.” *Anwar v. Johnson*, 720 F.3d 1183, 1184 (9th Cir. 2013). The Assumption/Rejection Motion is **DENIED**.

The Court declines the Landlord's request to order the Debtor to immediately surrender the leased premises to the Landlord, without prejudice to the Landlord's ability to present such request by way of a properly-noticed motion.

The Court will enter an order consistent with this Memorandum of Decision.

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Date: March 21, 2022

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge