

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC,
ET AL.,

DEBTORS

* CASE NO. 12-51127
*
* (JOINT ADMINISTRATION)¹
*
* CHAPTER 11
*
* JUDGE ROBERT SUMMERHAYS

**DEBTORS' SEVENTH MOTION FOR AN ORDER, PURSUANT
TO SECTION 365 OF THE BANKRUPTCY CODE,
AUTHORIZING THE DEBTORS TO (1) ASSUME AN UNEXPIRED
LEASE OF NONRESIDENTIAL REAL PROPERTY, AS AMENDED,
AND (2) SATISFY THE CURE AMOUNT IN RESPECT THEREOF**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this Seventh Motion for an Order, substantially similar to the proposed Order attached to this Seventh Assumption Motion as **Exhibit A**, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume An Unexpired Lease of Nonresidential Real Property, as Amended, and (2) Satisfy the Cure Amount in Respect Thereof (this "Seventh Assumption Motion"). This Seventh Assumption Motion relates to a lease of a cafeteria located at 402 Almeda Mall, Houston, TX (the "Lease"), as the same has been amended before and after the Petition Date (as defined below). In support of this Seventh Assumption Motion, the Debtors show as follows:

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On September 11, 2012 (the "Petition Date"), the Debtors filed for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors was appointed in these Chapter 11 cases on October 23, 2012.

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

5. The statutory predicates for the relief requested herein are §§ 105(a) and 365 of the Bankruptcy Code.

FACTUAL BACKGROUND

6. Pursuant to section 365(d)(4)(A) of the Bankruptcy Code, an unexpired lease of nonresidential real property under which a debtor is a lessee will be deemed rejected if such lease is not assumed or rejected within 120 days of the commencement of the debtor's case. Section 365(d)(4)(B) of the Bankruptcy Code provides that the court may extend the 120-day period by an additional 90 days for cause upon a motion of the debtor.

(a) Retention of the Consulting Company and Lease Negotiations

7. Piccadilly Restaurants, LLC (“Restaurants”), one of the Debtors herein, is a lessee under numerous nonresidential real property leases for their cafeterias. Since the Petition Date, as part of their ongoing restructuring efforts, Restaurants has worked diligently to identify those nonresidential real property leases that are not necessary to its ongoing business operations and beneficial to its estate.

8. To assist in this process, after the Petition Date, the Debtors engaged the services of a real estate advisor, GA Keen & Company (the “Consulting Company”),³ a company with significant experience in commercial real estate matters, to assist Restaurants in evaluating the real property leases of its cafeterias and renegotiating those leases.

9. Among other factors, the Debtors and the Consulting Company considered: (a) the suitability of each leased property to the Restaurants’ anticipated future business needs; (b) the rent and other material terms of each lease; (c) the market rent for similar properties; and (d) other miscellaneous consideration.

(b) The Assumption Deadlines

10. The Debtors sought authority to extend the initial 120-day deadline to assume or reject unexpired leases of nonresidential real property in their *Motion for an Order Extending Time to Assume or Reject Unexpired Nonresidential Leases of Real Property* (the “Extension Motion”) (Docket #305). In an Order entered on December 19, 2012 (Docket #416), the Extension Motion was granted, so that the deadline for assuming or rejecting nonresidential real property leases was extended through and including April 9, 2013 (the “Assumption Deadline”).

³ An Order granting the Debtors’ Motion for Authority to engage the Consulting Company was entered on December 6, 2012 (Docket #377).

11. The Debtors contacted certain landlords and requested consensual extensions of the Assumption Deadline. The Debtors and certain landlords agreed to consensual extensions. The Debtors filed those stipulations and presented them to this Court for approval. Section 365(d)(4)(B)(ii) of the Bankruptcy Code provides that if the Court grants an initial 90-day extension of the Assumption Deadline, the Court may grant a subsequent extension upon the prior written consent of the lessor.

12. The Assumption Deadline related to this Lease was extended, and currently expires on December 31, 2013. The Cure Amount is less than \$4,500, as discussed below.

(c) The First, Second, Third, Fourth, Fifth and Sixth Assumption Motions

13. This is the Debtors' Seventh motion to assume unexpired leases of nonresidential properties. Each of the previous assumption motions is summarized below:

(i) The first such motion was the Debtors' *Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (Docket #532) (the "First Assumption Motion"). In the First Assumption Motion, the Debtors sought authority to assume twenty-one (21) cafeteria leases, and the Debtors' headquarters lease. Two objections were filed to the First Assumption Motion, each of which was resolved by agreement in a consent Order granting the First Assumption Motion (Docket #684).

(ii) The second was the Debtors' *Second Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof*

(Docket #676) (the “Second Assumption Motion”). In the Second Assumption Motion, the Debtors sought authority to assume six (6) additional cafeteria leases, extend the time to assume three (3) additional cafeteria leases pursuant to written stipulations with the Landlords, and fix and pay Cure Amounts (as set forth in that Second Assumption Motion). An Order granting the Second Assumption Motion has been entered (Docket #677).

(iii) The third was the Debtors’ *Third Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (the “Third Assumption Motion”) (Docket #733). In the Third Assumption Motion, the Debtors sought authority to assume six (6) additional cafeteria leases. Two separate Orders granting the Third Assumption Motions have been entered (Docket ##816 and 817).

(iv) The fourth was the Debtors’ *Fourth Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (the “Fourth Assumption Motion”) (Docket #803). In the Fourth Assumption Motion, the Debtors seek authority to assume two (2) additional cafeteria leases. The Fourth Assumption Motion was granted (Docket #872).

(v) The fifth was the Debtors’ *Fifth Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (the

“Fifth Assumption Motion”) (Docket #839). Two landlords negotiated consent orders with the Debtors, and, therefore, three separate Orders were entered in connection with the Fifth Assumption Motion (Docket ##893, 894 and 895).

(vi) The sixth was the Debtors’ *Sixth Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof* (the “Sixth Assumption Motion”) (Docket #899), involving three properties, with two separate orders granting the Sixth Assumption Order (Docket ##956 and 955).

RELIEF REQUESTED

14. By this Seventh Assumption Motion, Restaurants seeks authority to assume, as modified, that certain unexpired lease of nonresidential real property, originally dated November 21, 1967, by and between Houston Mall, L.P. as the original landlord, and Piccadilly Cafeterias of Texas, Inc., as the original tenant, as amended from time to time before the Petition Date, together with the Lease Modification Agreement No. 6 (“Modification No. 6”), by and between the current landlord, Almeda Mall, L.P. (the “Landlord”), and Restaurants. Modification No. 6 was executed by the Landlord on September 9, 2013. The Lease, as modified from time to time, including Modification No. 6, shall be referred to as the “Lease, as Amended.” The stated term of the Lease, as Modified, expires on April 30, 2014.

15. By this Seventh Assumption Motion, Restaurants further requests entry of the proposed Order (Exhibit A) that fixes the proposed cure amount for the Lease, as Amended, at \$4,352.08 (the “Cure Amount”), and authorizes Restaurants to pay that Cure Amount within thirty (30) days of the entry of an Order approving this Seventh Assumption Motion.

16. A hearing on this Seventh Assumption Motion will be held on **October 29, 2013, at 10:00 a.m.**, Central Standard Time (the "Hearing").

17. If the Landlord objects to the relief sought in this Seventh Assumption Motion, the assumption of a Lease, as Amended, or the proposed Cure Amount, the Landlord must file an objection (an "Objection") no later than seven (7) days before the Hearing (the "Objection Deadline"). An Objection must:

- a. Be made in writing;
- b. State with specificity the grounds for the Objection, including if applicable, the fully liquidated Cure Amount the objecting party believes the Debtors are required to pay under section 365 of the Bankruptcy Code, along with the specific nature and dates of any alleged defaults, the pecuniary losses resulting therefrom, and the conditions giving rise thereto;
- c. Be filed with the Clerk of the Bankruptcy Court and served so as to be actually received on or before the Objection Deadline by sending the same to counsel to the Debtors, Elizabeth J. Futrell, Jones Walker LLP, 201 St. Charles Avenue, 51st Floor, New Orleans, Louisiana 70170, efutrell@joneswalker.com.
- d. If no Objection is timely received with respect to the Lease, as Amended, or if a timely Objection is received but does not comply with the foregoing requirements, the Debtors further request as follows:
 - i. The Debtors be authorized to assume the Lease, as Amended, effective as of entry of the Order approving the Motion, but no later than December 31, 2013;
 - ii. The Cure Amount be fixed at \$4,352.08, notwithstanding anything to the contrary in any Lease, as Amended, proof of claim (whether formal or informal), or any other document or instrument;
 - iii. The Debtors be authorized to pay the Cure Amount to the Landlord within 30 days of entry of an Order authorizing the assumption of the Lease, as Amended; and,
 - iv. If the Landlord fails to file an Objection, (a) the Landlord shall be deemed to have consented to the assumption of the Lease, as Amended, effective as of the entry of an Order granting this

Motion, but no later than December 31, 2013, (b) the Landlord shall be deemed to have consented to the Cure Amount being fixed at \$4,352.08, and (c) Restaurants shall be deemed to have satisfied all the requirements of adequate assurance of performance under the Bankruptcy Code, including any requirements set forth in sections 365(b)(1)(C) and 365(b)(3) of the Bankruptcy Code.

18. If the Landlord files a timely Objection (that complies with the requirements set forth above) as to the Cure Amount only (a “Cure Objection”), the Debtors request (a) authorization to assume the Lease, as Amended, as the entry of an Order approving this Seventh Assumption Motion, **but effective as of and no later than December 31, 2013**, as provided in the Proposed Order (Exhibit A), and (b) an Order that schedules a hearing at a later date with respect to the Cure Objection only. If the Landlord files a timely Objection or Cure Objection (that complies with the requirements set forth above), the Debtors request that a hearing be scheduled on that Objection or Cure Objection at such time as the Debtors file a motion to assume such Lease, as Amended.

19. The Debtors reserve the right, subject to appropriate notice and opportunity to object and this Court’s approval, to assign the Lease, as Amended, pursuant to and in accordance with the requirements of section 365 of the Bankruptcy Code.

BASIS FOR BELIEF

20. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). *See also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). This permits a debtor to “maximize the value of the debtors’ estate” by assuming executory contracts and unexpired leases that “benefit the estate” and by rejecting those that do not. *Cinicola v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001) (citation

omitted); *see also Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (section 365 "allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed").

21. The standard in approving the debtor's assumption or rejection of executory contracts and unexpired leases is whether such assumption or rejection (a) is a sound exercise of the debtor's business judgment, and (b) provides a benefit to the debtor's estate. *See Bildisco & Bildisco*, 465 U.S. at 523 (recognizing the business judgment standard used to approve rejection of executory contracts). Thus, a court must examine the Debtors' decision to assume or reject under the business judgment test to determine if assumption or rejection would be beneficial to the estates. *In re Food City, Inc.*, 94 B.R. 91, 93 (Bankr. W.D. Tex. 1988); *In re Transamerican Natural Gas Corp.*, 79 B.R. 663, 667 (Bankr. S.D. Tex. 1987).

22. To determine if a debtor has satisfied the business judgment standard, a court "is required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs*, 340 B.R. 222, 239 (Bankr. D. Del. 2006). Specifically, a court should find the decision to assume was made on "an informed basis, in good faith, and with the honest belief that the assumption . . . [i]s in the best interests of [the debtor] and the estate." *In re Network Access Solutions*, 330 B.R. 67, 75 (Bankr. D. Del. 2005). Under this standard, a court should approve a debtor's business decision unless the decision is the product of bad faith or a gross abuse of discretion. *See Lubrizol Enters v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985).

A. The Decision to Assume the Lease, as Amended, is a Sound Exercise of the Debtors' Business Judgment

23. Based on their review of the Lease, as Amended, in an exercise of their sound business judgment, the Debtors have determined the Lease, as Amended, is beneficial to their businesses and reorganization efforts and are necessary to sustain ongoing business operations.

B. Payment of Cure Amount and the Provision of Adequate Assurance of Future Performance

24. Pursuant to section 365(b)(1) of the Bankruptcy Code, if there has been a default under an executory contract or unexpired lease of a debtor, the debtor may not assume the executory contract or unexpired lease unless, at the time of assumption, the debtor: (a) cures or provides adequate assurance that it will promptly cure any defaults; (b) compensates or provides adequate assurance of prompt future compensation for actual pecuniary loss resulting from any defaults; and (c) provides adequate assurance of future performance under the contract or lease. *See* 22 U.S.C. § 365(b)(1).

25. By this Seventh Assumption Motion, the Debtors seek authority to pay the Cure Amount in compliance with section 365(b) of the Bankruptcy Code. In light of the scope of the Debtors' business operations, the Debtors believe payment of the Cure Amount is well justified.

26. The Debtors submit that the Landlord has sufficient assurance of the Debtors' future performance under the Lease, as Amended. In particular, the Debtors have substantially performed all of their obligations under the Lease, as Amended, since the Petition Date and have sufficient liquidity to continue meeting such obligations. Moreover, the Debtors have determined the Lease, as Amended, is integral to sustaining their business operations during and upon emergence from Chapter 11.

27. Additionally, the Debtors' acknowledge that the Amended Lease is lease of real property located in a "shopping center" (as such term is used in 11 B.S.C. § 365(b)(3)), and submit that they have demonstrated adequate assurance of future performance under the Lease, as Amended, sufficient to satisfy the requirements set forth in sections 365(b)(1)(C) and 365(b)(3) of the Bankruptcy Code.

NOTICE

28. Notice of this Seventh Assumption Motion has been given to (a) the Landlord, (b) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (c) the thirty largest unsecured creditors, the identity of which may be amended from time to time, (d) twenty (20) additional random unsecured creditors, (e) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, (f) counsel to the Unsecured Creditors' Committee, and (g) the Office of the United States Trustee. The Debtors submit that no further notice is necessary for this Court to enter an Order granting the relief requested by this Seventh Assumption Motion.

WHEREFORE, the Debtors respectfully requests an Order, (i) authorizing the Debtors to assume the Lease, as Amended, (ii) authorizing the Debtors to satisfy the Cure Amount in respect thereof, and (ii) granting the Debtors such other and further relief as the Court deems just and proper.

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Respectfully submitted,

/s/ Elizabeth J. Futrell

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**Attorneys for Piccadilly Restaurants, LLC,
Piccadilly Food Service, LLC, and
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Exhibit A

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

**ORDER, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE,
GRANTING THE SEVENTH ASSUMPTION MOTION**

Considering the Seventh Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, Authorizing the Debtors to (1) Assume An Unexpired Lease of Nonresidential Real Property, as Amended, and (2) Satisfy the Cure Amount in Respect Thereof (the “Seventh Assumption Motion”) (Docket #___), filed herein on September 18, 2013, by the above-

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

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captioned debtors and debtors-in-possession (collectively, the “Debtors”),² for an order to, *inter alia*, (i) assume as modified that certain unexpired lease of nonresidential real property, originally dated November 21, 1967, by and between Houston Mall, L.P. as the original landlord, and Piccadilly Cafeterias of Texas, Inc., as the original tenant, as amended from time to time before the Petition Date, together with the Lease Modification Agreement No. 6, by and between the current landlord, Almeda Mall, L.P. (the “Landlord”), and the current tenant, Piccadilly Restaurants, LLC (“Restaurants”), executed by the Landlord on September 9, 2013 (collectively, the “Lease, as Amended”), (ii) satisfy the proposed cure amount (the “Cure Amount”) for the assumption of the Lease, as Amended; the Court having subject matter jurisdiction to consider the Seventh Assumption Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and considering the Seventh Assumption Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed in these Chapter 11 cases; and due and proper notice of the Seventh Assumption Motion (including, but not limited to, the request to assume the Lease, as Amended,) having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Seventh Assumption Motion (the “Hearing”); and upon the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Seventh Assumption Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual basis set forth in the Seventh Assumption Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; and the

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

Debtors having represented to the Court that the Seventh Assumption Motion was filed and served in conformity with the Local Rules of this Court.

IT IS ORDERED that the Seventh Assumption Motion is **GRANTED**.

IT IS FURTHER ORDERED that Restaurants is hereby authorized to assume the Lease, as Amended, effective as of the entry of this Order[, but no later than December 31, 2013].

IT IS FURTHER ORDERED that Restaurants is authorized to satisfy the Cure Amount with respect to the Lease, as Amended, in the amount of \$4,352.08.

IT IS FURTHER ORDERED that Restaurants shall pay the Cure Amount, in the amount of \$4,352.08, to the Landlord within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that payment of the Cure Amount, in the amount of \$4,352.08, shall constitute the cure of all defaults arising under the Lease, as Amended, that is required to be cured by Restaurants under section 365(b) of the Bankruptcy Code (after giving effect to section 365(b)(2) of the Bankruptcy Code).

IT IS FURTHER ORDERED that, based the Restaurants' acknowledgement that the Lease, as Amended, is lease of real property located in a "shopping center" (as such term is used in 11 U.S.C. § 365(b)(3)) and the Landlord having consented to Restaurants' assumption (but not the assignment) of the Lease, as Amended, pursuant to this Order, Restaurants is deemed to have demonstrated adequate assurance of future performance under the Lease, as Amended, and has satisfied all the requirements set forth in sections 365(b)(1)(C) and 365(b)(3) of the Bankruptcy Code.

IT IS FURTHER ORDERED that, subject to appropriate notice and opportunity to object and this Court's approval, Restaurants retains its right to seek to assign the Lease, as

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Amended, pursuant to and in accordance with the requirements of section 365 of the Bankruptcy Code, and Landlord reserves all objections to any such assignment.

[IT IS FURTHER ORDERED that if the Landlord files a timely Objection (that complies with the requirements set forth above) as to the Cure Amount *only* (a “Cure Objection”), the hearing on such Cure Objection shall be heard on the __ day of _____, 2013.]

IT IS FURTHER ORDERED that the terms of this Order shall be immediately effective and enforceable upon its entry.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

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This Order was prepared and is being submitted by:

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