

**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**

**AMENDED MOTION FOR AN ORDER (1) APPROVING THE REJECTION OF AN
UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY OF AN
UNDERPERFORMING CAFETERIA LOCATED IN JACKSONVILLE, FLORIDA, AND
(2) THE REJECTION OF ONE EXECUTORY CONTRACT RELATED THERETO**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this *Amended Motion for an Order (1) Approving the Rejection of An Unexpired Lease of Nonresidential Real Property of An Underperforming Cafeteria Located in Jacksonville, Florida, and (2) the Rejection of One Executory Contract Related Thereto* (this “Amended Motion”),³ and in support thereof, shows 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.

³ See Note 4, *supra*. Other than changing the name of the Landlord, this Amended Motion is the same as the original *Motion for an Order (1) Approving the Rejection of An Unexpired Lease of Nonresidential Real Property of An Underperforming Cafeteria Located in Jacksonville, Florida, and (2) the Rejection of One Executory Contract Related Thereto* (the “Original Motion”) filed by the Debtors herein on January 30, 2013 (Docket #470).

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.

RELIEF REQUESTED

6. By this Amended Motion, the Debtors seek authority to reject one lease of nonresidential real property, as more fully described on Exhibit 1 to this Amended Motion, which covers an unprofitable, underperforming cafeteria, and that covers non-residential real property located in Jacksonville, Florida (the "Underperforming Cafeteria"). The Underperforming Cafeteria is leased from a third party, MHK Jacksonville, LLC (the

“Landlord”),⁴ pursuant to the lease, as amended, that is more fully described on **Exhibit 1** to this Amended Motion (collectively, the “Underperforming Cafeteria Real Property Lease”).

7. By this Amended Motion, the Debtors also seek authority to reject one executory contract that relates to services provided to the Underperforming Cafeteria (the “Executory Contract”). The Executory Contract is with ADP Security Services, Inc. (the “Non-Debtor Party”), for monitoring of the alarm system at the Underperforming Cafeteria, and is more fully described on **Exhibit 2** to this Amended Motion.

REASONS FOR REJECTION

8. After the Petition Date, the Debtors engaged the services of a real estate advisor, GA Keen & Company (the “Consulting Company”),⁵ with significant experience in commercial real estate matters. The Consulting Company concluded, as did the Debtors, that retaining the Underperforming Cafeteria Real Property Lease is not justified. The Cafeteria is unprofitable, and has a negative sales trend.

9. After closing the Underperforming Cafeteria, the Debtors will have 67 operating cafeterias.

BASIS FOR RELIEF REQUESTED

10. Section 365(a) of the Bankruptcy Code allows a debtor, subject to the bankruptcy court’s approval, to reject any executory contract or unexpired lease. *See Stewart Title Guaranty*

⁴ The original landlord was Provident Life and Accident Insurance Company, and by virtue of various assignments and transfers, the current Landlord is now MHK Jacksonville, LLC. Other than changing the name of the Landlord, this Amended Motion is the same as the original Motion filed on January 30, 2013 (Docket #470).

⁵ An Order granting the Debtors’ Motion for Authority to engage the Consulting Company was entered on December 6, 2012 (Docket #377).

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Co. v. Old Republic National Title Insurance Co., 83 F. 3d 735, 741 (5th Cir. 1966). “This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Id.* (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)). A debtor’s decision to reject executory contracts or unexpired leases is subject to the business judgment test. *See Sharon Steel Corp. v. National Fuel Gas Distrib. Corp.*, 872 F. 2d 36, 39-40 (3d Cir. 1989); *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).

11. The sole inquiry is whether the rejection will benefit this estate. *See Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.)*, 47 B.R. 425, 427 (D. Haw. 1985) (“[u]nder the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate”).

12. In applying the “business judgment” standard, courts show great deference to a debtor’s decision to reject executory contracts. *See Summit Land Co. v. Allen (in re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”). As long as the decision to reject is a reasonable exercise of business judgment, courts should approve the rejection of an executory contract or unexpired lease. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Group of Institutional Investors v. Chicago M. St. P. & P. R. R. Co.*, 318 U.S. 523 (1943); *Sharon Steel*, 872 F. 2d at 39-40.

13. Based on its relative unprofitability, exercising its business judgment, the Debtors have concluded that the Underperforming Cafeteria Real Property Lease and the related

Executory Contract should be rejected as of February 28, 2013. The Debtors will be vacated from the premises by that date.

NOTICE

14. Notice of this Amended Motion has been given to the Landlord and the other notice parties that are listed in the Underperforming Cafeteria Real Property Lease and the Non-Debtor Party to the Executory Contract, (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 Amended Motion.

WHEREFORE, the Debtors respectfully requests entry of an Order, substantially similar to the proposed Order attached to this Amended Motion as Exhibit 3, that approves the rejection of the nonresidential lease of real property that is described on Exhibit 1 to this Amended Motion, and the executory contract described on Exhibit 2. The Debtors further prays for such other relief as is equitable, just and proper.

Respectfully submitted,

/s/ Elizabeth J. Futrell

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**Attorneys for Piccadilly Restaurants, LLC,
Piccadilly Food Service, LLC, and
Piccadilly Investments, LLC**

EXHIBITS TO AMENDED MOTION

Exhibit 1 Description of the Underperforming Cafeteria Real Property Lease

Exhibit 2 Description of Executory Contract

Exhibit 3 Proposed Order

Exhibit 1

EXHIBIT 1

DESCRIPTION OF UNDERPERFORMING CAFETERIA REAL PROPERTY LEASE

That certain Lease (Lane Avenue, Jacksonville, Florida), made the 14th day of December, 1987, by and between Provident Life and Accident Insurance Company, as landlord, and Piccadilly Cafeterias, Inc., as tenant, as amended from time to time. The current landlord being MHK Jacksonville, LLC.

Notice to the landlord:

MHK Jacksonville, LLC
c/o Lat Purser & Associates
6320-7 St. Augustine Road
Jacksonville, FL 32217

MHK Jacksonville, LLC
c/o Lat Purser & Associates
Attn: Kristen Nimnicht
4168 Southpoint Parkway South, #200
Jacksonville, FL 32216

Westside Plaza/MHK Jacksonville, LLC
P.O. Box 915051, Stop #5051
Orlando, FL 32891-5051

Exhibit 2

EXHIBIT 2

DESCRIPTION OF EXECUTORY CONTRACT

Commercial Sale Agreement by and between ADP Services, Inc. (the Non-Debtor Party) and Piccadilly Restaurants, LLC, dated December 18, 2007

Notice to the Non-Debtor Party: Lawrence Sanders
7818 Phillips Hwy, Building #1
Jacksonville, FL 32256