

**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**

**MOTION FOR AN ORDER APPROVING THE REJECTION OF AN UNEXPIRED
LEASE OF NONRESIDENTIAL REAL PROPERTY OF AN UNDERPERFORMING
CAFETERIA LOCATED IN MIAMI, FLORIDA**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this *Motion for an Order Approving the Rejection of An Unexpired Lease of Nonresidential Real Property of An Underperforming Cafeteria Located in Miami, Florida* (this “Motion”), and in support thereof, shows as follows:

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).

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.

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 Motion, the Debtors seek authority to reject one lease of nonresidential real property, as more fully described on Exhibit 1 to this Motion, which covers an unprofitable, underperforming cafeteria, and that covers non-residential real property located in Miami, Florida (the "Underperforming Cafeteria"). The Underperforming Cafeteria is leased from a third party, Flagler S.C., L.L.C. (the "Landlord"), pursuant to the lease, as amended and modified before the Petition Date regarding the Flagler Park Plaza in Miami Florida, that is more fully described on Exhibit 1 to this Motion (collectively, the "Underperforming Cafeteria Real Property Lease").

REASONS FOR REJECTION

7. After the Petition Date, the Debtors engaged the services of a real estate advisor,

GA Keen & Company (the “Consulting Company”),³ 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.

8. After closing the Underperforming Cafeteria, the Debtors will have sixty-six (66) operating cafeterias.

BASIS FOR RELIEF REQUESTED

9. 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 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).

10. 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”).

11. 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*

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

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.

12. Based on its relative unprofitability, exercising its business judgment, the Debtors have concluded that the Underperforming Cafeteria Real Property Lease should be rejected as of March 31, 2013. The Debtors will be vacated from the premises by that date.

NOTICE

13. Notice of this Motion has been given to the Landlord and the other notice parties that are listed in the Underperforming Cafeteria Real Property Lease, (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 Motion.

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

Respectfully submitted,

/s/ Elizabeth J. Futrell

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

TYLER J. RENCH (#34049)

Jones, Walker, Waechter, Poitevent,

Carrère & Denègre, L.L.P.

201 St. Charles Avenue, 51st Floor

New Orleans, Louisiana 70170

Telephone: (504) 582-8000/ Direct: (504) 582-8194

Direct Facsimile: (504) 589-8194

Email: pvance@joneswalker.com

Email: efutrell@joneswalker.com

Email: mmintz@joneswalker.com

Email: trench@joneswalker.com

AND

PATRICK L. McCUNE (#31863)

Jones, Walker, Waechter, Poitevent,

Carrère & Denègre, L.L.P.

Four United Plaza

8555 United Plaza Blvd.

Baton Rouge, Louisiana 70809

Telephone: (225) 248-2150

Facsimile: (225) 248-3350

Email: pmccune@joneswalker.com

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

EXHIBITS TO MOTION

Exhibit 1 Description of the Underperforming Cafeteria Real Property Lease

Exhibit 2 Proposed Order

Exhibit 1

EXHIBIT 1

DESCRIPTION OF UNDERPERFORMING CAFETERIA REAL PROPERTY LEASE

That certain Lease by and between Flagler and 82nd, Ltd., a Florida limited partnership, as Landlord, and Piccadilly Cafeterias, Inc., a Louisiana corporation, as Tenant, as the same has been amended and modified from time to time before the Petition Date.

Notice to the Landlord: **Flagler S.C., LLC** (as the successor to Flagler and 82nd Ltd.)
c/o Kimco Realty Corp.
P.O. Box 5020
3333 New Hyde Park Rd., Suite 100
New Hyde Park, NY 11042-0020
Project ID SFLM1589
Lease ID LPICCA00
Tenant ID TIPICCA00

Exhibit 2

EXHIBIT 2; PROPOSED ORDER

**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 APPROVING THE REJECTION OF AN UNEXPIRED LEASE
OF NONRESIDENTIAL REAL PROPERTY OF AN UNDERPERFORMING
CAFETERIA LOCATED IN MIAMI, FLORIDA**

Considering the *Motion for an Order Approving (1) the Rejection of An Unexpired Lease of Nonresidential Real Property of An Underperforming Cafeteria Located in Miami, Florida* (the "Motion") (Docket # ___) filed herein on February 28, 2013, by the above-captioned debtors

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).

and debtors-in-possession (collectively, the “Debtors”),² by the Debtors, the Court concluding that (a) it has jurisdiction over this Motion, pursuant to 28 U.S.C. §§ 157 and 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (b) the relief requested in the Motion is essential to the continued operation of the Debtors’ businesses and is in the best interests of the Debtors’ estates and creditors, (c) sufficient notice was given to the non-debtor parties to the unexpired lease of nonresidential real property that is being rejected, and (d) sufficient cause supports the relief sought in the Motion; no pleading or response having been filed in opposition to the Motion, and the relief to be granted in this Order is consistent with the relief pled for in the Motion;

IT IS ORDERED that the Motion is hereby **GRANTED**;

IT IS FURTHER ORDERED that the unexpired lease of nonresidential real property that is listed on Exhibit 1 to this Order (the “Rejected Real Property Lease”) be and the same is hereby deemed rejected, effective March 31, 2013;

IT IS FURTHER ORDERED that, effective March 31, 2013, any personal property remaining on the premises of the Rejected Real Property Lease will be deemed abandoned by Piccadilly Restaurants, LLC, as the tenant (“Restaurants”), and Flagler S.C., LLC, as the landlord (the “Landlord”), will have the right to dispose of the same as it deems appropriate, without any liability whatsoever on the part of the Landlord to Restaurants, and without waiver of any of the Landlord’s damage claims, if any, against Restaurants;

IT IS FURTHER ORDERED that the Debtors are authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to

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

implement and effectuate this Order;

IT IS FURTHER ORDERED that, within five (5) days of the entry of this Order, the Debtors will serve this Order on the notice parties listed on Exhibit 1 to this Order; and

IT IS FURTHER ORDERED that the Court will retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion, or implementation of this Order.

###

This Order was prepared and is being submitted by:

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
MARK A. MINTZ (#31878)
TYLER J. RENCH (#34049)
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
201 St. Charles Avenue, 51st Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000/ Direct: (504) 582-8194
Direct Facsimile: (504) 589-8194
Email: pvance@joneswalker.com
Email: efutrell@joneswalker.com
Email: mmintz@joneswalker.com
Email: trench@joneswalker.com

AND

PATRICK L. McCUNE (#31863)
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
Four United Plaza
8555 United Plaza Blvd.
Baton Rouge, Louisiana 70809
Telephone: (225) 248-2150
Facsimile: (225) 248-3350
Email: pmccune@joneswalker.com

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