IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:	)	Chapter 11
	)	
ATA Holdings Corp., et al.,[1]	)	Case No. 04-19866
	)	(Jointly Administered)
Debtors.	)	

MOTION OF ATA AIRLINES, INC. TO REJECT EXECUTORY CONTRACT WITH GE ENGINE SERVICES, INC.

ATA Airlines, Inc., a debtor and debtor in possession (the "Debtor") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), files this motion (the "Motion") for entry of an order (the "Order"), the proposed for which is attached as Exhibit A, authorizing the Debtor to reject the CFM56-7 Maintenance Cost Per Hour ("MCPH") Engine Service Agreement between ATA Airlines, Inc. (f/k/a American Trans Air, Inc.) and GE Engine Services, Inc. dated September, 2000 as subsequently amended (the "MCPH Contract") pursuant to 11 U.S.C. § 365. A copy of the MCPH Contract is attached as Exhibit B (requested to be filed under seal).

In support of this Motion, the Debtor states as follows:

JURISDICTION

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. The Debtors continue to operate their businesses and

[1] The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadair Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Airlines, Inc. (04-19874).

manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "UCC") pursuant to § 1102(a)(1) of the Bankruptcy Code.

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief sought herein is Section 365(a) of the Bankruptcy Code.

RELIEF REQUESTED

5. For the reasons stated below, the Debtors request that the Court enter an order pursuant to section 365 of the Bankruptcy Code authorizing the Debtors to reject the MCPH Contract that in the Debtors' sound business judgment is an unnecessary burden on the Debtors, their estates, and creditors.

BASIS FOR RELIEF

6. Concurrent with and subsequent to the closure on the transfer of certain assets to Southwest Airlines, Inc., the Debtors are concentrating on restructuring efforts to create an efficient business and provide optimum return to their creditors. Part of that restructuring effort has concentrated on reducing and gauging the aircraft fleet. As a result, the Debtors are analyzing various executory contracts and unexpired leases pertaining to their aircraft fleet. After a thorough analysis of the MCPH Contract the Debtors have determined in their sound business judgment that the MCPH Contract is no longer cost effective and imposes an

unnecessary burden on the Debtors, their estates, and creditors in light of the reductions and other planning with relation to the aircraft fleet.

7. The MCPH Contract provides the Debtors with certain engine maintenance, both scheduled and unscheduled. Under the MCPH Contract, the Debtors pay for scheduled maintenance by remitting on the 15th day of the calendar month to GE Engine an amount per engine flight hour ("EFH") that the engines covered by the MCPH were actually flown in the prior calendar month, subject to a minimum monthly EHF total. Unscheduled maintenance is paid pursuant to fee schedules within the MCPH Contract. The aircraft engines covered by the MCPH Contract are fairly "young" and the Debtors believe that the EHF amounts being paid are in excess of any value that would be returned on the MCPH Contract for some time.

REJECTION OF THE CONTRACT

8. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract or an unexpired lease." 11 U.S.C. § 365(a). The assumption or rejection of an unexpired lease or executory contract by a debtor is subject to review under the business judgment standard. See, e.g., Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 43 (2d Cir. 1979) (Act case); In re Gucci, 193 B.R. 411, 414-15 (S.D.N.Y. 1996); In re Federated Dept. Stores. Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); In re Cutters, Inc., 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989). This standard is satisfied when a debtor demonstrates that rejection will benefit the estate. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

9. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., Group of Institutional Investors v. Chicago, M., St. P. & P.R.R. Co., 318 U.S. 523, 550-51 (1943); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); In re Child World, Inc., 142 B.R. 87, 90 (Bankr. S.D.N.Y. 1992); see also Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc. (In re Allied Tech., Inc.), 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) ("Court approval of a debtor in possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative or contrary to the provisions of the Bankruptcy Code").

10. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See, e.g., Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992); see also Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

11. The Debtors have determined that they can obtain the services currently received under the MCPH Contract at a lower cost than provided in the MCPH Contract and thus the rejection of the MCPH Contract is fiscally prudent and is a reasonable exercise of the Debtors' business judgment.

NO PRIOR REQUEST

12. No prior motion for the relief requested herein for the MCPH Contract has been made to this or any other Court.

WHEREFORE, the Debtors request that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing but not requiring the Debtors to reject the MCPH Contract.

Respectfully submitted,

BAKER & DANIELS

By: /s/Jeffrey C. Nelson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 5th day of January 2005, by electronic mail on the Core Group, 2002 List, Appearance List, and GE Engine Services, Inc.

/s/ Jeffrey C. Nelson