

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 ON SHORTENED NOTICE FOR ENTRY OF AN ORDER AUTHORIZING
DEBTORS TO REJECT AIRPORT LEASE AND USE AGREEMENT WITH THE
GREATER ORLANDO AVIATION AUTHORITY**

The debtors and debtors in possession (the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Order"), the proposed form of which is attached as Exhibit A, authorizing the Debtors, pursuant to 11 U.S.C. § 365, to reject that certain Airline – Airport Lease And Use Agreement with an effective date of January 1, 1996 by and between the Greater Orlando Aviation Authority (the "Authority") and ATA Airlines, Inc. f/k/a American Trans Air. Inc. ("ATA Airlines") (as subsequently modified and/or amended, the "Lease & Use Agreement") effective as of the Rejection Date (as defined herein).

In support of this Motion, the Debtors state 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

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassador 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).

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 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 basis 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 Lease & Use Agreement that, in the Debtor's sound business judgment, is an unnecessary burden on the Debtors, their estates, and creditors.

BASIS FOR RELIEF

6. As part of the Debtors' ongoing restructuring efforts, the Debtors are analyzing their executory contracts and unexpired leases. As a result of that analysis the Debtors believe in their sound business judgment that rejection of the Lease & Use Agreement is in the best interests of their estates and their creditors.

7. As more particularly described in Article II of the Lease & Use Agreement, the Lease & Use Agreement grants ATA Airlines the right to use certain premises and facilities at the Orlando International Airport along with certain rights and privileges in connection with such use. ATA was invoiced monthly under the Lease & Use Agreement.

8. Due to circumstances within the airline industry, the Debtors have decided to reduce their number of daily scheduled flights. The costs and fees associated with the Lease & Use Agreement are no longer economically feasible in light of Debtors' reduced flight operations. The benefits that may be received by the Debtors, their estates, and creditors from the Lease & Use Agreement is, in the Debtor's sound business judgment, exceeded by the costs incurred under the Lease & Use Agreement. The Lease & Use Agreement is an unnecessary burden on the Debtors at a time in which the Debtors are attempting to minimize costs to generate maximum value for all its creditors.

REJECTION OF THE LEASE & USE AGREEMENT

9. 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 Mingos), 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).

10. 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").

11. 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.").

12. The rejection of the Lease & Use Agreement is prudent and is a reasonable exercise of the Debtor's business judgment. The Debtors no longer intend to operate a flight schedule justifying the costs of the Lease & Use Agreement. By rejecting the Lease & Use Agreement, the Debtors will be able to obtain the use of the facilities at the Airport

necessary to their flight operations as a "non-Signatory" to the Lease & Use Agreement at a lower cost.

EFFECTIVE DATE OF REJECTION

13. Debtors request that the rejection of the Lease & Use Agreements be effective as of the date upon which Debtors surrender possession of the premises leased to them pursuant to the Lease & Use Agreement, such surrender to be deemed to occur upon the tendering of written notice to the Authority of rejection of the Lease & Use Agreement and the relinquishment of possession (the "Rejection Date").

NO PRIOR REQUEST

14. No prior motion for the relief requested herein for the Lease & Use Agreement has been made to this or any other Court.

WHEREFORE, the Debtor requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtor to reject the Lease & Use Agreement.

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 3rd day of March 2005, by electronic mail on the Core Group, 2002 List, Appearance List, and the Authority.

/s/ Jeffrey C. Nelson