UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	Chapter 11
	)	
ATA HOLDINGS CORP., et al.[1]	)	Case No.: 04-19866
	)	
Debtors.	)	

MOTION TO COMPEL ASSUMPTION OR REJECTION OF UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY

The Indianapolis Airport Authority (the "IAA"), by and through counsel, for its *Motion to Compel Assumption or Rejection of Unexpired Lease of Nonresidential Real Property*, states as follows:

Procedural History and Factual Background

1. On October 26, 2004, the Debtors filed their voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code (the "Petition Date"). The Debtors continue to operate their businesses and manage their assets as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. On December 7, 2004, the Debtors filed their *Motion for Entry of an Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property on Shortened Notice* [Docket No. 571]. By Order dated January 26, 2005 [Docket No. 1292], the Court allowed the Debtors through the earlier of February 25, 2005 or the date of confirmation of a plan or reorganization to either assume, assume and assign, or reject the Debtors' leases of nonresidential real property.

3. On February 11, 2005, the Debtors filed their *Second Motion for Entry of an Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property on*

Shortened Notice to and Including the Earlier of May 3, 2005, or the Date on Which a Plan of Reorganization is Confirmed [Docket No. 1397]. By Order dated March 1, 2005 [Docket No. 1571], the Court allowed the Debtors through the earlier of May 3, 2005 or the date of confirmation of a plan or reorganization to either assume, assume and assign, or reject the Debtors' leases of nonresidential real property.

4. On April 21, 2005, the Debtors filed their *Third Motion for Entry of an Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property on Shortened Notice to and Including the Earlier of May 3, 2005, or the Date on Which a Plan of Reorganization is Confirmed* [Docket No. 1997].

5. For the grounds stated herein, the IAA respectfully requests that this Court enter an order, pursuant to Sections 365(d) and 105 of the Bankruptcy Code, compelling the Debtors to immediately assume, assume and assign, or reject the below described nonresidential real property lease between the IAA and the Debtors.

The Debtors' Maintenance Facility Lease with the IAA

6. The IAA owns and operates the Indianapolis International Airport and is a party to a number of lease agreements with the Debtors, including the lease agreement to which this Motion relates.

7. Pursuant to a December 29, 1995 "Maintenance Facility Lease Agreement"[2] (as amended and supplemented, the "Maintenance Facility Lease"), the Debtors, on an ongoing basis, lease a maintenance hangar located at the Indianapolis International Airport (the "Maintenance Facility") from the IAA.

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[1] The Debtors are the following entities: ATA Holdings Corp., ATA Airlines, Inc., Ambassadair Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA Cargo, Inc., and Chicago Express Airlines, Inc.

[2] A copy of the Maintenance Facility Lease is not attached hetero as the same is voluminous, however, is available upon request to counsel for the IAA.

8. As of the date of filing of this Motion, the Debtors have neither assumed nor rejected the Maintenance Facility Lease. The Debtors' current deadline to assume or reject is May 6, 2005, although, as set forth above, the Debtors have sought an additional extension of time to assume or reject nonresidential real property leases.

Legal Standard and Request for Relief

9. Section 365(d)(4) of the Bankruptcy Code provides that a debtor must assume or reject unexpired leases of nonresidential real property within 60 days after the order for relief, or the lease will be deemed rejected. However, upon the debtor's showing of "cause", the Court has the discretion to enlarge the 60 day period. See 11 U.S.C. § 365(d)(4).

10. The primary purpose of Section 365(d)(4) is to '"protect lessors … from delay and uncertainty by forcing a trustee or a debtor in possession to decide quickly whether to assume unexpired leases.'" In re American Healthcare Management, Inc., 900 F.2d 827, 830 (5th Cir. 1990), quoting Sea Harvest Corp. v. Rivera Land Co., 868 F.2d 1077, 1079 (9th Cir. 1989). See also, In re Channel Home Centers, Inc., 989 F.2d 682, 687 (3rd Cir. 1993).

11. Section 362(d)(2) of the Bankruptcy Code provides that the court may, upon the request of a party, direct that a debtor determine within a specified period of time, whether to assume or reject executory contracts or certain unexpired leases. "Congress intended this provision to 'prevent parties in contractual or lease relationship with the debtor from being left in doubt concerning their status vis-a-vis the estate.'" University Medical Center v. Sullivan (In re University Medical Center), 973 F.2d 1065, 1079 (3rd Cir. 1992) quoting S.Rep. No. 989, 95th Cong., 2d. Sess. 59 (1978) reprinted in 1978 U.S.C.A.N. 5787, 5845.

12. When considering motions to establish a "specified period of time to assume or reject an executory contract, [c]ourts have routinely indicated that the debtor has 'a reasonable time within which to determine whether [assumption] or rejection of the executory contract would be

beneficial to an effective reorganization.'" In re Republic Technologies Int'l, LLC, 267 B.R. 548, 553-54 (Bankr. N.D. Ohio 2001) (quoting Data-Link Sys., Inc. v. Whitcomb & Keller Mtg. Co. (In re Whitcomb & Keller Mtg. Co.), 715 F.2d 375, 379 (7th Circ. 1983)). "In making this determination to require acceleration or assumption or rejection, courts evaluate the nature of the interests at stake, the potential harm to the parties, the potential benefits to the parties and the safeguards afforded to the parties." In re Republic Technologies Int'l, LLC, 267 B.R. at 554 (citing Mapco Fertilizer v. N-Ren Corp. (In re N-Ren Corp.), 69 B.R. 85, 86 (Bankr. S.D. Ohio 1987)). The determination of what is a reasonable amount of time to assume or reject an executory contract or unexpired lease is determined on a case by case basis. In re Teligent, Inc., 268 B.R. 273 (Bankr. S.D.N.Y. 2001).

13. In this case, ample cause exists to compel the Debtors to make a decision with respect to assumption or rejection of the Maintenance Facility Lease.

14. The Maintenance Facility is a unique property in that only a small number of entities have the ability to utilize the same at its highest and best use - namely commercial airlines operating out of Indianapolis. Should the Debtors ultimately reject the Maintenance Facility Lease, the IAA may be unable to find a replacement tenant for the property or may only be able to find a replacement tenant after extensive marketing costs are incurred and significant concessions are made by the IAA.

15. The IAA has been contacted by a new prospective tenant for the Maintenance Facility proposing a lease arrangement on terms generally equivalent to those of the Maintenance Facility Lease. In order to accommodate the tenant's timeline and needs and eliminate significant costs that would be incurred by the IAA in modifying alternative space to suit the tenant's needs the IAA must finalize an appropriate lease agreement for Maintenance Facility with the tenant in the very near future.

16. In short, the IAA is currently presented with an opportunity to lease the Maintenance Facility on appropriate terms to a new prospective tenant, thereby reducing any claims it may have against the Debtors' estates arising out of the Maintenance Facility Lease, reducing costs to the users of the Indianapolis International Airport, and ensuring that the Maintenance Facility is utilized at its highest and best use.

17. Opportunities to lease such a premises rarely arise. Were the Debtors allowed to continue to delay their decision regarding the assumption or rejection of the Maintenance Facility, this opportunity would evaporate and the IAA would be meaningfully and materially harmed.

WHEREFORE, IAA respectfully requests that this Court enter an Order immediately compelling the Debtors to assume, assume and assign or reject the Maintenance Facility Lease, and granting all other appropriate relief under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following parties via electronic means and/or U.S. First-Class United States Mail on this 22nd day of April, 2005:

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