

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 FOR ENTRY OF AN ORDER AUTHORIZING
ATA AIRLINES, INC. TO REJECT EQUIPMENT LEASE WITH GENERAL
ELECTRIC CAPITAL CORPORATION *NUNC PRO TUNC* TO APRIL 29, 2005.**

ATA Airlines, Inc. ("ATA"), one of the debtors and debtors in possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), hereby files this motion (the "Motion") for entry of an order authorizing ATA to reject, *nunc pro tunc* to the Effective Date (defined herein), an equipment lease with General Electric Capital Corporation ("GECC") pursuant to 11 U.S.C. § 365. The proposed form of the order ("Order") is attached hereto as Exhibit A.

In support of this Motion, ATA 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), 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).

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

2. No trustee has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") 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.

BACKGROUND

5. ATA (f/k/a American Trans Air, Inc.) and GECC are parties to that certain Commercial Transportation Lease Agreement dated March 23, 2001 (the "Lease"). A true and accurate copy of the Lease is attached hereto as Exhibit B. Pursuant to the Lease, ATA leases six buses manufactured by Thomas Built Buses, Inc. (the "Buses").

6. Pursuant to a sublease agreement between ATA and Chicago Express Airlines, Inc. ("Chicago Express"), Chicago Express used the Buses to transport passengers to and from its airplanes and the terminal at Midway International Airport in Chicago, IL. Chicago Express ceased flight operations on March 28, 2005, and as a result, the Debtors ceased any use of the Buses on that date.

7. By a notice sent to counsel for GECC on April 28, 2005 (the "Notice"), the Debtors surrendered possession of the Buses as of April 29, 2005. The Notice informed GECC of the location of the Buses and provided contact information to coordinate the Buses' return.

RELIEF REQUESTED

8. For the reasons stated below, ATA requests that the Court enter an order pursuant to section 365 of the Bankruptcy Code authorizing ATA to reject the Lease effective as of the Effective Date (defined below).

BASIS FOR RELIEF

9. 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 rejection of the Lease is in the best interests of their estates and their creditors.

10. 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).

11. 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").

12. 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.").

13. Chicago Express has ceased flight operations. As a result, the Buses are unnecessary to ATA's continued operations. Therefore, rejection of the Lease is in the best interests of ATA's estate and creditors and constitutes a proper exercise of ATA's sound business judgment.

EFFECTIVE DATE OF REJECTION

14. ATA requests that the rejection of the Lease be effective as of April 29, 2005 (the "Effective Date"). As of the Effective Date, the Debtors had informed GECC that they were rejecting the Lease and had surrendered possession of the Buses.

15. ATA respectfully requests that this Court enter an order authorizing ATA to reject the Lease, effective as of the Effective Date, so as not to expose ATA's estate to

unwarranted postpetition administrative expenses. See In re Amber Stores, Inc., 193 B.R. 821, 827 (N.D. Tex. 1996) ("where the debtor vacated the premises and turned over the keys to the landlord over a month before the petition was filed, the debtor should not be permanently penalized by the lag time between filing a motion and the entry of an order by the Court").

16. Because as of the Effective Date ATA had informed GECC of the rejection and surrendered possession of the Buses, the equities clearly weigh in favor of granting ATA the relief requested. See Thinking Machines Corp. v. Mellon Fin. Servs. (In re Thinking Machines Corp.), 67 F.3d 1021, 1028 (1st Cir. 1995) (holding that although court approval is a condition precedent to effective rejection of a lease, "bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation"); In re CCI Wireless LLC, 297 B.R. 133, 138 (D. Colo. 2003) ("section 365 does not prohibit the bankruptcy court from allowing the rejection of leases to apply retroactively"); Constant, L.P. v. Jamesway Corp. (In re Jamesway Corp.), 179 B.R. 33, 37-38 (S.D.N.Y. 1995) (affirming bankruptcy court's retroactive approval of lease rejection); In re Mid Region Petroleum, Inc., 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990), aff'd, 1 F.3d 1130 (10th Cir. 1993) (rejection of executory contract may be affected by affirmative act of debtor-in-possession prior to later court approval).

17. In addition, this Court has previously recognized the idea of a de facto rejection prior to the entry of an order approving a motion to reject in another large chapter 11 case. See In re American Commercial Lines LLC, Case No. 03-90305 (Bankr. S.D. Ind. 2003) (Docket No. 1593).

NO PRIOR REQUEST

18. No prior motion for the relief requested herein for the Lease has been made to this or any other Court.

WHEREFORE, ATA requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing ATA to reject the Lease effective as of the Effective Date.

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 May, 2005, by electronic mail on the Core Group, 2002 List, Appearance List, and GECC.

/s/ Jeffrey C. Nelson