

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 AUTHORITY TO ASSUME AGREEMENTS ANCILLARY TO
AIRCRAFT LEASE AGREEMENT WITH GATX THIRD AIRCRAFT CORPORATION
AND FOR APPROVAL OF AMENDMENT**

ATA Airlines, Inc. ("ATA") and ATA Holdings Corp. ("ATAH"), debtors and debtors in possession (collectively, the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), hereby file this motion (the "Motion") for entry of an order, the proposed form of which is attached hereto as Exhibit A, (i) authorizing ATA and ATAH to assume certain agreements with GATX Third Aircraft Corporation ("GATX") ancillary to the Lease (as defined herein); and (ii) approve the Amendment (as defined herein). ATA and ATAH request that the Court enter the Order without a hearing if no objections to the relief requested herein are filed with the Court and served on counsel for ATA and ATAH on or before May 20, 2005.

In support of this Motion, ATA and ATAH 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 Debtors, Inc. (04-19868), Ambassadeair 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 Debtors, 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 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.

RELIEF REQUESTED

5. For the reasons stated below, ATA and ATAH request that the Court enter an order: (i) authorizing ATA and ATAH to assume the Ancillary Agreements (as defined herein) pursuant to section 365 of the Bankruptcy Code.; and (ii) approving the Amendment.

BASIS FOR RELIEF

6. ATA, as lessee, and GATX, as lessor, are parties to that certain Aircraft Lease Agreement, dated as of June 30, 1995 (as amended, modified, or supplemented to date, the "Lease"). Pursuant to the Lease, GATX leases to ATA a Boeing B757-200 aircraft bearing U.S. registration number N514AT (manufacturer's serial number 27971) (the "Airframe") equipped with two Rolls-Royce RB211-535E4 engines (serial numbers 31391 and 31392) (the "Engines")

together will all parts and other installed equipment, records, log books and manuals (collectively with the Airframe and the Engines, the "Aircraft").

7. On March 7, 2005, the Debtors filed their Motion For Authority To Assume Amended Lease (Docket No. 1643) (the "Assumption Motion"). The Debtors sought authority to assume the Lease as amended (the "Amended Lease") by the Term Sheet (as defined in the Assumption Motion).

8. On March 21, 2005, the Court entered its Order On Motion For Authority To Assume Amended Lease (Docket No. 1765) (the "Assumption Order") authorizing the Debtors to assume the Amended Lease.

9. The Assumption Order authorized the Debtors to take all actions contemplated by the Term Sheet in entering into and assuming the Amended Lease. The Term Sheet contemplated that the Debtors and GATX would negotiate and enter into a definitive amendment (the "Amendment") to the Lease. A true and accurate copy of the Amendment agreed to by ATA, ATAH and GATX is attached to this Motion as Exhibit B (requested to be filed under seal).

10. In addition to the Lease, ATA, ATAH and GATX are parties to the following documents relating to the Aircraft (collectively, the "Ancillary Agreements"): (i) that certain Tax Reimbursement Agreement, dated as of September 1, 1995, between GATX and ATA; (ii) that certain Aircraft Lease Framework Agreement, dated as of June 30, 1995, between GATX and ATA; and (iii) that certain Guaranty Of The Obligations Of American Trans Air, Inc., dated as of June 30, 1995, by ATAH.

11. The Ancillary Agreements are an integral part of the transaction between ATA, ATAH and GATX whereby ATA leases the Aircraft from GATX.

ASSUMPTION OF THE ANCILLARY AGREEMENTS

12. 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).

13. 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").

14. 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.").

15. The Aircraft is important to ATA's business plan and future operations. The Court has previously found that the assumption of the Amended Lease is in the best interests of the Debtors, their estates and creditors, and is a sound exercise of the Debtors' business judgment. The Ancillary Agreements and the Amended Lease are all integral parts of the same transaction.

16. GATX has agreed that upon assumption of the Ancillary Agreements, neither ATA nor ATAH will be required to cure any outstanding defaults under the Ancillary Agreements, and that GATX will waive any claims related thereto provided that ATA has complied with the terms of that certain Stipulation dated December 20, 2004 between GATX and ATA, and subsequently approved by the Court on January 3, 2005 (the "Stipulation").

17. In light of the foregoing, assumption of the Ancillary Agreements is in the best interests of the estates and creditors of ATA and ATAH and constitutes a proper exercise of their sound business judgment.

APPROVAL OF THE AMENDMENT

18. Pursuant to the Assumption Order, the Debtors have authority to take all actions contemplated by the Term Sheet. One such action is the negotiation and execution of the Amendment. Therefore, ATA and ATAH do not believe further Court approval of the

Amendment is required, however, out of an abundance of caution, ATA and ATAH request that the Court authorize ATA and ATAH to enter into the Amendment.

19. The terms of the Amendment are substantially similar to the terms of the Term Sheet previously approved by the Court. The Amendment is the result of extensive arms-length negotiations between ATA and GATX. The terms of the Amendment are fair and reasonable and consistent with market terms and rates. Entry into the Amendment is within the sound business judgment of ATA and ATAH.

NO PRIOR REQUEST

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

WHEREFORE, ATA and ATAH request that the Court enter an order: (i) authorizing ATA and ATAH to assume the Ancillary Agreements pursuant to section 365 of the Bankruptcy Code; and (ii) approving the Amendment. ATA and ATAH request that the Court enter an order without a hearing if no objections to the relief requested herein are filed with the Court and served on counsel for ATA and ATAH on or before May 20 2005.

Respectfully submitted,

BAKER & DANIELS

By: /s/ Jeffrey C. Nelson

Attorneys for the Debtors and Debtors-in-Possession

James M. Carr (#3128-49)
Terry E. Hall (#22041-49)
Stephen A. Claffey (#3233-98)
Melissa M. Hinds (#24230-49)
Jeffrey C. Nelson (#25173-49)
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
jim.carr@bakerd.com
terry.hall@bakerd.com
steve.claffey@bakerd.com
melissa.hinds@bakerd.com
jeffrey.nelson@bakerd.com

Wendy W. Ponader (#14633-49)
Ponader & Associates, LLP
5241 North Meridian Street
Indianapolis, Indiana 46208
Telephone: (317) 496-3072
Facsimile: (317) 257-5776
wponader@ponaderlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 10th day of May, 2005, by electronic mail, facsimile, hand delivery or overnight mail on the Core Group, 2002 List, Appearance List, and GATX.

/s/ Jeffrey C. Nelson