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.	)	

ATA AIRLINES, INC.'S OBJECTION TO THE CLAIM OF THE CITY OF CHICAGO

Pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), ATA Airlines, Inc. ("ATA") objects (this "Objection") to claim number 1995 (as set forth on the official claims register in these cases (www.bmccorp.net/ATA)) (the "Claim") filed by the City of Chicago (the "City").

Jurisdiction

1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are 28 U.S.C. § 502 and Rules 3001 and 3007 of the Bankruptcy Rules.

Background

3. On October 26, 2004 (the "Petition Date"), ATA filed with this Court its 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"). The First Amended Joint Chapter 11 Plan For

[1] The Debtors means 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 C8 Airlines, Inc. (04-19874).

Reorganizing Debtors (the "Plan") was confirmed January 31, 2006 (the "Confirmation Date") and the Plan became effective on February 28, 2006.

4. On January 2, 2002, the City entered into an agreement with Washington Street Aviation, LLC, a Delaware limited liability company ("Washington"), a wholly owned subsidiary of Holdings, whereby the City leased 22.85 acres to Washington (the "Ground Lease") for a term of twenty (20) years. ATA is a guarantor of certain of the lessee's obligations under the Ground Lease. Washington is not a debtor in bankruptcy.

5. On April 20, 2005, the City filed the Claim asserting an unsecured nonpriority claim of $26,101,751.00 as rejection damages against ATA.

6. ATA rejected its guaranty of the Ground Lease on the Confirmation Date pursuant to the order entered by the Court confirming the Plan.

7. The City has not terminated the Ground Lease, has not asserted a claim against Washington under the Ground Lease and has not exercised any of its rights or remedies with respect to the Ground Lease.

Reservation of Rights

8. ATA requests that any order allowing the Claim is without prejudice to ATA's rights and avoidance powers under sections 544, 545, 546, 547, 548, 549, 550. 551, 552, 553, and 558 of the Bankruptcy Code or other applicable nonbankruptcy law.

Request for Relief

9. The City has been working independently to sell or lease the property subject to the Ground Lease to another party. ATA believes that process will result in a termination of the Ground Lease and a full mitigation of lessee's potential liability thereunder,

effectively eliminating any claim against ATA for liability for any amounts that may be owed under the Ground Lease.

10. However, in light of the upcoming deadline for objecting to claims, ATA files this objection out of an abundance of caution. ATA objects to the Claim on the basis that § 502(b)(6) of the Bankruptcy Code places a cap on the maximum allowable amount of the City's rejection damage claim and requests that the Court adjust the Claim accordingly.

Basis for Relief

a. The Applicability of § 502(b)(6) to a Guarantor of a Lease

11. The purpose of § 502(b)(6) is to compensate the landlord for loss due to the breach of a lease, yet allow other creditors to recover a reasonable amount by capping the amount the landlord can receive. See Oldden v. Tonto Realty Corp., 143 F.2d 916, 920 (2d Cir. 1944)[2] (stating that the allowance of large rent claims in full is not appropriate because other general creditors would suffer proportionately, and the claims themselves would often be disproportionate in amount to any actual damage suffered); Matter of Interco, Inc., 137 B.R. 1003 (Bankr. E.D. Mo. 1992) (quoting S. Rep. 95-989, 95th Cong., 2d Sess. 63. reprinted in 1978 U.S.C.A.N.N. 5787, 5849) (stating that § 502(b)(6) is "designed to compensate the landlord for his loss while not permitting a claim so large (based on a long-term lease) as to prevent other general unsecured creditors from recovering a dividend from the estate"); In re Thompson, 116 B.R. 610, 613 (Bankr. S.D. Ohio 1990) (stating that "permitting a landlord to consume a substantial part of the property for his benefit is unfair in light of the fact that the landlord has the opportunity to mitigate his damages by reletting. Not only has the landlord been compensated up

[2] Although Oldden's analysis was based upon § 63 of the Bankruptcy Act, that analysis is applicable to § 502(b)(6)—the Bankruptcy Code's successor to § 63. See In re Communicall Central, 106 B.R. 540, 543 (Bankr. N.D. Ill. 1989) (stating that § 502 "codified the holding in the controlling case of Oldden . . . ")

until the date of the bankruptcy petition but also reacquires his original assets upon bankruptcy"); and In re Rodman, 60 B.R. 334 (Bankr. W.D. Okla. 1986) (stating same).

12. In applying § 502(b)(6), it is not legally relevant whether the debtor is a tenant or a guarantor of the lease. On its face, § 502(b)(6) neither includes nor excludes guarantors from its purview. Instead, the statute is directed to the limitation of the amount of a lessor's damages that may be recovered from a bankruptcy estate when the damages arise from the termination of a lease. To read a distinction between tenants and guarantors into this provision is unwarranted, since either tenant or guarantor can be liable for damages from the termination of a lease. See In re Farley, Inc., 146 B.R. 739, 744-749 (N. D. Ill. 1992) (stating that § 502(b)(6) is equally applicable to a debtor-guarantor and a debtor-tenant). See also Matter of Interco, Inc., 137 B.R. at 1005-1006 (stating that § 502(b)(6) applies a cap to damages resulting from the termination of leases of real property; and that read literally, it applies to cap the damages of a lessor when the guarantor is a debtor under Title 11).

13. "The plain meaning of legislation should be conclusive, except in the 'rare case [in which] the literal application of a statute will produce a result at odds with the intentions of its drafters.'" United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242, (1989) (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, (1982)). The literal application of § 502(b)(6) to debtor-guarantors as well as debtor-tenants does not produce a result demonstrably at odds with the rationale of the section. See Matter of Interco, Inc. 137 B.R. at 1005-1006. See also In re Rodman, 60 B.R. at 335 (finding the "principles of rateable distribution are equally applicable in the case of a debtor-guarantor as they are in the case of a debtor-principal").

b. Computation of Damages under § 502(b)(6)

14. Section 502(b)(6) provides a formula for computing the maximum allowable amount of a landlord's actual rejection damage claim:

> the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease following the earlier of (i) the date of the filing of the petition; and (ii) the date on which such lessor repossessed, or the lessee surrendered, the lease property; plus any unpaid rent due under such lease, without acceleration, on the earlier of such dates.

15. Two competing views on the proper method of applying this formula exist and the Seventh Circuit has not definitively ruled on the issue. Under what appears to be the majority view, a court should (1) calculate the total rents due under the lease from the earlier of the petition date or the termination of the lease; (2) determine 15 percent of that total; (3) determine the rent reserved for the one year following the earlier of the petition date or the termination of the lease; (4) determine the rent reserved for three years following the earlier of the petition date or the termination of the lease; (5) limit the allowable rejection damage claim to the lower of the 15 percent amount or the three year amount, unless the 15 percent amount is less than the one-year amount, in which case the claim is limited to the one year amount. See Collier on Bankruptcy § 502.02[7][c] (15th ed. 2005), citing Unsecured Creditors' Comm. of Highland Superstores, Inc. v. Strobeck Real Estate, Inc, 154 F.3d 573, 577 (6th Cir. 1998) and In re Financial News Network, Inc., 149 B.R. 348 (Bankr. S.D.N.Y. 1993). See also Farley 146 B.R. at 747.

16. Some courts and commentators argue that the majority view is not in accord with the statute's plain language. Under the competing view, the 15 percent limitation of § 502(b)(6) speaks in terms of time, not in terms of rent. Collier on Bankruptcy § 502.02[7][c] (15th ed. 2005), citing In re Iron Oak Supply Corp., 169 B.R. 414, 420 (Bankr. E.D. Cal. 1994) ("Congress intended that the phrase "remaining term" be a measure of time, not rent.").

17. This alternate methodology interprets the phrase "the greater of" as suggesting two time periods—one year and 15 percent of the remaining term. Accordingly, the language "not to exceed three years" must be read as a further limitation on the 15 percent period. Construed this way, if a remaining lease term exceeds 20 years, the allowable damage claim will not increase. Under this methodology, the court should determine the rent reserved under the lease, without acceleration, for the applicable time period—whether that applicable time period is one year, three years or an intermediary time period—immediately following the termination of the lease or the petition date. The legislative history of § 502(b)(6) supports this reading, stating that damages "are limited to the rent reserved for the greater of one year or ten percent [later increased to 15 percent] of the remaining lease term, not to exceed three years." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 353 (1977). See also Collier on Bankruptcy § 502.02[7][c] (15th ed. 2005).

18. Courts in the Seventh Circuit have applied both constructions of 502(b)(6). See Farley, 146 B.R. at 747 (applying 15 percent to the total rents due) and In re Atlantic Container Corp., 133 B.R. 980, 989 (Bankr. N.D. Ill. 1991) (applying 15 percent to the remaining lease term).

19. The City included a debt service schedule in its proof of claim. In applying the majority view to the City's debt service schedule, the 502(b)(6) cap is $3,530,772.38—three years' worth of rent beginning at the Petition Date. In applying the alternate methodology, the remaining time period on the lease, as of the Petition Date, was 206 months. Fifteen percent of 206 months yields a time period of 31 months. Since this time period is greater than one year and less than three years, the City's maximum claim is the rent due

beginning with the first payment after the Petition Date and ending with the payment due on May 1, 2007, or $3,040,355.50.[3]

20. The rent under the Ground Lease is based upon the debt service on underlying revenue bonds. ATA believes the City holds a reserve to pay interest accruing on the revenue bonds for a period that has not yet expired. Upon a default under the Ground Lease that reserve would be applied against the principal. Such a principal reduction should result in a smaller interest accrual than calculated by the City, and therefore a corresponding reduction in the claim for unpaid rent.

WHEREFORE, ATA request entry of an Order

(a) reducing the Claim using one of the two competing 502(b)(6) methodologies; and

(b) granting ATA all other appropriate relief.

Respectfully Submitted,

BAKER & DANIELS LLP

By: /s/ Louis T. Perry

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[3] ATA believes that it did in fact make payments to the City during the Chapter 11 Cases, which payments should be applied against any debt owed.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 26th day of July, 2006, by electronic mail on the Core Group, the 2002 List, the Appearance List, and the City of Chicago.

/s/ Louis T. Perry