

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
THE DEBTORS TO REJECT CERTAIN LEASED AIRCRAFT EQUIPMENT**

The 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 authorizing Debtors to reject certain aircraft and engine leases 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, the Debtors 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 manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

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

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 bases for the relief sought herein is Section 365(a) of the Bankruptcy Code.

BACKGROUND

5. In 1973, J. George Mikelsons founded the precursor to ATA Airlines, Inc. ("ATA"), in Indianapolis, Indiana. Today, ATA Holdings Corp. ("ATAH") and its wholly-owned direct and indirect subsidiaries operate the tenth largest passenger airline in the United States. Operating a fleet consisting of eighty-four aircraft, ATA is a leading provider of low-cost scheduled airline services, is one of the largest commercial charter airlines in the United States and is one of the largest providers of passenger airline charter services to the U.S. military. ATA currently provides scheduled service primarily from its gateway cities of Chicago-Midway and Indianapolis to popular vacation and business destinations such as Phoenix, Las Vegas, Florida, California, Mexico and the Caribbean, as well as to New York's LaGuardia Airport ("LaGuardia"), Philadelphia, Denver, Dallas-Ft. Worth, Washington, D.C. ("Reagan"), Boston, Seattle, Minneapolis-St. Paul, Newark, Charlotte and Pittsburgh. ATA also provides transpacific service between the Western United States and Hawaii. ATAH's wholly-owned subsidiary, Chicago Express Airlines, Inc. ("Chicago Express") provides commuter passenger scheduled service between Chicago-Midway and the cities of Indianapolis, Dayton, Des Moines, Flint, Grand Rapids, Madison, Milwaukee, Moline, Toledo, South Bend and Fort Wayne. ATAH's

other subsidiaries are Ambassadors Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air ExecuJet, Inc. and ATA Cargo, Inc. As of the Petition Date, the Debtors employed a staff of approximately 7,324 full- and part-time personnel, of whom approximately 3,550 were employed under collective bargaining agreements.

6. The geopolitical impact of the conflict in the Middle East and generally weak economic conditions of the past several years have adversely affected the airline industry as a whole, and have caused many airlines, including ATA and Chicago Express, to suffer massive financial losses since 2001. This trend continues in 2004, as the industry and ATA experience a very weak revenue environment and substantially increased fuel costs. These conditions have caused several air carriers, including United Airlines, American Airlines, Delta Airlines, Hawaiian Airlines, and US Airways, to seek bankruptcy protection or warn that bankruptcy may be in the offing.

7. ATA faces a competitive pricing environment that includes extraordinary fare discounting by several airlines in many of the scheduled service markets that ATA serves. At the same time, jet aviation fuel prices have escalated far beyond any price per gallon previously experienced on a sustained basis by the air carrier industry and far beyond the increases expected by ATA. In addition, the highly destructive hurricanes and tropical storms which hit Florida and the Southern coast of the United States in the third quarter of 2004 had a very severe and continuing impact on ATA's revenues as a significant portion of the scheduled service routes of ATA serve these hard-hit areas of the United States.

8. A significant portion of ATA's current leases of aircraft were negotiated with higher payments in early years in order to reduce total rental costs over the related lease

terms. These large cash payments made in 2003 and 2004 resulted in substantial use of ATA's cash.

9. ATA has taken many measures to prevent the filing of the Chapter 11 Cases, including working with its three major lessors to restructure its lease obligations. ATA also has sought to reduce costs through, among other measures, negotiating labor cost reductions under its collective bargaining agreements, implementing pay reductions for its non-union employees and substantially reducing the number of employees. In addition to cutting costs, ATAH has conducted an exhaustive search for buyers for certain of ATAH's significant assets, such as the Chicago Midway operations of ATA and Chicago Express, as well as for ATA as a whole.

RELIEF REQUESTED

10. 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 (defined below) effective as of the Rejection Date (defined below).

BASIS FOR RELIEF

11. As part of the Debtors' ongoing restructuring efforts, the Debtors are analyzing their flight schedules, aircraft and engine types and costs, projected demand for air travel, labor costs and other business factors in conjunction with the use of their entire fleet of aircraft and engines. Through this analysis, the Debtors intend to maximize the fleet's utility at the lowest possible cost to the Debtors. In accordance with this analysis, the Debtors have decided to permanently remove certain aircraft and aircraft engines from their fleet. The aircraft and engines currently being selected for removal are no longer utilized by the Debtors.

Accordingly, the Debtors seek to eliminate the costs associated with retaining such aircraft and engines.

12. The Debtors continue to analyze their fleet and, as a result of this ongoing analysis, the Debtors believe it is possible that additional aircraft or engines will be retired in the future. The Debtors intend to pursue all cost savings opportunities regarding their fleet in an effort to minimize their costs of operations consistent with an optimal operating fleet and achieving the Debtors' reorganization goals.

13. The aircraft and engines to be retired are a leased aircraft (the "Leased Aircraft") and related leased engines (the "Leased Engines") that are the subject of a lease (the "Lease") with a lessor (the "Lessor"). A list of which is set forth on Exhibit B attached hereto.

14. On or before November 30, 2004, the Leased Aircraft and the Leased Engines were taken out of service, the Lessor was notified of the location of the Leased Aircraft and the Leased Engines, and the Lessor was informed that Debtors intended to reject the Lease effective November 30, 2004.

15. The Debtors will continue the existing insurance coverage for the Leased Aircraft and Leased Engines and the existing FAA approved maintenance program for the Leased Aircraft for thirty (30) days after the Rejection Date (defined below).

REJECTION OF THE LEASE

16. 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).

17. 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").

18. 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.").

19. As part of their ongoing efforts to reduce costs and maximize fleet flexibility, the Debtors have identified Leased Aircraft and Leased Engines that no longer fit into the Debtors' business plan and, accordingly, will no longer be utilized by the Debtors. The Debtors have determined that such Leased Aircraft and Leased Engines do not have any marketable value in that the lease rates are substantially above market lease rates for comparable aircraft. Thus, the Leased Aircraft and Leased Engines are burdensome to the Debtors and are no longer beneficial to the Debtors or their estates. Therefore, rejection of the Lease is in the best interests of the Debtors' estates and creditors and constitutes a proper exercise of the Debtors' sound business judgment.

EFFECTIVE DATE OF REJECTION

20. Debtors request that the rejection of the Lease be effective as of November 30, 2004 (the "Rejection Date"). As of the Rejection Date, the Debtors were no longer using the Leased Aircraft and Leased Engines; had removed the Leased Aircraft and Leased Engines from their fleet; and had notified the Lessor and made such Leased Aircraft and Leased Engines available to the Lessor.

21. The Debtors respectfully request that this Court enter an order authorizing the Debtors to reject the Lease, effective as of the Rejection Date, so as not to expose the Debtors' estates 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"). The Debtors will relinquish possession of all records and documents related to the Leased Aircraft and Leased Engines to the Lessor on or before January 30, 2005.

22. Because as of the Rejection Date the Leased Aircraft and Leased Engines provided no benefit to the Debtors estates, the equities clearly weigh in favor of granting the Debtors 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).

23. 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

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

WHEREFORE, the Debtors request that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to reject the Lease effective as of November 30, 2004.

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 2nd day of December, 2004, by facsimile, hand delivery or overnight mail on the Core Group, 2002 List, Appearance List, and Lessor.

/s/ Jeffrey C. Nelson