

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re : Chapter 11
:
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-11960 (BLS)
:
: (Jointly Administered)
Debtors. : **Objections: August 19, 2009 @ 4:00 p.m. (ET)**
----- : **Hearing: August 26, 2009 @ 12:00 p.m. (ET)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING
THE REJECTION OF CERTAIN UNEXPIRED LEASES FOR
PERSONAL PROPERTY PURSUANT TO 11 U.S.C. § 365**

Alset Owners, LLC, and certain of its direct and indirect subsidiaries, the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (this “Motion”) this Court for entry of an order, substantially in the form attached hereto, approving the rejection of each of the personal property leases as more particularly described on *Exhibit A* attached hereto (collectively, the “Rejected Leases”) between the Debtors and certain third parties (the “Lessors”) effective as of the closing date of the Sale (defined below). **Parties receiving notice of this Motion should review Exhibit A to see if their rights are affected by this Motion.** In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors’ service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Boca Raton, FL 33432.

2. The predicates for the relief requested herein are section 365(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On June 5, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors’ chapter 11 cases are being jointly administered. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On June 24, 2009, the Office of the United States Trustee filed a notice of appointment of an official committee of unsecured creditors (the “Committee”). No trustee or examiner has been appointed in these chapter 11 cases.

5. A thorough description of the Debtors and the events leading up to the Petition Date are set forth in the Amended Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief. [Dkt. No. 34].

6. The Debtors are the largest franchisee of Checkers Drive-In Restaurants, Inc., the national franchisor of the Rally’s and Checkers’ restaurant chains. Specifically, Debtors Altes, LLC (“Altes”) and Setla, LLC (“Setla”) operate Rally’s restaurants in Arkansas, Missouri, Illinois, and Ohio. Checkers Michigan, LLC operated Checkers restaurants in Michigan but has recently ceased operations there.

7. At their peak, in 2007, the Debtors collectively operated approximately 120 restaurants with the Rally’s or Checkers brand in six states, and had over 2,500 employees. The competitive atmosphere, as well as the rise in food and labor costs, among other things, led the

Debtors to restructure their operations starting in late 2007. As of the Petition Date, the Debtors operated 77 restaurants, down from their peak of about 120 restaurants in 2007.

8. In connection with certain personal property located in the Debtors' restaurants, Altes and Setla are parties to the Rejected Leases described on Exhibit A, pursuant to which the Lessors each grant the Debtors the right to use a variety of restaurant equipment and point-of-sale equipment (the "Leased Equipment").

9. On June 19, 2009, the Debtors filed a motion for entry of an order (A) Approving Bidding and Action Procedures, and Bidding Incentives for the Stalking Horse Bidder; (B) Approving Notice Procedures for the Solicitation of Bids, an Action, and the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Scheduling an Auction and Sale Hearing for the Sale of Substantially all of Debtors' Assets; (II) Approving the Sale of Substantially All of Debtors' Assets and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief. [Dkt. No. 43] (as amended, the "Sale Motion").

10. On July 9, 2009, the Court entered an order approving, among other things, certain bidding procedures (the "Procedures Order") for the sale of substantially all of the Debtors' assets free and clear of liens, claims and encumbrances to Checkerco, Inc. (the "Buyer"), or to another successful bidder (collectively with the Buyer, the "Successful Purchaser") at the auction (collectively, the "Sale"), pursuant to the terms of the Asset Purchase Agreement dated as of June 5, 2009, as thereafter amended (the "APA"). [Dkt. No. 82]. The Rejected Leases are not part of the APA and will not be assumed and assigned to the Buyer as part of the Sale.

11. Pursuant to the Procedures Order, the auction is scheduled for August 25, 2009. The sale hearing is scheduled for August 26, 2009. By the Sale Motion, the Debtors requested a

waiver of the 10 day stay under Bankruptcy Rule 6004. Pursuant to the APA, a closing on the Sale shall take place within 3 business days of entry by the Court of a final sale order, after satisfaction or waiver of all conditions precedent to the closing (the “Sale Closing Date”).

RELIEF REQUESTED

12. By this Motion, the Debtors respectfully request the entry of an order, substantially in the form attached hereto, (i) providing for the rejection, disaffirmance and termination of the Rejected Leases, effective as of the Sale Closing Date, in accordance with Bankruptcy Code sections 365(a) and Bankruptcy Rule 6006 and (ii) allowing the Lessors entry into the Successful Purchaser’s restaurants, after the Sale Closing Date for the purpose of removing the Leased Equipment which is the subject of such Lessor’s Rejected Lease. As set forth below, the Debtors believe that rejection of the Rejected Leases represents exercise of the Debtors’ sound business judgment.

BASIS FOR RELIEF REQUESTED

A. Cause Exists to Support the Rejection of the Rejected Leases

13. Bankruptcy Code section 365(a) provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or an unexpired lease of the debtor.” 11 U.S.C. §365(a); *See also Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992) (“This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.”).

14. Bankruptcy Rule 6006(f) allows for the rejection of multiple contracts and leases that are not between the same parties under certain conditions.²

² Bankruptcy Rule 6006(f) states, in relevant part, as follows:

A motion to reject or, if permitted under subsection (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:

- (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

15. Bankruptcy Code section 365(a) authorizes a debtor in possession, subject to the court's approval, to reject any executory contract or unexpired lease of the debtor if a rejection is a reasonable exercise of business judgment. *See NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test."). *See also In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003). The business judgment standard mandates that a court approve a debtor's business decision unless the decision is the product of bad faith, whim or caprice. *See In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); *see also Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). Thus, a court must examine the debtor's decision to assume or reject under the "business judgment" test to determine if assumption or rejection would be beneficial to the estate.

16. In order to avoid paying unnecessary administrative expenses related to the Rejected Leases, the Debtors seek to reject the Rejected Leases, effective as of the Sale Closing Date. As of the Sale Closing Date, the Debtors will no longer be operating any of the restaurants. The Debtors and Buyer have determined that the Leased Equipment is not necessary to the continued operation of the Debtors' restaurants. As of the Sale Closing Date, the Debtors will have no further use for the Leased Equipment and would gain no value from assumption and

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- (2) list parties alphabetically and identify the corresponding contracts or lease;
 - (3) specify the terms, including the curing of defaults, for each requested assumption or assignment;
 - (4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
 - (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
 - (6) be limited to no more than 100 executory contracts or unexpired leases.

assignment of the Rejected Leases. As such, a compelling economic justification exists for the rejection of the Rejected Leases proposed in this Motion. For these reasons, the Debtors have determined, in the exercise of sound business judgment, to reject the Rejected Leases.

17. By this Motion, the Debtors also propose that the Court permit the Lessors entry into the Successful Purchaser's restaurants, for at least 30 days after the Sale Closing Date for the purpose of removing the Leased Equipment which is the subject of such Lessor's Rejected Lease, without objection, delay, hindrance or interference by the Successful Purchaser or the landlord. To avoid any disruption of business to the Successful Purchaser, the Debtors request the Lessors provide the Successful Purchaser with at least five (5) business days' notice before entry. This relief is consistent with the Court's prior order dated July 28, 2009 in which the Debtors obtained relief authorizing landlords of rejected leases to cooperate with lessors whose equipment may have remained at such rejected restaurants. [Dkt. No. 111].³

18. Finally, the Debtors may withdraw the Motion as to any particular Rejected Lease if the Debtors are advised prior to the hearing on this Motion that the Successful Purchaser otherwise determines that any Rejected Leases should otherwise be assumed and assigned to it.

RESERVATION OF RIGHTS

19. The Debtors have begun their investigation into whether the Rejected Leases are true leases. That investigation continues. Nothing in this Motion constitutes an acknowledgment that any Rejected Lease is a true lease rather than a lease intended as security. As such, the Debtors fully reserve all rights with respect to the Rejected Leases and nothing herein waives any Debtors' defense, claim in respect of, or right of characterization in connection with, any Rejected Lease. Further, to the extent the Debtors have claims against a

third party arising under, or independent of, the Rejected Leases, the Debtors do not waive any such claims by filing this Motion or rejecting the Rejected Leases.

NO PRIOR REQUEST

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

³ To the extent any Leased Equipment has been placed in a storage facility, the Debtors will permit the Lessors to access such storage facility for the purpose of removing the Leased Equipment which is the subject of such Lessor's Rejected Lease.

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto, (i) authorizing and approving the Debtors' rejection, disaffirmance and termination of the Rejected Leases, described on Exhibit A attached hereto, in accordance with Bankruptcy Code section 365(a), effective as of the closing date of the Sale; (ii) allowing the Lessors to enter the Successful Purchaser's restaurants, upon providing 5 business days prior written notice, for up to 30 days after the Sale Closing Date for the purpose of removing the Leased Equipment which is the subject of such Lessor's Rejected Lease; and (iii) granting the Debtors such other and further relief as is just, proper and necessary.

Dated: August 6, 2009

BLANK ROME LLP

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*Attorneys for Debtors and
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Exhibit A

Lease Agreement	Counterparty
Master Lease Agreement dated as of August 29, 2005 by and between Setla, LLC and Arlington Capital	Arlington Capital
Master Lease Agreement dated as of June 16, 2005 by and between LEAF Funding, Inc. and Setla, LLC.	LEAF Funding, Inc.
Master Lease Agreement dated as of June 16, 2005 by and between LEAF Funding, Inc. and Altes, LLC	LEAF Funding, Inc.
Master Lease Schedule No. 2 dated as of June 15, 2006 by and between LEAF Funding, Inc. and Altes, LLC	LEAF Funding, Inc.
Master Lease Schedule No. 3 dated as of November 8, 2006 by and between LEAF Funding, Inc. and Altes, LLC	LEAF Funding, Inc.
Master Lease Schedule No. 2 dated as of December 15, 2005 by and between LEAF Funding, Inc. and Setla, LLC	LEAF Funding, Inc.
Master Lease Agreement dated as of November 4, 2005, by and between Vendor Capital Group and Altes LLC (d/b/a Rally's)	Vendor Capital Group
Master Lease Agreement dated as of April 7, 2005 by and between Vendor Capital Group and Setla, LLC (d/b/a Rally's Hamburgers)	Vendor Capital Group
Master Lease Agreement dated as of April 5, 2005 by and between Vendor Capital Group and Altes LLC (d/b/a Rally's Hamburger Franchise)	Vendor Capital Group