

**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: September 22, 2009 @ 4:00 p.m. (ET)**
----- : **Hearing: September 29, 2009 @ 10:00 a.m. (ET)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
APPROVING THE REJECTION OF CERTAIN
EXECUTORY CONTRACTS 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 executory contracts as more particularly described on *Exhibit A* attached hereto (collectively, the “Rejected Contracts”) between the Debtors and certain third parties (the “Counterparties”) effective as of the date hereof, 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 were 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 ceased operations there as of the Petition Date.

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. Altes and Setla are parties to the Executory Contracts described on Exhibit A, pursuant to which the Counterparties provides services or goods to the Debtors in connection with the operation of the Debtors' businesses.

9. On June 19, 2009, the Debtors filed a motion for entry of an order Under 11 U.S.C. §§ 105(a), 363, and 365 And Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (I) (A) Approving Bidding And Auction Procedures, And Bidding Incentives For The Stalking Horse Bidder; (B) Approving Notice Procedures For the Solicitation Of Bids, An Auction, 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 the Debtors' Assets And Approving The Assumption And Assignment Of Executory Contracts And Unexpired Leases; and (III) Granting Related Relief [Dkt. No. 43] (the "Sale Motion").

10. On August 31, 2009, the Court entered an order approving, among other things, the sale (the "Sale") of substantially all of the Debtors' assets free and clear of liens, claims and encumbrances to Checkerco, Inc. (the "Buyer"), pursuant to the terms of an Asset Purchase Agreement dated as of June 5, 2009, as thereafter amended (the "APA"). The Closing on the Sale took place on August 31, 2009 (the "Sale Closing Date"). The Executory Contracts are not part of the APA and have not been assumed and assigned to the Buyer in connection with the Sale.

RELIEF REQUESTED

11. By this Motion, the Debtors respectfully request the entry of an order, substantially in the form attached hereto, providing for the rejection of the Rejected Contracts,

effective as of the date hereof, in accordance with § 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006. As set forth below, the Debtors believe that rejection of the Executory Contracts represents an exercise of the Debtors' sound business judgment.

BASIS FOR RELIEF REQUESTED

A. Cause Exists to Support the Rejection of the Executory Contracts

12. Section 365(a) of the Bankruptcy Code 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.").

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

14. Section 365(a) of the Bankruptcy Code 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.*,

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;
- (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.

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.

15. In order to avoid paying unnecessary administrative expenses related to the Rejected Contracts, the Debtors seek to reject the Executory Contracts, effective as of the date hereof. As of the Sale Closing Date, the Debtors have no longer been operating any of the restaurants. The Buyer has determined that the Rejected Contracts were not necessary to the continued operation of the Debtors' restaurants by the Buyer. Therefore, as of the Sale Closing Date, the Debtors have no further use for the Rejected Contracts. Further, the Debtors will not assume and assign such Rejected Contracts to any other party. As such, a compelling economic justification exists for the rejection of the Executory Contracts proposed in this Motion. For these reasons, the Debtors have determined, in the exercise of sound business judgment, to reject the Rejected Contracts.

NO PRIOR REQUEST

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

NOTICE

17. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Committee; (c) all Counterparties on Exhibit A; and (d) all parties that

have filed notices of appearance in these cases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto, (i) authorizing and approving the Debtors' rejection of the Rejected Contracts, described on Exhibit A attached hereto, in accordance with § 365(a) of the Bankruptcy Code, effective as of the date hereof; and (ii) granting the Debtors such other and further relief as is just, proper and necessary.

Dated: September 11, 2009

BLANK ROME LLP

By: /s/ David W. Carickhoff
Bonnie Glantz Fatell (3809)
David W. Carickhoff (No. 3715)
1201 North Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

-and-

Michael Z. Brownstein
Rocco A. Cavaliere
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
Telephone: (212) 885-5000
Facsimile: (212) 885-5001

*Attorneys for Debtors and
Debtors in Possession*

Exhibit A

Counterparty/Address	Contract Description or Service
CBS Outdoor Billboard 6767 N. Hanley Road c/o Hank Millford Saint Louis, MO 63134	Billboard Lease Agreement – Store No. 8150
Clear Channel 12222 Plaza Drive Parma, OH 44130	Outdoor Billboard- Agreements in Akron and Columbus
Coca Cola One Coca Cola Plaza USA 1054C Atlanta, GA 30313	Drink Fountain Agreement
Darling International 251 O’Connor Ridge Blvd. Suite 300 Irving, TX 75038	Grease Trap Disposal Agreement
Direct Technologies 500 West Cypress Creek Road Suite 270 Ft. Lauderdale, FL 33309	Credit Card Processing Agreement
ERC Inc. 4001 Cobb International Blvd. Kennesaw, GA 30152	POS Maintenance Agreement
First National Bank 1620 Dodge Street Omaha, NE 68102	Credit Card Processor Agreement
Guardian 174 Thorn Hill Road Warrendale, PA 15806	Alarm Service Agreement
Malcolm Designs 5056 Jessop Court Sterling Heights, MI 48310	Software Programmer Agreement
Metropolitan Bus. Machines P.O. Box 41602 Philadelphia, PA 19101	Copier Lease Agreement
Mildred Knecht 603 East Lake Drive Edwardsville, IL 62025	Parking Lot Agreement

Counterparty/Address	Contract Description or Service
Missouri Highway 3218 Emerald Lane Suite A Jefferson City, MI 65109	Billboard Sign Agreement
National Restaurant Association Entertainment Publications, LLC P.O. Box 5017 Troy, MI 48007	Insertion Ad Agreement
Muzak 6777 Engle Road Suite L Middleburg Heights, OH 44130	Headset Maintenance Agreement
NuCo2 P.O. Box 9011 Stuart, FL 34995	Agreement Related to Co2 Tanks
Off Campus Solutions 680 American Avenue Suite 102 King of Prussia, PA 19406	Devry College Card Program Agreement
Pitney Bowes 1225 American Drive Neenak, WI 54956	Postage Machine Agreement – Ohio Machine Only
Reiss & Sons 200 East 61 st Street Suite 29-F c/o Linda Heffner New York, NY 10021	Easement Agreement – Store No. 8173