

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
: (Joint Administration Requested)
Debtors. :
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**TRIPLE R ASSOCIATES, LTD.’S OBJECTION TO DEBTORS’ MOTION FOR ENTRY
OF AN ORDER UNDER SECTION 365(a) OF THE BANKRUPTCY CODE
AUTHORIZING, TO THE EXTENT NECESSARY, THE DEBTORS TO REJECT
CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES (DOC. NO. 11)**

Triple R Associates, Ltd. (“Triple R”), landlord to Setla, LLC (“Debtor”), by and through its undersigned counsel², objects to Debtors’ Motion for Entry of an Order Under Section 365(a) of the Bankruptcy Code Authorizing, to the Extent Necessary, the Debtors to Reject Certain Nonresidential Real Property Leases (the “Motion”)(Doc. No. 11) because the relief sought in the Motion with respect to Triple R is not available to the Debtor, that is, the Debtor may not cherry-pick those benefits under a single lease which it seeks to assume and avoid those obligations under the same lease which it seeks to reject. In support hereof, Triple R states:

The Commercial Lease

1. The Debtor and Triple R entered into a Commercial Lease (a copy of which is

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).

² Triple R received notice of the Motion at approximately 11:30 a.m. today, June 8, 2009, less than 24 hours before the hearing, and has not yet retained local counsel. Triple R’s interest in this case is limited to the issues raised by the Motion. Accordingly, Triple R respectfully requests the Court not require compliance with Local Rule 9010-1(c) or alternatively, provide sufficient time for the undersigned to secure an association with local counsel pursuant to Local Rule 9010-1(c).

attached as Exhibit A) on October 15, 2001, and subsequently amended the Commercial Lease via an Amendment to Commercial Lease (Exhibit B); a Second Amendment to Commercial Lease (Exhibit C); and a Third Amendment to Commercial Lease (Exhibit D). The term “Lease” shall mean the Commercial Lease as amended.

2. Pursuant to the Lease, the Debtor agreed to lease from Triple R certain “Premises,” defined as “the Land comprising the forty-eight (48) Store Sites together with the improvements located thereon.” *See* Commercial Lease (Exhibit A), p.1. The annual base rent under the Lease is \$857,632.65 and the term of the Lease runs through September 30, 2016.

3. In the Motion, the Debtor seeks not to reject the Lease, but rather reject its obligations with respect to nine (9) of the forty-eight (48) locations which constitute the leased Premises under the Lease.

Relief Requested

4. Triple R objects to the Motion and seeks the entry of an order denying the Motion with respect to the nine (9) of the forty-eight (48) locations which constitute the Premises leased by Debtor from Triple R under the Lease.

Basis for Relief

5. The law is clear that a debtor-in-possession may not cherry-pick those benefits under a single executory contract or lease which it seeks to assume and avoid those obligations under the same lease which it seeks to reject. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984)(“Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere*.”)(citing *In re Italian Cook Oil Corp.*, 190 F.2d 994, 996 (3d Cir. 1951)(“The trustee, however, may not blow hot and cold. If he accepts the contract he accepts it *cum onere*. If

he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.”)).

6. In the instant matter, on one hand the Debtor seeks to reject the Lease with respect to what one must assume to be underperforming stores, and on the other hand the Debtor seeks to assume the benefit of the Lease with respect to performing stores. The Debtor has no basis in law to reject only portions of the Lease and the Motion should be denied with respect to the Lease.

7. Moreover, the Motion makes no mention of the one single Lease nor any analysis of the type conducted by this Court in *In re Buffets Holdings, Inc.*, 387 B.R. 115 (Bankr.D.Del. 2008)(J. Walrath), where the debtors unsuccessfully sought to reject only part of a master lease agreement. Triple R respectfully requests the Court set the matter for hearing at a later date rather than address the matter on one day’s notice so that the parties may fully parse out their positions.

WHEREFORE Triple R seeks the entry of an order (a) denying the Motion with respect to the nine (9) of the forty-eight (48) locations which constitute the Premises leased by Debtor from Triple R under the Lease; and (b) granting such other and further relief as is just and proper.

Dated: June 8, 2009

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON , P.A.**
By: /s/ Drew M. Dillworth
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was served upon the Debtor, Setla, LLC 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432 via overnight courier, and upon Debtor's counsel via the courts CM/ECF system, this 8th day of June, 2009.

/s/ Drew M. Dillworth
Attorney

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