

**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. : Hearing: July 22, 2009 at 10:00 a.m. (ET)
----- : Objections: July 13, 2009 @ 4:00 p.m. (ET)

**MOTION OF THE DEBTORS PURSUANT 11 U.S.C. § 105(a) AND
FED. R. BANKR. P. 9019 FOR APPROVAL OF A CRITICAL VENDOR AGREEMENT
BETWEEN DEBTORS AND MEADOWBROOK MEAT COMPANY, INC.**

Alset Owners, LLC and its debtor affiliates (collectively, the “Debtors”), debtors and debtors in possession in the above-captioned cases, hereby move this Court (the “Motion”) for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors to enter into a critical vendor agreement with Meadowbrook Meat Company, Inc. (“MBM”) concerning, among other things, critical vendor terms, and approving the terms of such agreement. In support of the Motion, the Debtors respectfully represent:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 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, Suite 111-B, Boca Raton, FL 33432-2813.

2. The predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. On June 5, 2009 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. 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 (the “Declaration”) [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 and Setla, LLC 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.

CRITICAL VENDOR MOTION

8. On the Petition Date, the Debtors filed a motion seeking authority to pay critical vendors and for related relief. The Court approved the critical vendor motion by order entered on June 9, 2009 (the “Critical Vendor Order”) [Dkt. No. 24]. Pursuant to the Critical Vendor Order, the Debtors are authorized to pay critical vendors claims in the aggregate amount not to exceed \$1.05 million. The Critical Vendor Order also enables the Debtors to negotiate terms and conditions of the payment of such prepetition claims, including future trade terms.

9. In furtherance of the Critical Vendor Order, the Debtors commenced negotiations with MBM, a critical vendor that provides meat and other essential food products to the Debtors. MBM refused to provide future trade terms to the Debtors absent terms that include a release of potential preference actions. As the Debtors do not believe they have any valid potential preference actions against MBM, the Debtors are seeking to release any such claims pursuant to the settlement agreement between the Debtors and MBM concerning, among other things, critical vendor terms (the “Critical Vendor Agreement”). A true and correct copy of the Critical Vendor Agreement is attached hereto as **Exhibit A** and incorporated herein by reference. Because the Critical Vendor Agreement contains a release of potential preference actions against MBM, Court approval of the same is warranted.

RELIEF REQUESTED

10. By this Motion, the Debtors seek the entry of an order (i) approving the Critical Vendor Agreement, (ii) authorizing the Debtors to enter into the Critical Vendor Agreement, and (iii) granting related relief. The Critical Vendor Agreement, if approved, will provide the terms and conditions of the payment of MBM’s critical vendor claim, including future trade terms, and the release of potential preference actions against MBM.

BASIS FOR RELIEF REQUESTED

11. This Court has the authority to grant the relief requested in this Motion pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provision of this title.” Bankruptcy Rule 9019(a) provides that, on motion by a debtor, the Court may approve a compromise or settlement. Fed. R. Bankr. P. 9019(a).

12. In arriving at the Critical Vendor Agreement, the Debtors were guided by the factors established by relevant case law regarding the reasonableness of such settlements. These factors include:

- a) the probability of success in the litigation;
- b) the complexity, expense and likely duration of the litigation;
- c) all other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and
- d) whether the proposed compromise is fair and equitable to the Debtors, their creditors, and other parties in interest.

See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (hereinafter referred to as “TMT”); see also In re Martin, 91 F. 3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, [c]ompromises are favored in bankruptcy”).

13. Basic to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” TMT, 390 U.S. at 425. The TMT rule does not require the Court to hold a full evidentiary hearing before a compromise can be approved, rather, the Court’s obligation is “to canvass the issues and see whether the

settlement ‘falls below the lowest point in a range of reasonableness.’” 10 Collier on Bankruptcy, ¶ 9019.2, 9019-4 (15th ed.), *quoting In re Drexel Lambert Group, Inc.*, 134 B.R. 493 (Bankr. S.D.N.Y. 1991).

TMT ANALYSIS

14. When considering the merits of the Critical Vendor Agreement, the Debtors focused on: (i) the benefits that the Critical Vendor Agreement provides to the Debtors, including the assurance of the continued provision of meat and other food products from MBM necessary to operate the Debtors’ businesses; (ii) the harm the Debtors would face if they were unable to receive meat and other food products from MBM; (iii) the fact that Debtors do not believe they have any valid preference claims against MBM; and (iv) the fact that the prepetition claim amounts owing to MBM are entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code. Accordingly, the Debtors are confident that the Critical Trade Agreement meets the standards set forth in TMT.

15. Providing the Debtors with the authority to enter into the Critical Vendor Agreement and approving the Critical Vendor Agreement is clearly beneficial to the Debtors as it enables them to continue to receive meat and other food products necessary to operate their businesses. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to enter into the Critical Vendor Agreement and approve the same.

NOTICE

16. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Committee, (c) Textron Financial Corporation; (d) counsel for Checkers Drive-In Restaurants, Inc., and (e) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary or required.

NO PRIOR REQUEST

17. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order substantially in the form attached hereto granting the relief requested herein and such other and further relief as is just and proper.

Dated: June 26, 2009

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