UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 7
RESTAURANTS ACQUISITION I, LLC,	Case No. 15-12406 (KG)
Debtor.	**Hearing Date: November 10, 2016 at 10:00 a.m.** **Objection Deadline: November 3, 2016 at 4:00 p.m.**

MOTION OF ALFRED T. GIULIANO, CHAPTER 7 TRUSTEE, FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105, 365, AND 554 OF THE BANKRUPTCY CODE AUTHORIZING THE REJECTION OF CERTAIN UNEXPIRED LEASES OF NON-RESIDENTIAL REAL ESTATE AND ABANDONMENT OF CERTAIN FURNITURE, FIXTURES AND EQUIPMENT

Alfred T. Giuliano, Chapter 7 Trustee (the "Trustee") of the estate of Restaurants Acquisition I, LLC (the "Debtor"), by and through his undersigned proposed counsel, and pursuant to sections 105(a), 365(a) and 554 of Title 11 of the United States Code (the "Bankruptcy Code"), and Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby moves (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the Trustee to (i) reject certain unexpired leases of non-residential real estate; and (ii) abandon certain furniture, fixtures, and equipment related thereto. In support of this Motion, the Trustee respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157 (b)(2).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 365(a), and 554 of the Bankruptcy Code, as well as Bankruptcy Rules 6006 and 6007.

BACKGROUND

4. On December 2, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case").

5. The Debtor operated its business and managed its property as a Debtor-In-Possession in accordance with Sections 1107(a) and 1108 of the Bankruptcy Code.

6. The Debtor operated a chain of full-service restaurants throughout Texas, largely located in the Dallas-Fort Worth and Houston metropolitan areas. As of January 1, 2015, the Debtor operated thirty (30) restaurant locations (collectively, the "Prepetition Stores"), operating under either the trade-name Black-eyed Pea or Dixie House. However, as of the Petition Date, the Debtor had ceased operations at and/or closed fifteen (15) of its Prepetition Stores, Since the Petition Date, the Debtor has closed two (2) additional Prepetition Stores.

7. Since the Petition Date, the Court approved the Debtor's assumption of the following non-residential real property leases (the "Assumed Leases"):

Location	Date of Assumption	Docket No.
7979 Belt Line Rd. Dallas, TX 75254	7/20/16	292
Westmont Shopping Center Beaumont, TX 77706	8/22/16	316
9710 FM 1960 Bypass Humble, TX 77338	7/20/16	292
1400 North Collins Street Arlington, TX 76011	7/20/16	292
3825 Pavilion Court Mesquite TX 75150	3/4/16	175; 186
Unit 103, Oak Hills Shopping Center 7959 Fredericksburg Road San Antonio, TX 78229	2/8/16	142

8. Additionally, as of the Petition Date, as part of its business operations, the Debtor was a party to, among other leases, a self-service storage rental agreement with Action's Self Storage for the spaces known as B210, B232, E117 and #147(the "Storage Lease," collectively with the Assumed Leases, the "Leases").

9. On September 30, 2016, the Court entered an Order converting the case from a Chapter 11 to a Chapter 7 case under the Bankruptcy Code (the "Conversion Order") [Docket No. 369].

10. On September 30, 2016, the Trustee was appointed as Chapter 7 Trustee [Docket No. 370].

11. Certain office and restaurant furniture, fixtures and equipment, including but not limited to, tables and chairs, computers and monitors, desks and desk chairs, restaurant equipment, cooking equipment, and eating utensils (the "FF&E") may remain at the leased premises subject to the Leases which is of insubstantial value for the Debtor's estate and/or owned by the landlord or other parties.

RELIEF REQUESTED AND BASIS THEREFOR

12. By this Motion, the Trustee respectfully requests the entry of an order pursuant to sections 105(a), 365(a), and 554 of the Bankruptcy Code, authorizing the rejection of the Leases and abandonment of the FF&E. The Trustee requests that rejection of the Leases and abandonment of the FF&E be effective as of September 29, 2016 – immediately before the date of conversion.

A. Rejection of Leases

13. Section 365 of the Bankruptcy Code provides, in relevant part, that a "trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

14. Assumption of a lease by a debtor-in-possession is not controlling upon a trustee in bankruptcy. In re Ultimate Restaurant Group, Inc., 144 B.R. 291, 295 (Bankr.W.D.Pa. 1992).

15. The decision to assume or reject an unexpired lease or executory contract is a matter within the "business judgment" of the trustee. See, e.g., National Labor Relations Board v. Bildisco (In re Bildisco), 6825 F.2d 72, 79 (3d Cir. 1982). The rejection of an unexpired lease or executory contract is appropriate where rejection of the lease would benefit the estate. Sharon Steel Corp. v. National Fuel Gas Distribution Corp., 872 F.2d 36, 40 (3d Cir. 1989); see also, In re Rickel Home Ctrs., Inc., 209 F.3d 291 (3rd Cir. 2000).

16. The Trustee submits that there is a sound business judgment for the rejection of the Leases. The Leases hold no material economic value to the Estate. The rejection of the Leases will eliminate the Trustee's obligation to perform under the Leases pursuant to section 365(d)(3) of the Bankruptcy Code, and the accrual of any associated chapter 7 administrative expenses. Accordingly, the Trustee submits that the rejection of the Leases is within his sound business judgment and is in the best interest of the Estate.

B. Effective Date of Rejection

17. Bankruptcy courts are empowered to grant retroactive rejection of executory contracts and unexpired leased under sections 105(a) and 365(a) of the Bankruptcy Code. See, e.g., Thinking Machines Corp. v. Mellon Fin. Serv. Corp. (In re Thinking Machines Corp.), 67 F.3d 1021, 1028 (1st Cir. 1995 (recognizing that bankruptcy courts are courts of equity that may

enter orders authorizing retroactive rejection); In re Amber's Stores, Inc., 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (same).

18. Section 365(g) of the Bankruptcy Code deals with subsequent rejections of previously assumed contracts and leases and provides if the contract or lease was assumed previously and is subsequently rejected, the breach will be at the time of rejection unless there has been a conversion under 11 U.S.C. § 1112. If a conversion occurs, the breach will be immediately before the date of the conversion unless the assumption itself took place after the conversion in which case the breach will be at the time or rejection. 11 U.S.C § 365(g)(2)(B).

19. Pursuant to section 365(g)(2)(B) of the Bankruptcy Code, the Trustee seeks the rejection of the Leases be effective as of September 29, 2016, which is immediately before the date of conversion pursuant to the Conversion Order.

C. Abandonment of FF&E

20. The Trustee believes in his business judgment that it would be cost-prohibitive to attempt to remove and/or sell the FF&E. As such, he does not intend to remove the FF&E and requests authority to abandon such FF&E.

21. Section 554 of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554. See, In re New Century TRS Holdings, Case No. 07-10416 (Bankr. D. Del. April 24, 2007) (Carey, J.).

22. The bulk of the FF&E located at the leased premises subject to the Leases has little or no resale value and the cost of removal exceeds the amount of any potential sale.

23. The Trustee has determined that it would be more cost-effective to abandon the FF&E than to transport, store, and sell the FF&E. As a result, the decision to abandon the FF&E

is supported by the Trustee's sound business judgment and is in the best interest of the Debtor's estate.

NOTICE

24. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the non-Debtor counterparties to the Leases, through their respective counsel, if any; and (iii) all parties that have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Trustee submits that no other or further notice is necessary.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, the Trustee respectfully requests entry of an order, substantially in the form attached hereto, authorizing the rejection of the Leases as of the proposed effective date of rejection, authorizing the abandonment of certain of the FF&E, and granting such other and further relief as is just and equitable.

Dated: October 14, 2016

/s/ David W. Carickhoff

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