IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
CHI-CHI'S, INC., et al.,[1]	)	Case No. 03-13063 (CGC)
	)	[Jointly Administered]
	)	
Debtors.	)	**Requested hearing date: January 16, 2004 at 10:30 a.m. prevailing Eastern time**

DEBTORS' EMERGENCY MOTION TO TERMINATE ASSET PURCHASE AGREEMENT WITH OTHELLO HOLDING CORP.

The Hamlet Group, Inc., HH of Maryland, Inc., and H.H.K. of Virginia, Inc., three of the debtors and debtors in possession in these jointly administered cases (collectively, the "Debtors") hereby move (the "Motion") this Court pursuant to 11 U.S.C. §§105 and 363 to terminate the Asset Purchase Agreement between the Debtors and Othello Holding Corp. ("Othello"), dated January 6, 2004 (the "Agreement"). In support of the Motion, the Debtors state as follows:[2]

BACKGROUND

1. On October 21, 2003 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions in this Court. Certain affiliates of the Debtors (all of the other companies identified in the caption of this Motion) previously filed chapter 11 cases on October 8, 2003.

[1] The Debtors consist of the following entities: Chi-Chi's, Inc., CCMR of Catonsville, Inc., CCMR of Cumberland, Inc., CCMR of Frederick, Inc., CCMR of Greenbelt, Inc., CCMR of Harford County, Inc., CCMR of Maryland, Inc., CCMR of Ritchie Highway, Inc., CCMR of Timonium, Inc., Chi-Chi's of West Virginia, Inc., CMM Dissolution, Inc., Koo Koo Roo, Inc., Maintenance Support Group, Inc., Koo Koo Roo Licensing Systems, Inc., the Hamlet Group, Inc., H.H. of Maryland, Inc., and H.H.K. of Virginia.

[2] The facts and circumstances supporting the Motion are set forth in the Declaration of Hugh Hilton Regarding the Termination of the Asset Purchase Agreement with Othello Holding Corp., attached hereto as Exhibit A.

2. The Debtors continue to operate their businesses and manage their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The statutory predicated for relief are sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code").

AGREEMENT WITH OTHELLO

4. The Debtors announced the decisions to sell substantially all of its assets. Several parties, including Othello and Joseph Mentor, completed due diligence and began negotiating an asset purchase agreement with the Debtors. After negotiations, the Debtors entered into the Agreement with Othello on January 6, 2004.

5. On January 7, 2004, the Debtors filed the Debtors' Motion for Order: (a) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Rights, Interest and Encumbrances Subject to Higher or Better Bids; and (b) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases (Docket No. 380) (the "Sale Procedure Motion"), which attached the Agreement.

6. The Court has scheduled a hearing on the Sale Procedure Motion on January 16, 2004 at 10:30 a.m. prevailing Easter time. It is imperative that the Court approve this Motion prior to hearing the Sale Procedure Motion.

7. The Agreement provided that Othello was to deliver a deposit to Debtors' counsel in the amount of $250,000 (the "Deposit") by January 9, 2004, no later than three (3) business days following the January 6, 2004 date of the Agreement. Agreement, section 1.5. Othello never provided the Deposit.

8. Furthermore, the Debtors have been informed that (1) counsel to Othello was no longer acting as counsel regarding the sale transaction, (2) Othello split from its partner who had obtained the financing to consummate the sale transaction, and (3) Othello did not have the financing to complete the sale transaction.

9. The Debtors believe that it is in the best interest of their estates and creditors that the Debtors terminate the Agreement with Othello and pursue a different stalking horse bidder. Othello is in breach under the Agreement and is unable to consummate the transaction contemplated by the Agreement.[3]

RELIEF REQUESTED

10. The Debtors seek to terminate the Agreement with Othello so that the Debtors may enter into an agreement with a different stalking horse bidder.

11. The Debtors do not believe that the Agreement is binding on the Debtors as the proposed sale transaction is outside the ordinary course of the Debtors' businesses and has not been approved by this Court pursuant to Bankruptcy Code section 363;[4] however, out of an abundance of caution, the Debtors seek Court approval to terminate the Agreement with Othello.

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[3] Nothing herein shall prevent Othello from participating in the auction process, once such auction process has been approved by the Court, if Othello submits a Qualified Bid, as defined in the Sale Procedure Motion.

[4] Under section 363(b) of the Bankruptcy Code, the debtor in possession "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §363(b)(1). Under applicable case law, if a debtors' proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on part of the debtor, such use should be approved. See, e.g., In re Adelphia Communications Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. March 4, 2003) (citing In re Intergrated Resources, Inc., 147 B.R. 650, 656 (2nd Cir. 1992)); In re Montgomery Ward Holding Corp., 242 B.R. 147, 154 (Bankr. D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under this section courts require the debtor to show that a sound business purpose justifies such actions."); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991)); In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D. Del. 1991) (courts have applied the "sound business purpose" test to evaluate motions brought pursuant to section 363(b)).

12. The Debtors were misinformed and misled when they originally signed the Agreement with Othello, the Debtors now believe that the Agreement with Othello is not in the best interests of their estates or their creditors. In the Debtors' business judgment, the Agreement with Othello should be terminated. Othello has not posted the Deposit within the required time and on information and belief Othello has neither obtained acquisition financing, nor has Othello obtained replacement counsel for advice on the sale. It is in the best interests of the Debtors and their estates and creditors to terminate the Agreement and enter into an asset purchase agreement with a new stalking horse purchaser who is a Qualified Bidder, as defined in the Sale Procedure Motion.

13. Furthermore, after Othello's misleading behavior, the Debtors do not believe that Othello should be entitled to the benefits of the Agreement that Othello breached, such as the requested Break-Up Fee, as defined in the Agreement.

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order granting the relief requested herein substantially in the form attached hereto; and (b) grant such other and further relief as is just and proper.

Dated: January 15, 2004

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and

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11 (Jointly Administered)
	)	
	)	Case No. 03-13063 (CGC)
CHI-CHI'S INC., et al.,[1]	)	
	)	
Debtors.		

DECLARATION OF HUGH HILTON REGARDING THE TERMINATION OF THE ASSET PURCHASE AGREEMENT WITH OTHELLO HOLDING CORP.

I, HUGH HILTON, declare as follows:

1. I am the Chief Executive Office of Prandium, Inc., ultimate parent company of The Hamlet Group, Inc., HH of Maryland, Inc., and H.H.K. of Virginia, Inc., three of the debtors and debtors in possession in these jointly administered cases (collectively, the "Debtors").

2. I submit this declaration in support of the Debtors' Emergency Motion to Terminate the Asset Purchase Agreement with Othello Holding Corp. (the "Motion"). Any capitalized terms not expressly defined herein shall have the meaning given to that term in the Motion. All facts set forth in this declaration are based on my personal knowledge, information supplied to me by others at the Debtors, information supplied to me by counsel to the Debtors, my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and

[1] The related debtors consist of the following entities: Chi-Chi's, Inc., CCMR of Catonsville, Inc., CCMR of Cumberland, Inc., CCMR of Frederick, Inc., CCMR of Greenbelt, Inc., CCMR of Harford County, Inc., CCMR of Maryland, Inc., CCMR of Ritchie Highway, Inc., CCMR of Timonium, Inc., Chi-Chi's of West Virginia, Inc., CMM Dissolution, Inc., Koo Koo Roo, Inc., Maintenance Support Group, Inc., Koo Koo Roo Licensing Systems, Inc., The Hamlet Group, Inc., H.H. of Maryland, Inc., and H.H.K. of Virginia, Inc.

would testify competently to the facts set forth herein. I am authorized to submit this declaration on behalf of the Debtors.

3. I had initial contact with John Creed concerning the sale of substantially all of the assets of the Debtors. Mr. Creed has extensive restaurant operating experience. At the initial meeting to discuss terms of the sale, John Creed was joined by Lanz Alexander and William Fleischman, who together made up the potential investment group for the Debtors' assets.

4. After negotiations with Mr. Creed, Mr. Alexander, and Mr. Fleischman, the Debtors drafted an asset purchase agreement to be entered into by Othello Holding Corp. ("Othello"), a shell-corporation held by Mr. Alexander. The selection of the signing entity was a matter of convenience for the purchasing group, although I continued to understand that Mr. Creed, Mr. Alexander, and Mr. Fleischman would all remaining active in the purchase of the assets and the operations of the restaurants after the closing of the sale.

5. It was my understanding and belief that the proposed sale transaction would take place with Othello, but that Mr. Creed, Mr. Alexander, and Mr. Fleischman were the principals contributing to the transaction. I believed that Mr. Creed, Mr. Alexander, and Mr. Flischman were all critical parties to the underlying agreement to sell the assets.

6. Mr. Alexander received commitment letter from G.E. Credit for $5,000,000 of the transaction price. I reviewed the commitment letter provided by G.E. Capital. I was shown a commitment letter from Momentum to Mr. Creed for an additional $3,000,000 of the transaction. Furthermore, Mr. Alexander and Mr. Fleischman were to each contribute $1,000,000 to the purchase price.

7. After review of the commitment letters and the financial commitments by Mr. Alexander and Mr. Fleischman, I was satisfied that the potential purchaser was financially capable of completing the sale transaction.

8. Mr. Alexander, on behalf of Othello signed the Agreement.

9. After signing the Agreement with Othello, I was informed by Mr. Creed that he was no longer part of the transaction and that Mr. Alexander and Mr. Fleischman knew that fact prior to the execution of the Agreement.

10. I contacted Mr. Alexander and requested proof that Othello had the requisite financing to complete the transaction. Mr. Alexander could not produce evidence of the additional financing needed to complete the transaction.

11. Othello did not make the Deposit as required by section 1.5 of the Agreement.

12. As of the date of this declaration, neither Othello, Mr. Alexander, nor Mr. Fleischman have produced proof the requisite financing to be considered a qualified bidder for the Debtors' assets.

13. I believe that the facts surrounding entry of the Agreement have materially changed since the Agreement was entered into. It appears that the facts surrounding Othello's financial capabilities changed prior to the execution of the Agreement, but were not communicated to me until after the fact. Had I known the true state of affairs as they relate to

Othello's present ability to consummate the sale transaction, I would not have entered into the Agreement with Othello.

14. I do not believe the Agreement with Othello is in the best interests of the Debtors' estates or creditors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of January 2004, at Irvine, California.

Hugh Hilton

Hugh Hilton

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11 (Jointly Administered)
	)	
	)	Case No. 03-13063 (CGC)
CHI-CHI'S INC., et al.,[1]	)	
	)	
Debtors.		

EMERGENCY ORDER TERMINATING THE ASSET PURCHASE AGREEMENT WITH OTHELLO HOLDING CORP.

Upon consideration of the Debtors' Motion to Terminate the Asset Purchaser Agreement with Othello Holding Corp. (the "Motion") filed by The Hamlet Group, Inc., HH of Maryland, Inc., and H.H.K. of Virginia, Inc., three of the debtors and debtors in possession in these jointly administered cases (collectively, the "Debtors");[2] and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties-in-interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and adequate notice of the Motion having been given under the circumstances and no further notice need be given; and after due deliberation and cause appearing therefor; it is hereby:

[1] The related debtors consist of the following entities: Chi-Chi's, Inc., CCMR of Catonsville, Inc., CCMR of Cumberland, Inc., CCMR of Frederick, Inc., CCMR of Greenbelt, Inc., CCMR of Harford County, Inc., CCMR of Maryland, Inc., CCMR of Ritchie Highway, Inc., CCMR of Timonium, Inc., Chi-Chi's of West Virginia, Inc., CMM Dissolution, Inc., Koo Koo Roo, Inc., Maintenance Support Group, Inc., Koo Koo Roo Licensing Systems, Inc., The Hamlet Group, Inc., H.H. of Maryland, Inc., and H.H.K. of Virginia, Inc.

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Asset Purchase Agreement with Othello Holding Corp. is terminated; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2003

_____
The Honorable Charles G. Case, II
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
CHI-CHI'S, INC., et al.,[1]	)	Case No. 03-13063 (CGC)
	)	(Jointly Administered)
Debtors.	)	

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS:
COUNTY OF NEW CASTLE)

Kathleen Forte Finlayson, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C., counsel for the Debtors, in the above-captioned action, and that on the 15th day of January 2004, she caused a copy of the following documents to be served upon the attached service lists in the manner indicated:

DEBTORS' EMERGENCY MOTION TO TERMINATE ASSET PURCHASE AGREEMENT WITH OTHELLO HOLDING CORP.

Kathleen Forte Finlayson

Sworn to and subscribed before
me this 15th day of January, 2004

Notary Public
My Commission Expires: 6/12/05

KATHLEEN M. WITTIG
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 12, 2005

[1] The Debtors consist of the following entities: Chi-Chi's, Inc., CCMR of Catonsville, Inc., CCMR of Cumberland, Inc., CCMR of Frederick, Inc., CCMR of Greenbelt, Inc., CCMR of Harford County, Inc., CCMR of Maryland, Inc., CCMR of Ritchie Highway, Inc., CCMR of Timonium, Inc., Chi-Chi's of West Virginia, Inc., CMM Dissolution, Inc., Koo Koo Roo, Inc., Maintenance Support Group, Inc., and Koo Koo Roo Licensing Systems, Inc.

Anthony Baril Prandium, Inc.	949-863-6885	949-863-6859
John Schafer, Esquire William N. Lobel, Esquir Alan J. Friedman, Esquire Mike Neue, Esquire Irell & Manella LLP (Co-Counsel to Debtors)	949-760-5200	949-760-5196
David Klauder, Esquire U.S. Trustee	302-573-6497	302-573-6491
Charles Gibbs, Esquire (Co-Counsel Creditors' Committee)	214-969-4343	214-969-2800
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John Creed, Esquire	760-754-2724	760-754-2722
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