

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: : Case No. 06-51848
: (Jointly Administered)
CEP HOLDINGS, LLC, et al.,¹ :
: Chapter 11
Debtors. :
: Honorable Marilyn Shea-Stonum
: :
: Hearing Date: 1/16/06 at 9:30 a.m.
: Objection Deadline: 1/12/06 at 4:00 p.m.
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**FIRST OMNIBUS MOTION OF DEBTORS AND
DEBTORS IN POSSESSION, PURSUANT TO SECTION 365 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 6006, FOR ENTRY OF
AN ORDER AUTHORIZING THEM TO REJECT CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AS OF JANUARY 16, 2007**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), hereby move (the “**Motion**”), pursuant to section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order authorizing them to reject certain executory contracts and unexpired leases (collectively, the “**Agreements**”) identified on **Exhibit A** attached hereto and incorporated herein by reference, effective as of January 16, 2007.² In support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors are: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

² **Exhibit A** includes: (a) the location of the equipment / place of contract; (b) a description of the contract or lease; and (c) the name and address of the nondebtor counterparty to the Agreement (collectively, the “**Contracting Parties**”).

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

BACKGROUND

4. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to an order entered by the Court on September 26, 2006, the Cases are being jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 28, 2006, the United States Trustee appointed an official committee of unsecured creditors. No trustee or examiner has been appointed.

6. On October 4, 2006, the Debtors filed the *Motion for Order (A) Granting Authority for the Sale of Assets Pursuant to § 363(b); (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases Pursuant to § 365; (C) Establishing Bidding Procedures; (D) Setting Date for Auction and Hearing on Approval of Sale of Assets; and (E) Approving Form of Notice* (Docket No. 103) (the “**Sales Motion**”).

7. On November 21, 2006, upon consideration of the Sales Motion, the Court entered the *Order Authorizing (A) Auctions of Liquidating Facilities, (B) Sale of Assets Free and*

Clear of All Claims, Liens and Encumbrances, and (C) Debtors' Entry into an Asset Marketing Agreement on an Interim Basis (Docket No. 248) (the "**Sales Order**"). Pursuant to the Sales Order, the Debtors are in the process of liquidating substantially all of the assets located at the Debtors' facilities in Vandalia, Ohio, Bishopville, South Carolina, Crestline, Ohio, Canton, Ohio, LaPeer, Michigan and Middlefield, Ohio (the "**Liquidating Facilities**").

RELIEF REQUESTED

8. By this Motion, the Debtors seek the entry of an order, pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, authorizing the Debtors to reject the Agreements effective as of January 16, 2007.

FACTS RELEVANT TO THIS MOTION

9. Since the Petition Date, the Debtors have reviewed their executory contracts and unexpired leases to identify those contracts and leases that, in the Debtors' business judgment, are not necessary to their business operations in light of the Debtors' liquidation under section 363 of the Bankruptcy Code. As a result of their review to date, the Debtors have determined that the Agreements identified on the attached **Exhibit A** are not necessary to the Debtors' businesses given the Debtors' liquidation pursuant to the Sales Order. Accordingly, the Debtors either have surrendered, or will surrender by January 16, 2007, possession of any property leased under the Agreements to the respective Contracting Party.

10. Each of the Agreements is an "executory contract" or "unexpired lease" within the meaning of section 365 of the Bankruptcy Code, capable of being rejected by the Debtors. To the extent that any Agreement already has expired or been terminated, it is included herein out of any abundance of caution.

ARGUMENT

11. Rejection of the Agreements is warranted under section 365 of the Bankruptcy Code. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease.” 11 U.S.C. § 365(a).

12. Courts routinely approve motions to assume, assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor’s decision to take such action will benefit the debtor’s estate and is an exercise of sound business judgment. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of “business judgment”); *Phar-Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 951-52 (Bankr. N.D. Ohio 1997) (“Whether an executory contract is ‘favorable’ or ‘unfavorable’ is left to the sound business judgment of the debtor.”); *In re Beare Co.*, 177 B.R. 879, 882 (Bankr. W.D. Tenn. 1994) (considering whether the debtor’s decision to assume a contract under section 365 of the Bankruptcy Code was “an exercise of ‘reasonable business judgment’”); *accord Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993) (stating that section 365 of the Bankruptcy Code “permits the trustee or debtor-in-possession, subject to the approval of the bankruptcy court, to go through the inventory of executory contracts of the debtor and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject.”); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (stating that “[t]he resolution of this issue of assumption or rejection will be a matter of business judgment by the bankruptcy court”).

13. Courts generally will not second-guess a debtor’s business judgment concerning the assumption or rejection of an executory contract or unexpired lease. *See Phar-Mor, Inc.*, 204 B.R. at 952 (“Courts should generally defer to a debtor’s decision whether to reject an executory

contract.”); accord *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, (*In re Richmond Metal Finishers, Inc.*), 756 F.2d, 1043, 1047 (4th Cir. 1985) (explaining that, under the business judgment test, “courts should defer to — should not interfere with — decisions of corporate directors upon matters entrusted to their business judgment except upon a finding of bad faith or gross abuse of their ‘business discretion.’”).

14. The “business judgment” test is not a strict standard — it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. See, e.g., *In re Federated Dep’t Stores, Inc.*, 131 B.R. 808, 812 (S.D. Ohio 1991) (finding that in authorizing a debtor’s rejection of an unexpired lease, a “bankruptcy court ‘need determine only whether disaffirmance would be advantageous to the debtor.’”); *In re Holly’s, Inc.*, 140 B.R. 643, 680 (Bankr. W.D. Mich. 1992) (stating that a debtor may reject an executory contract that is “burdensome” to the estate based upon the “Debtor’s business judgment”); *In re Pesce Baking Co.*, 43 B.R. 949, 956 (Bankr. N.D. Ohio 1984) (“A court will approve the rejection of an executory contract under the business judgment test if rejection would benefit the debtor’s estate.”).

15. Here, rejecting the Agreements constitutes a reasonable exercise of the Debtors’ business judgment. This is a liquidating Chapter 11 case. As of the date of this Motion, the Liquidating Facilities have completely shutdown. All or nearly all of the Agreements relate to the Debtors’ former operations at the Liquidating Facilities. The Agreements and the property leased thereunder, thus, are no longer necessary to the Debtors’ businesses, the payments due under the Agreements is economically burdensome and wasteful of estate resources. Additionally, the Agreements do not have any market value that could be captured by the

Debtors' estates. For these reasons, the rejection of the Agreements is appropriate and is in the best interests of the Debtors and their estates and other parties in interest.

NOTICE

16. Notice of the Motion has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors and any other parties in interest directly affected by this Motion, including the Contracting Parties.

17. No prior request for the relief sought in this Motion has been made to this or any other Court.

CONCLUSION

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

Dated: December 22, 2006
Cleveland, OH

CEP HOLDINGS, LLC, et al.,
Debtors and Debtors-in-Possession

By: /s/ Joseph F. Hutchinson, Jr.
One of Their Attorneys

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