

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
RED TOP RENTALS, INC.) CAUSE NO: 09-05229-JKC-11
)
)
DEBTOR.)
_____)

**AMENDED MOTION TO REJECT UNEXPIRED LEASE
WITH MARTIN FAMILY PROPERTIES, LLC**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Red Top Rentals, Inc., the debtor and debtor-in-possession (the “Debtor”), by counsel, in support of the above-entitled motion (this “Motion”), and respectfully states:

1. Since the Petition Date, the Debtor has continued in the possession of their property pursuant to §§ 1107 and 1108 of the Bankruptcy Code, codified at 11 U.S.C. §101, *et seq.* (the “Code”), and is a debtor-in-possession. A creditors committee has not been appointed in this case.

2. The Court has jurisdiction over this application pursuant to 28 U.S.C. §157 and 1334. Venue is proper pursuant to 28 U.S.C. §1408 and 1409. This application is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The statutory predicates for the relief requested herein are 11 U.S.C. §365 and Fed. R. Bankr. P. 6006.

3. Prior to the Petition Date, the Debtor, in its normal course of business, entered into a lease agreement with Martin Family Properties, LLC (the “Lease”). Attached as **Attachment A** is a copy of the Lease.

4. The Lease is for the lease of real property located on Gondola Street, Sharonville, Hamilton County, Ohio, where the Debtor formerly operated a branch office. The Lease appears to be still be executory and appears to expire on October 31, 2009. Rent is \$6,000 per month.

5. Assignment of the Lease is not deemed by the Debtor to have any value.

6. The Debtor has no further need to lease the real property. The Lease is a burden on the Debtor and is not a source of potential value for this estate.

7. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, [may] assume or reject any executory contract or unexpired lease.” See In re FBI Distribution Corp., 330 F.3d 36, 42 (1st Cir. 2003); University Medical Center v. Sullivan (In re University Medical Center), 973 F.2d 1065, 1075 (3d Cir. 1992). The assumption or rejection of an unexpired lease by a debtor is subject to review under the business judgment standard. In the Matter of Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases.”). This standard is satisfied when the debtor determines that rejection will benefit the estate. Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”) (citation omitted).

8. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease. See, e.g., NLRB v. Bildisco and Bildisco, 465 U.S. 513, 523 (1984); Group of Institutional Investors v. Chicago, M., St. P. & P.R. Co., 318 U.S. 523, 550 (1943); Sharon Steel Corp. v. National Fuel Gas Distribution Corp., 872

F.2d 36, 39-40 (3d Cir. 1989); In the Matter of Goldblatt Bros., Inc., 766 F.2d 1136, 1139 (7th Cir. 1985).

9. In applying the “business judgment” standard, courts show great deference to the debtor’s decision to reject. See Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

10. The Debtor clearly satisfies the “business judgment” standard in rejecting the Lease. As explained above, the Lease is not a source of potential value for the estate. Accordingly, the Debtor has determined that, in the sound exercise of their business judgment, the Lease should be rejected and such rejection will benefit the Debtor’s estates.

Request for Relief

The Debtor respectfully requests that the Court grant this Motion and grant such other and further relief as is just and proper.

Respectfully submitted,

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