

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,¹

Debtor.

)
) Chapter 11

)
) Case No. 09-12200 (BLS)

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)
) **Objection Deadline: March 1, 2010 at 4:00 p.m. EST**

)
) **Hearing Date: March 8, 2010 at 10:15 a.m. EST**

**DEBTOR'S SECOND OMNIBUS MOTION FOR ORDER UNDER
11 U.S.C. §§ 105(a), 363(b) AND 365(a) AND FED. R. BANKR. P.
6006 (A) AUTHORIZING AND APPROVING AMENDMENTS
OF UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND
(B) AUTHORIZING ASSUMPTION OF LEASES, AS AMENDED**

Pumpkin Patch LLC, the debtor and debtor in possession in the above-captioned case (the "Debtor"), hereby files this second omnibus motion (the "Second Omnibus Motion")² for entry of an order, under sections 105(a), 363(b), and 365(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (a) authorizing the Debtor to enter into fourteen (14) amendments (each a "Lease Amendment" and together, the "Lease Amendments")³ to unexpired leases of nonresidential real property set forth on Exhibit A (each a "Lease" together the "Leases") located at the premises listed on Exhibit A (the "Premises"), and (b) authorizing the Debtor to assume the Leases, as amended. In support of the Second Omnibus Motion, the Debtor relies on (i) the Declaration of Maurice Prendergast in Support of Chapter 11 Petition and Various First Day

¹ The last four digits of Pumpkin Patch LLC's federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 837 15th Street, #D, Santa Monica, CA 90403.

² The Debtor filed an earlier motion seeking similar relief with respect to other leases on January 14, 2010. [Docket No. 210].

³ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Lease Amendments.

Applications and Motions (the “Prendergast Declaration”) [D.I. 3], and (ii) the Declaration of Matthew Washington, attached hereto as Exhibit B (the “Washington Declaration,” and together with Prendergast Declaration, the “Declarations”). In further support of the Second Omnibus Motion, the Debtor, by and through its undersigned counsel, respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider this Second Omnibus Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Second Omnibus Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), and 365(a) and Bankruptcy Rule 6006.

BACKGROUND

2. On June 29, 2009 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declarations, and is fully incorporated herein by reference.

3. The Debtor continues to manage and operate its business as debtor in possession under Bankruptcy Code sections 1107 and 1108.

THE LEASES

4. As set forth in Exhibit A hereto, the Leases are 14 unexpired leases of real nonresidential property used to operate the Debtor’s retail stores located in at the various Premises. The Debtor and respective landlords (each a “Landlord” and together, the “Landlords”) are parties to the Leases.

KEY TERMS OF THE LEASE AMENDMENTS

5. After negotiation between and the Debtor and each of the Landlords, the Debtor and each Landlord executed, pending approval of this Second Omnibus Motion, a Lease Amendment with regard to each of the relevant Premises on various dates between November 30, 2009 and January 19, 2010.

6. The Lease Amendments provide for the continued existence of the stores at these locations under terms and conditions that will aid the Debtor's reorganization efforts and save the Debtor, according to its estimation, more than \$1.9 million in payments made under the Leases. If this Second Omnibus Motion is approved, the Leases will remain in full force and effect other than the changes set forth in the Lease Amendments. A copy of the Lease Amendments, along with a summary of the savings and benefits thereof (the "Summary"), will constitute Exhibit C hereto. For competitive and commercial reasons and due to confidentiality provisions contained in the Lease Amendments, the Debtors will not file Exhibit C electronically herewith but will do so under seal. Simultaneously with the filing hereof, the Debtor will file a motion for an order seeking authority to file Exhibit C under seal.

RELIEF REQUESTED

7. By this Second Omnibus Motion, the Debtor requests the entry of an order under Bankruptcy Code sections 105(a) and 365(a) (a) authorizing the Debtor to enter into the Lease Amendments, each amending one of the Leases and (b) authorizing the Debtor to assume the Leases, as amended.

BASIS FOR RELIEF

8. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a 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). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the debtor to amend a lease or contract, courts in this Circuit and others, in applying this section, have required that decisions regarding the disposition of assets outside the ordinary course of business be based upon the debtor’s sound business judgment and a finding of “good faith.” See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149-50 (3d Cir. 1986) (requiring a finding of “good faith” to approve a sale under section 363(b)); Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under section 363(b) when there is a legitimate business justification); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147,153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.”); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (examining the history of the standard required for a pre-confirmation sale of assets under section 363(b) and opining that the Third Circuit has implicitly abandoned the “emergency” test under earlier precedent and has adopted the “sound business judgment” test as utilized by other courts).

9. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject an executory contract or an unexpired lease.” 11 U.S.C. § 365(a); see also Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). The Court may approve a debtor’s assumption of an unexpired lease or executory contract if such assumption is made in the exercise of such debtor’s sound business judgment, and if such assumption benefits its estate. See, e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib.

Corp., 872 F.2d 36, 39 (3d Cir. 1989); NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72,79 (3d Cir. 1982), aff'd, 465 U.S. 513 (1984); In re Network Access Solutions, Corp., 330 B.R. 67 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“In reviewing a debtor’s decision to assume ... an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption ... would be beneficial ... to the estate”). It is enough if a debtor determines in its business judgment that a benefit will be realized. Sharon Steel Corp., 872 F.2d at 39 (citing Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the debtor’s business decision unless it is the product of bad faith, whim or caprice. See In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001); see also Lubrizol Enter., Inc. v. Richmond Metal Finishers, 756 F.2d 1043,1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

10. If a valid business justification exists - as it surely does in this case - the law vests the debtors’ decision to use property out of the ordinary course of business with a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that that action take was in the best interests of the company.” Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985). Accordingly, parties challenging a debtor’s decision making must make a showing of “bad faith, self-interest or gross negligence.” Id.

11. The Debtor submits that sound business reasons exist for the authorizing the Debtors to enter into the Lease Amendments and to assume the Leases, as amended. After vigorous, arms-length negotiation of the terms of the Lease Amendments, and upon consideration of the needs of the Debtor's business operation, the Debtor has determined, in its business judgment, that the terms of the Lease Amendments are favorable to the Debtor and will allow the Debtor to continue operating its business at each of the relevant retail Premises.

12. If the Second Omnibus Motion is not approved, the Debtor may be forced to reject each of the Leases and terminate its operation of the fourteen retail stores located on the Premises, which would result in a significant reduction of revenues for the Debtor and the loss of employment of the employees at the five retail stores. The rejection of the Leases will also result in significant rejection damages being asserted by Landlord against the Debtor's estate pursuant to section 502(b)(6) of the Bankruptcy Code.

13. Considering both the significant benefit provided by the Lease Amendments and the great potential harm to both the Debtor's estate and its employees that would result from a rejection of the Leases, the Debtor respectfully submit that the Second Omnibus Motion should be granted and the Court should authorize the Debtor to enter into the Lease Amendments and to assume the Leases, as amended.

NOTICE

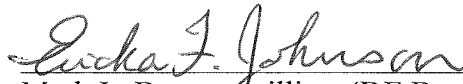
14. Notice of this Second Omnibus Motion has been provided to: (i) the United States Trustee for the District of Delaware; (ii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (iii) the Landlords (collectively, the "Initial Notice Parties"); and (iv) any party that has requested notice of filed pleadings in this Chapter 11 case. The Debtor submits that, under the circumstances, no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtor respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in the Second Omnibus Motion and such other and further relief as may be just and proper.

Dated: January 25, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**



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Counsel for the Debtor and Debtor-in-Possession

ORDERED, ADJUDGED, AND DECREED that:

1. The Second Omnibus Motion is GRANTED as set forth in this Order.
2. Each of the Lease Amendments is approved and all of its terms and conditions shall be valid and binding against the Debtor and each relevant Landlord.
3. The Debtor is authorized to assume the Leases, each as amended by the relevant Lease Amendment, with such assumption effective as of the date of this Order.
4. Any cure amounts, as provided in the Lease Amendments, will be paid upon the assumption of the relevant Lease.
5. This Court shall retain jurisdiction with respect to any and all matters relating to or arising from the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
March ____, 2010

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "A"

**List of Leases Subject
to Lease Amendments**

Tenant	Landlord	Location
Pumpkin Patch, LLC	South Bay Center SPE, LLC	Redondo Beach, CA
Pumpkin Patch, LLC	Macerich Cerritos LLC	Cerritos, CA
Pumpkin Patch, LLC	Macerich Westside Pavilion Property LLC	Los Angeles, CA
Pumpkin Patch, LLC	Annapolis Mall Limited Partnership	Annapolis, MD
Pumpkin Patch, LLC	Mainplace Shoppingtown LLC	Santa Ana, CA
Pumpkin Patch, LLC	EWH Escondido Associates, L.P. and North County Fair LP	Escondido, CA
Pumpkin Patch, LLC	Plaza Bonita LP	National City, CA
Pumpkin Patch, LLC	Roseville Shoppingtown LLC	Roseville, CA
Pumpkin Patch, LLC	Santa Anita Shppingtown LP	Arcadia, CA
Pumpkin Patch, LLC	Sherman Oaks Fashion Associates, LP	Sherman Oaks, CA
Pumpkin Patch, LLC	WEA Southcenter LLC	Seattle WA
Pumpkin Patch, LLC	Westfield Topanga Owner LP	Canoga Park, CA
Pumpkin Patch, LLC	Valencia Town Center Venture, L.P.	Valencia, CA
Pumpkin Patch, LLC	VF Mall LLC	Santa Clara, CA

EXHIBIT "B"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,¹

Debtor.

)
)
) Chapter 11

) Case No. 09-12200 (BLS)
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**DECLARATION OF MATTHEW WASHINGTON IN SUPPORT
OF (I) SECOND OMNIBUS LEASE
AMENDMENT MOTION AND (II) MOTION TO SEAL**

Under 28 U.S.C. § 1746, Matthew John Washington, declares as follows under the penalty of perjury:

1. I am the Chief Financial Officer of Pumpkin Patch LLC (the “Debtor”), a corporation organized under the laws of the state of Delaware.
2. I have been the Chief Financial Officer of the Debtor since its formation in 2005 and am familiar with the Debtor’s day-to-day operations, business affairs, and books and records.
3. On June 29, 2009 (the “Petition Date”), the Debtor commenced a case in this Court by filing a voluntary petition under chapter 11 of the Bankruptcy Code.
4. Concurrent with the filing of this Declaration, the Debtor will file (I) the Debtor’s Second Omnibus Motion for Order under 11 U.S.C. §§ 105(a), 363(b) and 365(a) and Fed. R. Bankr. 6006 (a) Authorizing and Approving Amendments of Unexpired Leases of Non-residential Real Property and (b) Authorizing Assumption of Leases, as Amended (the “Second

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Omnibus Motion")² and (II) the Debtor's Motion for Order Authorizing the Debtor to File Exhibit C to the Second Omnibus Motion Under Seal (the "Motion to Seal" and, together with the Second Omnibus Motion, the "Motions")

5. I have read the Motions and am familiar with the facts set forth therein. I have personal knowledge of the matters set forth in the Motions to the extent they relate to the Debtor or have gained knowledge of such matters from the Debtor's employees or retained advisors that report to me in the ordinary course of my responsibilities as Chief Financial Officer and, if called as a witness, would testify thereto.³

6. The Debtor believes, and I agree, that it is in the Debtor's best interest to enter into the Lease Amendments and to assume the Leases, as amended.

7. The Debtor estimates that the Lease Amendments will save the Debtors a total of approximately \$1.9 million in terms of aggregate amount payable under the Leases.

8. The Debtor believes, and I agree, that the authorizing the filing of the Lease Amendments and the Summary under seal and preserving the confidentiality of sensitive commercial information is in the best interest of the Debtor and the estate.

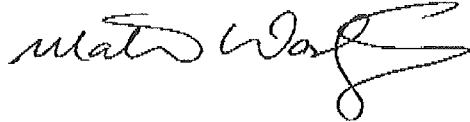
² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Second Omnibus Motion or the Motion to Seal.

³ Certain of the disclosures in the Declaration relate to matters within the knowledge of other employees of the Debtor and are based on information provided by them.

9. I hereby declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: _____, 2010

PUMPKIN PATCH LLC
Debtor and Debtor in Possession



Matthew Washington
Chief Financial Officer

EXHIBIT "C"

FILED UNDER SEAL

A HEARING ON THE MOTION WILL BE HELD ON **MARCH 8, 2010 AT 10:15 A.M.**, ONLY IF OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 25, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

_____/s/ Ericka F. Johnson_____
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