

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:

ROBB & STUCKY LIMITED LLLP,
a Florida Limited Liability Limited Partnership,¹

Case No.
Chapter 11

Debtor.

**DEBTOR'S EMERGENCY OMNIBUS MOTION TO REJECT EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AS OF THE PETITION DATE**

**PARTIES RECEIVING THIS MOTION SHOULD
LOCATE THEIR NAMES AND CONTRACTS OR
COUNTER PARTIES ON THE ATTACHED EXHIBIT
"A." EXHIBIT "A" LISTS THE NAME OF THE
PARTY TO THE CONTRACT ALPHABETICALLY.**

Robb & Stucky Limited LLLP (the "Debtor"), by and through proposed undersigned counsel, pursuant to 11 U.S.C. § 365(a) and Federal Rule of Bankruptcy Procedure 6006, files this *Emergency Omnibus Motion to Reject Executory Contracts and Unexpired Leases as of the Petition Date* (the "**Motion**") seeking the entry of an order approving the Debtor's rejection of the executory contracts and unexpired leases set forth in **Exhibit "A"** (collectively, the "**Contracts**" and the "**Leases**") as of the Petition Date. In support of the Motion, the Debtor relies upon the *Declaration of Kevin Regan in Support of First Day Pleadings* (the "**First Day Declaration**") which is filed concurrently herewith, and respectfully represent as follows:

¹ The last four digits of the taxpayer identification number for the Debtor are 6415. The mailing address for the Debtor is 14550 Plantation Road, Fort Myers, FL 33912.

Jurisdiction

1. This Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this District pursuant to 28 U.S.C. § 1408.

Background

2. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11, title 11, United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).

3. The Debtor is operating its business and managing its affairs as a debtor in possession. 11 U.S.C. §§ 1107(a) and 1108.

4. The Debtor is a Florida limited liability limited partnership and has operated as one of the largest, if not the largest, retailers of upscale, high-end, interior-design-driven home furnishings in the country. The Debtor was founded in 1915, some 96 years ago, by a predecessor entity as a one-store general merchandise emporium. Over time, the Debtor has grown to include 24 locations in five states consisting of interior showrooms, patio showrooms, warehouses, and its corporate office. The Debtor has consistently received awards for its pioneering use of visual marketing, and has been ranked as high as 34th out of all furniture retailers nationwide by well known industry rankings. Due to the economic recession, high unemployment rate, and low present demand for housing in the markets in which the Debtor's retail showrooms are located, the Debtor is faced with liquidity shortfalls that have necessitated its petition for relief.

5. The Debtor commenced this Chapter 11 case in order to stabilize its operations and to facilitate a sale of its assets or of its enterprise as a going concern for the benefit of its

customers, its secured creditors, its employees, its vendors, and its other unsecured creditors. For a detailed description of the Debtor, its operations, and its assets and liabilities, the Debtor respectfully refers the Court and parties-in-interest to the First Day Declaration filed concurrently herewith.

Relief Requested and Basis Therefor

6. The Debtor seeks approval of the rejection of the Contracts and Leases set forth on **Exhibit “A.”** The Debtor has determined, in its business judgment, that the Contracts and Leases are either unnecessary to the administration of the estate or burdensome because the Debtor is either unable to perform, or the cost to perform is greater than the benefit to the estate.

7. Section 365(a) of the Bankruptcy Code allows a debtor, subject to approval of the bankruptcy court, to assume or reject any executory contract or unexpired lease. *See Stewart Title Guaranty Co. v. Old Republic National Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996). ““This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.”” *Stewart Title*, 83 F.3d at 741 (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)). A debtor’s decision to assume or reject an executory contract or unexpired lease is subject to the “business judgment” test. *In re Gardinier, Inc.*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Chira*, 367 B.R. 888, 898 (S.D. Fla. 2007); *In re Prime Motors, Inc.*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991). The sole inquiry is whether assumption or rejection will benefit this estate. *Id.*; *see also In re Hawaii Dimensions, Inc.*, 47 B.R. 425, 427 (D. Haw. 1985) (“[u]nder the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate”).

8. In applying the “business judgment” test, courts show great deference to a debtor’s decision to assume or reject an executory contract. *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 debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). As long as the decision to assume or reject is a reasonable exercise of business judgment, courts should approve the assumption or rejection of an executory contract or 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. R. Co.*, 318 U.S. 523 (1943).

9. Because the Debtor will not profit from the continued performance under the Contracts or Leases, it necessarily follows that rejection of the Contracts and Leases as of the Petition Date is a decision made in the sound exercise of its business judgment, that is, a decision that will benefit the Debtor's estate.

WHEREFORE, the Debtor respectfully requests entry of an Order in the form attached hereto as **Exhibit "B,"** (i) approving the rejection of the Contracts and Leases effective as of the Petition Date, and (ii) granting such other relief as is just and proper.

Dated: February 18, 2011

Respectfully submitted,

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EXHIBIT "A"

(List of Contracts)

EXHIBIT "A" TO OMNIBUS MOTION TO REJECT CONTRACT AND LEASES**Executory Contracts**

Name and Address of Lessor	Description of Contract	Location of Equipment /Property	Contract/Lease Expiration	Fax Number
Hillco Merchant Resources, LLC 5 Revere Drive, Suite 206, Northbrook, Illinois 60062	Consulting Agreement	Contract for management and disposition of merchandise at store located at International Plaza #400, Tampa, Florida 33607	4/30/2011	847-897-0868
GE Capital, P.O. Box 740441, Atlanta, GA 30374	Photocopier Lease; Contract # 7124782-070	14550 Plantation Road, Fort Myers, FL 33912	9/26/2010	(319) 841-6324
GE Capital, P.O. Box 740441, Atlanta, GA 30374	Photocopier Lease; Contract # 7124782-050	14550 Plantation Road, Fort Myers, FL 33912	8/9/2010	(319) 841-6324
GE Capital, P.O. Box 740441, Atlanta, GA 30374	Photocopier Lease: Contract # 7124782-082	14550 Plantation Road, Fort Myers, FL 33912	1/7/2012	(319) 841-6324
SBS Miami Lakes, P.O. Box 790448, St. Louis, MO 68179	Photocopier Lease: Contract # 500-0134010-002	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312	1/21/2014	(866) 405-8329
SBS Miami Lakes, P.O. Box 790448, St. Louis, MO 68179	Photocopier Lease: Contract # 500-0134010-000	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312	11/26/2012	(866) 405-8329
SBS Miami Lakes, P.O. Box 790448, St. Louis, MO 68179	Photocopier Lease: Contract # 500-0238072-000	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312	6/5/2013	(866) 405-8329
SBS Miami Lakes, P.O. Box 790448, St. Louis, MO 68179	Photocopier Lease: Contract # 500-0134010-001	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312	4/7/2013	(866) 405-8329
CIT Technology Financial Services, 21146 Network Place, Chicago, IL 60673	Photocopier/Printer/Lotter Lease; Contract # 900-0113496-000	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312	8/28/2011	(877) 703-8391

EXHIBIT "A" TO OMNIBUS MOTION TO REJECT CONTRACT AND LEASES**Executory Contracts**

Name and Address of Lessor	Description of Contract	Location of Equipment /Property	Contract/Lease Expiration	Fax Number
ADT Security, P.O. Box 371967, Pittsburgh, PA 15250	Contract for Burglar Alarm Service; Contract # 01200131524777	2200 SW 45th Street, Suite 101, Fort Lauderdale, FL 33312		(888) 778-2352
Schindler Elevator Corp., P.O. Box 93050, Chicago, IL 60673	Elevator Service Contract; Contract # 4100054941	4001 Design Centre Drive, Palm Beach Gardens, FL 33410	10/31/2017	(954) 626-5599
Schindler Elevator Corp., P.O. Box 93050, Chicago, IL 60673	Elevator Service Contract; Contract # 4100060807	301 State Street, Southlake, TX 76092	9/1/2018	(972) 621-2502

Real Property Leases

Cabot II - FL2W01, LLC, One Beacon Street, #1700, Boston, MA 02108	Real property lease	2200 S.W. 45th Street, Fort Lauderdale, FL 33312	12/31/2019	(617) 723-4200
SFB Robb & Stucky Invest., 7024 N. Longlook Drive, Paradise Valley, AZ 85253	Real property lease	1020 N 54th Street, Chandler, AZ 85226	9/30/2017	(602) 256-0070
Gables Design Centre Properties, Inc., 10425 SW 79th Place, Miami, FL 33156	Real property lease	4199 Ponce deLeon Boulevard, Coral Gables, FL 33146	3/31/2015	(954) 779-3388
NorthPark Partners, LP, 8080 N. Central Expressway, #1100, Dallas, TX 75206-1807	Real property lease	8687 North Central Expressway, Dallas, TX 75225	5/30/2017	(214) 369-5267

EXHIBIT "A" TO OMNIBUS MOTION TO REJECT CONTRACT AND LEASES**Executory Contracts**

Name and Address of Lessor	Description of Contract	Location of Equipment /Property	Contract/Lease Expiration	Fax Number
School House of Port Charlotte, LLC, 696 NE 125th Street, North Miami, FL 33161	Real property lease	4300 Kings Highway, Port Charlotte, FL 33980	4/30/2016	(305) 981-2777
SLTS Grand Avenue, L.P., 1256 Main Street, #240, Southlake, TX 76092	Real property lease	301 State Street, Southlake, TX 76092	10/31/2017	(972) 770-2156
RCA Center II of Florida, LLC, 4300 Catalfumo Way, Palm Beach Gardens, FL 33410	Real property lease	4001 Design Center Drive, Palm Beach, FL 33410	11/30/2021	(813) 202-1313

EXHIBIT "B"

(Proposed Order)

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

ROBB & STUCKY, LIMITED, LLLP,
a Florida Limited Liability Limited
Partnership,¹

Case No.
Chapter 11

Debtor.

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION
TO REJECT EXECUTORY CONTRACTS AS OF THE PETITION DATE**

THIS CASE came before the Court on the ____ day of February, 2011 at _____, in Tampa, Florida, upon the *Debtor's Emergency Motion to Reject Executory Contracts as of the Petition Date* [D.E. No. ____] (the "**Motion**") filed by the above-captioned debtor-in-possession (the "**Debtor**"). The Motion seeks authority to reject the Contracts² listed on **Exhibit "A."** The Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors. Proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary. Upon review of the record before the Court, good and sufficient cause exists to grant the relief requested. Accordingly, it is

¹ The last four digits of the taxpayer identification number for the Debtor are 6415. The mailing address for the Debtor is 14550 Plantation Road, Fort Myers, FL 33912.

² All capitalized terms used herein shall have the meaning ascribed to them in the Motion.

ORDERED that:

1. The Motion is **GRANTED**.
2. The Debtor's rejection of the Contracts listed on **Exhibit "A"** is **APPROVED** as of the Petition Date pursuant to 11 U.S.C. § 365(a).
3. The Court retains jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

DONE and **ORDERED** in Tampa, Florida, on _____.

United States Bankruptcy Judge

Copy to:
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Miami, FL 33131.