

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:

PITTSBURGH ATHLETIC
ASSOCIATION, *et al*¹
Debtors,

Jointly Administered at:
Case No. 17-22222-JAD

Bankruptcy Case Nos:
17-22222-JAD, and
17-22223-JAD

PITTSBURGH ATHLETIC
ASSOCIATION,

Chapter 11

Movant,

Hearing: Sept. 26, 2017 10:00 am

v.

PURE FORCE/ECOLAB, INC.

Respondents.

**MOTION TO REJECT UNEXPIRED LEASE WITH PURE
FORCE/ECOLAB, INC., PURSUANT TO 11 U.S.C §§ 105 AND
365, FED.R.BANKR.P. 6006 AND 9014 AND WDPALBR 6006-1**

The Pittsburgh Athletic Association, as the Debtor in Possession and Movant (the “Debtor”), files this Motion to Reject the Lease with Pure Force/Ecolab, Inc. (the “Respondents”), pursuant to 11 U.S.C. §§ 105 and 365, Fed. R. Bankr. P. 6006 and 9014, and W.D.Pa. LBR 6006-1.

The Debtor represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter constitutes a “core” proceeding pursuant to 28 U.S.C. §§ 157(b)(2).

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 157(a), 1408 and 1409.

4. The statutory predicate for the relief sought herein is 11 U.S.C. §§ 105(a) and 365, and Fed. R. Bankr. P. 6006 and 9014, and W.D.Pa. LBR 6006-1.

BACKGROUND

5. The Debtor commenced this case by filing a voluntary bankruptcy petition under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. §101, *et seq.*, in the United States Bankruptcy Court for the Western District of Pennsylvania on May 30, 2017 (the “Petition Date”).

6. On or about May 30, 2017, the Pittsburgh Athletic Association Land Company (the “PAA-LC”) also filed a case under Chapter 11 of the Bankruptcy Code which is currently pending at 17-22223-JAD.

7. The Debtor’s case and the PAA-LC’s case are being jointly administered under Bankruptcy Case No. 17-22222-JAD.

8. Based on information and belief, prior to the Petition Date, the Debtor, as lessee, entered into lease for a commercial dishwasher machine (the “Dishwasher”) with the Respondents, as lessor (the “Lease”). The Debtor has been unable to locate the written Lease with the Respondents, however, a true and correct copy of a recent invoice and correspondence from the Respondents are attached hereto as **Exhibit “A”**.

9. Prior to the Petition Date, on or about May 20, 2017, the Debtor temporarily ceased operations at the club to pursue its restructuring and potential redevelopment. Accordingly, there is no need for the Debtor to retain the Dishwasher or the Lease as and, in the future, the potential redevelopment of the PAA club will likely include obtaining new Dishwasher.

10. Rejection of the Lease by the Debtor will benefit the Debtor’s Bankruptcy Estate by eliminating an unnecessary monthly expense.

RELIEF REQUESTED

11. The Debtor seeks entry of an Order authorizing rejection of the Lease under Section 365 of the Bankruptcy Code, deeming the Lease rejected as of the date of the filing of the within Motion.

DISCUSSION

12. Section 365 of the Bankruptcy Code provides, in relevant part that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

13. Section 105(a) of the Bankruptcy Code provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. Taken together, Sections 365 and 105 permit the Court to authorize a debtor to assume or reject executory contracts and 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. *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992). (“The resolution of this issue of assumption or rejection will be a matter of business judgment by the bankruptcy court....”).

15. The Debtor, in its business judgment, has determined it is in its best interests and the best interests of the estate’s creditors to reject the Lease to eliminate an unnecessary monthly expenditure for the Dishwasher which is not being used.

RESERVATION OF RIGHTS

16. Nothing in the within Motion shall be deemed as an admission by the Debtor as to existence or validity of any of the Lease and/or damages or amounts due by the Debtor. The Debtor

expressly reserves all rights and remedies to object to any and all claims filed by the Respondents or otherwise dispute an amounts claimed against the Debtor and/or any equitable remedy claimed by the Respondents.

WHEREFORE, the Debtor prays this Honorable Court to enter of an Order authorizing the rejection of the Lease pursuant to §§ 105 and 365 of the Bankruptcy Code, deeming the Lease and any related service or maintenance agreements with the Respondents, rejected, *nunc pro tunc*, to the date of the filing of the within Motion and any additional relief the Court deems appropriate.

TUCKER ARENSBERG, P.C.

DATED: August 31, 2017

/s/ Jordan S. Blask

Jordan S. Blask, Esquire

PA ID No. 308511

Matthew J. Burne, Esquire

PA ID. No. 314888

1500 One PPG Place

Pittsburgh, PA 15222

Phone: 412-566-1212

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mburne@tuckerlaw.com

Counsel for the Debtor

Exhibit “A”

(Pure Force/ Ecolab, Inc. Invoice and Correspondence)

Exhibit A Page 2 of 4
FOR CUSTOMER ASSISTANCE CALL:pure**FORCE**

1-866-444-7450

N.C.

1

INVOICE NO.

6564584

B.B.

SHIPPING DATE

INVOICE DATE

RX

08/09/17

08/09/17

WHSE.

B/L NO. 00

CONT. NO.

SORT

250

00888

2114

REMIT TO:

P.O. BOX 32027 NEW YORK NY 10087-2027

CUSTOMER ORDER NO. OR REFERENCE

ACCOUNT NO.

2654

IND.

SALES REPRESENTATIVE

LYONS MICHAEL

TERRITORY NO.

08-07-1

SOLD

TO:

PITTSBURGH ATHLETIC ASSN
4215 5TH AVE
PITTSBURGH PA 15213-3546

SHIP

TO:

TERMS		PAYABLE UPON RECEIPT			FEDERAL ID 41-0231510	
QUANTITY	UPS ID 51700 CASE CODE	ITEM DESCRIPTION	UNIT PRICE	AMOUNT		
1		MACHINE RENTAL FEE FROM 08-09-2017 THRU 09-08-2017 DISHMACHINE #06A14343P	344.9500	344.95		
RETURNS MAY BE SUBJECT TO A RESTOCKING FEE						
TOTAL QTY	AMOUNT SUBJECT TO SALES TAX	SALES TAX	PROPERTY TAX	SHIPPING POLICY	FREIGHT	
1	344.95	24.15				
TOTAL WEIGHT					PAGE NO.	
ELIGIBLE FOR DISCOUNT OF					1	
ONLY IF PAYMENT RECEIVED BY						
INVOICE TOTAL					369.10	

UNIT PRICE INCLUDES THE RENTAL FEE FOR ANY DISPENSING EQUIPMENT THAT MAY BE PROVIDED BY PUREFORCE FOR THE EXCLUSIVE USE OF PUREFORCE PRODUCTS. AT SUCH TIME AS CUSTOMER HAS CONSUMED ALL PUREFORCE PRODUCTS AND FAILS TO TIMELY REORDER THE PUREFORCE PRODUCT, THE RENTAL AGREEMENT SHALL TERMINATE AND PUREFORCE WILL TAKE POSSESSION OF SUCH DISPENSERS. PUREFORCE AGREES TO PROVIDE ALL SERVICING, REPAIR AND MAINTENANCE OF SUCH DISPENSERS OR REPLACE ANY DISPENSER RENDERED UNUSEABLE THROUGH NORMAL USE AND WEAR.



1 ECOLAB PLACE
ST. PAUL, MN 55102-2739

PC2

Pittsburgh Athletic Assn
4215 5th Ave
Pittsburgh PA 15213-3546

July 19, 2017

Account: 2654 - PITTSBURGH ATHLETIC ASSN

Dear Ecolab Customer:

A statement showing the status of your account is enclosed.
If you have recently sent your payment for the past due
balance, kindly disregard this letter.

If payment of these past due items has been overlooked,
please send your check today to the remit-to address listed
on your statement. Due to the delay in payment, your open
account privileges have been suspended. Please contact us
if you would like to discuss this issue in further detail.

We appreciate your business and look forward to receiving
your payment for the past due balance.

Regards,

CREDIT SERVICES
INQUIRIES CALL CUSTOMER SVC:
(866) 444-7450

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Movant,

Related Doc. No.:

v.

PURE FORCE/ECOLAB, INC.,

Respondents.

ORDER

AND NOW this _____ day of _____, **2017**, upon consideration of the Debtor’
Motion to Reject Unexpired Lease with Pure Force/Ecolab, Inc. pursuant to 11 U.S.C §§ 105 And
*365 (the “Motion”), it is hereby **ORDERED, ADJUDGED** and **DECREED**, that Lease as set forth*
in the Motion, and any related service or maintenance agreements with the Respondents are rejected
by the Debtor as of the date of filing the Motion.

JEFFERY A. DELLER
Chief U.S. Bankruptcy Judge

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.