

**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: January 30, 2018 10:00 am

v.

Responses due: January 5, 2018

MITEL CLOUD SERVICES,

Respondent.

**MOTION TO REJECT THE EXECUTORY SERVICE
CONTRACTS WITH MITEL CLOUD SERVICES, PURSUANT
TO 11 U.S.C §§ 105 AND 365, FED.R.BANKR.P. 6006 AND 9014
AND WDPA LBR 6006-1**

The Pittsburgh Athletic Association, as the Debtor in Possession and Movant (the “Debtor”), files this Motion to Reject the Executory Service Contracts with Mitel Cloud Services (the “Respondent”), 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 entered into certain service agreements for internet and cloud related services with the Respondent, as provider (the “Service Contracts”). A copy of the most recent invoice from Mitel is 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 maintain the services or the Service Contracts.

10. On December 22, 2017, the Debtors filed a Joint Chapter 11 Plan of Reorganization (the “**Plan**”) [Doc. No. 418], a Joint Disclosure Statement (the “**D/S**”) [Doc. No. 419] and a Joint Chapter 11 Plan Summary (the “**Plan Summary**” and together with the Plan and D/S, the “**Plan Documents**”).

11. On December 28, 2017 the Court entered an Order setting a hearing on the approval of the D/S for February 6, 2017. [Doc. No. 429].

12. Although the plan provides for rejection of any executory contracts and unexpired leases not previously assumed by the Debtors, the rejection of the Service Contracts as of the date of this Motion by the Debtor will benefit the Debtor's Bankruptcy Estate by eliminating an unnecessary monthly expense.

RELIEF REQUESTED

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

DISCUSSION

14. 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).

15. 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).

16. 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....").

17. The Service Contracts constitute executory contracts within the meaning of §365 because continuing performance remained due by both the Debtor and the Respondent.

18. 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 Service Contracts to eliminate an unnecessary monthly expenditure for the services which are not being used.

RESERVATION OF RIGHTS

19. Nothing in the within Motion shall be deemed as an admission by the Debtor as to existence or validity of any of the Service Contracts 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 Respondent or otherwise dispute an amounts claimed against the Debtor and/or any equitable remedy claimed by the Respondent.

WHEREFORE, the Debtor prays this Honorable Court to enter of an Order authorizing the rejection of the Service Contracts pursuant to §§ 105 and 365 of the Bankruptcy Code, deeming the Service Contracts and any related service or maintenance agreements with the Respondent, 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: January 5, 2018

/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

jblask@tuckerlaw.com

mburne@tuckerlaw.com

Counsel for the Debtors

Exhibit “A”

(Mitel Invoice, December, 2017)



885 Trademark Drive Reno, NV 89521-5943

Address Service Requested

☐ Check here for change of address.
(See back for details)**Remittance Section**Invoice Date: 12/10/2017
Account Number: 7535
Invoice Number: 8916**NET DUE UPON RECEIPT:****Total Due: \$1,515.71**Amount Enclosed \$
Please put your account number on your check and make payable to **Mitel**.**PLEASE REMIT TO:**Mitel Cloud Services
P.O. Box 53230
Phoenix, AZ 85072-3230

Please detach and return portion below with your payment

Invoice InformationInvoice Date 12/10/2017
Account Number 7535
Invoice Number 8916
Total Due \$1,515.71**Important Messages****Summary of Charges****Balance Information**Previous Balance \$2,972.53
Payments Received -\$2,972.53**Past Due Balance \$0.00****New Charges**New Usage Charges \$0.37
Recurring Charges \$986.89
Non-Recurring Charges \$213.76
Taxes and Surcharges \$314.69**Total New Charges \$1,515.71****Total Amount Due \$1,515.71****Thank you for Choosing Mitel**For Questions about your invoice or to discuss payment issues
Please call Customer Service at 1-800-722-1301, or email us at mcscustomerservice@mitel.com.

Please check the box on the reverse side and print information clearly.

Effective Date: _____

Account Name: _____

New Address: _____

City: _____ State: _____ Zip: _____

Contact Name: _____ Phone Number: _____

How to Read Your Bill



885 Trademark Drive Reno, NV 89521-5943

Address Service Requested
☐ Check here for change of address.
(See back for details)

Remittance Section

Invoice Date: 12/05/2014
Account Number: **1**
Invoice Number: **1**
NET DUE UPON RECEIPT: \$1,180.60
Total Due: \$1,180.60
Amount Enclosed: \$
Please put your account number on your check and make payable to Mitel NetSolutions.

PLEASE REMIT TO:

Mitel NetSolutions
P.O. Box 53230
Phoenix, AZ 85072-3230



Please detach and return portion below with your payment

Invoice Information

Invoice Date: 12/05/2014
Account Number: 234567890
Invoice Number: 23456789
Total Due: \$1,180.60

Summary of Charges

Balance Information	
Previous Balance	\$279.11
Payments Received	\$0.00
Adjustments	\$599.00
Past Due Balance	\$878.11
New Charges	
New Charge Adjustments	\$599.00
New Usage Charges	\$1.00
Recurring Charges	\$259.62
Finance Charges	\$4.19
Taxes and Surcharges	\$37.68
Total New Charges	\$302.49
Total Amount Due	\$1,180.60

Important Messages

We are changing to serve you better! Effective September 16th Mitel will be providing one number support for all of our US and Canada customers at **1-800-722-1301**. Please call that number for all of your NetSolutions support needs along with any other Mitel service or support issues you have. Call **1-800-722-1301** beginning September 16th for all of your Mitel needs including all Netsolutions Services and Support issues and we will be happy to continue to serve you!! One number - One Mitel - One Focus, Our Customers!

IMPORTANT NOTICE: IT IS VERY IMPORTANT THAT YOU REMIT YOUR PAYMENT TO THE PO BOX INDICATED ON THIS INVOICE. PAYMENTS MAILED TO THE STREET ADDRESS MUST BE FORWARDED TO OUR PO BOX AND WILL DELAY POSTING TO YOUR ACCOUNT. THIS MAY CAUSE LATE CHARGES ON YOUR NEXT INVOICE.

The Samsung Galaxy S3, America's best selling Android 4G smartphone, is now available from Mitel Mobile. Featuring a large vibrant display, an 8.0MP camera, access to thousands of apps within the Android Marketing place and much more.

For questions about your invoice, please call Mitel NetSolutions at 1-800-722-1301, option 3, 2 or email us at mcscustomerservice@mitel.com. To discuss payment issues please call 1-800-722-1301, option 3, 6

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Thank you for Choosing Mitel NetSolutions

1 REMITTANCE SECTION

The Remittance portion should be removed and included with your payment in the envelope provided. Write in the amount enclosed in the space provided and indicate any address changes on the back of the coupon.

2 STATEMENT INFORMATION

Information about your billing statement date, billing period and your account number are covered in this section.

3 CUSTOMER MESSAGE

Watch this space for important information concerning your account and service.

4 SUMMARY OF CHARGES

An overview of the current status of your account starting with Beginning Balance, Payments and Adjustments applied since your last billing and your Current Balance. The current month's charges are summarized by category with the Total Amount Due at the bottom.

Attn:Bill Krieger
 1 Gateway Center #525
 420 Duquesne Blvd
 Pittsburgh, PA 15222-5222
 Account Number

Account Summary

	# of Calls	Minutes	Charges
Payments			
Lock Box	11/14/2017		1,459.32
Lock Box	11/20/2017		1,513.21
Total Payments			-\$2,972.53

Detail of Wireline Charges

New Usage Charges			
DID			
Domestic 1+ Intralata	3	5.1	0.37
Total DID			0.37
Total New Usage			\$0.37
Recurring Charges			
-9261 Temp BTN			
1-PICC	11/15/2017	12/14/2017	4.31
Total -9261 Temp BTN			4.31
-2400 BTN			
1-PICC	11/15/2017	12/14/2017	4.31
Total 2400 BTN			4.31
2400			
1-Local PRI Standard Charges	12/15/2017	01/14/2018	0.00
1-Local PRI Trunk	12/15/2017	01/14/2018	534.00
1-DID Block	11/15/2017	12/14/2017	0.00
1-Inbound Caller Name	11/15/2017	12/14/2017	0.00
1-Inbound Caller Name	11/15/2017	12/14/2017	0.00
Total 2400			534.00
0701			
1-PICC	11/15/2017	12/14/2017	4.31
Total 0701			4.31
(412) 622-0779			
1-PICC	11/15/2017	12/14/2017	4.31
Total (0779			4.31
Ded IP F866			
1-EdgeWatch 24x7x365 Monitoring	12/15/2017	01/14/2018	0.00
Total Ded IP L			0.00
/ Pittsburgh, PA			
1-Adtran 3430 Single NIM	12/15/2017	01/14/2018	45.00
1-Internet DNS	11/15/2017	12/14/2017	0.00
1-Local Access Facility	12/15/2017	01/14/2018	196.00
1-Internet Port	12/15/2017	01/14/2018	194.65
1-IP Standard Charges	12/15/2017	01/14/2018	0.00
Total /AFYT/ Pittsburgh, PA			435.65
Total Recurring Charges			\$986.89

Management Reports

Executive Summary Account Codes

Account Code	Calls	Minutes	Cost
0	3	5.10	0.37
Totals	3	5.10	0.37

Executive Summary

Phone Numbers	Calls	Minutes	Cost
-9261	3	5.10	0.37

Management Reports - continued

Executive Summary - continued

Phone Numbers	Calls	Minutes	Cost
Totals	3	5.10	0.37

DID

Date	Time	R	Min	Called #	Location	Charges
				-9261		

0.03

3 Calls	5.1	For	-9261	\$0.37
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Detail of New Wireless Charges

		Charges
New Nonrecurring Charges		
UU Contract Penalty		213.76
Total New Nonrecurring Charges		213.76
Payments		
Lock Box		1459.32
Lock Box		1513.21

Taxes and Surcharges

Taxes and Surcharges		
Allegheny County Sales Tax		7.93
Carrier Cost Recovery Charge		20.10
FCC Common Carrier Regulatory Fee		0.05
Federal Excise Tax		18.01
Federal Regulatory Recovery Fee		40.00
Federal Universal Service Fund Surcharge		3.24
North American Numbering Plan Surcharge		0.03
PA Relay Surcharge - Business (Multi-Channel)		1.84
PA State Sales Tax		47.55
PA Utility Gross Receipts Surcharge (Interstate)		5.68
PA Utility Gross Receipts Surcharge (Intrastate)		33.08
Pennsylvania E911 Surcharge - PRI / DS-1		37.95
Property Tax Surcharge		19.58
State and Local Regulatory Fee		30.67
PRI Federal Access Charge (Qty.1)		48.98
Total Taxes and Surcharges		\$314.69

Total New Charges	\$1,515.71
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PITTSBURGH ATHLETIC
ASSOCIATION,

Chapter 11

Movant,

Related Doc. No.:

v.

MITEL CLOUD SERVICES,

Respondent.

ORDER

AND NOW this _____ day of _____, **2018**, upon consideration of the Debtor’
Motion to Reject Executory Service Contracts with Mitel Cloud Services pursuant to 11 U.S.C §§
105 And 365 (the “Motion”), it is hereby **ORDERED, ADJUDGED** and **DECREED**, that Service
Contracts as set forth in the Motion and any related service or maintenance agreements with the
Respondent 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.