

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

:

THQ INC., *et al.*, : Case No. 12-13398 (MFW)

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Debtors.¹ : Jointly Administered

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: Hearing Date: April 3, 2013 at 11:30 a.m. (ET)

: Objection Deadline: March 1, 2013 at 4:00 p.m. (ET)

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**DEBTORS' OMNIBUS MOTION FOR AN ORDER AUTHORIZING THE DEBTORS
TO REJECT CERTAIN UNEXPIRED LEASES OF PERSONAL PROPERTY
EFFECTIVE AS OF FEBRUARY 15, 2013**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR NAMES ON
EXHIBIT 1 TO THE PROPOSED ORDER TO IDENTIFY THE AGREEMENTS
THAT ARE THE SUBJECT OF THIS MOTION**

THQ Inc. (“**THQI**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases hereby move this Court (the “**Motion**”) for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the “**Proposed Order**”), pursuant to sections 105(a) 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**”), authorizing the Debtors to reject certain unexpired leases of personal property together with the associated service contracts (collectively, the “**Leases**”) outlined on **Exhibit 1** to the Proposed Order effective as of February 15, 2013 (the “**Rejection Date**”). In support of this Motion, the Debtors respectfully represent as follows:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and *the Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 365(a) of the Bankruptcy Code, along with Bankruptcy Rule 6006.

BACKGROUND

2. On December 19, 2012 (the “**Petition Date**”), each of the Debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in possession.

3. The Debtors’ Chapter 11 Cases are consolidated for procedural purposes only and are jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. On January 3, 2013, the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) [Docket No. 80].

5. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the *Declaration of Brian Farrell in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 2] filed on the Petition Date.

6. On January 22 and 23, 2013, an auction was held by the Debtors (the “**Auction**”). The Auction resulted in the sale of substantially all of the Debtors’ assets to five separate bidders who submitted piecemeal bids for certain segregated assets of the Debtors. The Court entered orders approving the sales to the successful bidders on January 24, 2013 [D.I. 239–243].

THE LEASES

7. Through this Motion, the Debtors seek to reject two equipment Leases that provide for the lease and maintenance of the five copiers identified below (collectively, the “**Copiers**”).

8. The first Lease is with Canon Financial Services, Inc., with maintenance provided by Canon Business Solutions, Inc. The Lease agreement contains the identification number S0059249 and provides for the lease of four Copiers, each with the model number ADVC5051, and certain related equipment. The serial numbers associated with the Copiers are GQM58868, GQM58739, GQM58870 and GQM58441. The Lease has a term of 36 months at the base rate of \$2,870.00 per month.

9. The second Lease is also with Canon Financial Services, Inc., with maintenance provided by Canon Business Solutions, Inc. The Lease agreement contains the identification number S0047647 and provides for the lease of one Copier with the model number ADVC7065, and certain related equipment. The serial number associated with the Copier is HJY51486. The Lease has a term of 36 months at the base rate of \$1,078.00 per month.

RELIEF REQUESTED

10. By this Motion, the Debtors respectfully request the entry of an order authorizing the rejection of the Leases listed on Exhibit 1 to the Proposed Order pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, effective as of the Rejection Date.²

BASIS FOR RELIEF REQUESTED

11. The Debtors recently sold substantially all of their assets and are in the process of winding down their remaining business operations. The Debtors, therefore, no longer have use for certain office equipment and in particular the Copiers identified in the Leases. Accordingly, the Debtors have determined, in their sound business judgment, that the Leases are unnecessary and detrimental to their overall liquidation strategy and goals. Because the Leases no longer provide a benefit to the Debtors' estates, and in order to avoid any administrative expense to the estates arising from the Debtors' obligations under the Leases, the Debtors seek authority to reject the Leases listed on Exhibit 1 to the Proposed Order.

12. The Debtors have provided notice as of February 14, 2013 to the counterparties to the Leases that the Debtors intend to reject the Leases and surrender the Copiers on or before the Rejection Date. By the same notice, the Debtors also informed the counterparties to the Leases that they may retrieve the Copiers from the Debtors' facilities.

13. 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 Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992); *see also In re Penn Traffic Co.*, 524 F.3d 373 (2d Cir. 2008). The Court may approve a debtor's rejection of an executory contract or unexpired lease if such rejection is made in the exercise of such debtor's sound business judgment, and if such rejection benefits its estate. *See*,

² The Debtors reserve all rights to contest any and all claims that arise out of the rejection of the Leases.

e.g., *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (a debtor's decision to assume or reject an executory contract will stand so long as "a reasonable business person would make a similar decision under similar circumstances"); *In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182 (Bankr. E.D. Pa. 2010) ("The standard applied to determine whether the rejection of an executory contract or unexpired lease should be authorized is the 'business judgment' standard."); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, 465 U.S. 513 (1984). 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)); *In re Balco Equities, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) ("In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate."). The business judgment standard requires that the Court approve the debtor's business decision unless that judgment is the product of bad faith, whim or caprice. *See In re Philadelphia Newspapers, LLC*, 424 BR at 182-83; *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

14. As an integral component of the Debtors' efforts to maximize value for their estates and creditors by, among other things, eliminating unnecessary operating costs, the Debtors have determined that it is in their best business interest to avoid the accrual of any further obligations under the Leases. The Debtors have reviewed each of the Leases and determined that because the Leases will not be assumed and assigned, the Leases hold no material economic value to the Debtors or their estates and are not essential to the conduct of the Debtors' Chapter 11 Cases. The decision to reject the Leases will eliminate the Debtors'

obligation to perform under the Leases and the accrual of any further obligations thereunder.

Therefore, as the Leases will simply reflect ongoing expenses to the Debtors, the Debtors submit that rejection represents an exercise of the Debtors' sound business judgment.

15. The Debtors further request that this Court approve rejection of the Leases as of February 15, 2013, the Rejection Date. Bankruptcy courts are empowered to grant retroactive rejection of a contract under sections 105(a) and 365(a) of the Bankruptcy Code. *See e.g., Thinking Machines Corp. v. Mellon Fin. Serv. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995) (recognizing that bankruptcy courts are courts of equity that may enter orders authorizing retroactive rejection); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (same).

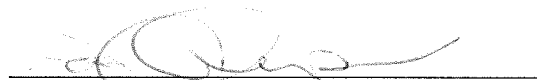
16. In conjunction with the rejections contemplated by this Motion, the Debtors propose that counterparties to the Leases be required to timely file a claim for damages, if any, as a result of the rejection (each, a "**Rejection Claim**") by the later of (i) the general bar date to be established in these cases or (ii) within 30-days of notice of the entry of the Order. The Debtors reserve their right to challenge a Rejection Claim on any basis.

NOTICE

17. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Creditors' Committee; (c) the counterparties to the Leases; and (d) all parties that, as of the filing of this Motion, have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in form annexed hereto as **Exhibit A**, authorizing the Debtors to reject the Leases as of the Rejection Date and granting to the Debtors such other and further relief as the Court may deem just and proper.

Dated: February 15, 2013
Wilmington, Delaware



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EXHIBIT A
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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: Chapter 11
In re: :
: Case No. 12-13398 (MFW)
THQ INC., *et al.*, :
: Jointly Administered
Debtors.¹ :
: RE: Docket No. __
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**ORDER AUTHORIZING THE DEBTORS
TO REJECT CERTAIN UNEXPIRED LEASES OF PERSONAL PROPERTY**

Upon the Motion² of THQ Inc. (“**THQI**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases for entry of an order, pursuant to sections 105(a) 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**”), authorizing the Debtors to reject certain unexpired leases of personal property and the associated service contracts set forth in **Exhibit 1** attached hereto (collectively, the “**Leases**”) effective as of February 15, 2013 (the “**Rejection Date**”); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given;

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

and the Court having reviewed the Motion and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED, as set forth herein.
2. Pursuant to 11 U.S.C. § 365(a), the Debtors' rejection of the Leases identified on **Exhibit 1** attached hereto is hereby approved.
3. The Leases indicated on Exhibit 1, hereto, are deemed rejected pursuant to 11 U.S.C. § 365(a), effective as of the Rejection Date.
4. Nothing herein shall prejudice the rights of the Debtors to argue that any claim for damages arising from the rejection of the Leases is limited to the remedies available under any applicable termination provision of such rejected Lease.
5. Furthermore, the Debtors do not waive any claims that they may have against the counterparties to the Leases, whether or not such claims arise under, are related to the rejection of, or are independent of the Leases.
6. Notwithstanding the relief granted herein, any actions taken hereunder, or any failure to act, nothing contained herein shall constitute, nor is it intended to constitute, an assumption of any lease or contract under section 365 of the Bankruptcy Code or the waiver by the Debtors of any of their rights pursuant to any agreement by operation of law or otherwise.
7. This Order shall be binding on the Debtors and all counterparties to the Leases.

8. The counterparties to the Leases shall have until the later of (i) the date fixed by this Court pursuant to Bankruptcy Rule 3003(c)(3) to file any and all claims for damages arising from the rejection of the Rejected Leases or (ii) within 30-days of notice of entry of the Order.

9. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

10. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any Order(s) of this Court approving the Debtors' debtor-in-possession financing facility and use of cash collateral and any budget in connection therewith.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: _____, 2013
Wilmington, Delaware

Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT 1
REJECTED LEASES

Rejected Leases					
Lease Counterparty	Address	Lease/Agreement Number	Model Numbers of Copiers Associated with Lease	Serial Numbers of Copiers Associated with Lease	
1. Canon Financial Services, Inc. and Canon Business Solutions, Inc.	14904 Collections Center Dr. Chicago, IL 60693 4 Ohio Drive Lake Success, NY 11042	S0059249	ADVC5051 ADVC5051 ADVC5051 ADVC5051	GQM58868 GQM58739 GQM58870 GQM58441	
2. Canon Financial Services, Inc. and Canon Business Solutions, Inc.	14904 Collections Center Dr. Chicago, IL 60693 4 Ohio Drive Lake Success, NY 11042	S0047647	ADVC7065	HJY51486	