

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

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: Chapter 11
: Case No. 09-13931 (KJC)
: (Jointly Administered)
: **Hearing Date: September 23, 2010 at 2:00 pm.**
: **Objection Deadline: September 16, 2010 at 4:00 p.m.**
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In re
ADVANTA CORP., *et al.*,
Debtors.¹

**MOTION FOR AUTHORITY TO REJECT
CERTAIN UNEXPIRED MAILING SYSTEM LEASE**

Advanta Corp. (“*Advanta*”) and certain of its affiliated debtors, as debtors and debtors in possession in the above referenced chapter 11 cases (collectively, the “*Debtors*”), respectfully represent:

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), ASSC (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BE Corp. (8960), ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Information regarding the Debtors’ businesses and the background relating to events leading up to these chapter 11 cases can be found in (i) the Declaration of William A. Rosoff in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions, filed on November 8, 2009, (the “*Rosoff Declaration*”), the date the majority of Debtors filed their petitions (the “*Commencement Date*”) under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and (ii) that certain supplement thereto, filed on November 20, 2009, the date Advanta Ventures Inc., BE Corp., ideablob Corp. and Advanta Credit Card Receivables Corp. filed their chapter 11 cases (the “*Second Commencement Date*”, and together with the Commencement Date, the “*Commencement Dates*”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

Relief Requested

1. By this motion (the “*Motion*”), the Debtors request, pursuant to section 365(a) of the Bankruptcy Code, entry of an order substantially in the form of the proposed order attached hereto as *Exhibit A* approving the rejection of that certain unexpired lease, dated April 28, 2008, along with that certain addendum to single sided lease agreement, dated August 25, 2008 (together, the “*Lease*”), between Advanta and ASCOM HASLER and General Electric Corporation (“*ASCOM/GE*” and, together with Advanta, the “*Lease Parties*”), pursuant to which ASCOM/GE agreed lease to Advanta two mailing systems (the “*Mailing Systems*”). Pursuant to a letter dated August 31, 2010, the Debtors gave ASCOM/GE notice of their intention to reject the Lease as of September 1, 2010. The Mailing Systems are currently located at 417 Caredean Drive, Suite D, Horsham, Pennsylvania 19044 and 700 Dresher Road, Horsham, Pennsylvania 19044 and are not being used by the Debtors.

Rejection of the Lease Is Supported by the Debtors’ Business Judgment and Should Be Approved by the Court

2. Section 365(a) of the Bankruptcy Code provides in relevant part that a debtor in possession,² “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” It is generally recognized that assumption or rejection of an executory contract or unexpired lease is within the sound business judgment of the debtor in possession. See *N.L.R.B. v. Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.)*, 180 B.R. 83, 88 (D. Del. 1995); *In re III Enters., Inc.*, V,

² Although section 365(a) of the Bankruptcy Code refers to a “trustee” only, a debtor in possession in a chapter 11 case has the rights and powers, and performs the functions, of a trustee, including assuming or rejecting unexpired leases. 11 U.S.C. § 1107(a).

163 B.R. 453, 469 (Bankr. E.D. Pa.), *aff'd sub nom, Pueblo Chem., Inc.*, 169 B.R. 551 (E.D. Pa. 1994). This test is not a strict standard. The debtor in possession merely must show that rejection would benefit the estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, 465 U.S. 513 (1984). The Court “will not substitute [its] own business judgment for that of the debtor...unless the [Debtor’s] decision is so unreasonable that it could [only be based] on bad faith or whim.” *III Enters.*, 163 B.R. at 469 (citations omitted). Courts defer to a debtor’s business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. *See Bildisco & Bildisco*, 465 U.S. at 523 (recognizing the “business judgment” standard used to approve rejection of executory contracts and unexpired leases). Under this standard, this Court should approve the rejection of the Lease.

3. The Debtors have reviewed the Lease and have determined, in the exercise of their sound business judgment, that it is no longer of any value or utility to the Debtors or their estates because the Debtors are winding down their operations.

4. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors seek to reject the Lease, effective as of September 1, 2010. While section 365 of the Bankruptcy Code does not specifically address whether the Court may order rejection to be effective retroactively, many courts, including those in this district, have held that bankruptcy courts may, in their discretion, authorize rejection retroactive to a date prior to entry of the order authorizing such rejection. *See, e.g., TW, Inc. v. Angelastro (In re TW, Inc.)*, 2004 U.S. Dist. LEXIS 671 at *5 (D. Del. 2004) (holding that “[a] bankruptcy court may ‘when principles of equity so dictate ... approve a rejection of a nonresidential lease pursuant to section 365(a) retroactive to the motion filing date.’”) (citing *Thinking Machines. v. Mellon Fin. Servs. Corp. (In re Thinking Machines)*,

67 F.3d 1021, 1028 (1st Cir. 1995)); *New Valley Corp. v. Corp. Property Assoc.* (*In re New Valley Corp.*), 2000 U.S. Dist. LEXIS 12663 at *45 (D.N.J. 2000) (affirming bankruptcy court's decision to permit retroactive rejection); *In re Velocita Corp., et al.*, Case No. 02-35895 (DHS) (Bankr. D. N.J. 2002) (rejection effective as of the date the cases were commenced); *In re Refco, et al.*, Case No. 05-60006 (RDD) (Bankr. S.D.N.Y. 2006) (rejection effective as of a date prior to the hearing); *In re Acterna Corp., et al.*, Case No. 03-12837 (BRL) (Bankr. S.D.N.Y. 2003) (rejection effective as of the date the cases were commenced); *BP Energy Co. v. Bethlehem Steel Corp.*, 2002 WL 31548723, *3 (S.D.N.Y. Nov. 15, 2002) (finding that retroactive rejection is valid when the balance of equities favor such treatment).

5. Without a retroactive date of rejection, the Debtors will be forced to incur unnecessary administrative expense charges for a lease that no longer provides any tangible benefit to the Debtors' estates. The counterparty to the Lease is not prejudiced by the effective date of the rejection because they have already received notice of the Debtors' rejection of the Lease and of the effective date of the rejection, and will have ample opportunity to object. The Debtors request that the Court direct that any claim for damages arising as a result of the rejection of the Lease be filed within thirty (30) days of entry of an order approving this Motion.

6. In light of the foregoing, the Debtors respectfully request that pursuant to section 365(a) of the Bankruptcy Code, the Court approve the Debtors' rejection of the Lease in the manner requested herein as a sound exercise of their business judgment.

Jurisdiction

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. 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.

Notice

8. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the official committee of unsecured creditors, (iii) Bank of New York Mellon, as trustee under the Investment Note Indenture, and Law Debenture Trust Company of New York as trustee under the 8.99% Indenture (both as defined in the Rosoff Declaration), (iv) the FDIC, (v) ASCOM/GE, and (vi) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “*Notice Parties*”). The Debtors respectfully submits that no further notice of this Motion is required.

No Prior Request

9. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: September 7, 2010
Wilmington, Delaware

/s/ Zachary I. Shapiro

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ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

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

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:
In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
:
: **Hearing: September 23, 2010 at 2:00 p.m. (EDT)**
-----X **Obj. Deadline: September 16, 2010 at 4:00 p.m. (EDT)**

NOTICE OF MOTION AND HEARING

Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”), today, filed the **Motion for Authority to Reject Certain Unexpired Mailing System Lease** (the “*Motion*”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for the Debtors on or before **September 16, 2010 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the Bankruptcy

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Court, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **September 23, 2010 at 2:00 p.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 7, 2010
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro

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Paul N. Heath (No. 3704)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

The Proposed Order

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

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:
In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
:
-----X **Re: Docket No. __**

**ORDER AUTHORIZING THE DEBTORS TO
REJECT CERTAIN UNEXPIRED MAILING SYSTEM LEASE**

Upon the motion (the “*Motion*”), dated September 7, 2010, of Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”), pursuant to section 365 of title 11 of the United States Code (the “*Bankruptcy Code*”), for approval of their rejection of the Lease,² as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and the relief requested in the Motion being in the best interests of the Debtors, their respective estates and their respective creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and

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

factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court, and upon the record of the hearing on the Motion, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that pursuant to sections 365(a) of the Bankruptcy Code, the rejection of the Lease is hereby approved, and the Lease shall be deemed rejected, without further action on the part of the Debtors, effective as of September 1, 2010; and it is further

ORDERED that all claims for damages arising as a result of the rejection of the Lease shall be filed within thirty (30) days of entry of this Order; and it is further

ORDERED that nothing herein shall constitute a waiver by the Debtors of any potential claims any of them may have related to the Lease; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: September _____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE