UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:	Jointly Administered Under Case No. 17-30673 (MER)
Gander Mountain Company, Overton's, Inc.,	Case No. 17-30673 Case No. 17-30675
Debtors.	Chapter 11 Cases

OBJECTION TO MOTION FOR AN ORDER COMPELLING REJECTION OF CONTRACT

INTRODUCTION

Gander Mountain Company ("Gander Mountain") and Overton's, Inc. ("Overton's" and, collectively with Gander Mountain, the "Debtors") file this objection to the motion of Mastercard International Incorporated ("MasterCard") for an order compelling the Debtors to assume or reject a Co-Branding Agreement by June 26, 2017. The motion is premature, is being brought for strategic purposes in the context of MasterCard's own material breach of the Co-Branding Agreement, and ignores the fact that the Debtors will continue operating through approximately August 31, 2017 despite the closing of the Purchase Agreement and Agency Agreement (each as defined below).

BACKGROUND

A. The Store Closing Agreement, the Purchase Agreement, and the Agency Agreement.

Several key milestones in these chapter 11 cases are relevant to the relief being requested in the Motion. On May 19, 2017, the Court entered an amended order [dkt. no. 776] that, among other things, authorized the Debtors to enter into a Store Closing Agreement (as defined in the order). The Store Closing Agreement contemplates that the Debtors will conduct store closing

operations, with the assistance of a consultant, at 32 of the Debtors' stores through approximately August 31, 2017.

On April 27 and 28, 2017, the Debtors conducted an auction of substantially all of their assets and selected a joint bid submitted by CWI, Inc., a subsidiary of CWGS Group, LLC; and a contractual joint venture comprising Tiger Capital Group, LLC; Great American Group WF, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC as the highest and best bid, and presented such bid to the Court for approval.

The Court approved the joint bid and entered (i) an Order Authorizing the Sale of Certain Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and other Interests [dkt. no. 691] (the "Sale Approval Order") and (ii) an Amended Order Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests [dkt. no. 700] (the "Agency Approval Order").

The Sale Approval Order authorizes the Debtors to sell certain assets to CWI on a going concern basis, and approves the Asset Purchase Agreement between CWI, the Debtors, and certain other parties (the "Purchase Agreement"), a form of which is attached to the Sale Approval Order. The transaction closed on May 26, 2017. The Purchase Agreement provides that CWI has thirty days to designate executory contracts and unexpired leases of personal property to be assumed and assigned by the Debtors, which may include the Co-Branding Agreement. Furthermore, CWI has indicated that it is in discussions with MasterCard regarding assumption and assignment and has requested that the Debtors *not* immediately reject the Co-Branding Agreement.

The Agency Approval Order authorizes the Debtors to enter into an Agency Agreement (the "Agency Agreement"), a form of which is attached to the Agency Approval Order, pursuant

to which the Agent (as defined in the Agency Agreement) is authorized to act as the Debtors' exclusive agent to conduct sales of certain of the Debtors' assets, including, without limitation, certain of the Debtors' inventory and other assets. The parties have closed on the transaction contemplated by the Agency Agreement, and the Agent is proceeding with the sales. The Agency Agreement contemplates that the Debtors will continue operating through approximately August 31, 2017.

The retail operations being conducted pursuant to the Store Closing Agreement and the Agency Agreement currently include the acceptance of co-branded and private label credit cards and the continued acceptance of certain reward certificates that are issued as incentives to cardholders.

B. The Co-Branding Agreement.

Gander Mountain and MasterCard are parties to a Co-Branding Strategic Alliance Agreement dated October 1, 2012 (the "Co-Branding Agreement"). Gander Mountain has entered into an agreement with Comenity Bank whereby Comenity Bank issued co-branded credit cards.[1] Pursuant to the Co-Branding Agreement with MasterCard, Gander Mountain agreed that all of the co-branded credit cards would be issued exclusively as MasterCard co-branded cards and agreed to market and promote the co-branded credit cards. In return, MasterCard agreed to provide incentives to Gander Mountain, including payments based on the aggregate dollar amount of all transactions attributable to the co-branded cards during each calendar year.

For calendar year 2016, the incentive payments totaled $613,111.27. MasterCard has acknowledged the amount of the incentive payments. The incentive payments were due June 20,

[1] Comenity has brought a motion compelling the Debtors to assume or reject such agreement [dkt. no. 882]. That hearing has been set for July 18, 2017.

2017. MasterCard has not paid the incentive payments, despite numerous requests. Instead, it has brought the Motion, seeking to compel the Debtors to either assume or reject the Co-Branding Agreement by June 26, 2017.

ANALYSIS

In a chapter 11 case, the debtor in possession may assume or reject an executory contract at any time before confirmation of a plan. 11 U.S.C. § 365(d)(2). The court may, on request of a counterparty, order the debtor in possession to make such determination within a specified period. *Id.* In the primary case cited by MasterCard, the court recited established law: "The movant bears the burden of demonstrating cause to shorten the debtor's time to decide to assume or reject an executory contract or unexpired lease." *In re Memory Lane of Bremen, LLC*, 535 B.R. 901, 906 (Bankr. N.D. Ga. 2015) *citing In re Hawker Beechcraft, Inc.*, 483 B.R. 424, 429 (Bankr. S.D.N.Y. 2012). As noted in a leading treatise, "the request is rarely granted." 3 *Collier on Bankruptcy* ¶ 65.05[2][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). And if granted, the debtor in possession is granted a reasonable amount of time within which to make such a determination. *In re G-I Holdings, Inc.*, 308 B.R. 196 (Bankr. D.N.J. 2004). In exercising its discretion regarding what constitutes a reasonable amount of time, courts consider:

(i) the nature of the interests at stake;

(ii) the balance of the hurt to the litigants;

(iii) the good to be achieved;

(iv) the safeguards afforded those litigants; and

(v) whether the action would be considered arbitrary.

Id. at 213. In the present situation, MasterCard has not met its burden of demonstrating cause to shorten the Debtors' time to determine whether to assume or reject the Co-Branding Agreement.

First, the interests at stake are purely economic. Second, MasterCard has not provided any evidence that it will suffer any harm from the continuance of the Co-Branding Agreement, nor has it identified any benefit to the estate from rejecting the Co-Branding Agreement. MasterCard's bare assertion that the Debtors will not realize any benefit by delaying rejection of the Co-Branding Agreement is not "cause" to compel the Debtors to make a premature determination. If the Debtors reach that conclusion after reasoned deliberation, they are free to bring a motion to reject the Co-Branding Agreement.

As of the time of the filing of this objection, the Debtors are not even certain whether CWI will designate the Co-Branding Agreement for assumption and assignment. In the event that CWI designates the Co-Branding Agreement for assumption and assignment, this Motion will be moot. In the event that CW does not designate the Co-Branding Agreement for assumption and assignment by June 25, 2017, it may still be beneficial for the estates for the Debtors to operate under the Co-Branding Agreement through the term of the Store Closing Agreement and the Agency Agreement. Furthermore, CWI has indicated that it is in discussions with MasterCard regarding assumption and assignment and has requested that the Debtors *not* immediately reject the Co-Branding Agreement, raising the possibility of a later assumption and assignment. MasterCard's motion appears to be strategically filed to increase pressure on CWI relative to the potential assumption and assignment and to complicate the collection by the Debtors of the $613,111.27 that it indisputably owes under the Co-Branding Agreement. Those motivations are not a proper basis to grant the Motion.

CONCLUSION

In short, MasterCard has not established cause why its request, of a type which is "rarely granted", is appropriate in this case. The Debtors request that the Motion be denied. In

the event that the Court does find such cause, the Debtors request that they be given a reasonable period of time to make such a determination. A deadline of June 26, 2017 does not provide a reasonable period of time.

Dated: June 23, 2017

/e/ James C. Brand

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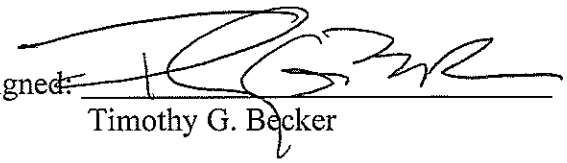
VERIFICATION

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the foregoing statements of fact are true and correct according to the best of my knowledge, information and belief.

Dated: June 23, 2017

Signed: 

Timothy G. Becker