

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

In re:

GENERAL WIRELESS OPERATIONS
INC. DBA RADIOSHACK et al.,¹

Debtors.

Chapter 11

Case No. 17-10506 (BLS)

(Jointly Administered)

Obj. Deadline: August 9, 2017 at 4:00 p.m. (ET)

Hearing Date: August 16, 2017 at 10:00 a.m. (ET)

**SIXTH OMNIBUS MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN
CONTRACTS AND LEASES AND (II) GRANTING CERTAIN RELATED RELIEF**

**PARTIES RECEIVING THIS MOTION SHOULD LOCATE
THEIR NAMES AND THEIR CONTRACTS OR LEASES
LISTED ON EXHIBIT A, ATTACHED HERETO.**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") move this Court for the entry of an order pursuant to sections 105(a) and 365 of the Bankruptcy Code: (i) authorizing the Debtors to reject certain contracts and leases and (ii) granting certain related relief. 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 U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

Background

1. On March 8, 2017 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' cases.
3. An overview of the Debtors' history and businesses, a summary of the events leading to the commencement of these chapter 11 cases, and the facts supporting this Motion are set forth in the *Declaration of Dene Rogers in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") [Docket No. 4], filed on the Petition Date and incorporated by reference herein.
4. The Debtors are parties to a significant number of prepetition executory contracts and unexpired leases (the "Contracts"). The Debtors have already liquidated a substantial number of underperforming stores. As a result of the filing of their bankruptcy cases and that liquidation process, the Debtors' day-to-day operations have changed significantly and the Debtors have identified certain Contracts that no longer provide meaningful value to the Debtors or their estates.
5. On March 28, 2017, the Court entered the *First Omnibus Order (I) Authorizing the Debtors to Reject Certain Contracts and Leases and (II) Granting Certain Related Relief* [Docket No. 308].

6. On April 18, 2017, the Court entered the *Second Omnibus Order (I) Authorizing the Debtors to Reject Certain Contracts and (II) Granting Certain Related Relief* [Docket No. 470].

7. On May 17, 2017, the Court entered the *Third Omnibus Order (I) Authorizing the Debtors to Reject Certain Contracts and (II) Granting Certain Related Relief* [Docket No. 626].

8. On June 20, 2017, the Court entered the *Fourth Omnibus Order (I) Authorizing the Debtors to Reject Certain Contracts and (II) Granting Certain Related Relief* [Docket No. 735].

9. On July 18, 2017, the Court entered the *Fifth Omnibus Order (I) Authorizing the Debtors to Reject Certain Contracts and (II) Granting Certain Related Relief* [Docket No. 818].

10. By this motion, the Debtors seek to reject the Contracts listed in Exhibit A effective as of July 31, 2017.

Rejection of the Contracts Is a Sound Exercise of the Debtors' Business Judgment

11. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to reject executory contracts or 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. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); see also In re Taylor, 913 F.2d 102 (3d. Cir. 1990); In re Buckhead America Corp., 180 B.R. 83 (Bankr. D. Del. 1995).

12. Courts generally will not second-guess a debtor's business judgment concerning the rejection of an executory contract or unexpired lease. See In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001) ("A debtor's decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim or caprice." (internal quotations omitted)). The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. N.L.R.B. v. Bildisco (In re Bildisco), 682 F.2d 72, 79 (3rd Cir. 1982) (noting that the "usual test for rejection of an executory contract is simply whether rejection would benefit the estate") aff'd, 465 U.S. 513. Further, "[s]ection 365 enables the trustee to maximize the value of the debtor's estate by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not." L.R.S.C. Co. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.), 209 F.3d 291, 298 (3d Cir. 2000); see also Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (section 365 of the Bankruptcy Code "allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed").

13. The rejection of the Contracts is an appropriate exercise of the Debtors' business judgment and will reduce the administrative burdens on their estates. The Contracts are financially burdensome and no longer necessary. Further, the Contracts have no marketable value that could be generated through assumption and assignment. Accordingly, the Debtors' continued performance under the Contracts would constitute an unnecessary depletion of value of the Debtors' estates.

14. Further, the Debtors submit that it is appropriate for the Court to authorize rejection retroactive to July 31, 2017. Although section 365 of the Bankruptcy Code does not

address whether a court may order retroactive rejection, many courts have held that they are so empowered. See, e.g., SCS Co. v. Peter J. Schmitt Co., No. 94-125-RRM, 1995 U.S. Dist. LEXIS 22163, at *5 (D. Del. May 15, 1995) (noting that a bankruptcy court has authority to select a retroactive date for the effective date of a lease's rejection); *In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”); In re Mid Region Petroleum, Inc., 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (finding that the effective date for the rejection of leases was the date the trustee gave notice of intent to reject); In re Carlisle Homes, Inc., 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (finding that debtor may reject an executory contract by clearly communicating the intention to reject).

15. Courts in this jurisdiction have approved relief similar to that requested herein. See *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 15, 2015) (authorizing rejection of executory contracts effective as of specified dates); *In re QCE Fin. LLC*, No. 14-10543 (PJW) (Bankr. D. Del. Apr. 9, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to the petition date); *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Feb. 26, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to prior notice date); *In re Prommis Holdings, LLC*, No. 13-10551 (BLS) (Bankr. D. Del. June 14, 2013) (same).

16. The balance of equities favors the relief requested herein. Without a retroactive date of rejection, contractual counterparties may attempt to assert additional administrative expenses under the Contracts. Therefore, the Debtors respectfully submit that it is fair and equitable for the Court to order that the Contracts be rejected retroactively as of July 31, 2017.

Compliance with Bankruptcy Rule 6006(f)

17. Bankruptcy Rule 6006(f) establishes requirements for a motion to reject multiple executory contracts or unexpired leases that are not each between the same parties.

Rule 6006(f) states, in part, that such a motion shall:

- (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- (2) list parties alphabetically and identify the corresponding contract or lease;
- (3) specify the terms, including the curing of defaults, for each requested assumption or assignment;
- (4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- (6) be limited to no more than 100 executory contracts or unexpired leases.

Bankr. R. 6006(f). The Debtors respectfully submit that the relief requested in this motion complies with the requirements of Rule 6006(f).

Request for Immediate Relief & Waiver of Stay

18. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek a waiver of any stay of the effectiveness of an order granting this motion, to the extent that it applies to the relief requested in this motion.

Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The relief requested herein is essential to avoid the potential accrual of unnecessary administrative expenses. Accordingly, the Debtors submit that, to the extent that Bankruptcy Rule 6004(h) applies, ample cause exists to justify a waiver of the fourteen-day stay.

Notice

19. Notice of this motion will be provided to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Debtors' secured lenders; (d) contractual counterparties to the Contracts listed on Exhibit A; and (e) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this motion is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit B, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: July 26, 2017
Wilmington, Delaware

Respectfully submitted,

/s/ Michael J. Custer

David M. Fournier (DE 2812)
Michael J. Custer (DE 4843)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

JONES DAY

Scott J. Greenberg (*pro hac vice*)
250 Vesey Street
New York, NY 10281-1047
Tel: (212) 326-3939
Fax: (212) 755-7306
Email: sgreenberg@jonesday.com

Mark A. Cody (*pro hac vice*)
77 West Wacker
Chicago, IL 60601-1692
Tel: (312) 782-3939
Fax: (312) 782-8585
Email: macody@jonesday.com

Attorneys for Debtors and Debtors-in-Possession

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

In re:

GENERAL WIRELESS OPERATIONS
INC. DBA RADIOSHACK et al.,¹

Debtors.

Chapter 11

Case No. 17-10506 (BLS)

(Jointly Administered)

Obj. Deadline: August 9, 2017 at 4:00 p.m. (ET)

Hearing Date: August 16, 2017 at 10:00 a.m. (ET)

**NOTICE OF SIXTH OMNIBUS MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN
CONTRACTS AND LEASES AND (II) GRANTING CERTAIN RELATED RELIEF**

PLEASE TAKE NOTICE that on July 26, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the **Sixth Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Contracts and Leases and (II) Granting Certain Related Relief** (the “Rejection Motion”).

PLEASE TAKE FURTHER NOTICE that any objection or response to the Rejection Motion must be (i) filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 **on or before August 9, 2017 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”) and (ii) served so as to be *actually received* no later than the Objection Deadline by the undersigned counsel to the Debtors.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Rejection Motion is scheduled to be held before the Honorable Brendan L. Shannon, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 6th Floor, Courtroom No. 1, 824 N. Market Street, Wilmington, Delaware 19801 **on August 16, 2017 at 10:00 a.m. (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND TO THE REJECTION MOTION IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE REJECTION MOTION WITHOUT FURTHER NOTICE OR OPPORTUNITY FOR A HEARING.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

Dated: July 26, 2017
Wilmington, Delaware

Respectfully submitted,

/s/ Michael J. Custer

David M. Fournier (DE 2812)
Michael J. Custer (DE 4843)
PEPPER HAMILTON LLP
Hercules Plaza, Suite 5100
1313 N. Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

JONES DAY

Scott J. Greenberg (admitted *pro hac vice*)
250 Vesey Street
New York, NY 10281-1047
Tel: (212) 326-3939
Fax: (212) 755-7306
Email: sgreenberg@jonesday.com

Mark A. Cody (admitted *pro hac vice*)
77 West Wacker
Chicago, IL 60601-1692
Tel: (312) 782-3939
Fax: (312) 782-8585
Email: macody@jonesday.com

Attorneys for Debtors and Debtors-in-Possession

EXHIBIT A

	Contract Counterparty	Contract Title	Contract Effective Date	Contract Rejection Date	Address Line 1	Address Line 2	City	State	Zip Code
1	Vertex	Software License Agreement & any related amendments, etc.	6/30/15	7/31/17	1041 Old Cassat Rd.		Berwyn	Pennsylvania	19312
2	The Retail Outsource, LLC	Authorized Service Agreement	9/23/2017	7/31/17	Attn: Brett Beveridge	800 S. Douglas Rd., Suite 450	Coral Gables	Florida	33134
3	T Parkside KTX TX LLC	Apartment Lease Contract (#4028)	11/20/2016	7/31/17	900 Matisse Dr.		Fort Worth	Texas	76107
4	Microsoft Corporation	Master Services Agreement & any related amendments, etc., etc.	10/5/15	7/31/17	Legal & Corporate Affairs	One Microsoft Way	Redmond	Washington	98052

EXHIBIT B

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

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	:	Chapter 11
GENERAL WIRELESS OPERATIONS	:	
INC. DBA RADIOSHACK <i>et al.</i> , ¹	:	Case No. 17-10506 (BLS)
	:	
	:	(Jointly Administered)
	:	
	:	Related Docket No.:
<hr style="width: 300px; margin-left: 0;"/>	:	

**SIXTH OMNIBUS ORDER
(I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN
CONTRACTS AND (II) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the Sixth Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Reject Certain Contracts and (II) Granting Certain Related Relief (the "Motion")² filed by the above-captioned debtors and debtors in possession (the "Debtors"); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Motion is necessary and essential for the administration of the Debtors' estates and such relief is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, the Contracts listed on Exhibit A to the Motion are hereby rejected by the Debtors, effective as of July 31, 2017.
3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing in the Motion or this Order shall: (i) constitute an admission as to the validity or priority of any claim against the Debtors; (ii) constitute a waiver of the Debtors' rights to dispute any claim; or (iii) prejudice any party's rights to assert that any of the Contracts are not executory or unexpired within the meaning of section 365 of the Bankruptcy Code.
4. The terms and conditions of this order shall be immediately effective and enforceable upon its entry.
5. The rejection of the Contracts complies with the requirements of Bankruptcy Rule 6006(f).
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this order.

Dated: August ____, 2017
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE