N THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In Re:	)	
	)	
PREMIER KINGS, INC.[1]	)	**Case No. 23-02871-TOM-7**
	)	
Debtors.	)	

PREMIER HOLDINGS OF GEORGIA, LLC,	)	
	)	
Plaintiff,	)	**A.P. No. 24-00016-TOM**
vs.	)	
	)	
RRG OF JACKSONVILLE, LLC,	)	
	)	
Defendant.	)	

ORDER ON (I) MOTION FOR RELIEF FROM ORDER ASSUMING AND ASSIGNING CONTRACT, (II) MOTION FOR JUDGMENT ON THE PLEADINGS, AND (III) MOTION FOR SUMMARY JUDGMENT

This bankruptcy case and this adversary proceeding came before the Court for a hearing on December 16, 2024, on the Motion of RRG of Jacksonville, LLC for Relief from Order Assuming and Assigning Contract (BK Doc. 643, "Motion for Relief") filed by RRG of Jacksonville, LLC ("RRG"); Defendant's Motion for Judgment on the Pleadings[2] (AP Doc. 5)

[1] The Court entered an order for joint administration of certain bankruptcy cases (BK Doc. 84) on October 30, 2023. The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors' address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071.

[2] RRG initially filed "Defendant's Motion for Judgment on the Pleadings" seeking a judgment under Rule 7012 of the Federal Rules of Bankruptcy Procedure. AP Doc. 5. RRG later filed "Defendant's Supplemental Memorandum in Support of Motion for Summary Judgment or, in the Alternative, Relief from Order Assuming Contract." AP Doc. 35. Although the title of this motion references summary judgment, the body of the motion states that RRG "moves the Court to enter judgment in its favor in accordance with Rule 7012(c), or Rule 7056, of the Federal Rules of Bankruptcy Procedure . . . ." AP Doc. 35, at 1. As will be explained herein, the considerations under Rule 7012 and Rule 7056 are different. Since RRG initially filed its "Motion for Judgment on the Pleadings," the Court will treat the motion as one requesting judgment on the pleadings under Rule 7012 and not one for summary judgment under Rule 7056. It will become evident that ultimately, the result will be the same under either Rule 7012 or Rule 7056.

filed by RRG; Plaintiff Premier Holdings of Georgia, LLC's Motion for Summary Judgment (AP Doc. 43) filed by Premier Holdings of Georgia, LLC ("Premier Holdings"), and the various responses and replies filed by both parties. Appearing before the Court were Heather A. Jamison, Mike Hall, Chloe Champion, and Annie Hughes, attorneys for Premier Holdings; and Peter J. Haley, attorney for RRG.

Debtor Premier Kings of Georgia, Inc. ("Premier Kings") and RRG entered into an Asset Purchase Agreement dated October 25, 2023, as amended on December 11, 2023, providing that Premier Kings would sell numerous store locations to RRG and assign to RRG leases relating to the applicable Burger King store locations[3] as set forth on Schedule 1.3(a)-2 of the First Amendment to Asset Purchase Agreement. BK Doc. 355, at 215. The sale was approved by this Court's Order (the "Sale Order") of December 13, 2023. As evidenced in an Assignment and Assumption of Lease Agreement between Premier Kings and RRG, dated January 16, 2024, one of the leases assumed by RRG covers Store No. 26868 located in Port Wentworth, Georgia (the "Port Wentworth Store"). *See* AP Doc. 1, Ex. 2.

Premier Holdings asserts that the Port Wentworth store is subject to a Development Agreement originally requiring Premier Kings to pay Premier Holdings monthly debt service payments and administrative fees relating to construction of the Port Wentworth Store. *See* AP Doc. 1, Ex. 1. Premier Holdings further asserts that RRG assumed the Development Agreement along with the lease on the Port Wentworth Store and therefore RRG is now responsible for payment of the amounts due under the Development Agreement. RRG, however, contends that

[3] RRG was one of four purchasers that bought a total of approximately 165 or more Burger King store locations. RRG purchased 40 stores, as evidenced in Schedule 1.3(a)-2 attached to the First Amendment to Asset Purchase Agreement. BK Doc. 355, at 215.

"[t]he [Assignment and] Assumption Agreement intentionally does not state that [RRG] is assuming the Development Agreement."[4] BK Doc. 643.

In its Motion for Summary Judgment Premier Holdings seeks in part a declaratory judgment that RRG assumed the Development Agreement and the obligations thereunder. RRG requests in its Motion for Judgment on the Pleadings that this Court dismiss Premier Holdings' Complaint. Finally, RRG, in its Motion for Relief, requests that the Court "amend[] the Sale Order to provide for the rejection of the Development Agreement" if "the Court finds that the Development Agreement was assumed by the Debtor and assigned to RRG . . . ." BK Doc. 643.

MOTION FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides in relevant part:

> A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Fed. R. Civ. P. 56(a). The party moving for summary judgment has the burden of demonstrating the absence of genuine issues of material fact and its entitlement to judgment as a matter of law.

[4] It is worth noting that for each of the approximately 40 store locations RRG acquired, Premier Holdings and RRG entered into an Assignment and Assumption Agreement that appears to be the same for each store – with the exception of the Port Wentworth store. Exhibit 3 to the Sale Order covers the transaction between Premier Kings and RRG. One of the documents that is part of Exhibit 3 is a "form" Assignment and Assumption Agreement (designated as Exhibit D) that does not mention any development agreement or otherwise indicate that the Port Wentworth purchase was different from the rest of the stores that RRG was acquiring. The only reference in Exhibit 3 to the Development Agreement is found on Schedule 1.3(a)-1, titled "Assignable Leases"; under the column "Lessor/Sublessor," in extremely small font, is the following language: Port Wentworth (GL to PKGA/PHGA (Del. Agrmnt w/ PK-GA). BK Doc. 355, at 173. The actual Assignment and Assumption Agreement for the Port Wentworth store, attached to the Motion for Judgment on the Pleadings as Exhibit C, contains additional language in the Recitals stating that the ground lease is "subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and [Premier Kings] . . . ." AP Doc. 5, Ex. C. This Court, when reviewing and approving the proposed sale order, would have only seen the "form" Assignment and Assumption Agreement and not the modified Assignment and Assumption Agreement executed by RRG. It is unclear when the additional language was added to the Assignment and Assumption Agreement executed by RRG, or which party added the language.

Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d. 265 (1986). The court is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). "'[T]he court must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment.'" *Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc) (quoting *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995)); *see also Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1986). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store Inc.*, 975 F.2d 1518 (11th Cir. 1992) (citing *Mercantile Bank & Trust v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11th Cir. 1985)). Once the moving party has satisfied its burden of proof by proving the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law, the burden shifts to the non-moving party to offer evidence of specific facts which prove the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

This Court has considered the Motion for Summary Judgment, all replies and responses thereto, and the arguments of counsel, and finds that summary judgment is not appropriate in this adversary proceeding. It is apparent to the Court that, after making all reasonable inferences in favor of RRG, there are genuine issues of material fact that preclude entry of summary judgment. The asset sale from Premier Kings to RRG involved multiple Burger King locations and took place over a fairly short period of time. As evident from the voluminous documents submitted in consideration of the Motion for Summary Judgment, Premier Kings had to share and RRG had to

evaluate a great deal of information in the short time frame. In addition, it appears that the Port Wentworth store is the only location that involved a development agreement. There are questions of material fact that remain to be answered including, but not limited to, the timing and sufficiency of the information RRG received regarding the assets being considered for purchase by RRG. Further, the Court determines that a full trial on the issues would be appropriate regardless. A full trial will "assure that the facts are fully aired." *Harris v. Byner*, Civil Action No. 2:12cv591-MHT, 2014 WL 129040, at *9 (M.D. Ala. Jan 14, 2014). Summary judgment may be denied by a trial court "in a case where there is reason to believe that the better course would be to proceed to full trial." *Anderson*, 477 U.S. at 255, 106 S. Ct. at 2513-14 (1986). *See also Lind v. United Parcel Serv., Inc.*, 254 F.3d 1281, 1285 (11th Cir. 2001) ("'A trial court is permitted, in its discretion, to deny even a well-supported motion for summary judgment, if it believes the case would benefit from a full hearing.'") (quoting *United States v. Certain Real and Personal Prop. Belonging to Hayes*, 943 F.2d 1292, 1298 (11th Cir.1991))). Because there are genuine issues of material fact, and because a full trial would be beneficial, the Court finds and concludes that Premier Holdings' Motion for Summary Judgment is due to be denied.

MOTION FOR JUDGMENT ON THE PLEADINGS

Rule 12(c) of the Federal Rules of Civil Procedure, made applicable to adversary proceedings under Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, provides:

> (c) Motion for Judgment on the Pleadings. After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings.

Fed. R. Civ. P. 12(c). It has been explained that:

> In deciding a Rule 12(c) motion for judgment on the pleadings, a Court may consider only the pleadings . . . . A motion for judgment on the pleadings under Rule 12(c) is governed by the same standards as a motion to dismiss under Rule 12(b)(6). The main difference between the motions is that a motion for judgment on the pleadings is made after an answer and that answer may also be considered

> in deciding the motion. Judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is appropriate when there are no material facts in dispute and the moving party is entitled to judgment as a matter of law.

United States v. Bahr, 275 F.R.D. 339, (M.D. Ala. 2011) (internal citations omitted) (citing *Mergens v. Dreyfoos*, 166 F.3d 1114, 1116-17 (11th Cir. 1999)). *See also Cunningham v. District Attorney's Office for Escambia County*, 592 F.3d 1237, 1255 (11th Cir. 2010) ("'Judgment on the pleadings is proper when no issues of material fact exist, and the moving party is entitled to judgment as a matter of law based on the substance of the pleadings and any judicially noticed facts.'" (quoting *Andrx Pharmaceuticals, Inc. v. Elan Corp., PLC*, 421 F.3d 1227, 1232 - 33 (11th Cir. 2005))). "In determining whether a party is entitled to judgment on the pleadings, we accept as true all material facts alleged in the non-moving party's pleading, and we view those facts in the light most favorable to the non-moving party." *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014) (citing *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998)).

In ruling on the Motion for Judgment on the Pleadings filed by RRG, this Court must take the facts alleged in the Complaint as true, viewed in a light most favorable to Premier Holdings. Under Rule 12(c) of the Federal Rules of Civil Procedure the Court may consider only the pleadings[5] filed in this adversary proceeding; however, it is nonetheless apparent to the Court from a review of just the pleadings that there are genuine issues of material fact that preclude the Court from disposing of this adversary proceeding without the benefit of a full trial. This Court has considered the pleadings filed in the adversary proceeding and the arguments of counsel, and finds and concludes that RRG's Motion for Judgment on the Pleadings is due to be denied.

[5] Pleadings include only complaints and answers, including answers to counterclaims and crossclaims, third-party complaints and answers thereto, and replies to answers if ordered by the court. Fed. R. Civ. P. 7(a).

MOTION FOR RELIEF FROM ORDER ASSUMING AND ASSIGNING CONTRACT

Rule 60(b)(1) of the Federal Rules of Civil Procedure, made applicable to bankruptcy cases under Rule 9024 of the Federal Rules of Bankruptcy Procedure, provides:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect[.]

Fed. R. Civ. P. 60(b)(1). "The aim of Rule 60(b), Fed. R. Civ. P., is 'to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts.'" *Safari Programs, Inc. v. Collecta Int'l Ltd.*, 686 Fed. App'x 737, 743 (11th Cir. 2017) (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. Jan. 1981)). As one court has explained:

> Rule 60(b) is an extraordinary remedy designed to address mistakes attributable to exceptional circumstances. *Griffin v. Swim–Tech Corp*., 722 F.2d 677, 680 (11th Cir. 1984) (citing *Ackermann v. United States*, 340 U.S. 193, 202, 71 S.Ct. 209, 95 L.Ed. 207 (1950). The burden of proof in seeking relief from a final judgment or final order initially lies with the moving party. *Id.* "The burden for setting aside a final order is a heavy one for res judicata is being negated." *In re Abrams*, 305 B.R. 920 (Bankr. S.D. Ala. 2002). Whether to grant such relief is within this Court's discretion. *In re Timmons*, 479 B.R. 597, 608 (Bankr. N.D. Ala. 2012).

In re Long, 564 B.R. 750, 755 (Bankr. S.D. Ala. 2017). As explained in *Long*, RRG, as the movant seeking relief under Rule 60(b), has a heavy burden to persuade this Court to grant relief from the Sale Order. As noted in the Motion for Relief, RRG asks that the Sale Order be amended to reject the Development Agreement if "the Court finds that the Development Agreement was assumed by the Debtor and assigned to RRG . . . ." BK Doc. 643. The Court cannot determine at this time whether or not the Development Agreement is applicable to RRG since there are issues of material fact that must be first resolved. As a result, the Court finds and concludes that the extraordinary

remedy found in Rule 60(b) is not warranted and that the Motion for Relief is due to be denied. It is therefore

ORDERED, ADJUDGED, and DECREED that Premier Holdings' Motion for Summary Judgment is **DENIED**; and it is further

ORDERED, ADJUDGED, and DECREED that RRG's Motion for Judgment on the Pleadings is **DENIED**; and it is further

ORDERED, ADJUDGED, and DECREED that the RRG's Motion for Relief is **DENIED**.

A status conference on the Complaint filed in the adversary proceeding will be held on February 10, 2025, at 11:00 a.m. in Courtroom 3, Robert S. Vance Federal Building, 1800 5th Avenue North, Birmingham, Alabama, 35203.

Dated: January 15, 2025

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

TOM/dgm

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