

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<i>Caption in Compliance with D.N.J. LBR 9004-1(b)</i> OBERMAYER REBMANN MAXWELL & HIPPEL LLP Edmond M. George, Esquire Michael D. Vagnoni, Esquire (pro hac vice) Turner N. Falk, Esquire 1120 Route 73, Suite 420 Mount Laurel, NJ 08054-5108 Telephone: (856) 795-3300 Facsimile: (856) 482-0504 E-mail: edmond.george@obermayer.com michael.vagnoni@obermayer.com turner.falk@obermayer.com	
Counsel to the Debtor and Debtor in Possession	
In re:	Chapter 11
ALUMINUM SHAPES, L.L.C.,	Case No. 21-16520 (JNP)
Debtor.	

**DEBTOR’S FIRST OMNIBUS MOTION TO REJECT EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES**

Debtor Aluminum Shapes, L.L.C. (the “Debtors”), by and through its counsel, Obermayer Rebmann Maxwell & Hippel LLP, hereby moves, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), Rules 6006, 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 3003-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”) to reject executory contracts and unexpired leases, and for related relief (the “Motion”), and states as follows:

**I. JURISDICTION**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

2. Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are section 365 of the Bankruptcy Code, Bankruptcy Rules 6006 and 9014, and Local Rule 3003-1.

4. The Debtor consents to the entry of a final order or judgment by the court if it is determined that the court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

**II. BACKGROUND**

5. On August 15, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey, Camden Vicinage (the “Court”).

6. No request has been made for the appointment of a trustee or examiner; an official committee of unsecured creditors has been established in this case.

7. The Debtor was an industry leader in the fabrication, processing, and extruding of aluminum metals and operates out of a single facility located at 9000 River Road, Delair, New Jersey (the “Business”), consisting of approximately 500,000 square feet, including a cast house, foundry, and processing area (the “Real Property”). See First Day Declaration of Jordan Meyers of Support of First Day Motions. (DI #17)

8. On June 18, 2021, the Debtor engaged Cowen and Company, LLC (“Cowen”) as investment banker to explore a sale of the Debtor’s Business or assets (the “Assets”).

9. Since the Petition Date, the Debtor engaged in negotiations to sell substantially all of its Assets, either to a strategic purchaser or a real estate purchaser. To that end, the Debtor filed a motion to approve bid procedures. This Court approved the bid procedures by a September 30, 2021 order, as modified on November 5, 2021. (DI #122, 229).

10. Pursuant to these bid procedures, the Debtor conducted an auction of its Assets on November 10, 2021.

11. On November 12, 2021, this Court approved the Debtor's request to sell its Assets to the winning bidder VV9000 LLC for \$32 million. This sale did not convey any executory contracts or unexpired leases to VV9000 LLC.

12. The sale to VV9000 LLC closed on November 24, 2021.

13. The Debtor currently has no business operations and will only retain select employees through the end of 2021.

14. In the exercise of its business judgment, the Debtor seeks to reject all executory contracts and unexpired leases (the "Contracts"), as they are burdensome to the Debtor's estate and provide no further value. The contracting parties and subject matters of which are set forth in **Exhibit A**.

15. The Contract with Ultimate Software Group was terminated prepetition. However, in an adversary proceeding arising out of this case Ultimate Software Group has taken the position that its Contract was not terminated. In an abundance of caution, and reserving the right to argue that the Contract was indeed terminated prepetition, the Debtor seeks to terminate any unexpired Contract with Ultimate Software Group.

### III. RELIEF REQUESTED

#### A. Rejection of the Rejected Contracts Pursuant to 11 U.S.C. §365

16. Pursuant to 11 U.S.C. §365(a), a trustee, and by extension a chapter 11 debtor-in-possession, “may assume or reject any executory contract or unexpired lease of the debtor.”

17. Pursuant to Fed. R. Bankr. P. 6006(a), a proceeding to reject an executory contract or unexpired lease must be made by motion.

18. “The main purpose of Section 365 is to allow a debtor to reject executory contracts in order to relieve the estate of burdensome obligations while at the same time providing ‘a means whereby a debtor can force others to continue to do business with it when the bankruptcy filing might otherwise make them reluctant to do so.’” In re Chateaugay Corp., 10 F.3d 944, 954–55 (2d Cir. 1993) quoting Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1310 (5th Cir. 1985)

19. “Courts normally leave the decision to reject a contract to the debtor's sound business judgment. As Judge Walsh wrote in *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.” *See also Wheeling–Pittsburgh Steel Corp. v. W. Penn Power Co. (In re Wheeling–Pittsburgh Steel Corp.)*, 72 B.R. 845, 849–50 (Bankr.W.D.Pa.1987).” In re Caribbean Petroleum Corp., 444 B.R. 263, 268–69 (Bankr. D. Del. 2010)

20. “The business judgment test dictates that a court should approve a debtor's decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion.” In re Fed. Mogul Glob., Inc., 293 B.R. 124, 126 (D. Del. 2003).

21. Here, the Debtor availed itself of the benefits of the Contracts as necessary to complete a value-maximizing sale of its Assets.

22. Now that the sale has closed and the Debtor has terminated the majority of its employees and ceased operations, it is well within the Debtor's business judgment to reject the Contracts, each of which pertains to some aspect of employment or operations, in order to minimize ongoing costs to the estate.

23. Rejection "constitutes a breach of such contract or lease...immediately before the date of the filing of the petition." 11 U.S.C. §365(g)(1).

24. "Rejection gives rise to a remedy for breach of contract in the non-debtor party. The claim is treated as a pre-petition claim, affording creditors their proper priority." In re Lavigne, 114 F.3d 379, 387 (2d Cir.1997) (citing In re Yasin, 179 B.R. 43, 50 (Bankr.S.D.N.Y.1995))

25. Pursuant to L.B.R. 3003-1(b), "a proof of claim arising from the rejection of an executory contract or unexpired lease must be filed by the later of (1) 30 days after rejection; or (2) 70 days after the date of the order for relief".

26. More than seventy (70) days have elapsed since the Petition Date; the bar date for a proof of claim alleging rejection damages must be thirty (30) days from the date this Court grants the Motion.

#### IV. CONCLUSION

For the reasons discussed above, this Court must grant the Motion authorizing the Debtor to reject the Contracts and setting the bar date for rejection damages claims for 30 days after rejection.

Respectfully Submitted,

Dated: December 6, 2021

By: /s/ Edmond M. George  
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