

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

BIRD GLOBAL, INC., *et al.*,¹

Debtors.

Chapter 11 Cases

Case No. 23-20514-CLC

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE
DEBTORS TO ASSUME AND ASSIGN TO THE PURCHASER'S ASSIGNEE THE
SCOOTER PARTNERSHIP AGREEMENT BETWEEN LYFT BIKES AND
SCOOTERS, LLC AND SKINNY LABS, INC., AS AMENDED,
EFFECTIVE AS OF MARCH 22, 2024**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through undersigned counsel, pursuant to 11 U.S.C. §§ 365(a) and (f), file this motion (the “Motion”) for entry of an order approving the assumption and assignment by the Debtors, specifically Skinny Labs, Inc., to Blue Jay Transit, Inc., as assignee of Bird Scooter Acquisition Corp. (the “Purchaser”), of that certain Scooter Partnership Agreement entered into as of September 21, 2021 by and between Lyft Bikes and Scooters, LLC (“Lyft”) and Skinny Labs, Inc. (“SPIN”), which was amended by that certain Amendment No. 1 to the Scooter Partnership Agreement and by Amendment No. 2 to the Scooter Partnership Agreement, each dated as of March 10, 2023 (collectively, the “Contract”), which assignment will be effective as of March 22, 2024. In support of the Motion, the Debtors state as follows:

I. Jurisdiction

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

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

¹ The address of the Debtors is 392 Northeast 191st Street, #20388, Miami, FL 33179. The last four digits of the Debtors' federal tax identification numbers are: (i) Bird Global, Inc. (3155); (ii) Bird Rides, Inc. (9939); (iii) Bird US Holdco, LLC (8390); (iv) Bird US Opco, LLC (6873); and (v) Skinny Labs, Inc. (8176).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are 11 U.S.C. § 365(a) and Bankruptcy Rule 6006.

II. Background

4. On December 20, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtors are managing their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On January 5, 2024, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors.

7. On March 8, 2024, the Court entered an *Order (I) Authorizing And Approving (A) The Sale of Substantially All Of The Debtors’ Assets Free And Clear Of All Liens, Claims, And Encumbrances And (B) The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection Therewith, And (III) Granting Related Relief* [ECF No. 464] (the “Sale Order”). The closing of the sale of substantially all of the Debtors’ assets to the Purchaser occurred on March 22, 2024 (the “Sale Closing Date”). Pursuant to the Sale Order, the Debtors assumed and assigned a number of executory contracts to the Purchaser. The Contract was inadvertently omitted from the list of executory contracts that were being assumed and assigned to the Purchaser.

8. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties in interest to the *Declaration of Christopher Rankin in Support of Chapter 11 Petitions and First Day Pleadings* [ECF No. 31].

III. Relief Requested and Basis Therefor

9. By way of this Motion, the Debtors seek the entry of an order authorizing, but not directing, the Debtors, specifically Skinny Labs, Inc., to assume and assign the following Contract to the Purchaser, effective as of the Sale Closing Date:

Debtor Entity	Counterparty	Address	Contract Description	Good/Service
Skinny Labs, Inc.	Lyft	Lyft Bikes and Scooters, LLC c/o Lyft, Inc. 185 Berry Street Suite 5000 San Francisco, CA 94107 Attention: LBS Legal Email: lbs-legal@lyft.com	Scooter Partnership Agreement entered into as of September 21, 2021, as amended by Amendment No. 1 and Amendment No. 2, each entered into as of March 10, 2023	Use of Lyft mobile application and online platform

10. Section 365(a) of the Bankruptcy Code allows a debtor, subject to the approval of the bankruptcy court, to assume or reject any executory contract or unexpired lease. *See Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996); *Wilmington Trust Co. v. Jeffries Leveraged Credit Prods., LLC, et al. (In re TOUSA, Inc., et al.)*, 598 F. App'x 761, 763 n.3 (11th Cir. 2015). A debtor's decision to assume or reject an executory contract or unexpired lease is subject to the "business judgment" test. *Byrd v. Gardiner, Inc. (In re Gardiner, Inc.)*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Surfside Resort and Suites, Inc.*, 325 B.R. 465, 469 (Bankr. M.D. Fla. 2005); *see also Chira v. Saal, et al. (In re Chira)*, 567 F.3d 1307, 1312 (11th Cir. 2009) (describing the business judgment test as "narrow"). The sole inquiry is whether assumption or rejection will benefit the estate. *See id.*

11. Moreover, in the event that a default exists under a contract sought to be assumed and assigned, the Debtors must satisfy the requirements of section 365(b) of the Bankruptcy Code by (i) curing a pre-petition default or providing adequate assurance of a prompt cure, (ii)

compensating or providing adequate assurance of prompt compensation of any actual pecuniary loss resulting from the pre-petition default and (iii) providing adequate assurance of future performance under the contract.

12. Here, the Purchaser has represented that (i) it will pay any cure amounts required to be paid to Lyft in connection with the assumption of the Contract, and (ii) it has and/or will provide the requisite adequate assurance of future performance under the Contract to Lyft in connection with its ability to continue to perform all obligations required under the Contract. If the Contract were not assumed and assigned to the Purchaser, then the Debtors would need to reject the Contract, which would, among other things, create a rejection damage claim against the Debtors' estates.

13. The Purchaser agrees that a condition of the proposed assumption and assignment of the Contract is that the Purchaser will pay any cure amounts required to be paid to Lyft.

14. Given the foregoing, the Debtors submit that the decision to assume and assign the Contract to the Purchaser is made in the sound exercise of the Debtors' business judgment. More specifically, assumption and assignment of the Contract will benefit the Debtors' estates given that it is made in the context of the Purchaser's prior purchase of substantially all of the Debtors' assets as reflected in the Sale Order, was inadvertently omitted the Contract from the list of executory contracts that were assumed and assigned to the Purchasers, and will further the Purchaser's ability to successfully operate the Debtors' former business through the use of the Lyft mobile app and platform which is the subject of the Contract.

WHEREFORE, the Debtors respectfully request the entry of an Order in the form attached hereto as **Exhibit A**, which approves the assumption and assignment of the Contract to the

Purchaser effective on the Sale Closing Date and grants such other relief as the Court deems just and proper.

Dated: May 14, 2024

Respectfully submitted,

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EXHIBIT A
(PROPOSED ORDER)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:

BIRD GLOBAL, INC., *et al.*,²

Debtors.

Chapter 11 Cases

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(Jointly Administered)

**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN TO THE
PURCHASER'S ASSIGNEE THE SCOOTER PARTNERSHIP AGREEMENT
BETWEEN LYFT BIKES AND SCOOTERS, LLC AND SKINNY LABS, INC.,
AS AMENDED, EFFECTIVE AS OF MARCH 22, 2024**

THIS MATTER came before the Court for a hearing on _____ at ____:____
a.m./p.m. in Miami, Florida (“Hearing”) upon the *Debtors’ Motion for Entry of an Order
Authorizing the Debtors to Assume and Assign to the Purchaser’s Assignee the Scooter
Partnership Agreement Between Lyft Bikes and Scooters, LLC and Skinny Labs, Inc., as amended,
Effective as of March 22, 2024* [ECF No. ____] (the “Motion”). The Motion seeks authority to

² The address of the Debtors is 392 Northeast 191st Street, #20388, Miami, FL 33179. The last four digits of the Debtors’ federal tax identification numbers are: (i) Bird Global, Inc. (3155); (ii) Bird Rides, Inc. (9939); (iii) Bird US Holdco, LLC (8390); (iv) Bird US Opco, LLC (6873); and (v) Skinny Labs, Inc. (8176).

assume and assign, effective as of March 22, 2024, the Contract³ to the Purchaser as more fully described in the Motion. Having considered the Motion and having heard argument of counsel, the Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (iii) the relief requested in the Motion represents a decision made well within the scope of the Debtors' sound business judgment and is in the best interests of the Debtors, their estates, and their creditors, (iv) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary, (v) the Debtors and the Purchaser have satisfied the requirements of section 365 of the Bankruptcy Code in connection with the proposed assumption and assignment of the Contract to the Purchaser, and (vi) upon review of the record before the Court, including the legal and factual bases set forth in the Motion and the record of the hearing, good and sufficient cause exists to grant the relief requested in the Motion. Accordingly, it is

ORDERED that:

1. The Motion is **GRANTED**.
2. The Debtors are authorized to assume and assign the Contract to the Purchaser, which assumption and assignment is **APPROVED** effective on March 22, 2024.
3. Pursuant to and in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to the Contract.
4. The assumption and assignment of the Contract to the Purchaser hereunder is and shall be free and clear of any and all liens, claims, liabilities, encumbrances, and other interests.

³ Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Motion.

5. The Court retains jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

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Submitted by:
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(Attorney Avron is directed to serve this order upon all non-registered users who have yet to appear electronically in this case and file a conforming certificate of service.)