

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	
	§	
SCHLOTZSKY’S, INC., <u>et al.</u>	§	CHAPTER 11
	§	
Debtors.	§	Case No. 04-54504 (lmc)
	§	Jointly Administered

ORDER (i) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (ii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (iii) GRANTING RELATED RELIEF

Upon the motion (the “Amended Amended 363/365 Motion”)¹ of Schlotzsky’s, Inc. (“SI”), Schlotzsky’s Restaurants, Inc. (“Restaurants”), Schlotzsky’s Real Estate, Inc. (“Real Estate”), Schlotzsky’s Franchisor, LLC (“Franchisor”), Schlotzsky’s Franchise Operations, LLC (“Franchise Operations”), and Schlotzsky’s Brand Products, LLC (“Brand Products”), DFW Restaurant Transfer Corp. (“DFW”), 56th and 6th, Inc. (“56th and 6th”), RAD Acquisition Corp.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Amended 363/365 Motion.

(“RAD”), and San Felipe, LLC (“San Felipe”), each a debtor and debtor-in-possession (collectively, “Schlotzsky’s,” the “Debtors,” or the “Sellers”), pursuant to Sections 105, 363, 365 and 1146 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq., (the “Bankruptcy Code”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for order (i) authorizing and approving the sale of substantially all of the assets of the Debtors (collectively, the “Sale Assets”) pursuant to a Purchase and Sale Agreement among the Debtors and Buyer dated _____, 2004, (the “Asset Purchase Agreement”) free and clear of all liens, claims and encumbrances (except as otherwise set forth in the Asset Purchase Agreement), (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases and (iii) granting related relief (the “Order”); and it appearing that due notice of the Amended 363/365 Motion was given; and such notice being good and sufficient; and a hearing to consider approval of the Amended 363/365 Motion having been held on December __, 2004 (the “Sale Hearing”); and upon the record made at the Sale Hearing; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED, that

Jurisdiction

A. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections 105, 363, 365 and 1146 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Bankruptcy Rules.

Notice

B. Due notice of this Order, the proposed sale of the Sale Assets, through Auction, and of the assumption and assignment of certain executory contracts and unexpired leases pursuant to the Asset Purchase Agreement, the Amended 363/365 Motion, and the Sale Hearing has been given to all parties entitled thereto, as evidenced by the affidavits of service filed with the Court; and the Debtors have complied with all of the procedures for notice of the Amended 363/365 Motion and the Sale Hearing as approved by the Court. Such notice constitutes appropriate and adequate notice to all parties-in-interest under the circumstances and complies with Section 102(l) of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules. No other or further notice of the Amended 363/365 Motion, the Sale Hearing, or the entry of this Order is necessary.

C. Under the circumstances, a reasonable opportunity to object or be heard regarding the relief requested in the Amended 363/365 Motion has been afforded to all interested entities.

Objections; Other Bidders

D. Objections to the Amended 363/365 Motion were filed by _____. Such objections have been resolved as described on the record of the Sale Hearing, voluntarily withdrawn or are otherwise overruled. Additionally, no counter-party to any of the executory contracts or unexpired leases proposed to be assumed in the Amended 363/365 Motion objected to the proposed assumption and assignment or disputed the “Cure Amounts” set forth on *Exhibit C* to the Amended 363/365 Motion, save and except for _____. The _____ objection has been resolved as follows: _____. There were no Qualified Bids for the purchase of

the Sale Assets [or the Buyer was the Successful Bidder at the Auction]. Secured Creditors and other entities have been afforded a reasonable opportunity to bid for the Sale Assets.

Justification for Sale

E. The Debtors have established sound business justifications in support of the proposed sale of the Sale Assets to Buyer. Such business justifications include, but are not limited to, the facts that (i) the Debtors marketed the Sale Assets extensively, (ii) the Debtors have attempted in good faith to maximize the value of the transaction and (iii) the consideration to be received is reasonable and resulted from good faith, arm's length, bona fide negotiations. The Buyer has demonstrated the ability to provide adequate assurance of future performance as to Assumed Contracts and to satisfy Allowed Cure Amounts (each as defined below).

F. The transactions contemplated by the Amended 363/365 Motion, as approved and implemented by this Order, are in compliance with and satisfy all applicable provisions of the Bankruptcy Code including, without limitation, Sections 363(b), (f), and (o) and Section 365. The terms and conditions of the sale of the Sale Assets and the other transactions approved by this Order and contemplated by the Asset Purchase Agreement, are fair and reasonable. The sale of the Sale Assets outside of a plan of reorganization pursuant to the Asset Purchase Agreement is reasonable and appropriate under the circumstances and does not impermissibly dictate the terms of any such plan.

G. The sale of the Sale Assets to Buyer for the consideration set forth in the Asset Purchase Agreement is in the best interest of the Debtors' estates, their creditors and all parties-in-interest. The total consideration to be received by the Debtors pursuant to the Asset Purchase Agreement is fair and reasonable.

Good Faith

H. The Asset Purchase Agreement was entered into by the parties in good faith, from arm's length bargaining positions and without collusion. Neither the Debtors nor Buyer engaged in any conduct that would prevent the application of Section 363(m) of the Bankruptcy Code or cause the application of Section 363(n) of the Bankruptcy Code to these transactions. Consequently, Buyer is a good faith Buyer under Section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. The Sale Assets are reasonably equivalent in value to the consideration that will be paid by Buyer.

I. In the absence of a stay pending appeal, if any, Buyer will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement pursuant to this Order at any time after the entry of this Order.

Corporate Authority; Consents and Approvals

J. The Debtors have full corporate power and authority to execute the Asset Purchase Agreement, any related agreement and all other documents contemplated by the Asset Purchase Agreement or such other related agreement as they or Buyer deem necessary or appropriate to effectuate any of the transactions contemplated thereby, and the sale, transfer and conveyance of the Sale Assets by the Debtors has been duly and validly authorized by all necessary corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement. No consents or approvals, other than this Order and those as may be expressly provided for in the Asset Purchase Agreement, are required for the Debtors to consummate such transactions.

K. The transfers of the Sale Assets by the Debtors to Buyer (a) are or will be legal, valid and effective transfers of the Sale Assets to the Buyer, and (b) vest or will vest Buyer with all right, title and interest of the Debtors in and to the Sale Assets as of the date of the closing of the sale free and clear of all liens and claims pursuant to Bankruptcy Code §§ 363(b) and (f) except as otherwise provided in the Asset Purchase Agreement.

**BASED UPON THE FOREGOING, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED THAT**

1. The Amended 363/365 Motion shall be, and hereby is, granted in its entirety. All objections to the Amended 363/365 Motion that were not withdrawn or settled on the record of the Sale Hearing are hereby overruled in their entirety.

Sale of Assets Free and Clear

2. The Asset Purchase Agreement and each of its terms and conditions shall be, and hereby are, approved in their entirety. The sale of the Sale Assets to Buyer free and clear of all liens, claims and encumbrances, except as provided for in the Asset Purchase Agreement, is hereby authorized under Sections 363(b) and (f) and 365 of the Bankruptcy Code. The Debtors are hereby authorized to execute, deliver, implement and fully perform the Asset Purchase Agreement, together with all additional instruments and documents which may be reasonably necessary, convenient or desirable to implement the terms of the Asset Purchase Agreement, and to take any and all further actions as may be necessary or appropriate to perform the obligations, and effectuate the transactions contemplated by the Asset Purchase Agreement. In the event that the Buyer and the Debtors agree in writing to waive the condition contained in the Asset Purchase Agreement that the sale of the Sale Assets to the Buyer close no later than ____ Central Time on December 31, 2004 (and neither the Buyer nor the Debtors shall

be under any obligation to waive such condition), the parties shall nonetheless be authorized to consummate the sale without further order of this Court on the express condition that all other terms and conditions of the Asset Purchase Agreement not be altered in any respect; provided, however, that notwithstanding any such waiver, if any, in no event shall the sale of Sale Assets to the Buyer close later than February 28, 2004 unless otherwise ordered by the Court. Subject to the fulfillment of the terms and conditions of the Asset Purchase Agreement, on the closing date, the Debtors will transfer, assign and convey to Buyer all of the Debtors' rights, title, and interests in and to the Sale Assets. The Debtors are authorized and empowered to enter into such agreements and to deliver on the closing date (and thereafter as requested by Buyer) bills of sale, assignments and other such documentation that may be necessary or reasonably requested by Buyer to evidence or effectuate the transfers contemplated in the Asset Purchase Agreement and this Order.

3. Pursuant to Sections 105(a), 363(b), (e) and (f) and 365 of the Bankruptcy Code, on the closing date, the Sale Assets and all of the Debtors' rights, title, and interest therein shall be transferred to and vested in Buyer in accordance with the Asset Purchase Agreement free and clear of all pre- and post-Petition Date liens, claims, interests and encumbrances (except as otherwise set forth in the Asset Purchase Agreement). All such liens, claims, interests and encumbrances shall be released, terminated, and discharged as to the Sale Assets, and all such claims, interests, encumbrances and liens shall attach to the proceeds ("Proceeds") of the sale of the Sale Assets, provided, however, that upon satisfaction of the terms as set forth in the Asset Purchase Agreement including, but not limited to, that (i) the transaction as contemplated by the Asset Purchase Agreement must close and payment of _____ be indefeasibly transferred and received by the Debtors on or before _____ a.m. Central Time

on **December 31, 2004** (the “Closing Date”) unless extended and (ii) the necessary closing documentation shall have been executed and delivered on the Closing Date.

4. All persons and entities holding liens, claims, interests or encumbrances of any kind or nature with respect to the Sale Assets are hereby forever barred and permanently enjoined from asserting such liens, claims, interests and encumbrances of any kind or nature against the Sale Assets or Buyer, or its successors, assigns, or affiliates. All persons and entities holding liens, claims, interests or encumbrances of any kind or nature with respect to the Sale Assets are hereby directed to execute and deliver all additional instruments and documents which Buyer may deem reasonably necessary, convenient or desirable to evidence the sale of the Sale Assets free and clear of all liens, claims, interests and encumbrances, including, without limitation, termination statements on form UCC-3 and releases of liens.

Assumption and Assignment of Executory Contracts and Unexpired Leases

5. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Debtors shall be, and hereby are, authorized to assume, sell and assign to Buyer the Assumed Contracts listed on *Exhibit C* to this Order, pursuant to the terms and provisions of the Asset Purchase Agreement. Because there have been no timely objections by any counter-parties to such Assumed Contracts, the Cure Amounts set forth on *Exhibit C* shall be deemed the only Cure Amounts due and owing to the non-Debtor parties to the Assumed Contracts (the “Allowed Cure Amounts”).
6. Upon the entry of this Order and the Closing Date, Buyer shall succeed to the entirety of the Debtors’ rights and obligations in the Assumed Contracts from and after the Closing Date and shall have all rights thereunder.

7. To the extent that any Assumed Agreements are subject to a cure (pursuant to Section 365 of the Bankruptcy Code and described in any Order of the Bankruptcy Court relating to such cure liability), the Buyer is hereby directed to pay all Allowed Cure Amounts due and owing to non-Debtor parties to the Assumed Contracts so that all such payments are made promptly after the Closing Date (as defined in the Asset Purchase Agreement) or on such date agreed to between Buyer and the non-Debtor party to an Assumed Contract. The non-Debtor parties to the Assumed Contracts shall be forever barred from claiming or asserting as to Buyer or the Debtors' estates, any amounts other than the Allowed Cure Amounts.
8. The assumption and assignment of each Assumed Contract shall be deemed effective upon the closing of the sale of Sale Assets. Pursuant to Section 365(k) of the Bankruptcy Code, upon assignment of the Assumed Contracts to Buyer, the Debtors and their estates shall be relieved of liability for any breach of the Assumed Contracts after such assignment.

Termination of Employee Benefit Plans

9. The Debtors shall be, and hereby are, authorized but not directed to terminate each of their Employee Benefit Plans effective as of the closing of the sale of the Sale Assets.

Miscellaneous

10. Notwithstanding anything to the contrary that may be contained in the Asset Purchase Agreement, the Sale Assets sold by the Debtors to the Buyer shall not include any of the estates' causes of action or claims under Sections 510, 544, 545 and 547-553 of the Bankruptcy Code (except that causes of action or claims that relate to the Assumed Contracts or the liabilities assumed by Buyer pursuant to Section 2.2 of the Asset Purchase Agreement, other than the kind referred to in Sections 510, 544, 545, 547 and 553 of the Bankruptcy Code, are being sold by the Debtors to the Buyer).

11. Neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the foregoing provisions hereof; provided, however, that this decretal paragraph shall not (i) excuse such parties from performing any and all of their respective obligations under the Asset Purchase Agreement and any other documents contemplated to be executed in connection therewith, or (ii) excuse any person or entity from complying with any provision of this Order.
12. Except as expressly permitted or otherwise specifically provided by the Asset Purchase Agreement or this Order, and only to the fullest extent authorized by applicable law, all persons and entities (and their respective successors and assigns) including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding interests, liens, claims, and/or encumbrances of any kind or nature whatsoever against or in the Debtors or the Sale Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Sale Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Sale Assets to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' interests, liens, claims, or encumbrances against the Buyer, its affiliates, designees, assignees, or successors, its properties, or its Sale Assets. Effective upon the Closing Date, the Buyer shall have no liability for any claims (as defined in Section 101(5) of the Bankruptcy Code) against the Debtors or their estates or interests in the Debtors or their estates, except as expressly

provided in the Asset Purchase Agreement, and only to the fullest extent authorized by applicable law.

13. Except for the liabilities expressly assumed under the Asset Purchase Agreement, and only to the fullest extent authorized by applicable law, the Buyer shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the closing of the sale, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors. Except for the liabilities assumed under the Asset Purchase Agreement, and only to the fullest extent authorized by applicable law, under no circumstances will the Buyer be deemed a successor of or to the Debtors for any Claim or Encumbrance against the Debtors or the Sale Assets, except as set forth in the Asset Purchase Agreement. The sale, transfer, assignment and delivery of the Sale Assets shall not be subject to any such Claims, Encumbrances, liabilities or obligations, except that the Buyer shall assume the Debtors' obligations under the Assumed Contracts to the extent such obligations arise after the Effective Date or as otherwise provided in the Asset Purchase Agreement.
14. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, maritime liens or other documents or agreements evidencing interests with respect to the Debtors or the Sale Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Sale Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Sale Assets and (b) the Buyer and/or the

Debtors are hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all interests, liens, claims, and/or encumbrances in the Sale Assets of any kind or nature whatsoever. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, and local governmental agency, department, or office.

15. All entities who are presently, or on the Closing Date may be, in possession of any of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Buyer on the Closing Date except as may be otherwise directed by the Buyer.
16. The Asset Purchase Agreement and all other documents, agreements, and instruments necessary to effectuate and consummate the transactions contemplated by the Asset Purchase Agreement together with the terms and provisions of this Order, shall be binding upon and shall inure to the benefit of the Debtors, the Buyer and their respective successors and assigns, including, without limitation, any trustee, responsible person, estate administrator, representative or similar person hereinafter appointed for or in connection with any of the Debtors' estates or affairs in this or in any subsequent case under the Bankruptcy Code involving the Debtors.
17. Nothing contained in any Chapter 11 plan of reorganization (or liquidation) confirmed in this case or the order of confirmation confirming any such plan shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.
18. Under no circumstances shall the Buyer or any of its affiliates, designees, assignees, or successors be deemed successors of or to the Debtors for any interests, liens, claims, or encumbrances of any kind or nature whatsoever against or in the Debtors or the Sale Assets,

except as set forth in the Asset Purchase Agreement, and only to the fullest extent authorized by applicable law. The sale, transfer, assignment, and delivery of the Sale Assets shall not be subject to any interests, liens, claims, or encumbrances of any kind or nature whatsoever and any such interests, liens, claims, or encumbrances of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors (except as otherwise ordered and as set forth in the Asset Purchase Agreement, and only to the fullest extent authorized by applicable law). Except as set forth in the Asset Purchase Agreement or this Order, and only to the fullest extent authorized by applicable law, all persons holding interests, liens, claims, or encumbrances of any kind or nature whatsoever against or in the Debtors or the Sale Assets shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such interests, liens, claims, or encumbrances of any kind or nature whatsoever against the Buyer, its property, its affiliates, designees, assignees, or successors, or the Sale Assets with respect to any interests, liens, claims, or encumbrances of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, its estate, officers, directors, shareholders, or the Sale Assets. Following the Closing Date, no holder of any interests, liens, claims, or encumbrances of any kind or nature whatsoever in or against the Debtor or the Sale Assets shall interfere with the Buyer's title to or use and enjoyment of the Sale Assets based on or related to such interests, liens, claims, or encumbrances of any kind or nature whatsoever, or any actions that the Debtors may have taken or may take in its Chapter 11 case, except as set forth in the Asset Purchase Agreement.

19. This Order is a final and enforceable order immediately upon entry. The 10 day stay under Bankruptcy Rules 6004(g) and 6006(d) are hereby waived. To the extent necessary under

Rules 5003, 9014, 9021 and 9022 of the Bankruptcy Rules, the Court expressly find that there is no just reason for delay in the implementation of this Order and expressly (i) directs entry of this Order and (ii) authorizes the Debtors to consummate the transactions as soon as practicable.

20. The failure to specifically include any particular provision of the Asset Purchase Agreement or the related agreements in this Order will not diminish the effectiveness of such provision, it being the intent of this Court that the Asset Purchase Agreement and related agreements and transactions contemplated thereby are authorized and approved in their entirety, provided, however, that in the event of any inconsistency between this Order and the Asset Purchase Agreement, this Order shall control.

21. Headings are included in this Order for ease of reference only.

22. Pursuant to Section 363(m) of the Bankruptcy Code, the reversal or modification of this Order on appeal will not affect the validity of the transfer of the Sale Assets to Buyer, as well as the transactions contemplated or authorized by this Order, unless the same is stayed pending appeal prior to the closing date and the consummation of the transactions authorized by this Order.

23. The provisions of this Order are non-severable and mutually dependent.

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