

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

40-17580

In re:)
)
FANSTEEL INC., *et al.*,¹) 02-CV-44 (JJF)
)
) **Objection Deadline: March 29, 2002 at 4:00 p.m.**
Debtor.) **Hearing Date: Only if Necessary**

NOTICE OF MOTION OF DEBTORS FOR AN ORDER EXTENDING THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE

TO: LANDLORDS OF THE NONRESIDENTIAL REAL PROPERTY AND ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO DEL. BANKR. LR 2002-1 (the "Notice Parties")

PLEASE TAKE NOTICE that on or about March 14, 2002, the debtors and debtors-in-possession (the "Debtors") filed with United States District Court for the District of Delaware, 844 King Street, Wilmington, Delaware 19801 (the "District Court") the **Motion Of Debtors For An Order Extending The Time To Assume Or Reject Unexpired Leases Of Nonresidential Real Property Pursuant To Section 365(d)(4) Of The Bankruptcy Code** (the "Motion"). The Notice Parties were served the Motion on or about March 14, 2002.

PLEASE TAKE FURTHER NOTICE THAT RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN THE MOTION MUST BE IN WRITING, FILED WITH THE DISTRICT COURT, AND SERVED UPON BOTH

¹ The Debtors are the following entities: Fansteel Inc.; Fansteel Holdings, Inc.; Custom Technologies Corp.; Escast, Inc.; Wellman Dynamics Corp.; Washington Mfg. Co.; Phoenix Aerospace Corp.; American Sintered Technologies, Inc.; and Fansteel Schulz Products, Inc.

Wm 5501
Add: Kds Ogema Center

UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M.,
PREVAILING EASTERN TIME, ON MARCH 29, 2002.

**PLEASE TAKE FURTHER NOTICE THAT, IF ANY OBJECTIONS ARE
TIMELY FILED AND SERVED, A HEARING ON THE MOTION WILL BE HELD ON
APRIL 24, 2002, TIME TO BE DETERMINED, BEFORE THE HONORABLE JOSEPH J.
FARNAN, JR., OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
DELAWARE. THE HEARING WILL BE HELD IN COURTROOM 6A, J. CALEB BOGGS
FEDERAL BUILDING, 844 N. KING STREET, WILMINGTON, DELAWARE 19801. ONLY
TIMELY FILED AND RECEIVED WRITTEN OBJECTIONS WILL BE CONSIDERED BY
THE COURT AT THE HEARING.**

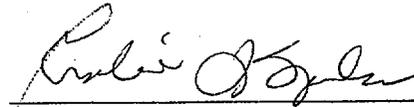
IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN
ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF
REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 15, 2002

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Co-Counsel for the Debtors and
Debtors in Possession

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:)
)
FANSTEEL INC., *et al.*,¹) Case No. 02-CV-44 (JJF)
)
)
Debtors.) **Objections Due: March 29, 2002 at 4:00 p.m.**
) **Hearing Date: Only if necessary**

**MOTION OF DEBTORS FOR AN ORDER EXTENDING THE TIME TO ASSUME OR
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby move (the “Motion”) this Court, pursuant to section 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”), to enter an order granting a 120-day extension of time for the Debtors to assume or reject any leases, subleases or other agreements (the “Real Property Leases”) to which any of the Debtors are a party that may be considered an “unexpired nonresidential real property lease,” through and including the date of July 14, 2002. In support of this Motion, the Debtors respectfully represent as follows:

Status of the Case and Jurisdiction

1. On January 15, 2002 (the “Petition Date”), the Debtors commenced these cases by each filing a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical “first day” orders, including an order to have these cases jointly administered.

¹ The Debtors are the following entities: Fansteel Inc.; Fansteel Holdings, Inc.; Custom Technologies Corp.; Escast, Inc.; Wellman Dynamics Corp.; Washington Mfg. Co.; Phoenix Aerospace Corp.; American Sintered Technologies, Inc.; and Fansteel Schulz Products, Inc.

2. On January 22, 2002, the District Court for the District of Delaware authorized the withdrawal of the reference from the Bankruptcy Court for the entirety of Debtors' chapter 11 cases.

3. The Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors in possession since the Petition Date pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. On January 28, 2002, the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors in these chapter 11 cases.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are § 365(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6006.

Background of the Debtors

6. Fansteel and the other eight Debtors (each a direct or indirect wholly-owned subsidiary of Fansteel) have been engaged for over 70 years in the business of manufacturing and marketing specialty metal products with today's operations being conducted at ten manufacturing facilities (five of which are owned by Fansteel) in nine states.

7. Collectively, Debtors have approximately 1,250 employees, substantially all on a full-time basis, including approximately 365 employees that are working under collective

bargaining agreements with four different unions. Each Debtor is operated separately, with separate employees, separate operations and separately maintained books and records.

**Request for an Extension of the Debtors' Deadline
to Assume or Reject Their Real Property Leases**

8. By this Motion, the Debtors request entry of an order, pursuant to section 365(d)(4) of the Bankruptcy Code, granting a 120-day extension of the sixty-day period to assume or reject non-residential real property leases ("Sixty-Day Period"), which would otherwise have expired on March 16, 2002, through and including July 14, 2002. Such an extension would be subject to and without prejudice to the rights of the Debtors to request a further extension of time to assume or reject the Real Property Leases.

Basis For Relief Requested

9. This Motion is filed pursuant to section 365(d)(4)² of the Bankruptcy Code which permits courts to grant, for cause, extensions of the Sixty-Day Period. See In re Channel Home Centers, Inc., 989 F.2d 682 (3d Cir. 1993), cert. denied, 114 S. Ct. 184 (1993). The primary purpose of section 365(d)(4) is "to protect lessors... from delay and uncertainty by forcing a trustee or a debtor in possession to decide quickly whether to assume unexpired leases." In re American Healthcare Mgmt., Inc., 900 F.2d 827, 830 (5th Cir. 1990). In enacting section 365(d)(4) of the Bankruptcy Code, Congress recognized, "that in some cases sixty days

² Section 365(d)(4) provides:
Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

will not be enough time for bankrupt lessees to decide whether to assume or reject leases. In those circumstances, upon adequate demonstration of cause, bankruptcy courts may grant lessees extensions of time in which to assume or reject.” Id.

10. It is well-established that the factors³ in support of an extension of time under section 365(d)(4) of the Bankruptcy Code include, among others, “whether the debtor has had sufficient time to formulate a plan of reorganization,” In re Burger Boys, Inc., 94 F.3d 755, 761 (2d. Cir. 1996), and “whether the case is exceptionally complex and involves a large number of leases.” In re Victoria Station, Inc., 88 B.R. 231, 236 n.7 (9th Cir. B.A.P. 1988). Indeed, the Third Circuit Court of Appeals recognized that “nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.” In re Channel Home Centers, Inc., 989 F.2d at 689.

11. Numerous courts have granted debtors the extension, under section 365(d)(4) of the Bankruptcy Code, for long periods of time in order to give the debtor more time to analyze its leases in light of the reorganization plan. See, e.g., In re New York Deli, Ltd., 41 B.R. 198 (Bankr. D. Del. 1984) (granting a nine month extension of time to assume or reject leases); In re Victoria Station, Inc., 88 B.R. at 236-37 (granting multiple extensions of time to

³ The legislative history of section 364(d)(4) indicates that the Sixty Day Period “could be extended by the court for cause, such as in exceptional cases involving large numbers of leases.” In re Channel Home Centers, Inc., 989 F.2d at 685 n.2 (citing 130 Cong. Rec. S8894-95, reprinted at 1984 U.S. Code Cong. & Admin. News 576, 598-601 (remarks of Sen. Hatch concerning the bill)).

assume or reject leases). Indeed, this District has uniformly granted such extensions in chapter 11 cases.⁴

12. Since the Petition Date, the Debtors' management and professionals have been consumed with (i) obtaining interim and final approval of the first day motions, including the debtor in possession financing facility, (ii) responding to information requests and concerns of the Committee and various creditor constituencies, and (iii) handling the typical business emergencies that occur immediately following the commencement of a chapter 11 case of a large operating company. As a result, the Sixty-Day Period has not provided a sufficient amount of time for the Debtors to determine whether to assume or reject the Real Property Leases.

13. Pending the Debtors' election to assume or reject the Real Property Leases, the Debtors will perform all of their obligations arising from and after the Petition Date in a timely fashion, including payment of postpetition rent due, as required by section 365(d)(3) of the Bankruptcy Code. As a result, there should be little or no prejudice to the Lessors as a result of the requested extension.

14. For the reasons set forth herein, and given the importance of the Real Property Leases to the Debtors' ongoing operations, the Debtors propose that the deadlines for making these decisions be extended through and including July 14, 2002. The Debtors respectfully submit that the time period extended should be granted subject to and without

⁴ See, e.g., In re Webvan Group, Inc., No. 01-2404 (MFW) (Bankr. D. Del. July 13, 2001); In re Pathmark Stores, Inc., 00-2963 (PJW) (Bankr. D. Del. July 12, 2000); In re Pillowtex, Inc., No. 00-4211 (SLR) (Bankr. D. Del. Jan. 16, 2001); In re The Imperial Home Décor Group, Inc., No. 00-19 (MFW) (Bankr. D. Del. Mar. 15, 2000); In re Purina Mills, Inc., No. 99-3938 (SLR) (Bankr. D. Del. Aug. 31, 1999); In re Montgomery Ward Holding Corp., No. 97-1409 (PJW) (Bankr. D. Del. Aug. 28, 1998).

prejudice to the rights of the Debtors to request a further extension of time to assume or reject the Real Property Leases.

Notice

15. Notice of this Motion has been provided to (i) all of the applicable landlords involving the Real Property Leases; (ii) the Office of the United States Trustee; (iii) counsel to the postpetition lenders; (iv) counsel to the Official Committee of Unsecured Creditors; and (v) those persons who have requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

16. No prior request for the relief sought in this Motion has been made to this or any other Court.

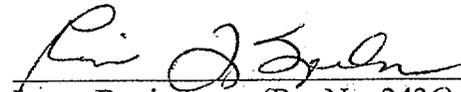
WHEREFORE, the Debtors respectfully request that the Court enter an order: (i) granting the Debtors an extension of time pursuant to 365(d)(4) of the Bankruptcy Code to assume or reject all Real Property Leases through and including July 14, 2002, subject to and without prejudice to the rights of the Debtors to seek further extension of time, and (ii) granting such other and further relief as the Court may deem necessary and proper.

Dated: March 5, 2002

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Co-Counsel to the Debtors and Debtors in Possession

ORDERED that the Debtors' time to elect to assume or reject the Real Property Leases is extended pursuant to section 364(d)(4) of the Bankruptcy Code through and including July 14, 2002; and it is further

ORDERED that entry of this Order shall be subject to and without prejudice to the rights of the Debtors to request a further extension of time to assume or reject the Real Property Leases.

Dated: _____, 2002

The Honorable Joseph J. Farman, Jr.