

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

40-7580

In re:)
)
FANSTEEL INC., *et al.*,¹) Case No. 02-CV-44 (JJF)
)
Debtors.)

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.

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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.

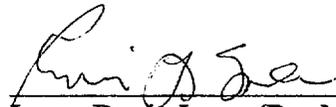
WHEREFORE, the Debtors respectfully request that the Court enter an order: (i) granting the Debtors an extension of time pursuant to 365(d)(4) of the Bankruptcy Code to assume or reject all Real Property Leases through and including July 14, 2002, subject to and without prejudice to the rights of the 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 7, 2002

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Co-Counsel to the Debtors and Debtors in Possession

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:)
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) Case No. 02-CV-44 (JJF)
FANSTEEL INC., *et al.*,¹)
)
Debtors.)

**ORDER GRANTING EXTENSION OF TIME TO ASSUME OR
REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the "Motion") of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for entry of an order pursuant to section 365(d)(4) of the Bankruptcy Code,² extending the time to assume or reject unexpired nonresidential real property leases; and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C §§ 157 and 1334; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and appearing that this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interest of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Motion is granted; and it is further

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 Capitalized terms not defined herein shall have the same meaning as in the Motion.

Fansteel Additional Service List
Document No. 42873
All Service by First Class Mail

Schulz Family Trust
John Schulz
3570 San Pasqual
Pasadena, CA 91107

Schulz Family Trust
Doris Schulz
3444 San Pasqual
Pasadena, CA 91107

Schulz Family Trust
Marilyn Schulz
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Pasadena, CA 91107

Glendale Office Park
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Northbrook, IL 78680

Elgin Joliet Eastern Railway
P.O. Box 360931
Pittsburgh, PA 15251-6931

Chambersburg Engineering Co.
150 Derbyshire Street
Chambersburg, PA 17201

Catellus Development Corp.
File #1918

PO Box 61000
San Francisco, CA 94161-1918

L.A. Machinery Moving
214 S. 9th Avenue
City of Industry, CA 91746

Mammoet Western
1419 Potrero Avenue
South El Monte, CA 91733

Mechanical & Machine Repair Services
10584 Silicon Avenue
Montclair, CA 91763

Bill & Patsy Cale
3504 River Oaks Drive
Muskogee, OK 74401

Ridge Realty Group
257 East Main Street
Barrington, IL. 60010

RLB Truck Leasing
2730 West Trio Lane
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