

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

40-7580

In re:)	Chapter 11
)	
FANSTEEL INC., <i>et al.</i> ,)	Case No. 02-10109(JJF)
)	
Debtors.)	(Jointly Administered)
)	
)	Objection Deadline: August 14, 2002 at 4:00 p.m.

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION
TO DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS
TO ASSUME MOCNIAK CONFIDENTIAL SEVERANCE AGREEMENT AND
MUTUAL RELEASE [DOCKET NO. 359]**

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of Fansteel Inc., *et al.*, (the "Debtors"), by its attorneys, submits this objection (the "Objection") to the Debtors' Motion for Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release (the "Motion") [Docket No. 359]. In support of the Objection, the Creditors' Committee respectfully states as follows:

FACTUAL BACKGROUND

1. Seven months before the Debtors filed for bankruptcy, on June 24, 2001, Michael Mocniak ("Mocniak"), the former Vice President and General Counsel of Fansteel, Inc. ("Fansteel"), voluntarily resigned and entered into a Confidential Severance Agreement and Mutual Release (the "Agreement") with Fansteel. The Agreement was for a thirteen-month period ending on July 24, 2002 (the "Severance Period") during which time Mocniak would continue to receive his base salary and certain other benefits. In exchange for these benefits, Mocniak would provide consulting services not to exceed twenty hours a month if requested by Fansteel. The Agreement terminated by its own terms on July 24, 2002. One day after the

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Agreement terminated, on July 25, 2002, the Debtors' moved for an Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release.

THE AGREEMENT IS NOT AN EXECUTORY CONTRACT

2. A contract is only executory within the meaning of section 365(c) of the Bankruptcy Code if both the debtor and the other contracting party have remaining performance obligations. See In re Columbia Gas System, Inc., 50 F.3d 233, 239 (3d Cir. 1995); In re Access Beyond Tech., 237 B.R. 32, 43 (Bankr. D. Del. 1999). In circumstances where the nonbankrupt party has fully performed under a contract, it makes no sense to assume the contract. In re Columbia, 50 F.3d at 239.

3. In this case, Mocniak has fully performed his obligations under the Agreement. Under the terms of the Agreement, Mocniak was legally obligated, if requested by the Debtors, to consult and cooperate "...concerning matters in which Employee (Mocniak) was involved during the course of his employment by the Company (Fansteel), whether in connection with litigation with respect to matters or otherwise;...". (Agreement at ¶ 8). However, Mocniak was only required to perform consulting services to Fansteel during the "Severance Period". Under the terms of the Agreement, Mocniak's legal obligations to provide consulting services to Fansteel expired under its own terms on July 24, 2002. The Agreement defines the "Severance Period" as "thirteen (13) months following the Termination Date" of June 24, 2001 (Agreement at ¶ 2(e)). Moreover, the Debtors have not presented any evidence that Mocniak's performance obligations under the Agreement extended beyond July 24, 2002. Accordingly, Mocniak has fully performed his obligations under the Agreement and the Agreement is no longer an executory contract subject to assumption by the Debtors pursuant to section 365 of the Bankruptcy Code.

ASSUMPTION OF THE AGREEMENT BY THE DEBTORS DOES NOT BENEFIT THE ESTATE

4. In support of the Motion, the Debtors assert that it is in the best interest of the Debtors and their estates to assume the Agreement because assumption of the Agreement by “the Debtors will enhance the Debtors’ ongoing viability and reorganization efforts.” (Motion at ¶ 24). However, in circumstances where the nonbankrupt party has fully performed under the contract, assumption of the contract by the debtor would be of no benefit to the debtor’s estate, “serving only to convert the nonbankrupt’s claim into a first priority expense of the estate at the expense of other creditors.” In re Columbia, 50 F.3d at 239.

5. These exact circumstances exist in this case. Because Mocniak has fully performed his duties pursuant to terms of the Agreement, assumption of the Agreement by the Debtors provides no benefit to the Debtors’ estate or the Debtors’ creditors. The Debtors vaguely allege that Mocniak’s experience and expertise are necessary in dealing with the Nuclear Regulatory Commission (Motion at ¶¶ 6, 25). However, even if the Agreement is assumed, the consulting period expired on July 24, 2002. Moreover, the Debtors already are paying Winston & Strawn hundreds of thousands of dollars to work with the Nuclear Regulatory Commission. Given the amount of legal fees incurred to date, there is no justification for adding another lawyer now. In short, assumption of the Agreement will accomplish nothing more than the depletion of valuable estate assets to the detriment of the Debtors’ creditors. If the Court were to grant the Motion, the Debtors would be required to pay Mocniak almost \$145,000 and in return, the Debtors’ creditors would receive no benefit since Mocniak has fully performed his obligations under the Agreement.

6. The Debtors fail to state any legal basis for this Court to grant the Motion. The Debtors seek to assume an agreement that already has expired and provides no benefit to the Debtors' estate or the creditors. Mocniak has fully performed his legal obligations under the terms of the Agreement, assumption of the Agreement by the Debtors would deplete valuable assets of the Debtors' estate, and the Debtors' creditors would derive no benefit from the assumption of the Agreement.

CONCLUSION

7. The Debtors have provided no legal or practical reason for assuming the expired Mocniak Agreement. The only party who will benefit from assumption is Mocniak, whose prepetition claim will be paid in full while all other prepetition claims go unpaid. For all the foregoing reasons, the Official Committee of Unsecured Creditors of Fansteel, Inc., respectfully requests that this Court enter an order denying the Debtors' Motion for Order Authorizing the Debtors to Assume Mocniak Confidential Severance Agreement and Mutual Release, and granting such other and further relief as is just.

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