

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

40-7580

In re:) Chapter 11)
)
FANSTEEL INC., et al.,¹) Case No. 02-10109 (JJF)
) (Jointly Administered))
)
Debtors.)

Objection Deadline: November 12, 2002 at 4:00 p.m.
Hearing Date: TBD, Only if objections are timely filed

**NOTICE OF MOTION FOR ENTRY OF ORDER
AUTHORIZING ASSUMPTION OF AMERICAN EXPRESS
EXECUTORY CONTRACT UNDER 11 U.S.C. §§ 365(a) AND 105(a)**

TO: ALL PARTIES REQUIRED TO RECEIVE NOTICE PURSUANT TO
DEL. BANKR. LR 2002-1.

The captioned debtors and debtors in possession (collectively, the "Debtors")
filed the attached "*Motion For Entry Of Order Authorizing Assumption Of American Express
Executory Contract Under 11 U.S.C. §§ 365(a) and 105(a)*" (the "Motion") with the United
States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, DE 19801
(the "Bankruptcy Court"). The Motion seeks entry of an order authorizing the assumption of
American Express executory contract under 11 U.S.C. §§ 365(a) and 105(a). Objections and
responses to the Motion, if any, must be in writing and filed with the Bankruptcy Court no later
than 4:00 p.m. on November 12, 2002. At the same time, you must also serve a copy of the
objection or response on the undersigned Debtors' counsel.

DMS,SOI Add: Kids Ogcmail Center

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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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11)
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FANSTEEL INC., *et al.*,¹) Case No. 02-10109 (JJF)
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Debtors.)

Objection Deadline: November 12, 2002 at 4:00 p.m.
Hearing Date: TBD, Only if objections are timely filed

**MOTION FOR ENTRY OF ORDER AUTHORIZING ASSUMPTION OF AMERICAN
EXPRESS EXECUTORY CONTRACT UNDER 11 U.S.C. §§ 365(a) AND 105(a)**

The above-captioned debtors and debtors in possession (“Debtors”) hereby move the Court (the “Motion”) for entry of an order authorizing the Debtors to assume the American Express Executory Contract (as defined herein) under 11 U.S.C. §§ 365(a) and 105(a). In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This 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 relief are 11 U.S.C. §§ 365(a) and 105(a).

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.

Background

The Bankruptcy Filing

2. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"). The Court has entered an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") directing that the Debtors' separate chapter 11 cases (the "Cases") be procedurally consolidated and jointly administered by this Court.

3. The Debtors continue to manage their respective properties and operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On January 29, 2002, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") for the Cases. No trustee or examiner has been appointed in any of the Cases.

The American Express Contract

4. On September 26, 2001, the Debtors entered into a "Sales and Use Tax Reduction Proposal" (the "Contract") with American Express Tax and Business Service, Inc. ("American Express"), a copy of which is attached hereto as Exhibit A.

5. Under the Contract, American Express is engaged by the Debtors as a sales and use tax consultant whereby American Express reviews and identifies possible overpayments, refunds, credits and tax savings for the Debtors. If no refunds, credits or other sales and use tax savings are realized, there is no charge for the American Express services.

However, if refunds, credits or other sales and use tax savings are realized by the Debtors, the American Express fee is 40% of the amount realized.²

6. From January 23, 2002 to February 25, 2002, American Express performed services in connection with the realization of a tax refund in the amount of \$80,029.37 from the Iowa Department of Revenue for Wellman Dynamics Corporation, a debtor in these Cases. Pursuant to the Contract, American Express is owed 44% of the amount realized, or \$32,011.75.

Relief Requested

7. By this Motion, Debtors request entry of an order assuming the Contract under 11 U.S.C. §§ 365(a) and 105(a).

8. As there are no novel issues of law presented herein, Debtors waive their right to file a brief in support of the Motion pursuant to D. Del. L.R. 7.1.2(a), incorporated by reference into the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware by Del. Bankr. L.R. 1001-1(b). Because of the nature of the relief requested in this Motion, the Debtors believe that no briefing is required.

Assumption of the Contract

9. The Debtors have determined, in their business judgment, that the Contract is beneficial to the estates, and that assumption of the Contract: (1) will lead towards the successful reorganization of these estates and (2) is in the best interests of the estates and their creditors.

² See Exhibit A for a more detailed description of the fee arrangement and services rendered under the Contract.

10. It is well established that the Debtors may exercise their business judgment to assume executory contracts or unexpired leases that are useful or necessary to the bankruptcy estate. The Bankruptcy Code provides that “the trustee, subject to the court’s approval, may . . . assume any . . . executory contract of the debtor.” 11 U.S.C. § 365(a). Courts utilize the business judgment standard to determine whether to approve the assumption or rejection of a contract or lease. Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.; (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); In re ANC Rental Corp., Inc., 277 B.R. 226, 238 (Bankr. D. Del. 2002) (debtor/car rental company used sound business judgment for assuming and assigning contracts resulting in expense reductions of almost \$4.5 million).

11. The relief requested in this Motion is also authorized by Bankruptcy Code section 105(a) which provides that . . . “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of Bankruptcy Code section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, 105.01, at 105-06 (15th ed. rev. 1999). Thus, section 105 essentially codifies the Bankruptcy Court’s inherent equitable powers. See Management Tech. Corp. v. Pardo (In re Management Tech. Corp.), 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (indicating that court’s equitable powers are derived from § 105). Based thereon, the Debtors respectfully request that they be authorized to assume the Executory Contract.

Notice

12. Notice of this Motion has been given to all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy 2002-1(b). In light of the nature of the relief requested, the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, authorizing the assumption of the Contract; and granting such other and further relief as the Court may deem just and proper.

Dated: October ____, 2002

SCHULTE ROTH & ZABEL LLP
Jeffrey S. Sabin (JSS-7600)
Michael R. Mitchell (MRM-9279)
919 Third Avenue
New York, NY 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955

and

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.

Laura Davis Jones (Bar No. 2436)
Hamid Rafatjoo (CA Bar No. 181564)
Rosalie L. Spelman (Bar No. 4153)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and
Debtors in Possession

IF YOU FAIL TO RESPOND OR OBJECT IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

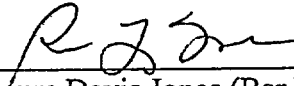
A HEARING ON THE MOTION WILL BE HELD AT THE COURT'S CONVENIENCE ONLY IF OBJECTIONS OR RESPONSES ARE TIMELY FILED.

Dated: October 23, 2002

SHULTE ROTH & ZABEL LLP
Jeffrey S. Sabin (JSS-7600)
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Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A



**Tax & Business
Services**

September 23, 2002

American Express
Tax and Business Services Int
Suite 800
One South Wacker Drive
Chicago, IL 60606-3392
Bus: 312.634.3400
Fax 312.634.3410

Via Facsimile 847.689.1816

Mr. Michael McEntee
Chief Financial Officer
Fansteel, Inc.
Number One Tantalum Place
North Chicago, IL 60064

RE: Invoice Number ACHG70904

Dear Mike:

As discussed, attached is a copy of our engagement letter and invoice dated April 16, 2002 in the amount of \$32,011.75. Additionally, a chronology of key events which led to our invoice, per our engagement letter, is as follows:

- January 23, 2002- Refund claims were filed by our office with the Iowa Department of Revenue.
- February 14 - 22, 2002: Various communications by our office with the Iowa Department of Revenue regarding refund claims.
- February 25, 2002: Refund checks in the amount of \$80,029.37 were issued by the Iowa Department of Revenue. (We were notified of this on April 5, 2002, resulting in our invoice dated April 16, 2002.)

Thank you for your attention to this matter. Please contact me at 312.634.4496 if you require additional information or assistance.

Very truly yours,

Ned R. Leiby
Managing Director

Sales and Use Tax Reduction Proposal

We are pleased to offer our services as sales and use tax consultants to PANSTEEL/ENCASIT INC. This letter confirms the terms and objectives of our engagement, the nature and limitations of the services provided by us and your required involvement and assistance in support of our services.

We will perform a review of your sales and use tax compliance solely for the purpose of identifying and assisting you in the realization of the tax savings arising from our identification of overpayments, refunds, credits and future tax savings. We do not guarantee that refunds or reductions will be realized.

You confirm that no other individual(s) or organization is now engaged by you to perform a sales and use tax reduction study and agree to provide us with all information including tax returns, tax audit reports or notices of deficiency, purchase invoices and similar and related documents as may be requested during the course of our survey.

Our fee is calculated as follows:

- If no refunds, credits or other sales and use tax savings are realized, there will be no charge for our services.
- If a refund, credit or other sales and use tax savings is realized, our fee will be 40% (forty-percent) of the sales and use tax savings realized (including interest and penalty savings related to refunds or reductions).

Payment of fee will be due within fifteen (15) days of realization of such reductions, refunds or credits. With respect to prospective savings, our fee will be based on actual savings throughout the twelve (12) month period and will be due within fifteen (15) days from the date such savings are periodically determined by American Express Tax and Business Services Inc. Any amount sixty (60) days past due will be assessed interest at one-and-one-half percent (1.5%) per month. It is understood that the identification of underpayments and/or imposition of deficiencies by a taxing authority is outside the scope of the engagement and related fee structure.

If the foregoing is in accordance with your understanding and acceptable, please indicate below as your organization's authorized representative.

Accepted by:

Wellman Dynamics Corporation
Company Name

By: [Signature]

Title: Controller

Date: 9-26-01

American Express
Tax and Business Services, Inc.

By: [Signature]

Date: 9/26/01



**Tax & Business
Services**

One South Wacker Drive, Chicago, IL 60606-3392
Bus: 312.634.3400 800.621.0373 Fax: 312.634.3410

033052 / 238980

April 16, 2002

Fansteel Wellman Dynamics
Ms. Dana Tank
1746 Commerce Road
Creston, IA 50801

Invoice No: ACHG70904

For professional services:

In connection with TaxBack sales/use tax review and Iowa refund claims (detail attached)

\$32,011.75

Amount Due

\$ 32,011.75

*Invoices are due upon receipt. Past due amounts are subject to interest at 1.5% per month for all amounts not paid within 60 days of our original billing. Please remit to American Express Tax and Business Services Inc.
FEIN: 41-1795707*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
FANSTEEL INC., *et al.*,¹) Case No. 02-10109 (JJF)
) (Jointly Administered)
)
Debtors.)

**ORDER AUTHORIZING ASSUMPTION OF AMERICAN EXPRESS
EXECUTORY CONTRACT UNDER 11 U.S.C. §§ 365(a) AND 105(a)**

Upon the motion (“Motion”) of the debtors and debtors in possession in the above-captioned case (“Debtors”), seeking entry of an order authorizing the Debtors to assume the American Express Executory Contract² under 11 U.S.C. §§ 365(a) and 105(a); and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and notice having been given to all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy 2002-1(b); and after due deliberation and good cause appearing therefore; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors may assume the Contract and make any payments thereunder; 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 Defined terms have the meanings ascribed to them in the Motion.

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

Dated: _____, 2002

The Honorable Joseph J. Farnan, Jr.
United States District Court Judge