

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.)

40-7580

Objection Deadline: November 18, 2002 at 4:00 p.m.
Hearing Date: TBD, Only if objections are timely filed

**NOTICE OF MOTION FOR ORDER DISMISSING
FANSTEEL SCHULZ PRODUCTS, INC. CASE NO. 02-10116
PURSUANT TO 11 U.S.C. § 305(a)(1) CONTINGENT UPON, AND
SIMULTANEOUSLY WITH, CLOSING OF STOCK PURCHASE AGREEMENT**

TO: (I) ALL CREDITORS LISTED ON THE SCHULZ SCHEDULES AND/OR WHO FILED A PROOF OF CLAIM IN THE SCHULTZ BANKRUPTCY CASE; (II) ALL TAXING AUTHORITIES FOR DEBTORS IN THESE PROCEDURALLY CONSOLIDATED CASES, (III) ALL SECURED CREDITORS FOR DEBTORS IN THESE PROCEDURALLY CONSOLIDATED CASES, (IV) ALL PARTIES REASONABLY ASCERTAINABLE TO BE INTERESTED IN PURCHASING THE CAPITAL STOCK OF SCHULZ, (V) THE PENSION BENEFIT GUARANTY CORPORATION, (VI) CONGRESS FINANCIAL CORPORATION (CENTRAL), (VII) INTERESTED PARTIES TO CERTAIN SCHEDULED ENVIRONMENTAL MATTERS, (VIII) LINCOLN PARTNERS LLP, (IX) LANDLORDS TO A CERTAIN SCHULZ LEASE, (X) THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND (XI) THE OFFICE OF THE UNITED STATES TRUSTEE

Fansteel Schulz Products, Inc. one of the captioned debtors and debtors in possession (the "Debtor") filed the attached "*Motion for Order Dismissing Fansteel Schulz Products, Inc. Case No. 02-10116 Pursuant To 11 U.S.C. § 305(A)(1) Contingent Upon, And Simultaneously With, Closing Of Stock Purchase Agreement*" (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, DE 19801

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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(the "Bankruptcy Court"). 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 18, 2002. At the same time, you must also serve a copy of the objection or response on the undersigned Debtor's counsel.

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 A TIME TO BE DETERMINED BY THE COURT. YOU WILL RECEIVE FURTHER NOTICE OF THE TIME AND PLACE OF THE HEARING.

Dated: November 1, 2002

SHULTE 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.

/s/ Rosalie L. Spelman
Laura Davis Jones (Bar No. 2436)
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

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)
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Debtors.)
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) **Objection Deadline: November 18, 2002 at 4:00 p.m.**
) **Hearing Date: TBD**

**MOTION FOR ORDER DISMISSING FANSTEEL SCHULZ PRODUCTS, INC.
CASE NO. 02-10116 PURSUANT TO 11 U.S.C. § 305(a)(1) CONTINGENT UPON,
AND SIMULTANEOUSLY WITH, CLOSING OF STOCK PURCHASE AGREEMENT**

Fansteel Schulz Products, Inc. ("Schulz") one of the debtors and debtors-in-possession in the captioned and jointly administered bankruptcy cases (collectively, "Debtors"), by and through their undersigned counsel, hereby moves (the "Motion") this Court for an order dismissing Schulz's chapter 11 Case No. 02-10116 (the "Schulz Case"), pursuant to 11 U.S.C. § 305(a)(1).² In support of this Motion, Schulz respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction 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 predicate for the relief requested herein is section 305(a)(1) of the Bankruptcy Code.

Background

2. On January 15, 2002 (the "Petition Date"), the debtors and debtors-in-possession, including Schulz, (collectively, 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

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 This motion is filed in connection with "Motion for Orders Under 11 U.S.C. §§ 363 and 1146(c) and Fed. R. Bankr. P. 6004 and 6006: (I) Scheduling Hearing on Approval of Bidding Procedures, and Break-Up Fee and Expense Reimbursement, (II) (A) Approving Bidding Procedures and Break-Up Fee and Expense Reimbursement in Connection with the Proposed Sale of the Shares, (B) Scheduling a Hearing Date, Auction Date and Bidding Deadline in Connection with the Sale of Such Shares, and (C) Approving Form and Manner of Notice thereof; and (III) (A) Approving the Stock Purchase Agreement between Hancock Park Associates and Fansteel Inc., (B) Approving the Sale of the Shares; (C) Determining that such Sale is Exempt From Stamp, Transfer, Recording or Similar Taxes; and (D) Approving Assumption and Assignment of Lease Addendum" dated October 30, 2002 (the "363 Motion"). All terms not defined herein shall have the meanings ascribed to them in the 363 Motion.

Rules"), directing that the Debtors' separate chapter 11 cases (the "Cases") be procedurally consolidated and jointly administered by this Court.

3. The Debtors manage their own properties and operate their own businesses as debtor-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.

4. Schulz is a wholly-owned subsidiary of Fansteel Inc. ("Fansteel").

The Schulz Operations

5. Schulz machines and assembles precision aerospace components in a 9,000 sq. ft. facility in San Gabriel, CA and has operated its current facilities, centrally located in aerospace-rich Los Angeles County, since its inception in 1972.

6. Schulz's nine CNC mills and four CNC lathes are used to machine titanium, steel, aluminum and high temperature alloy products to the tightest standards of the aircraft industry. Components are manufactured from bar stock, plate, castings, and forgings which make the Schulz product line a natural fit with the Fansteel family of companies. The components produced by Schulz are found in the fuel, hydraulic systems, safety systems and structures of some of this country's most advanced fighter and cargo aircraft. Schulz is responsible not only for machining but also the finish and assembly of the components that it manufactures.

7. The machinery of Schulz is well coordinated and all programming is accomplished through a centralized, state-of-the-art CAD system. CAD data can then be translated and directly used to ensure dimensional quality and accuracy by its use in a newly installed Mitutoyo coordinate measuring machine. Schulz' combination of modern methods and machinery, together with an experienced and dedicated work force, produces high quality aerospace components.

Financing and Potential Sales

8. Although the Debtors filed their petitions for relief on January 15, 2002, they were unable to obtain DIP financing until May 2002 because potential DIP lenders were concerned that the rights of the NRC would prime their rights.³ See 363 Motion at ¶ 12-24. Congress Financial Corporation ("Congress") ultimately entered into a DIP Facility with the Debtors under which the Debtors, including Schulz, are jointly and severally liable. Congress has agreed to amend the DIP Facility in order to facilitate the sale of Schulz. See 363 Motion at ¶ 30-35. Currently, there are no drawings under the DIP Facility nor do the Debtors expect to draw any amounts prior to closing the sale of Schulz.

9. Faced with the uncertainty of adequate financing and in order to provide additional funds to meet the Debtors' working capital needs, the Debtors pursued a variety of alternatives to raise cash, including efforts to sell one or more of their divisions. With the help of Lincoln Partners LLP ("Lincoln Partners"), their investment banking firm, Fansteel was able to procure a bid for a sale of its ownership interest in Schulz. See 363 Motion at ¶ 25-29.

10. After extensive negotiations with a variety of potential buyers, Fansteel and Hancock Park Associates ("Proposed Purchaser") entered into a Stock Purchase Agreement for the sale of all the issued and outstanding Shares of capital stock of Schulz for \$2.35 million

³ For example, such concerns specifically were expressed by Foothill Capital Corporation and The CIT Group/Business Credit, Inc., which refused to lend without the affirmative consent of the NRC.

in cash, subject to higher and better offers. Closing on the sale is subject to certain conditions precedent, including the dismissal of the Schulz Case. See 363 Motion at ¶ 28-29.

11. On March 21, 2002, as amended on March 26, 2002, Schulz filed its Schedules of Assets and Liabilities (the "Schedules") with the Court, that listed one unsecured priority claim and approximately 100 unsecured non-priority claims, including an inter-company claim by Fansteel against Schulz in the amount of \$2,915.00 that will be waived by Fansteel at closing. All of the above unsecured claims are listed as non-disputed.

12. Four potential creditors filed timely proofs of claim that were not listed on the Schedules. Two of those claims were filed by taxing authorities and those claims have been paid in the ordinary course of business. The other two claims are disputed.

13. Nine creditors listed in the Schedules timely filed proofs of claim in an amount greater than the amount listed on the Schedules. Those nine claims are disputed. The above referenced Schedule claims and timely filed proofs of claims are hereafter identified as the "Claims". Schedule 4.19 of the Stock Purchase Agreement identifies the Claims, including the designation of each Claim (i.e. disputed or undisputed).

14. The \$2,975,940.00 intercompany receivable for Schulz from Fansteel that is listed in the Schulz Schedules as "Schedule B, Rider B.15-Consolidated Accounts Receivable" will be forgiven at closing and will be considered a deemed distribution against capital accounts.
The Stock Purchase Agreement

15. On October 25, 2002, Fansteel, Schulz and the Proposed Purchaser entered into a Stock Purchase Agreement (the "SPA") for the sale of Fansteel's 100% ownership interest in the capital stock of Schulz. Section 7.02(f) of the SPA provides as a condition precedent to closing that "The Bankruptcy Case with respect to the Company [Schulz] shall have been dismissed as to the Company without prejudice, and the Court shall not have entered an order limiting in any way the Company from filing a petition for voluntary relief under the Bankruptcy Code."

16. As part of the negotiation of the SPA, Schulz and the Proposed Purchaser recognized that under section 305(a)(1) of the Bankruptcy Code, a Court may dismiss a case if "the interests of creditors and the debtor would be better served under this title by such dismissal." Accordingly, Schulz and the Proposed Purchaser crafted the SPA so that the Schulz creditors would not risk recovery, and/or delay the recovery, of their claims under a plan of reorganization and would be "better served" by the expedited settlement of their Claims.

17. Section 10.04(d) of the SPA provides, as a post-closing obligation, that Schulz's creditors will be paid as follows:

The Proposed Purchaser agrees that, within 60 days of the Closing, or such greater period of time that the Court may decide is reasonable, it will use its best efforts to enter into agreements with each creditor identified on Schedule 4.19 attached hereto to settle, compromise and pay, on terms and conditions mutually agreed upon by the Proposed Purchaser and each such creditor, all claims against Fansteel Schulz Products, Inc. set forth on Schedule 4.19, which claims were scheduled or filed as timely proofs of claims in accordance with the bar date order entered by this Court on July 3, 2002, which claims Debtors believe should be allowed, and which claims are not disputed. The Proposed Purchaser reserves the right to dispute in good faith any or all of these claims.

Section 10.04(d).

18. The SPA is fully supported by the Committee.

PBGC Reporting Requirement

19. The Pension Benefit Guaranty Corporation ("PBGC") is a wholly-owned United States government corporation that administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 ("ERISA"). Pension plans are covered by Title IV of ERISA. PBGC has filed a consolidated contingent proof of claim⁴ in connection with its contingent claims that could arise if any of the Debtors' (none of which Pension Plans cover Schulz employees) three defined benefit pension plans ("Pension Plans") were to be terminated. Each of the Debtors, including Schulz, either sponsors one or more of the Pension Plans or is a member of a sponsor's control group.

20. Upon closing of the Sale, Schulz will cease to be part of Fansteel's control group, which may constitute a reportable event under section 4043(c)(9) of ERISA but will not result in a termination. However, under PBGC Reg. § 4043.29(c)(1), notice of the reportable event is waived if the entity leaving the control group represents a de minimis part of that control group.

21. As further described in ¶ 38-40 of the 363 Motion, Schulz meets the waiver requirements based upon Schulz's revenue, annual operating income and its net tangible assets.

Relief Requested

22. Schulz seeks an order dismissing the Schulz Case under 11 U.S.C. § 305(a)(1) because (i) the sale of Schulz is the best interest of the Schulz's creditors and the Schulz's estate and (ii) dismissal of the Schulz Case under section 706(f) of the SPA is a condition precedent to closing. The dismissal is requested to occur contingent upon, and simultaneously with, the closing of the SPA.

Authority

23. Section 305(a)(1) of the Bankruptcy Code provides in relevant part that: The court after notice and a hearing, may dismiss a case under this title, . . . at any time if:

- (1) the interests of creditors and the debtor would be better served under this title by such dismissal.

11 U.S.C. § 305(a)(1).

24. Dismissal of a case under section 305(a)(1) of the Bankruptcy Code is within the sound discretion of the Court. *See, e.g., In re Marker*, 133 B.R. 340 (W.D. Pa. 1991) (dismissal in the interest of creditors and the debtor rests in sound discretion of bankruptcy court); *In re A & D Care, Inc.*, 90 B.R. 138, 141 (Bankr. W.D. Pa. 1988) (the decision to dismiss under § 305(a) is discretionary and must be made on a case-by-case basis.)

⁴ The PBGC proof of claim is contingent upon termination of any of the Debtors' Pension Plans. The Debtors, including Schulz, are jointly and severally liable under the claim.

25. Courts have determined that the test for dismissal under section 305(a)(1) is whether both the debtor and its creditors would be better served by a dismissal. See e.g., In re Lorraine Eastman, 188 B.R. 621, 624-25 (B.A.P. 9th Cir. 1995); see also In re Mazzone, 200 B.R. 568, 575 (E.D. Pa. 1996) (dismissal under section 305(a) of the Bankruptcy Code is appropriate when the interests of the creditors and the debtor are better served by dismissal).

26. Dismissal of the Schulz Case is warranted because Schulz's creditors are "better served" through the timing and settlement of their Claims as provided by the SPA. Claims will likely be settled within sixty days after the closing of the sale. Alternatively, these Claims would most likely remain unsettled until the consummation of the Schulz Case, with creditors exposed to a substantial risk of recovery. In any event, the Proposed Purchaser, as a matter of law, will remain liable for the Claims as a result of its acquired ownership of the stock of Schulz. Moreover, upon settlement of the Claims, Schulz will emerge from bankruptcy as a well capitalized entity, substantially free from debt.

27. In addition, the sale is fully supported by the Committee. Committee support is an important factor in the decision to dismiss a case pursuant to § 305(a)(1). See e.g., In re Rimpull Corp., 26 B.R. 267, 272 (Bankr. W.D. Mo. 1982) (vast majority of creditors accepted and supported out-of-court arrangement was deemed important factor for dismissal); In re Artists' Outlet, 25 B.R. 231, 234 (Bankr. Mass. 1982) (with clear majority (in number) of creditors satisfied with out-of-court arrangement, the court saw no benefit to retain jurisdiction); In re M. Egan Co., 24 B.R. 189, 191 (Bankr. W.D.N.Y. 1982) (noting as a key factor in its decision to dismiss, most creditors had supported dismissal and only 5% objected); In re Bioline Laboratories, Inc., 9 B.R. 1013, 1019-23 (Bankr. E.D.N.Y. 1981) (court repeatedly noted that majority (60%) of creditors supported dismissal as a key factor in its decision to dismiss.)

28. For the above reasons, Schulz and its creditors are "better served" by the dismissal of the Schulz Case. Accordingly, it is in the best interest of Schulz's creditors and the Schulz estate that the Schulz Case be dismissed.

Notice

29. This Motion has been served upon (i) all those creditors who were either listed on the Schulz Schedules and/or who filed a proof of claim in the Schulz bankruptcy case, (ii) all taxing authorities for Debtors in these Cases, (iii) all secured creditors for Debtors in these Cases, (iv) all parties reasonably ascertainable to be interested in purchasing the capital stock of Schulz, (v) the Pension Benefit Guaranty Corporation, (vi) Congress Financial Corporation (Central), (vii) interested parties to certain Scheduled environmental matters in these Cases, (viii) Lincoln Partners LLP, (ix) landlords to a certain Schulz lease and addendum proposed to be assumed and assigned as set forth in the 363 Motion, (ix) the Office of the United States Trustee, (x) the Official Committee of Unsecured Creditors. Debtors submit that such notice is adequate under the circumstances.

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WHEREFORE, Schulz respectfully requests that this Court (a) dismiss Schulz Case No. 02-10116 pursuant to section 305(a)(1) of the Bankruptcy Code contingent upon, and simultaneously with, closing of the SPA, and (b) grant Schulz such other relief as may be appropriate.

Dated: October 31, 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.

/s/ Rosalie L. Spelman

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
the Debtors-in-Possession

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)
) (Jointly Administered)
)
Debtors.)

**ORDER DISMISSING SCHULZ CASE NO. 02-10116
PURSUANT TO 11 U.S.C. § 305(a)(1)**

Upon consideration of the motion (the "Motion")² of Fansteel Schulz Products, Inc. ("Schulz") debtor-in-possession in the above-captioned and jointly administered bankruptcy cases pursuant to Bankruptcy Code section 305(a)(1) for entry of an order dismissing the Schulz Case; and it appearing that the relief requested in the Motion is in the best interests of the Schulz and Schulz's creditors; and due and sufficient notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted in its entirety; and it is further

ORDERED that the Proposed Purchaser settle all creditors' Claims in accordance with Section 10.04 of the Stock Purchase Agreement; and it is further

ORDERED that contingent upon, and simultaneously with, the Closing, the chapter 11 case of Fansteel Schulz Products, Inc. (Case No. 02-10116) shall be dismissed; and it is further

ORDERED in the event the Closing does not occur and the sale is not consummated, the chapter 11 case of Fansteel Schulz Products, Inc. shall continue and the preceding decretal paragraph shall have no force or effect; and it is further

ORDERED that this Court shall retain jurisdiction to the extent necessary to enforce the provisions of this order.

Dated: Wilmington, Delaware

November __, 2002

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

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 All terms not defined herein shall have the meanings ascribed to them in the 363 Motion.