

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11	
FANSTEEL INC., <u>et al.</u> , ¹)	Case No. 02-10109 (JJF)	40-7580
)	(Jointly Administered)	
Debtors.)	Objection Deadline: December 5, 2003 at 4:00 p.m. e.t.	
)	Hearing Date: Only if objections are timely filed	

**MOTION FOR ORDER AUTHORIZING
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The captioned debtors and debtors in possession ("Debtors") hereby move for entry of an order (the "Motion") authorizing the Debtors to reject certain executory contracts, including service agreements, leases of personal property, and leases of nonresidential real property, as identified on Exhibit A hereto (the "Executory Contracts"). Exhibit A lists the Executory Contracts by Debtor, counter-party, and subject matter.

The facts and circumstances supporting this Motion are set forth in the Affidavit of Gary L. Tessitore, Chief Executive Officer, filed in Support of First Day Motions. In support of this Motion, the Debtors further state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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. The statutory bases for the relief requested herein are sections 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code").

Procedural History

3. On January 15, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. During the course of the first day hearings on the Debtors' motions, the Court entered an order directing the joint administration of the Debtors' cases (the "Chapter 11 Cases"), for procedural purposes only.

4. Since the Petition Date, the Debtors have continued in possession of their properties and are operating and managing their businesses as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. By order entered on January 22, 2002, the United States District Court for the District of Delaware withdrew the reference of these chapter 11 cases; the cases are being administered by the bankruptcy court, but under the jurisdiction of the United States District Court for the District of Delaware as an Article III court.

6. No request has been made for the appointment of a trustee or examiner in the Debtors' cases. On January 28, 2002, the Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed by the United States Trustee.

7. On July 24, 2003, the Debtors and the Creditors' Committee filed, as co-proponents, their Disclosure Statement and proposed Joint Reorganization Plan of Fansteel Inc. and Subsidiaries. Thereafter, on September 18, 2003, the Amended Joint Reorganization Plan of Fansteel Inc and Subsidiaries (the "Plan") was filed with this Court, together with the First Amended Disclosure Statement for the Joint Reorganization Plan (the "Disclosure Statement").

On September 30, 2003, the Court entered an order approving the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. §1125(a)(1) and scheduled the hearing on confirmation of the Debtors' Plan for November 17, 2003 at 5:00 p.m., Eastern Time.

Relief Requested

8. By this Motion, Debtors request entry of an order under 11 U.S.C. §365(a) rejecting the Executory Contracts listed on Exhibit A. Debtors have determined, in their business judgment, that the contracts are no longer beneficial to the estates, and that rejection of the Executory Contracts: (1) will lead towards the successful reorganization of these estates and (2) is in the best interests of the estates and their creditors.

9. It is well established that the Debtors may exercise their business judgment to reject executory contracts or unexpired leases that are no longer useful or necessary to the bankruptcy estate. The Bankruptcy Code provides that "the trustee, subject to the court's approval, may . . . reject any . . . unexpired lease of the debtor." 11 U.S.C. § 365(a). Courts utilize the business judgment standard to determine whether to approve the 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 G. Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (holding that "[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of business discretion, the debtor's business judgment will not be altered.").

10. 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 reject the Executory Contracts listed on Exhibit A.

Notice

11. Notice of this Motion has been given to all parties required to receive notice pursuant to Delaware Local Rule of Bankruptcy 2002-1(b).

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WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, authorizing the rejection of the Executory Contracts listed on Exhibit A; and granting such other and further relief as the Court may deem just and proper.

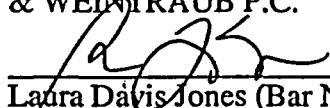
Dated: November 14, 2002

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—and—

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Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Name and Address of Other Parties	Description of Contract
Debtor: <u>Fansteel Inc.</u>	
Van Dyke Business Systems 800 Trumbull Drive Pittsburgh, PA 15205-1365	Sharp Copier
GE Capital Corp. c/o Conrad K. Chiu Pitney Hardin, Kipp & Szuch LLP 685 Third Avenue New York, NY 10017-4024	Fork Lifts -- pursuant to Lease Schedules Nos. 4119 168-002, 003, 005. Rejected pursuant to terms agreed to by the parties

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
FANSTEEL INC., *et al.*,¹)
Debtors.) 02-10109 (JJF)
) (Joint Administration)
)
Objection Deadline: December 5, 2003 at 4:00 p.m. E.T.
Hearing Date: Only if objections are timely filed

**NOTICE OF MOTION FOR ORDER AUTHORIZING
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

TO: ALL PARTIES REQUIRED TO BE SERVED PURSUANT TO DELAWARE LOCAL
RULE OF BANKRUPTCY 2002 – 1 (b)

PLEASE TAKE NOTICE that on or about November 14, 2003, the debtors and
debtors-in-possession (the “Debtors”) filed with The United States Bankruptcy Court for the
District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”)
the Motion For Order Authorizing Rejection of Certain Executory Contracts (the
“Motion”).

PLEASE TAKE FURTHER NOTICE THAT RESPONSES OR
OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN THE MOTION MUST BE IN
WRITING, FILED WITH THE BANKRUPTCY COURT, AND SERVED UPON BOTH
UNDERSIGNED COUNSEL FOR DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M.,
PREVAILING EASTERN TIME, ON DECEMBER 5, 2003.

PLEASE TAKE FURTHER NOTICE THAT, IF ANY OBJECTIONS ARE
TIMELY FILED AND SERVED, A HEARING ON THE MOTION WILL BE HELD AT 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.; and American Sintered Technologies, Inc.

TIME AND DATE 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 KING STREET, WILMINGTON, DELAWARE 19801. ONLY TIMELY FILED AND RECEIVED WRITTEN OBJECTIONS WILL BE CONSIDERED BY THE COURT AT THE HEARING.

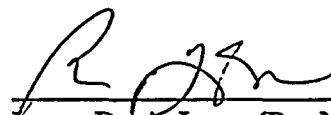
IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

November 14, 2003

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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)
Debtors.)

**ORDER AUTHORIZING DEBTORS TO REJECT
CERTAIN EXECUTORY CONTRACTS**

Upon the motion ("Motion") of the debtors and debtors in possession in the captioned chapter 11 case ("Debtors"), seeking entry of an order under 11 U.S.C. § 365(a) rejecting certain (executory contracts, including leases of personal property and employment related agreements (the "Executory Contracts"));¹ and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(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 any claim for rejection damages by a contracting party to any Executory Contract listed on Exhibit A to the Motion, shall be filed and served by the date that is thirty (30) days from the date of service of this order authorizing the rejection of that Executory Contract, or shall be forever barred; 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.

¹ Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Motion.

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

Dated: November ___, 2003

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