

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.)

Objection Deadline: February 3, 2004 at 4:00 p.m. E.T.
Hearing Date: TBD (Only if objections are timely filed)

**NOTICE OF DEBTORS' MOTION FOR AN ORDER FURTHER EXTENDING
THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY PURSUANT TO BANKRUPTCY CODE SECTION 365(d)(4)**

TO: All Parties Required To Receive Notice Pursuant To Del. Bankr. L.R. 2002-1(b)

On January 14, 2004, the above-captioned debtors and debtors-in-possession (the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") the *Debtors' Motion For An Order Further Extending The Time To Assume Or Reject Unexpired Leases Of Nonresidential Real Property Pursuant To Section 365(d)(4) Of The Bankruptcy Code* (the "Motion").

ALL 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 OF THE UNDERSIGNED COUNSEL FOR THE DEBTORS SO AS TO BE RECEIVED BY 4:00 P.M., PREVAILING EASTERN TIME, ON FEBRUARY 3, 2004.

IF ANY OBJECTIONS ARE TIMELY FILED AND SERVED, A HEARING ON THE MOTION MAY BE HELD AT A TIME TO BE DETERMINED, BEFORE THE

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.

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HONORABLE JOSEPH J. FARNAN, JR., OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE. THE HEARING, IF NECESSARY, SHALL BE
HELD IN COURTROOM 4B, J. CALEB BOGGS FEDERAL BUILDING, 844 N. 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.

Dated: January 14, 2004

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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:) Chapter 11
)
FANSTEEL INC., et al.,¹) Case No. 02-10109 (JJF)
) (Jointly Administered)
Debtors.)
) Objection Deadline: February 3, 2004 at 4:00 p.m. E.T.
) Hearing Date: TBD (Only if necessary)

**DEBTORS' MOTION FOR AN ORDER FURTHER 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"), for an order granting a further extension 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 earlier of May 17, 2004 (an approximately 120-day extension) or the Plan Effective Date.² In support of this Motion, the Debtors respectfully represent as follows:

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.

² The Plan Effective Date shall be defined as the first Business Day (capitalized terms used herein shall be as defined in the Debtors' second amended joint reorganization plan ("Second Amended Plan")) following the thirtieth (30th) day after the Confirmation Order on which: (i) no stay of the Confirmation Order is in effect, and (ii) all conditions to consummation of the Plan set forth in Article IX of the Plan have been (x) satisfied or (y) waived pursuant to Article IX.C of the Plan.

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 "first day" orders, including an order to have these cases jointly administered.

2. 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.

3. On January 28, 2002, the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors ("Committee") in these chapter 11 cases.

4. On July 24, 2003, the Debtors filed their original disclosure statement and original proposed plan of reorganization (the "Plan"), both of which were subsequently amended. The Court entered an order approving the disclosure statement on September 30, 2003.

5. The Court held a hearing to consider confirmation of the Plan on November 17, 2003 ("Confirmation Hearing"). The Court held an additional hearing on December 23, 2003 ("Further Hearing," and collectively with the Confirmation Hearing, "Hearings") to consider the *Debtors' Second Amended Joint Reorganization Plan* dated December 23, 2003 (together with all exhibits thereto, the "Second Amended Plan"). Subsequent to the Hearings, the Court entered an order confirming the Second Amended Plan on December 23, 2003 (D.I. 1791, dated December 23, 2003, which order supersedes the order at D.I. 1760).

Jurisdiction

6. 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.

Request For An Extension Of The Debtors' Deadline To Assume Or Reject Their Real Property Leases

7. By this Motion, and solely out of an abundance of caution, the Debtors request entry of an order pursuant to section 365(d)(4) of the Bankruptcy Code granting a further extension of the Debtors' time to assume or reject non-residential real property leases ("Determination Period"), which would otherwise have expired on January 16, 2004 (*See* Order entered on December 12, 2003 at D.I. 1736), through and including the earlier of May 17, 2004 (approximately a 120-day extension) or the Plan Effective Date. 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

8. This Motion is filed pursuant to section 365(d)(4)³ of the Bankruptcy Code which permits courts to grant, for cause, extensions of the Determination Period. See In re Channel Home Ctrs., Inc., 989 F.2d 682 (3d Cir. 1993), cert. denied, 114 S. Ct. 184 (1993). The

³ 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).

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 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.

9. It is well-established that the factors 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), “whether the case is exceptionally complex and involves a large number of leases,”⁴ In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); accord Channel Home Ctrs., 989 F.2d at 689, and where the leases are an important asset of the estate such that the decision to assume or reject would be central to any plan of reorganization. Id. 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.” Channel Home Ctrs., 989 F.2d at 689.

10. Numerous courts have granted debtors an extension, under section 365(d)(4) of the Bankruptcy Code, for long periods of time in order to allow the debtor more

⁴ The legislative history of section 364(d)(4) indicates that the Determination Period “could be extended by the court for cause, such as in exceptional cases involving large numbers of leases.” In re Channel Home Ctrs., 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)).

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. Hawaii 1984) (granting a nine month extension of time to assume or reject leases); In re Victoria Station, 88 B.R. 231, 236-37 (9th Cir. B.A.P. 1988) (granting multiple extensions of time to assume or reject leases). Indeed, courts in this District have uniformly granted such extensions in chapter 11 cases.⁵

11. Since the Petition Date, the Debtors' management and professionals have concentrated their time on, among other things, working on a decommissioning plan for the Debtors' Muskogee facility, marketing assets, and resolving issues related to retention of professionals and maintaining and improving operations. In addition, the Debtors' management and professionals have expended a great deal of time in securing approval of its disclosure statement and confirmation of its consensual Plan (and the Second Amended Plan).

12. Importantly, the Debtors and their professionals continue to focus their efforts on meeting the requirements to ensure that the Plan goes effective. In addition, as the Plan expressly provides for the assumption of the Real Property Leases, the Debtor cannot risk the Real Property Leases being rejected by operation of law pursuant to section 365(d)(4), which will occur absent the granting of the relief sought in the Motion.⁶ As a result, the Debtor requires additional time to properly determine whether to assume or reject the Real Property Leases.

⁵ See, e.g., In re Owens Corning, et al., Case No. 00-3837 (JKF) (Bankr. D. Del. May 21, 2003) (extending period for assumption or rejection until 38 months after petition date); In re W.R. Grace & Co., et al., Case No. 01-1139 (JKF) (Bankr. D. Del. Apr. 28, 2003) (extending period for assumption or rejection until 30 months after petition date); In re USG Corp., et al., Case No. 01-2094 (RJN) (Bankr. D. Del. Feb. 19, 2003) (extending period for assumption or rejection until 26 months after petition date); In re Armstrong World Indus., et al., Case No. 00-4471 (RJN) (Bankr. D. Del. Oct. 8, 2002) (extending period for assumption or rejection until 31 months after petition date). The extension requested herein would, by comparison, extend the period for assumption or rejection until approximately 28 months after the Petition Date.

⁶ Except as otherwise provided, the Plan establishes that, as of the Effective Date, each Debtor shall be deemed to have assumed each unexpired lease to which it is a party and which is identified in the Schedules (as defined in the Plan) filed with the Bankruptcy Court, as amended, unless such lease was (i) previously assumed and/or assigned or

13. In the absence of an extension of the current deadline, the Debtors could be forced unintentionally to reject Real Property Leases that are vital to the Reorganized Debtors' operations, to the collective detriment of all stakeholders.

14. The Debtor contends that the most practical approach, under the circumstances, is to extend the time within which the Debtors may assume or reject the Real Property Leases through and including the earlier of May 17, 2004 or the Plan Effective Date.

15. Pending the Debtors' ultimate election to assume or reject the Real Property Leases, the Debtors will continue to timely perform all of their obligations under the Real Property Leases, as required by section 365(d)(3) of the Bankruptcy Code. As a result, there will be no prejudice to the Lessors as a result of the requested extension. Consequently, the requested extension affords the Debtors maximum flexibility in seeking to implement their long-term business plan and reorganize successfully while preserving the Lessors' rights under the Bankruptcy Code, and, accordingly, should be approved, 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.

Notice

16. Notice of this Motion has been provided to all persons required to receive notice pursuant to Del. Bankr. L.R. 2002-1.

rejected by a Debtor, (ii) previously expired or terminated pursuant to its own terms, (iii) is the subject of a motion to reject filed on or before the Confirmation Date, or (iv) is identified in Ex. J to the Plan as an unexpired lease to be rejected as of the Confirmation Date pursuant to the terms of the Plan.

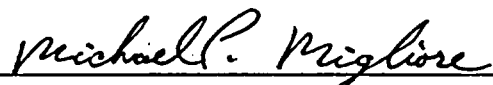
WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting an extension of time, pursuant to 365(d)(4) of the Bankruptcy Code, for the Debtors to assume or reject all Real Property Leases through and including the earlier of May 17, 2004 or the Plan Effective Date, subject to and without prejudice to the rights of the Debtors to seek a further extension of time, and (ii) granting such other and further relief as this Court deems necessary and proper.

Dated: January 14, 2004

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**IN THE UNITED STATES BANKRUPTCY COURT
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In re:)	Chapter 11
)	
FANSTEEL INC., <i>et al.</i> , ¹)	Case No. 02-10109 (JJF)
)	(Jointly Administered)
Debtors.)	

**ORDER GRANTING EXTENSION OF TIME FOR DEBTORS 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 (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 it 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 interests of the Debtors, 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., and American Sintered Technologies, Inc.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that the Debtors' time to elect to assume or reject the Real Property Leases is extended, pursuant to section 365(d)(4) of the Bankruptcy Code, through and including the earlier of May 17, 2004 or the Plan Effective Date; and it is further

ORDERED that entry of this Order shall 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.

Dated: _____, 2004

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