

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

IN RE:)	
)	
JOANNE'S BED & BACK STORES, INC.)	Case No. 08-14606 (TJC)
)	(Chapter 11)
Debtor)	

**MOTION TO REJECT NON-RESIDENTIAL
REAL ESTATE LEASE AS OF MAY 12, 2008**

JoAnne's Bed & Back Stores, Inc., a Maryland corporation, debtor and debtor-in-possession herein (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for entry of an order Rejecting Non-Residential Real Estate Lease *Nunc Pro Tunc* (the "Motion"). In further support of this Motion, the Debtor alleges:

BACKGROUND

1. On April 2, 2008 (the "Petition Date"), the Debtor filed in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. The Debtor has continued in possession of its property and has continued to operate and manage its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is 11 U.S.C. § 365.
4. Prior to the Petition Date, the Debtor operated sixteen (16) retail stores including a warehouse in Maryland, Washington, DC and Virginia, which sell ergonomic mattresses,

adjustable beds, office, lounge and massage chairs, seat lift chairs, comfort accessories and other furniture.

RELIEF REQUESTED

5. The Debtor entered into certain pre-petition leases with various parties for non-residential real property. The property subject to the lease the Debtor is seeking to reject (the “Rejected Lease”) is located at 7033 Arlington Road, Bethesda, Maryland 20814.

6. In its business judgment, the Debtor entered into an agreement to sell substantially all of its assets and assume and assign certain leases to the purchaser. The Rejected Lease will not be assumed by the purchaser. Accordingly, in its business judgment, Debtor has decided to reject the Rejected Lease and vacated the property under the Rejected Lease on May 12, 2008.

7. The Debtor seeks entry of an order authorizing the rejection of the Rejected Lease pursuant to section 365(a) of the Bankruptcy Code effective as of May 12, 2008.

AUTHORITIES

8. Section 365 of the Bankruptcy Code states that a debtor-in-possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See Nat’l Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (stating that “the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgement’ test”). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of “bad faith,

whim or caprice.” Lubrizon Enters. v. Richmond Metal Finishes, 756 F.2d 1043, 1047 (4th Cir. 1980).

9. The Debtor has evaluated the Rejected Lease in the context of the Bankruptcy Code. In the exercise of its business judgment and in light of the facts and circumstances surrounding the Rejected Lease, the Debtor has determined that the Rejected Lease is not useful for its ongoing operations, and as a result, such Rejected Lease is more burdensome than beneficial to the estate. The Rejected Lease represents a lease which, based on the Debtor’s careful review, is unnecessary for the Debtor’s current needs and essentially is an empty space.

10. The Debtor seeks to reject the Rejected Lease, effective as of May 12, 2008, to ensure that any claims under such will be treated as unsecured pre-petition claims in accordance with section 365(g)(1) of the Code. See Nat’l Labor Relations Bd. v. Bildisco and Bildisco, 465 U.S. 513, 530 (1984) (stating that rejection relates back to the petition date). The Debtor does not believe the Rejected Lease provides the basis for a claim for administrative expense priority because the Rejected Lease is a burden rather than a benefit to the estate. See In re O.P.M. Leasing Services, Inc., 56 B.R. 678, 683 (Bankr. S.D.N.Y. 1986).

11. The equities surrounding the circumstances of the Rejected Lease weighs in favor of approving a lease rejection date in accordance with this Motion. See Amber’s Stores, Inc., 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (holding that “nothing precludes a bankruptcy court, based upon the equities of the case, from approving the trustee’s rejection of a non-residential real property lease retroactively to an earlier date”). See also In re Thinking Machines Corp., 67 F.3d 1021, 1028 (1st Cir. 1995) (stating that “bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities proponderates in favor of such

remediation?”). Consequently, rejection of the Rejected Lease is in the best interests of the Debtor and the estate.

NOTICE

12. Notice of the Motion has been given to (i) the United States Trustee, (ii) the affected landlord; and (iii) the twenty largest unsecured creditors. In light of the nature of the relief requested herein, the Debtor submits that no further notice need be given.

13. No previous application for the relief requested herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order rejecting the non-residential real estate lease indicated herein as of May 12, 2008, and granting such other and further relief as is just and proper.

Respectfully submitted,

**SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.**

By: /s/ Michael J. Lichtenstein
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Attorneys for Debtor

Dated: May 13, 2008

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

IN RE:)
)
JOANNE'S BED & BACK STORES, INC.) **Case No. 08-14606 (TJC)**
) **(Chapter 11)**
Debtor)

**ORDER AUTHORIZING THE REJECTION OF
NON-RESIDENTIAL REAL ESTATE LEASE AS OF MAY 12, 2008**

Upon consideration of the Motion to Reject Non-Residential Real Estate Lease as of May 12, 2008 (the "Motion"), and for good cause shown, it is this hereby

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that rejection of the lease for the store located at 7033 Arlington Road, Bethesda, Maryland, be and is hereby APPROVED as of May 12, 2008.

Copies to:

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Rockville, Maryland 20852

Office of the U.S. Trustee
6305 Ivy Lane, Suite 600
Greenbelt, Maryland 20770

Fitness Resource
2721 Dorr Avenue
Fairfax, VA 22031

END OF ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

IN RE:)
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JOANNE'S BED & BACK STORES, INC.) **Case No. 08-14606 (TJC)**
) **(Chapter 11)**
Debtor)

CERTIFICATE OF SERVICE

The following parties received electronic notice of this filing:

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US Trustee – Greenbelt USTPRegion04.GB.ECF@USDOL.GOV

To the extent that the following persons were not served electronically via CM/ECF system, a copy of the **Motion to Reject Non-Residential Real Estate Leases as of May 12, 2008 and proposed Order** was mailed, postage prepaid this 13th day of May, 2008, to:

Fitness Resource
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Fairfax, VA 22031
Landlord for Rejected Lease

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Baltimore, Maryland 21201

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Fairfax, VA 22030

Security Exchange Commission
100 F Street, NE
Washington, DC 20549
Attn: Bankruptcy Specialist

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114-0326

To the 20 Largest Unsecured Creditors on the Attached List

Landlords
Robin Tang
7098 Crows Nest #22
Laurel, MD 20707

8032 Tysons Plaza (Mar-West)
c/o May Jewelers
8032 Leesburg Pike
Vienna, VA 22182

Saul Subsidiary Conn Ave
7501 Wisconsin Avenue
Suite 1500
Bethesda, MD 20814-6522

Kentlands LLC
c/o Beatty Management Co., Inc.
6824 Elm Street
Suite 200 West
McLean, VA 22101

Writ Ltd Partnership
P.O. Box 79555
Baltimore, MD 21279-0555

Central Park
c/o William A. and Dana Middleton
P.O. Box 1480
King George, VA 22485

The Peterson Companies
Atlas Walk LC #3443
P.O. Box 601726
Charlotte, NC 28275-1726

Annapolis Harbour Center Associates
11501 Huff Court
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Saint Thomas Joint Venture
c/o Harry B. Cooper Associates
10749 Falls Road, Suite 202
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AAK Dobbin, LLC
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Respectfully submitted,

**SHULMAN, ROGERS, GANDAL,
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Service List
(Creditors Holding 20 Largest Unsecured Claims)

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