

**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 APRIL 8, 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 Lesae”) is located at 1958 York Road, Timonium, Maryland 21093.

6. In its business judgment, the Debtor has decided to consolidate its business operations prior to a sale of substantially all of its assets and has vacated the properties under the Rejected Lease. The property was vacated on April 8, 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 April 8, 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 April 8, 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 April 8, 2008, and granting such other and further relief as is just and proper.

Respectfully submitted,

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

By: /s/ Michael J. Lichtenstein
Michael J. Lichtenstein (Bar No. 05604)
Morton A. Faller (Bar No. 01488)
Stephen A. Metz (Bar No. 13720)
11921 Rockville Pike, Suite 300
Rockville, Maryland 20852-2743
TEL: (301) 230-5231
FAX: (301) 230-2891
Attorneys for Debtor

Dated: April 10, 2008

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
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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 APRIL 8, 2008**

Upon consideration of the Motion to Reject Non-Residential Real Estate Lease as of April 8, 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 1958 York Road, Timonium, Maryland, be and is hereby APPROVED as of April 8, 2008.

Copies to:
Michael J. Lichtenstein, Esquire
Morton A. Faller, Esquire
Stephen A. Metz, Esquire
Shulman, Rogers, Gandal, Porody & Ecker, P.A.
11921 Rockville Pike, 3rd Floor
Rockville, Maryland 20852

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

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:

Lynn A. Kohen lynn.a.kohen@usdoj.gov
Counsel for US Trustee - Greenbelt

Leslie J. Polt lpolt@adelbergandow.com
Counsel for The Healthy Back Store, LLC

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 Lease as of April 8, 2008 and proposed Order** was mailed, postage prepaid this 10th day of April, 2008, to:

Howard R. Herman, Esquire
Moses & Singer, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174-1299
Counsel for The Healthy Back Store, LLC

Office of the United States Trustee
6305 Ivy Lane, Suite 600
Greenbelt, Maryland 20770

Office of the Attorney General of Maryland
200 St. Paul Place
Baltimore, Maryland 21201

Maryland SDAT
301 West Preston Street
Baltimore, Maryland 21201

Office of the Attorney General for
The Commonwealth of Virginia
10555 Main Street
Fairfax, VA 22030

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

Internal Revenue Service
Insolvency Unit
31 Hopkins Plaza, Room 1150
Baltimore, MD 21201

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
North Bethesda, MD 20895-1904

Saint Thomas Joint Venture
c/o Harry B. Cooper Associates
10749 Falls Road, Suite 202
Lutherville, MD 21093

AAK Dobbin, LLC
7221 Lee DeForest Drive
Suite 100
Columbia, MD 21046

Government Counties re Leases

Charles W. Thompson, Jr.
Office of Montgomery County Attorney
101 Monroe Street, 3rd Floor
Rockville, MD 20850

David Whitacre
Office of Prince George's County Attorney
14741 Governor Oden Bowie Drive
Suite 5121
Upper Marlboro, MD 20772

Office of Fairfax County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, VA 22035

Linda M. Schvett
Office of Anne Arundel County Attorney
Heritage Office Complex
2660 River Road
Annapolis, MD 21401

Office of Alexandria City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314

Respectfully submitted,

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

By: /s/ Michael J. Lichtenstein
Michael J. Lichtenstein (Bar No. 05604)
Morton A. Faller (Bar No. 01488)
Stephen A. Metz (Bar No. 13720)
11921 Rockville Pike, Suite 300
Rockville, Maryland 20852-2743
TEL: (301) 231-0928
FAX: (301) 230-2891
Attorneys for Debtor

Service List
(Creditors Holding 20 Largest Unsecured Claims)

Arent Fox PLLC
P.O. Box 758670
Baltimore, MD 21275

Kim Davis
160 E. 72nd Street, #3A
New York, NY 10021-4364

Beltsville Commercial Ctr (B&R)
11716 Baltimore Avenue
Beltsville, MD 20705

King Koil Mid Atlantic
1112 Kingwood Avenue
Norfolk, VA 23502

Bruce Stram
3200 W. Lamar, #13
Houston, TX 77019

Leggett & Platt
P.O. Box 198747
Atlanta, GA 30384-8747

Classic Sleep Products
8214 Wellmoor Court
Jessup, MD 20794

Mark M. Levin
4700 Linnean Avenue, NW
Washington, DC 20008

Daniel and Rebecca Okrent
645 West End Avenue, Apt. 12F
New York, NY 10022

Phillip M. Sierralta
17207 Loblolly Court
Accokeek, MD 20607

Darius Gaskins
136 Country Road
Ipswich, MA 01938

Sandra Sauls
1238 Girard Street, NW
Washington, DC 20009

David B. and Betsy H. Summer
1027 Duchess Drive
McLean, VA 22102

Sealy Corporation
P.O. Box 932621
Atlanta, GA 31193-2621

Golden Technologies
401 Bridge Street
Old Forge, PA 18518

Tempur-pedic
P.O. Box 632852
Cincinnati, OH 45263-2852

James Turner
1236 Girard Street, NW
Washington, DC 20009

The Washington Post
1150 11th Street, NW
Washington, DC 20071-7100

Judith and Philip Davis
6925 Cottonwood Knoll
West Bloomfield, MI 48322

Thomas and Laura Aust
226 Elderwood Avenue
Pelham, NY 10803