

**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 FOR ENTRY OF AN ORDER APPROVING
THE ASSUMPTION AND ASSIGNMENT OF THE
NON-RESIDENTIAL REAL PROPERTY LEASES**

JoAnne's Bed & Back Stores, Inc., debtor and debtor-in-possession (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for the entry of an Order approving the assumption and assignment of the non-residential real property leases identified on Exhibit A attached hereto (the "Leases") and states as follows:

1. On April 2, 2008 (the "Petition Date"), the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code.
2. Prior to the Petition Date, the Debtor operated sixteen (16) 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.
3. On the Petition Date, the Debtor filed a notice seeking to sell substantially all of its assets (the "Sale") to The Healthy Back, LLC ("Healthy Back"), subject to higher and better offers. Healthy Back has agreed, *inter alia*, to assume the cure obligations for the Leases. Additionally, the Debtor has agreed to assume and assign the Leases to Healthy Back, subject to Court approval.
4. The cure amounts for the Leases are set forth on Exhibit B attached hereto.

5. In its business judgment, the Debtor believes that assumption and assignment of the Leases is in the best interests of the estate.

6. The Court has scheduled a hearing on approval of the Sale for May 8, 2008 at 2:00 p.m. and the Debtor requests that a hearing on this Motion be scheduled for the same time.

Argument

7. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” See *In re Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992). To obtain court approval to use property under § 363(b) of the Bankruptcy Code, the Debtor need only show a legitimate business justification for the proposed action. See, e.g., *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 993 F.2d 513, 515 (7th Cir. 1991)); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (7th Cir. 1983) (same).

8. Section 365(a) of the Bankruptcy Code provides 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). As noted by the United States Court of Appeals for the Second Circuit, “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY, ¶ 365.01[1] (15th ed. 1993)).

9. The standard governing motions to assume an executory contract or lease pursuant to § 365 of the Bankruptcy Code is the business judgment test, which requires a

