

**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

showing that the proposed course of action will benefit the estate. *See Sharon Steel Corp. v. National Fuel Gas Distribution Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *See also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984). Generally, courts defer to a debtor in possession's business judgment to assume an executory contract or lease. *See Bildisco*, 465 U.S. at 525; *Wheeling-Pittsburgh Steel Corp.*, 82 B.R. at 829.

Request for Relief Under Bankruptcy Rules 6004(g) and 6006(d)

10. In the exercise of its business judgment, the Debtor believes that this Court should authorize the assumption and assignment of the Leases.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

- A. scheduling a hearing for May 8 at 2:00 p.m.;
- B. approving the assumption and assignment of the Leases; and
- C. for such other and further relief as is just and equitable.

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 21, 2008

EXHIBIT A

Real Estate Leases to be Assigned and Assumed

Store#	Address	City	State	Zip	SQ FT
02	1350 Rockville Pike	Rockville	MD	20852	2,516
05	8032 Leesburg Pike	Tysons	VA	22182	2,291
06	4455 Connecticut Avenue, NW	Washington	DC	20008	1,706
08	640 Center Point Way	Gaithersburg	MD	20878	2,358
09	803 South Washington Street	Alexandria	VA	22314	2,071
20	1676 Carl D Silver Pkwy	Fredericksburg	VA	22401	2,736
24	7324 Atlas Walk Way	Gainesville	VA	20156	2,560
33	2460 Solomons Island Rd	Annapolis	MD	21401	2,025
34	9936 Reisterstown Road	Owings Mills	MD	21117	2,200
35	6181 Old Dobbin Lane Suite 400	Columbia	MD	21045	3,199

EXHIBIT B

Cure Amounts

Store#	Address	City	State	Zip	Cure Amount
02	1350 Rockville Pike	Rockville	MD	20852	\$44,037.82
05	8032 Leesburg Pike	Tysons	VA	22182	\$21,070.94
06	4455 Connecticut Avenue, NW	Washington	DC	20008	\$11,991.83
08	640 Center Point Way	Gaithersburg	MD	20878	\$15,243.01
09	803 South Washington Street	Alexandria	VA	22314	\$20,712.65
20	1676 Carl D Silver Pkwy	Fredericksburg	VA	22401	\$13,928.05
24	7324 Atlas Walk Way	Gainesville	VA	20156	\$17,294.79
33	2460 Solomons Island Rd	Annapolis	MD	21401	\$ 8,274.85
34	9936 Reisterstown Road	Owings Mills	MD	21117	\$12,224.41
35	6181 Old Dobbin Lane Suite 400	Columbia	MD	21045	\$15,225.79

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

**ORDER AUTHORIZING THE ASSUMPTION AND ASSIGNMENT
OF THE NON-RESIDENTIAL REAL PROPERTY LEASES**

Upon consideration of the Motion for Entry of an Order Approving the Assumption and Assignment of the Non-Residential Real Estate Leases (the "Motion"), and for good cause shown, it is this hereby

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

ORDERED, that the assumption and assignment of the leases listed on Exhibit A and attached to the Motion, be and is hereby APPROVED.

Copies to:

Michael J. Lichtenstein, Esquire
Morton A. Faller, Esquire
Stephen A. Metz, Esquire
Shulman, Rogers, Gandal,
Pordy & Ecker, P.A.
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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:

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Counsel for US Trustee – Greenbelt

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Leslie J. Polt lpolt@adelbergurdow.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 for Entry of an Order Approving the Assumption and Assignment of the Non-Residential Real Estate Property Leases and proposed Order** was mailed, postage prepaid this 21st day of April, 2008, to:

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Baltimore, Maryland 21201

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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
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Columbia, MD 21046

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Other Parties Requesting Notice

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Respectfully submitted,

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

By: /s/ Michael J. Lichtenstein
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Service List
(Creditors Holding 20 Largest Unsecured Claims)

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