

**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
SALE OF SUBSTANTIALLY ALL OF DEBTOR’S ASSETS**

JoAnne’s Bed & Back Stores, Inc. (the “Debtor”), debtor and debtor-in-possession, by and through its undersigned counsel, hereby moves this Court for the entry of an Order approving the sale of substantially all of its assets (the “Sale”), 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 initiating this case.
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. The Debtor’s principal place of business is located at 11714 Baltimore Avenue, Beltsville, Maryland 20705.
3. Prior to the Petition Date, the Debtor experienced difficulties and closed several stores.
4. The Debtor has determined in its business judgment that the most likely highest recovery for creditors will be through the sale of substantially all of its assets and an assumption and assignment of some or all of its leases.

5. Attached hereto as Exhibit A is a copy of an Asset Purchase Agreement (the “APA”) signed by The Healthy Back Store, LLC (“Healthy Back”). The Debtor seeks approval of the sale of substantially all of its assets to Healthy Back, subject to higher and better offers.

6. The APA provides inter alia :

- a. Healthy Back will pay \$600,000 for substantially all of the debtor’s assets;
- b. Healthy Back will pay all arrearages for leases to be assigned;
- c. Healthy Back will fulfill orders for which customers provided pre-petition deposits.

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) (noting that “going-out-of-business” sales are governed by § 363(b)). 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. In the exercise of its business judgment, the Debtor believes that this Court should approve the Sale to Healthy Back, subject to higher and better offers. The Debtor has filed a Motion seeking an Order approving bid procedures for an auction to be conducted on May 8, 2008.

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

A. approving the Sale to Healthy Back, subject to higher and better offers;

and

B. for such other and further relief as is just and equitable.

Respectfully submitted,

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

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