

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:)	Chapter 11
)	
DAN RIVER INC., <i>et al.</i>)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake
<hr/>)	

**MOTION FOR ORDER GRANTING VALID RECLAMATION CLAIMS
ADMINISTRATIVE EXPENSE STATUS**

Dan River, Inc. and its affiliated debtors (collectively, the “Debtors” or the “Company”) file this Motion, respectfully showing the Court as follows:

Summary of Relief Requested

1. By this Motion, the Debtors request that all valid Reclamation Claims (as hereinafter defined) be granted administrative expense priority as allowed by Section 546(c)(2)(A) of the Bankruptcy Code in the amounts listed on the attached Exhibit B and that such administrative expense claims be paid upon the effective date of a plan of reorganization, or in the event no plan is confirmed, that such administrative expense claims be paid at such time as may be otherwise ordered by the Court.

Jurisdiction

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Background

3. The Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on March 31, 2004 (the “Petition Date”).

4. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors was appointed in these cases on April 12, 2004.

Basis for Relief

5. Section 546(c) of the Bankruptcy Code allows a creditor to reclaim goods delivered to a debtor under certain conditions. Specifically, to establish the right to reclaim goods under Section 546(c), a seller must establish: (1) a statutory or common law right to reclaim the goods; (2) the debtor’s insolvency at the time it received the goods; (3) that the seller made a written demand within ten (10) days after the debtor’s receipt of the goods (or within twenty (20) days if the ten (10) day period would expire after the Petition Date); and (4) that the debtor possessed the goods at the time it received the written demand. See, e.g., In re Flooring America, Inc., 271 B.R. 911, 916 (Bankr. N.D. Ga. 2001) (Bihary, J.); In re Leeds Bldg. Prod’s, Inc., 141 B.R. 265, 267 (Bankr. N.D. Ga. 1992) (Drake, J.).

6. However, a seller’s right to reclaim goods pursuant to Section 546(c) is not absolute. Instead, the Court has discretion to deny reclamation if the Court either (1) grants the claim of the seller administrative expense priority under Section 503(b) of the Bankruptcy Code, or (2) grants the seller a lien to secure the claim. 11 U.S.C. § 546(c)(2); In re Leeds Bldg. Prod’s, 141 B.R. at 268. Thus, courts have denied reclamation of goods and have instead

granted administrative expense claims where the goods are necessary for a debtor's successful reorganization. See, e.g., In re Continental Airlines, 125 B.R. 415, 417-18 (Bankr. D. Del. 1991).

7. Since the Petition Date, the Debtors have received numerous demands (the "Reclamation Claims") from sellers asserting the right to reclaim goods pursuant to Section 546(c) of the Bankruptcy Code. However, if the Debtors are required to return goods that are required for the operation of their business, the Debtors' manufacturing operations will be severely disrupted, and the Debtors' chances for a successful reorganization will be diminished. Thus, the Debtors request that they not be required to return goods that are the subject of a valid Reclamation Claim and that, instead, such claims be granted administrative expense priority pursuant to Section 546(c)(2)(A).

8. The Debtors have reviewed their records to determine the amount of the Reclamation Claims that should be granted administrative expense status. The results of the Debtors' analysis are listed on Exhibit B. As shown on Exhibit B, the Debtors have determined that many of the Reclamation Claims should not be allowed in the full amount of the Reclamation Claim received by the Debtors.

9. The Debtors first adjusted the amounts of the Reclamation Claims where the amounts of the claims did not match the invoices previously submitted by the claimant. Similarly, the Debtors adjusted the amounts of the Reclamation Claims where the Debtors did not have a record of any invoice from a claimant, or where the amount claimed had already been paid.

10. The Debtors then determined whether the Reclamation Claims were submitted within the time limits provided by Section 546(c). As noted above, Section 546(c) requires a

seller to make a written demand within ten (10) days after a debtor's receipt of the goods. That period is expanded to twenty (20) days if the ten-day period would expire after the Petition Date. As shown on Exhibit B, the Debtors determined that a portion of the Reclamation Claims were not timely submitted, and the Reclamation Claims were reduced accordingly.

11. Finally, to establish a valid reclamation claim, a creditor must establish that the debtor possessed the goods at the time it received the written demand. See, e.g., In re Flooring America, Inc., 271 B.R. 911, 916 (Bankr. N.D. Ga. 2001) (Bihary, J.). In this case, the goods received by the Debtors are processed by the Debtors as part of their manufacturing operations. Thus, at the time the Reclamation Claims were received, many of the goods that were the subject of the Reclamation Claims had already been consumed by the Debtors. Accordingly, the Debtors reduced the amount of the Reclamation Claims to reflect the value of the goods still in their possession at the time the Reclamation Claims were received.

12. The amount of the Reclamation Claims that the Debtors have determined to be valid, after making the adjustments described above, are set forth on Exhibit B. Accordingly, the Debtors request that the Reclamation Claims be granted administrative expense priority in the amounts set forth on Exhibit B and that such administrative expense claims be paid upon the effective date of a plan of reorganization, or in the event no plan is confirmed, that such administrative expense claims be paid at such time as may be otherwise ordered by the Court. The Debtors further request that all parties submitting Reclamation Claims be enjoined from taking any further action to reclaim any goods received by the Debtors prior to the Petition Date.

Notice

13. Notice of this Motion has been provided to all parties on the Master Service List and all parties that submitted Reclamation Claims as listed on Exhibit B. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

Conclusion

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter the proposed Order attached hereto as Exhibit A; and
- (b) grant the Debtors such other and further relief as is just and proper.

This 19th day of May, 2004.

Respectfully submitted,

KING & SPALDING LLP

/s/ Felton E. Parrish

James A. Pardo, Jr.

Georgia Bar No. 561206

Sarah Robinson Borders

Georgia Bar No. 610649

Felton E. Parrish

Georgia Bar No. 564910

191 Peachtree Street

Atlanta, Georgia 30303-1763

(404) 572-4600

Fax: (404) 572-5149

ATTORNEYS FOR THE DEBTORS

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:)	Chapter 11
)	
DAN RIVER INC., <i>et al.</i>)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake
<hr/>)	

**ORDER GRANTING DEBTORS' MOTION FOR ORDER GRANTING VALID
RECLAMATION CLAIMS ADMINISTRATIVE EXPENSE STATUS**

This matter is before the Court on the motion of Dan River, Inc. and its affiliated debtors (collectively, the “Debtors” or the “Company”) to grant valid reclamation claims administrative expense status (the “Motion”). (Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the Motion.)

The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to all parties on the Master Service List and all parties that have submitted a Reclamation Claim; that no further notice is necessary; that the relief sought in the motion is in the best interests of the Debtor, its estate, and its creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (document no. ____) is GRANTED.
2. The Reclamation Claims shall be entitled to priority as allowed administrative expense claims in the amounts set forth on Exhibit B to the Motion;

3. The administrative expense claims granted pursuant to this Order shall be paid upon the effective date of a plan of reorganization, or in the event no plan is confirmed, at such time as may be otherwise ordered by the Court.

4. Except to the extent they are allowed as administrative expense claims, the Reclamation Claims are invalid;

5. The Debtors are hereby authorized to refuse all demands for actual reclamation and return of goods;

6. Nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other order entered by this Court; and,

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order

SO ORDERED.

At Newnan, Georgia this ____ day of _____, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

Prepared and presented by:

KING & SPALDING LLP

/s/ Felton E. Parrish

James A. Pardo, Jr.

Georgia Bar No. 561206

Sarah Robinson Borders

Georgia Bar No. 610649

Felton E. Parrish

Georgia Bar No. 564910

191 Peachtree Street

Atlanta, Georgia 30303-1763

(404) 572-4600

Fax: (404) 572-5149

Attorneys for the Debtor