

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

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

---

**DEBTORS' SECOND MOTION FOR AN ORDER AUTHORIZING REJECTION OF  
CERTAIN UNEXPIRED LEASES AND MOTION FOR AUTHORITY  
TO ABANDON CERTAIN "NO NET VALUE" ASSETS IN CLOSED LOCATIONS**

Dan River Inc. (the "Debtor") files its second motion to reject unexpired leases pursuant to Bankruptcy Code sections 365 and 363, and to abandon certain unusable items remaining in closed locations pursuant to Bankruptcy Code section 554(a), respectfully showing the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background to the Case**

2. On March 31, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under the Bankruptcy Code. The Debtor is authorized to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed on April 12, 2004.

### **Burdensome Leases**

3. The Debtor has determined that three leases (the “Rejected Leases”) are not necessary for the implementation of the Debtor’s current plan of organization. The Rejected Leases include: (i) Lease Agreement of Rental Space in Commerce Factory Stores Shopping Center in Commerce, Georgia dated September 27, 1991 (the “Commerce Lease”); (ii) Lease Agreement for property located in Surfside Beach, South Carolina dated August 29, 2002 (the “Surfside Lease”); and (iii) the Lease dated March 8, 2004 related to the former Dan River Arnco Plant in Newnan, Georgia (the “Arnco Lease”).

4. Since before the Petition Date, the Debtor has been in the process of closing its Commerce, Georgia and Surfside Beach, South Carolina Factory Stores locations, and is ready to vacate those premises upon the Court’s approval of this motion. Prior to the Petition Date, the Debtor shut down its Newnan, Georgia plant, and is similarly prepared to vacate the premises upon the Court’s approval of this motion.

### **“No Net Value” Items in Abandoned Locations**

5. Additionally, the Debtor owns certain items in its Surfside Beach and Commerce stores, and in its Arnco plant, that are of no value, even as scrap, or are of such negligible value that the cost of transporting, storing and marketing the items will far outstrip their market value. Examples of “no net value” items in the Debtor’s closed stores include customized items such as storefront signs, and store fixtures such as merchandise shelves and display furniture. A list of these items is attached on Exhibit “A.” Examples of similar “no net value” items in the Debtor’s Arnco plant include a used exhaust fan, sewing tables and a box of forklift parts. A list of these items is attached on Exhibit “B.”

6. The Debtor has attempted to market similar store fixtures in other, closed locations without success. The Debtor has attempted to market equipment similar to that which is sitting idle in the Arnco plant (although such items were more marketable than the Arnco equipment, which has not been in use for some time), and could obtain only minimal value for the equipment. The Debtor has concluded that the estate's economic interests require abandonment of these "no net value" assets.

#### **Relief Requested**

7. The Debtor requests authorization to reject the Commerce Lease, the Surfside Lease and the Arnco Lease, effective immediately. The Debtor also requests authority to abandon the items listed on Exhibits A and B to this motion.

#### **Basis for Relief**

8. The Debtor has determined that the Rejected Leases are not necessary for the Debtor's ongoing business operations and will not contribute to the orderly and efficient reorganization of the Debtor's business and financial affairs. The Rejected Leases constitute a burden upon the Debtors' estates and will needlessly increase administrative costs if not rejected.

9. Section 365 of the Bankruptcy Code provides, in pertinent part, 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). A debtor in possession's right to reject executory contracts and unexpired leases is a fundamental component of the bankruptcy process, as it provides a debtor with a mechanism to eliminate financial burdens to the estate. *In re Hardie*, 100 B.R. 284 (Bankr. E.D.N.C. 1989); *In re Gunter Hotel Assoc.*, 96 B.R. 696 (Bankr. W.D. Tex. 1988).

10. The decision to reject an executory contract or unexpired lease is primarily administrative and should be given great deference by a court subject only to review under the “business judgment” rule. *See In re Gardinier, Inc.*, 831 F.2d 974, 976 n. 2 (11th Cir. 1987); *Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989). The business judgment rule requires the debtor to establish that rejection of the agreement will likely benefit the estate. *See Sharon Steel Corp.*, 872 F.2d at 39-40; *In re Kong*, 162 B.R. 86 (Bankr. E.D.N.Y. 1993). Courts universally regard the business judgment rule as a low standard to meet, and therefore, absent a finding of bad faith, will not disturb the decision to reject an executory contract or unexpired lease by submitting their own business judgment for that of the debtor. *See In re III Enter., Inc. V*, 163 B.R. 453, 469 (Bankr. E.D.Pa. 1994); *In re Hardie*, 100 B.R. at 287.

11. The Debtor has determined that the burdens of complying with the Rejected Leases outweighs the benefits to the estate of continued performance under the Rejected Leases. Because they relate to closed facilities, the Rejected Leases provide no economic benefit to the Debtor’s estate to offset their recurring costs. Accordingly, the Debtor believes, in the exercise of its business judgment, that continued performance under the Rejected Leases would not be in the best interest of the Debtor’s estate. Thus, the Debtor seeks authority under Section 365 of the Bankruptcy Code to reject the Rejected Leases.

12. Section 554(a) of the Bankruptcy Code provides that a debtor, “after notice and a hearing... may abandon any property of the estate that... is of inconsequential value and benefit to the estate.” *See, e.g., In re Midlantic Nat’l Bank*, 474 U.S. 494, 507 (1986) (“The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm.”). The Debtor believes that the abandonment of property that cannot reliably be sold for more than the costs of sale is

the best means of maximizing the value of their estates. The Debtor submits that the proposed abandonment of the “no net value” assets identified in Exhibits A and B represents the exercise of sound business judgment, and balances the need for a reduction of burdensome costs to the estate against the Debtor’s desire to obtain value for every asset for the benefit of its creditors.

### **Notice**

13. Notice of this motion has been provided to (a) Georgia Factory Stores, Ltd. (party to the Commerce Lease); (b) Home Accents Direct Outlet Center, LLC (party to the Surfside Lease); (c) Crain Headley Tucker, LLC (party to the Arnco Lease); and (d) those parties listed on the Master Service List. In light of the nature of the relief requested, and given the Court’s prior order regarding notice procedures for these jointly-administered chapter 11 cases, the Debtor submits that no further notice is necessary under Bankruptcy Rule 6007(a).

### **Conclusion**

WHEREFORE the Debtor respectfully requests entry of an order granting the relief requested herein, and granting the Debtors such other and further relief as may be just.

Dated: Atlanta, Georgia  
May 28, 2004

Respectfully submitted,

KING & SPALDING LLP

/s/ Jonathan W. Jordan

James A. Pardo, Jr.

Georgia Bar No. 561206

Sarah Robinson Borders

Georgia Bar No. 610649

Jonathan W. Jordan

Georgia Bar No. 404874

191 Peachtree Street

Atlanta, Georgia 30303-1763

(404) 572-4600

Fax: (404) 572-5149

ATTORNEYS FOR THE DEBTORS

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

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

**ORDER GRANTING DEBTOR'S SECOND MOTION FOR AN ORDER  
AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES  
AND MOTION FOR AUTHORITY TO ABANDON "NO NET VALUE" ASSETS  
IN CLOSED LOCATIONS**

This matter is before the Court on the motion of Dan River Inc. (the "Debtor") for authority to reject the Commerce Lease, the Surfside Lease and the Arnco Lease, effective immediately, and for authority to abandon certain items of negligible value (the "Motion"). (Capitalized terms not defined in this order are given the meanings ascribed to them in the Motion.)

The Court has considered the Motion, the papers filed in connection therewith 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 the parties listed on the Master Service List and the contracting parties to the agreements rejected by the Motion (collectively, the "Rejected Leases"); that no further notice is necessary; that to the extent additional notice is otherwise required by Bankruptcy Rule 6007(a), such requirement is modified consistent with this Order; 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 is GRANTED.
2. Effective immediately, the Debtor is authorized to reject the Rejected Leases, and such Rejected Leases are hereby deemed rejected pursuant to 11 U.S.C. § 365.
3. Effective immediately, the Debtor is authorized to abandon those items listed on Exhibits "A" and "B" to the Motion pursuant to 11 U.S.C. § 554(a).
4. To the extent the ten-day stay of Bankruptcy Rule 6004(g) may be construed to apply to the subject matter of this Order, such stay is hereby waived.
5. 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/ Jonathan W. Jordan  
James A. Pardo, Jr.  
Georgia Bar No. 561206  
Sarah Robinson Borders  
Georgia Bar No. 610649  
Jonathan W. Jordan  
Georgia Bar No. 404874  
191 Peachtree Street  
Atlanta, Georgia 30303-1763  
(404) 572-4600  
Fax: (404) 572-5149

Attorneys for the Debtors