

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

In re:)	Chapter 11
)	
DAN RIVER INC., et al.)	Case Nos. 04-10990 through 04-10993
)	Jointly Administered
)	
Debtors.)	Judge Drake
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**DEBTOR'S MOTION FOR AN ORDER AUTHORIZING REJECTION OF A
CONTRACT WITH AT&T CORP.**

Dan River Inc. (the "Debtor") files this motion to reject a contract with AT&T Corp. ("AT&T") pursuant to section 365 of the Bankruptcy Code, 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

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.

Relief Requested

3. The Debtor has determined that the AT&T Contract (as hereinafter defined) is no longer beneficial to its ongoing business operations. Accordingly, the Debtor requests

authorization to reject the AT&T Contract and for the rejection to become effective on July 19, 2004.

Basis for Relief

4. The Debtor obtains certain services from AT&T pursuant to the “AT&T Service Order Attachment – Voice/Data Services” (the “AT&T Contract”) that became effective on or around October 9, 2001.

5. Since the Petition Date, the Debtor has been conducting a review of its ongoing business operations. As part of this review, the Debtor has determined that the AT&T Contract is 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 AT&T Contract constitutes a burden upon the Debtors’ estates and will needlessly increase administrative expenses if not rejected.

6. 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).

7. 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.

8. The Debtor has determined that the burdens of complying with the AT&T Contract outweighs the benefits to the estate of continued performance under the AT&T Contract. Accordingly, the Debtor believes, in the exercise of its business judgment, that continued performance under the AT&T Contract 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 AT&T Contract and for the rejection to become effective on July 19, 2004.¹

Notice

9. Notice of this motion has been provided to those parties listed on the Master Service List and to AT&T. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

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.

[signature on following page]

¹ The AT&T Contract is not the only contract between AT&T and the Debtor. By this motion, the Debtor is only seeking to reject the AT&T Contract and is not seeking to reject any other contract between AT&T and the Debtor and is not seeking to terminate any services with AT&T except for those services provided pursuant to the AT&T Contract.

Dated: Atlanta, Georgia
June 15, 2004

Respectfully submitted,

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**ORDER GRANTING DEBTOR'S MOTION FOR AN ORDER AUTHORIZING
REJECTION OF A CONTRACT WITH AT&T CORP.**

This matter is before the Court on the motion of Dan River Inc. (the "Debtor") for authority to reject a contract with AT&T Corp. (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 to AT&T; 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 is GRANTED.
2. Effective July 19, 2004, the Debtor is authorized to reject the AT&T Contract, and the AT&T Contract is hereby deemed rejected pursuant to 11 U.S.C. § 365 as of July 19, 2004.
3. 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:

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