Hearing Date and Time: July 7, 2005 @ 1:00 p.m.
Objection Deadline: July 5, 2005 @ 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
NORSTAN APPAREL SHOPS, INC. d/b/a FASHION CENTS, et al.,	:	Case No. 05 – 15265 (CEC) (Lead Case) 05 - 15268 (CEC) (Jointly Administered)
Debtors.	:	

NOTICE OF MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 1113 AND FED R. BANKR. P. 9019 APPROVING STIPULATION FOR REJECTION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN NORSTAN APPAREL SHOPS, INC. AND OFFICE AND DISTRIBUTION EMPLOYEES' UNION LOCAL 99 UNITE HERE

PLEASE TAKE NOTICE that a hearing will be held on July 7, 2005, at 1:00 p.m. or as soon thereafter as counsel can be heard before the Honorable Carla E. Craig, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Eastern District of New York, 75 Clinton Street, Brooklyn, New York, to consider the annexed Motion for Order Pursuant to 11 U.S.C. § 1113 and Fed. R. Bankr. P. 9019 Approving Stipulation for Rejection of Collective Bargaining Agreement Between Norstan Apparel Shops, Inc. and Office and Distribution Employees' Union Local 99 UNITE HERE (the "Motion").

PLEASE TAKE FURTHER NOTICE that the hearing to consider the Motion and any objections thereto may be adjourned from time to time without notice to any creditor or other party-in-interest, other than the announcement of the adjourned date at such hearing.

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be filed with the Court, together with a copy for the chambers of Judge Craig, and served upon (i) counsel for the Debtor, Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman, Esq.); (ii) the Office of the United States Trustee, 33 Whitehall Street, 22nd Floor, New York, New York 10004 (Attn: Linda A. Riffkin, Esq.); (iii) counsel to the Official Committee of Unsecured Creditors, Kronish Lieb Weiner & Hellman LLP, 1114 Avenue of the Americas, New York, New York 10036-7798 (Attn: Lawrence C. Gottlieb, Esq.); and (iv) counsel to AmSouth Bank, Kaye Scholer LLP, 425 Park Avenue, New York, New York 10022 (Attn: Marc Rosenberg, Esq.), so as to be received no later than July 5, 2005 at 4:00 p.m.

Dated: New York, New York
June 16, 2005

KATTEN MUCHIN ROSENMAN LLP
Attorneys for Debtors and Debtors-In-Possession

By: /s/ Jeff J. Friedman
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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Debtors.	:	

MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 1113 AND FED. R. BANKR. P. 9019 APPROVING STIPULATION FOR REJECTION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN NORSTAN APPAREL SHOPS, INC. AND OFFICE AND DISTRIBUTION EMPLOYEES' UNION LOCAL 99 UNITE HERE

Norstan Apparel Shops, Inc. d/b/a/ Fashion Cents, as debtor and debtor-in-possession (the "Debtor"), respectfully represents:

Jurisdiction

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Introduction

2. On April 8, 2005 (the "Petition Date"), the Debtor and Norstan Delaware Corp., ("Norstan Delaware") filed with the Court petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor and Norstan Delaware continue to operate their businesses and manage their affairs as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in these chapter 11 cases. An official committee of unsecured creditors (the "Committee") was appointed in these cases on April 13, 2005.

Background

4. As of the Petition Date, the Debtor operated 229 retail stores selling women's budget-priced apparel in 24 states throughout the midwestern, midsouthern, mid-Atlantic and southeastern regions of the United States.

5. The Debtor recently sold substantially all of its assets to a joint venture consisting of Gordon Brothers Retail Partners, DJM Asset Management, LLC, Rainbow Northeast Leasing, Inc., Simply Fashion Stores, Ltd., Hilco Real Estate LLC, and Hilco Merchant Resources, LLC (the "Joint Venture") pursuant to the terms of an asset purchase agreement, an agency and license agreement and related documents, each dated as of June 1, 2005. The Court entered an order approving the sale to the Joint Venture on May 31, 2005 and the sale closed the next day. As a result of the sale to the Joint Venture, the Debtor will no longer be in the business of selling women's apparel. Accordingly, the Debtor will vacate its warehouse in Long Island City, New York (the "LIC Facility") on or about June 30, 2005 when the lease expires.

The Collective Bargaining Agreement

6. The Debtor is a party to collective bargaining agreement (the "CBA") with the Office and Distribution Employees' Union Local 99 – UNITE HERE (the "Union"). Of the Debtor's approximately 1,700 employees, 50 are members of the Union (the "Union Employees"), each of whom are employed at the LIC Facility.

7. Prior to the Petition Date, the Debtor discussed the CBA and the Union Employees with Fashion Cents Acquisition LLC ("FCA") – the Debtor's original stalking horse purchaser. Additionally, after the Petition Date, the Debtor discussed the CBA and the Union Employees with the Joint Venture. Both FCA and the Joint Venture made clear that they would not assume the CBA, and would not keep the Union in place.

8. Accordingly, as required by section 1113 of the Bankruptcy Code the Debtor made a proposal to and negotiated in good faith with the Union to reach an agreement providing for the termination of the Union Employees and rejection of the CBA. Specifically, the Debtor's President, Chief Financial Officer, and bankruptcy counsel meet with representatives of the Union on April 22, 2005 and provided the Union Representatives with a written proposal regarding rejection of the CBA in light of the then anticipated sale of the Debtor's business. The Debtor also provided additional information necessary for the Union representatives to evaluate the Debtor's proposal including information on the proposed sale to FCA, copies of the Debtor's financial statements, and various filed pleading in this case such as the Debtor's motion to obtain postpetition financing which effectively required a sale of the Debtor's assets.

9. The representatives of the Union rejected the Debtor's initial offer. Accordingly, further negotiations were conducted in order to reach an amicable resolution over the rejection of

the CBA and the termination of the Union Employees. As a result of these further negotiations, the Debtor and the Union have entered into the stipulation (the "Stipulation") attached as Exhibit "A" hereto which memorializes their agreement. The terms of the Stipulation are summarized below:[1]

a) The CBA will be deemed rejected as of the date of Norstan Apparel's termination of the employment of the last Union Employee – a date the Debtor anticipates will be June 24, 2005, the last day of the 60-day WARN Act notice period.

b) Norstan Apparel will continue to perform all payment obligations under the CBA until the effective date of rejection of the CBA.

c) In the event all Union employees are not terminated on the same date, layoffs the Union Employees will occur in the inverse order of seniority, provided that each Union Employee not terminated is qualified by reason of training, experience and physical ability to perform the remaining work required by the Debtor.

d) The Union Employees will be paid with their final paycheck for all unused vacation and sick days as required by the CBA. The Debtor estimates that such payments will aggregate approximately $40,000.

e) Severance payments required to be paid by the CBA, to the extent not paid out of the "Severance Fund" established pursuant to the CBA, will be paid directly to the Union Employees by the Debtor no later than thirty (30) days after the termination of the Union Employees. The Union will cooperate and coordinate with the Debtor to assure that each Union Employee is paid the severance to which he or she is entitled from the Severance Fund. The Debtor anticipates that approximately $280,000, in addition to amounts in the Severance Fund, will be payable in respect of severance.

f) As consideration for the Union's agreement to stipulate to the relief in the Stipulation and to avoid time consuming and potentially costly litigation, within ten (10) days after the effective date of the rejection of the Collective Bargaining Agreement, the Debtor will make payments to the Local 99 Health and Welfare Fund for two (2) months of medical and dental insurance for the Union Employees so that the Union Employees will have two (2) months of additional coverage after the date of their termination pursuant to COBRA. The Debtor estimates such payments will total approximately $32,000.

[1] This description is intended only as a summary of the terms of the Stipulation and is qualified in its entirety by reference to the more detailed provisions of the Stipulation attached as Exhibit "A" hereto. If any inconsistency exists between this summary and the Stipulation, the terms of the Stipulation will control.

g) The Union may file a general unsecured claim (and only a general unsecured claim) against the Debtor's estate for any damages suffered as a result of the rejection of the CBA, which may include a claim for any damages based on withdrawal liability incurred by the Debtor pursuant to its obligations under the CBA (the "Union Claim").

h) The Debtor and any estate representative have reserved the right to object to the amount of the Union Claim, and will enter into good-faith negotiations with the Union over the appropriate allowed amount of the Union Claim prior to the filing of a formal objection in the Bankruptcy Court as to the amount of the Union Claim.

i) With the exception of the filing of the Union Claim, neither the Union nor any of the former Union Employees, will file additional claims arising out of the CBA against the Debtor's estate, or the estate of any affiliate (whether such claims are secured, priority, administrative or otherwise), nor will the Union or any of the former Union Employees acting on behalf of the Union commence any adversary proceeding or other action (whether commenced in the Bankruptcy Court or otherwise) against the Debtor, its officers, directors, employees, representatives or affiliates, which seeks to recover amounts allegedly due under the CBA, provided, however, that nothing prevents the Union or any pension plan to which the Debtor was required to contribute pursuant to the CBA from asserting claims with respect to such pension plans against the trades or businesses which are under common control with the Debtor, as set forth in 26 U.S.C. § 414(c) and the regulations promulgated thereunder, with the exception of Norstan Delaware.

j) Other than as stated above, the parties to the Stipulation wave and release claims against each other, their officers, directors, agents, parents, subsidiaries, successors or assigns.

Relief Requested

10. By this motion (the "Motion"), the Debtor seeks entry of an order pursuant to section 1113 of the Bankruptcy Code and Bankruptcy Rule 9019 approving the Stipulation and authorizing the rejection of the CBA pursuant to the terms thereof.

Bases for the Relief Requested

11. As stated above, now that the sale of the Debtor's assets to the Joint Venture has closed, the Debtor will no longer be conducting its retail operations. Additionally, the Debtor will be vacating the LIC Facility warehouse where the Union Employees work. Simply put, the

Debtor no longer has a business that requires the Union Employees. Rather, the Debtor's focus will now be on winding up its estate, and the estate of Norstan Delaware, and preparing and submitting a confirmable plan. Additionally, the Joint Venture members have made clear that it will not assume the CBA and the agreements between the Debtor and Joint Venture make clear that the Joint Venture is not a successor to the Debtor. Accordingly, the Debtor is left with no alternative but to reject the CBA and terminate the Union Employees.

12. As detailed above and in the accompanying memorandum of law, the Debtor has satisfied the requirements of section 1113 of the Bankruptcy Code regarding the termination of the CBA. However, because section 1113 does not *specifically* address the situation presented here (a debtor and its union reaching a consensual resolution over the rejection of a collective bargaining agreement), and because the Stipulation provides for a compromise between the parties and a waiver of claims, the Debtor also relies upon Bankruptcy Rule 9019 for the relief requested herein.

13. Under the circumstances of this case, the Debtor submits that entry into the Stipulation is fair and equitable, reasonable, and in the best interests of the Debtor's estate because the Stipulation provides for an orderly and cost-effective termination of the CBA without the need for litigation over issues such as the reasonableness of the Debtor's proposal and/or the necessity of termination. The Stipulation also resolves the issue of the priority of the Union's claims. As stated above, the Union Claim will be a general unsecured claim. In exchange, the Debtor will assume the cost of supplying the Union Employees with two additional months of health insurance coverage under COBRA – an expense of approximately $32,000. That expense is the only payment made to Union pursuant to the Stipulation that was not mandated by the CBA.

14. Accordingly, the Debtor also submits that the terms of the Stipulation are fair and equitable to the Union Employees who will be receiving everything they are entitled to under the CBA plus two months of additional heath insurance coverage. This additional coverage, together with severance, will provide a measure of relief to the Union Employees while they seek employment elsewhere.

Notice

15. Notice of this Motion will be served by overnight delivery upon (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to the Debtor's prepetition and postpetition lenders; (iv) counsel for the Union; and (v) all of the entities who have filed a notice of appearance and request for service of papers in the Debtor's case. In light of the nature of the relief requested herein, the Debtor submits and requests that the Court find that such notice is sufficient and that no other or further notice need be provided.

16. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that this Court (i) enter an order

substantially in the form accompanying this Motion approving the Stipulation and the rejection of the CBA pursuant to the terms thereof; and (ii) grant such other and further relief as is just and proper.

Dated: New York, New York
June 16, 2005

KATTEN MUCHIN ROSENMAN LLP
Attorneys for Debtors and Debtors-In-Possession

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
NORSTAN APPAREL SHOPS, INC. d/b/a FASHION CENTS, et al.,	:	Case No. 05 – 15265 (CEC) (Lead Case) 05 - 15268 (CEC) (Jointly Administered)
Debtors.	:	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 1113 AND FED. R. BANKR. P. 9019 APPROVING STIPULATION FOR REJECTION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN NORSTAN APPAREL SHOPS, INC. AND OFFICE AND DISTRIBUTION EMPLOYEES' UNION LOCAL 99 UNITE HERE

Norton Apparel Shops, Inc. d/b/a/ Fashion Cents, as debtor and debtor-in-possession (the "Debtor"), submits this memorandum of law in support of its Motion for Order Pursuant to 11 U.S.C. § 1113 and Fed. R. Bankr. P. 9019 Authorizing Rejection of Collective Bargaining Agreement Between Norstan Apparel Shops, Inc. and Office and Distribution Employees' Union Local 99 UNITE HERE (the "Motion").[1]

FACTUAL BACKGROUND

The factual support for this memorandum is set forth in the Motion, which may be supplemented by testimony at the hearing on the Motion.

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

LEGAL ARGUMENT

Section 365 of the Bankruptcy Code authorizes the assumption or rejection of executory contracts and unexpired leases of the debtor, subject to the court's approval. 11 U.S.C. § 365(a). The rejection of collective bargaining agreements, however, is controlled by section 1113 of the Bankruptcy Code which provides, in relevant part:

> The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that
>
> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);
>
> (2) the authorized representative of the employees has refused to accept such proposal without good cause; and
>
> (3) the balance of the equities clearly favors rejection of such agreement

11 U.S.C. §1113(c).

Bankruptcy Code section 1113(b)(1), in turn, provides:

> Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee . . . shall
>
> (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all the affected parties are treated fairly and equitably; and
>
> (B) provide . . . the representative of the employees with such relevant information as is necessary to evaluate the proposal

11 U.S.C. 113(b)(1). See also, In re Maxwell Newspapers, Inc., 981 F.2d 85, 89 (2d Cir. 1992); In re Family Snacks, Inc., 257 B.R. 884, 891 (8th Cir. B.A.P. 2001).

Section 1113 contains safeguards that force unions to face changed circumstances that occur when a company becomes insolvent, while at the same time ensuring that debtors do not use the chapter 11 process as an expedient "medicine to rid themselves of corporate indigestion." Maxwell Newspapers, 981 F.2d at 89 citing In re Century Brass Prods., Inc., 795 F.2d 265, 272 (2d Cir. 1986).

Courts interpreting section 1113 apply the following analysis to determine whether a debtor may reject a collective bargaining agreement:

1. The debtor must have made a proposal to the union to modify the collective bargaining agreement;
2. The proposal must be based on the most complete and reliable information available at the time of the proposal;
3. the modification must be necessary to permit reorganization;
4. the modification must provide that all affected parties are treated fairly and equtably;
5. the debtor must provide the union with such relevant information as is necessary to evaluate the proposal;
6. the debtor must have met with the collective bargaining representative at reasonable times subsequent to making the proposal;
7. the debtor must have negotiated with the union concerning the proposal in good faith;
8. the union must have refused to accept the proposal without good cause; and
9. the balance of the equities must clearly favor rejection of the agreement.

See, e.g., In re Carey Transportation, Inc., 50 B.R. 203, 207 (Bankr. S.D.N.Y 1985) aff'd 816 F.2d 82 (2d Cir. 1987). See also, Family Snacks, 257 B.R. 892; In re Horizon Natural Resources Co., 316 B.R. 268, 280 (Bankr. E.D. Ky. 2004); In re Lady H. Coal Co., Inc., 193 B.R. 233, 241

(Bankr. S.D. W.Va. 1996). The debtor bears the burden of satisfying each of these elements. In re Liberty Cab and Limo. Co., Inc., 194 B.R. 770 (Bankr. E.D. Pa. 1996).

As detailed in the Motion, the Debtor has satisfied the first, second, fourth, fifth, sixth, seventh and ninth elements of the test. Specifically, the Debtor made a proposal to the Union based upon the most complete and reliable information at the time and provided that information to the Union representatives so that the proposal could be evaluated. The Debtor met with the Union representatives and conducted extensive subsequent good-faith negotiations to reach the terms of the Stipulation. Additionally, entry into the Stipulation treats the Debtor and the Union Employees fairly and equitably with advantages to both sides. Given the costs of further negotiations and litigation, and the results achieved by the Stipulation, the balance of equities clearly tip in favor of rejecting the CBA in accordance with the provisions of the Stipulation. The third element (that modification be necessary to permit reorganization) is inapplicable here because the Debtor will not be reorganizing. Finally, the eighth element (that the union has rejected the proposal without good cause) is inapplicable here because, unlike the facts in almost all the reported case law, the Debtor and the Union have reached an agreement. Accordingly, the Debtor has satisfied its burden under section 1113 of the Bankruptcy Code.

Because section 1113 of the Bankruptcy Code does not specifically address the situation in which a debtor and the union reach a consensual resolution over the modification or termination of a collective bargaining agreement, and because the Stipulation provides for a compromise between the parties and a waiver of claims, the Debtor also relies upon Bankruptcy Rule 9019 in further support of the relief requested herein.

Bankruptcy Rule 9019 provides, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Courts have held that, in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), the Court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of the debtor's estate. See In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), affirmed, 17 F.3d 600 (2d Cir. 1994) (citing Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968)). The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise under bankruptcy Rule 9019, should not decide the numerous questions of law and fact raised by the compromise, but should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir 1983). See also, In re Ionosphere Clubs, 156 B.R. at 426.

As stated in the Motion, the Stipulation is the result of extensive and good-faith negotiations between the Debtor and representatives of the Union and is in the best interests of the Debtor's estate because it resolves the important issue of the priority of the Union's claims. The Union Claim will be a general unsecured claim for any damages suffered as a result of the rejection of the CBA. In exchange, the Debtor will assume the cost of supplying the Union Employees with two additional months of health insurance coverage under COBRA – an expense of approximately $32,000.

The Debtor submits that inasmuch as all of the payments to the Union with the exception of the two months for COBRA benefits are required by the CBA and would constitute administrative expense obligations of the estate, that the settlement embodied by the Stipulation is well within the "range of reasonableness" required by the law in the circuit.

CONCLUSION

For all of the foregoing reasons and for the reasons set forth in the Motion, the Court should grant the Motion, approve the Stipulation and authorize the rejection of the CBA pursuant to the terms of the Stipulation.

Dated: New York, New York
June 16, 2005

KATTEN MUCHIN ROSENMAN LLP
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
NORSTAN APPAREL SHOPS, INC. d/b/a FASHION CENTS, et al.,	:	Case No. 05 – 15265-608 (Jointly Administered)
Debtors.	:	

ORDER PURSUANT TO 11 U.S.C. § 1113 AND FED. R. BANKR. P. 9019 APPROVING STIPULATION FOR REJECTION OF COLLECTIVE BARGAINING AGREEMENT

Upon the Motion for Order Pursuant to 11 U.S.C. § 1113 and Fed. R. Bankr. P. 9019 Authorizing Rejection of Collective Bargaining Agreement Between Norstan Apparel Shops, Inc. and Office and Distribution Employees' Union Local 99 UNITE HERE (the "Motion")[1] filed by Norstan Apparel Shops, Inc., as debtor and debtor-in-possession (the "Debtor"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtor is authorized to enter into and carry out the provisions of the Stipulation and make all payments required thereunder without further order of this Court; and it is further

ORDERED that, consistent with the terms of the Stipulation, the effective date of rejection of the CBA shall be the date of the Debtor's termination of the employment of the last Union Employee.

Dated: Brooklyn, New York
July ___, 2005

UNITED STATES BANKRUPTCY JUDGE