

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

In re:) Chapter 11
)
FIBRANT, LLC, *et al.*,¹) Case No. 18- 10274
)
)
Debtors.) (Joint Administration Requested)
)
_____)

DEBTORS' MOTION FOR ENTRY OF AN
ORDER AUTHORIZING THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS *NUNC PRO TUNC* TO THE
PETITION DATE

Fibrant, LLC and its affiliated debtors-in-possession (the "Debtors"), by and through their undersigned counsel, hereby move this Court (the "Motion") for entry of an order pursuant to 11 U.S.C. §§ 365(a) and 105(a) authorizing the Debtors to reject certain executory contracts identified on the proposed order attached as Exhibit A (the "Rejected Agreements"), effective *nunc pro tunc* to the Petition Date, as defined below. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 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.

2. The statutory and legal predicates for the relief sought herein are sections 365(a)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).



and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On February 23, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of David Leach in Support of First-Day Motions and Applications* (the “First-Day Declaration”)² filed on the Petition Date and incorporated herein by reference.

5. The Debtors have continued in possession of their properties and continue to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. As of the date of this filing, no official committee of unsecured creditors has been appointed in these cases, and no request has been made for the appointment of a trustee or examiner.

RELIEF REQUESTED

7. By this Motion, the Debtors respectfully request the entry of an order in the form attached hereto as Exhibit A: (i) authorizing the rejection of the Rejected Agreements pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 and having such rejection effective *nunc pro tunc* to the Petition Date, and (ii) requiring that any and all claims arising out of the rejection of the Rejected Agreements be filed on or prior to the general non-governmental bar date set by this Court for filing claims or interests (the “Bar Date”), and directing that any such claims that are not filed on or prior to the Bar Date shall be deemed

² Capitalized terms that are used but not defined in this Motion have the meanings ascribed to such terms in the First-Day Declaration.

waived, shall not be asserted against the Debtors or their estates and shall not be entitled to participate in any distributions payable to the Debtors' creditors.

BASIS FOR THE RELIEF REQUESTED

8. Section 365(a) of the Bankruptcy Code authorizes a debtor to reject its executory contracts and unexpired leases subject to the approval of the bankruptcy court: “(a) Except as provided in . . . subsections (b), (c) and (d) of this section, the trustee, 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).

9. The Court may approve a debtor’s rejection of an executory contract or unexpired lease if such rejection is made in the exercise of such debtor’s sound business judgment, and if such rejection benefits its estate. *See, e.g., In re Gardinier, Inc.*, 831 F. 2d 974, 976 n.2 (11th Cir. 1987); *In re Wells*, 227 B.R. 553, 564 (Bankr. M.D. Fla. 1998); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *see also Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989); *In re Patterson*, 119 B.R. 59 (E.D. Pa. 1990); *In re Federated Dep’t Stores, Inc.*, 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases.”); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“[u]nder the business judgment test, . . . [a court should approve a debtor’s proposed rejection] if the debtor can demonstrate that rejection will benefit the estate”). It is enough if a debtor determines in its business judgment that a benefit will be realized. *Sharon Steel Corp.*, 872 F.2d at 39 (citing *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the

debtor's business decision unless it is the product of bad faith, whim or caprice. *See Lubrizol Enter. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); *In re Prime Motor Inns*, 124 B.R. 378, 383 (S.D. Fla. 1991).

10. The Debtors have determined, in their business judgment, that the Debtors no longer need (or receive any benefit from) the Rejected Agreements. In their business judgment, the Debtors have determined that rejection of the agreements at this stage of their chapter 11 cases is in the best interests of the Debtors' estates. The Debtors therefore wish to reject the Rejected Agreements. Thus, the relief requested herein is an appropriate exercise of the Debtors' business judgment and should be approved.

11. The Rejected Agreements may give rise to post-petition liability against the Debtors without commensurate value to the estates. To minimize this liability, the Debtors ask the Court to permit rejection on an expedited basis, as part of the Court's hearing of the First-Day Motions.

NOTICE

12. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest

Holding, B.V.; (m) any party that has requested notice pursuant to Bankruptcy Rule 2002, and (n) the counter-parties to the Rejected Agreements. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

13. No previous motion for relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court:

- (a) enter an Order substantially in the form attached hereto as Exhibit A granting the relief requested herein; and
- (b) grant the Debtors such other and further relief as is just and proper.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Dated: February 23, 2018
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Paul K. Ferdinands

Paul K. Ferdinands

Georgia Bar No. 258623

pferdinands@kslaw.com

Jonathan W. Jordan

Georgia Bar No. 404874

jjordan@kslaw.com

Sarah L. Primrose

Georgia Bar No. 532582

sprimrose@kslaw.com

1180 Peachtree Street

Atlanta, Georgia 30309-3521

Telephone: (404) 572-4600

Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP

James C. Overstreet Jr.

Georgia Bar No. 556005

jco@klosinski.com

1229 Augusta West Parkway

Augusta, GA 30909

Telephone: (706) 863-2255

Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

EXHIBIT A
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:)	Chapter 11
)	
FIBRANT, LLC, et al.,¹)	Case No. 18-<u>10274</u>
)	
Debtors.)	Jointly Administered
)	

**ORDER GRANTING DEBTORS’ MOTION TO
REJECT CERTAIN EXECUTORY CONTRACTS NUNC PRO TUNC TO
PETITION DATE**

This matter is before the Court on the *Debtors’ Motion for Entry of an Order Authorizing the Rejection of Certain Executory Contracts* (the “Motion”) of Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion. It appears that the Court has jurisdiction over this proceeding; that notice of the Motion has been given to (a) the Office of the United States

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (n) the counter-parties to the Rejected Agreements; that no further notice of the Motion is necessary; that this is a core proceeding; that a hearing regarding the Motion was held on [_____], 2018; and the Court having determined that the relief requested in the Motion is in the best interest of the Debtors' estates, their creditors and their other stakeholders and is the result of the Debtors' exercise of their business judgment; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion [Docket No. __] is GRANTED.
2. The terms of this Order shall be immediately effective and enforceable upon its entry.
3. The Rejected Agreements identified on Exhibit 1, attached hereto, are deemed rejected effective as of the date of the pursuant to Bankruptcy Code section 365.
4. Counsel to the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that

previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (n) the counter-parties to the Rejected Agreements, within three (3) days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

5. Any and all claims arising out of the rejection of the Rejected Agreements are required to be filed on or prior to the bar date established for non-governmental entities by subsequent order of this Court (the "Bar Date"). Any such claims that are not filed on or prior to the Bar Date shall be deemed irrevocably waived, shall not be asserted against the Debtors or their estates and shall not be entitled to participate in any distributions payable to the Debtors' creditors.

6. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

END OF DOCUMENT

Prepared and presented by:

KING & SPALDING LLP

/s/ Paul K. Ferdinands
Paul K. Ferdinands
Georgia Bar No. 258623
pferdinands@kslaw.com
Jonathan W. Jordan
Georgia Bar No. 404874
jjordan@kslaw.com
Sarah L. Primrose

Georgia Bar No. 532582
sprimrose@kslaw.com
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Telephone: (404) 572-4600
Facsimile: (404) 572-5100

and

KLOSINSKI OVERSTREET, LLP
James C. Overstreet Jr.
Georgia Bar No. 556005
jco@klosinski.com
1229 Augusta West Parkway
Augusta, GA 30909
Telephone: (706) 863-2255
Facsimile: (706) 863-5885

PROPOSED COUNSEL FOR THE
DEBTORS-IN-POSSESSION

Exhibit 1**Rejected Contract Listing**

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
American Railcar Leasing LLC	Master Lease and Rider #1, Amendment #1	DSM Chemicals North America LLC	Lease: Equipment	06/25/2015
Anderson Shipping Company	Anderson Shipping Company Customs Power of Attorney	DSM Chemicals North America LLC	Unknown	07/16/2015
Augusta Communications Inc.	Agreement between DSM and Augusta Communications for Managed Services of Site Radios and Supporting Systems	DSM Chemicals North America LLC	Maintenance: Equipment	01/01/2016
BMSI Packaging Inc.	Second Amendment to Product Purchasing Agreement	DSM Services USA, Inc.	Purchase Contract / Purchase Order	06/23/2015
The BOC Group Inc.	On Site Product Purchase Agreement	DSM Chemicals North America	Purchase Contract / Purchase Order	11/19/2007
Chevron Phillips Chemical Company LP	Cyclohexane Contract of Sale	DSM Chemicals North America Inc.	Supply Agreement	01/01/2014
Chicago Freight Car Leasing Co	Second Supplement to Lease #1101 Dated 12/10/2008	DSM Chemicals North America Inc.	Lease: Equipment	12/10/2008
Chicago Freight Car Leasing Co.	Third Supplement to Lease @1101 Dated 12/8/2008 between Chicago Freight and DSM	DSM Chemicals North America Inc.	Lease: Equipment	12/10/2008

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
Enviance Inc.	Second Amendment to Application Services Provider Customer Agreement	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	09/07/2011
Formosa Plastics Corporation USA	Caustic Agreement with Formosa (North American Framework Agreement for Goods--Caustic Soda)	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	01/01/2010
Formosa Plastics Corp. USA	First Amendment to the Caustic Soda 50% Solution Agreement	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	01/01/2013
Formosa Plastics Corp. USA	Second Amendment to the Caustic Soda 50% Solution Agreement	DSM Chemicals North America LLC	Purchase Contract / Purchase Order	07/01/2016
GATX Corporation Rail	Renewal of Contract 2123, Rider 0021	DSM Chemicals North America Inc.	Service Contract	04/01/2013
GATX Corporation Rail	Renewal of Contract 2123, Rider 0023	DSM Chemicals North America Inc.	Service Contract	04/01/2013
GATX Corporation	Renewal of Rider 0017	DSM Chemicals North America Inc.	Service Contract	09/01/2011
GATX Corporation	Renewal of Contract 2123, Rider 0010	DSM Chemicals North America Inc.	Service Contract	09/03/2013
GATX Corporation Rail	Renewal of Contract 2123, Rider 0013	DSM Chemicals North America Inc.	Lease: Equipment	01/01/2014

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
GATX Corporation	Amendment to Revised Renewal of Contract 2123, Rider 0023	DSM Chemicals North America Inc.	Lease: Equipment	05/20/2013
GATX Corporation Rail North America	Rider No. 25 to Car Service Contract No. 2123	DSM Chemicals North America Inc.	Lease: Equipment	09/01/2013
GATX Corporation	Renewal of Contract 2123, Rider 0009--Revised	DSM Chemicals North America Inc.	Lease: Equipment	09/03/2013
General Electric Railcar Services Corporation	Rider No. 16 Renewal No. 4 to Car Leasing Agreement No. 6082-01	DSM Chemicals North America Inc. DSM Chemicals North America LLC	Lease: Equipment	02/01/2015
General Electric Railcar Services Corporation	Rider No. 18 Renewal No. 4 to Car Leasing Agreement No. 6082-01	DSM Chemicals North America Inc. DSM Chemicals North America LLC	Lease: Equipment	01/01/2015
General Electric Railcar Services Corporation	Rider No. 20 Renewal No. 1-A and 1-B to Car Leasing Agreement 6082-01	DSM Chemicals North America LLC DSM Chemicals North America Inc.	Lease: Equipment	01/01/2015

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
General Chemical Corporation	Third Amendment to Agreement	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	01/31/2013
General Chemical Corporation	Fourth Amendment to Agreement	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	01/31/2013
Morrall Companies LLC	Storage and Handling Agreement	DSM Chemicals North America Inc.	Storage Agreement	08/15/2014
Olin Corporation Olin Chlor Alkali Products	Agreement for the Supply of Caustic Soda 50% Solution	DSM Chemicals North America LLC	Purchase Contract / Purchase Order	01/01/2016
Pollock Financial Services	Copier-Printer Management Program	DSM Chemicals North America Inc.	Unknown	07/01/2015
R.M. Railcars LLC	Rider No. 5 to Master Lease No. DSM 0315	DSM Chemicals North America Inc.	Lease: Auto	04/20/2015
Shintech Inc.	Framework Agreement for Caustic Soda 50% Solution	DSM Chemicals North America Inc.	Purchase Contract / Purchase Order	01/01/2014

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
General Electric Railcar Services Corporation	Rider No.16 Renewal No.4to Car Leasing Agreement NO.6082-01	DSM Chemicals North America Inc.	Lease: Auto	02/28/2015
General Electric Railcar Services Corporation	Rider 18 Renewal 4 to Car Leasing Agreement No.6082-01	DSM Chemicals North America Inc.	Lease: Auto	02/28/2015
General Electric Railcar Services Corporation	Rider 20 Renewal No.1-A to Car Leasing Agreement 6082-01	DSM Chemicals North America Inc.	Lease: Auto	04/01/2015
Independent Ag Inc.	Independent Ag AS Supply Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	07/01/2015
Independent Ag Inc.	Independent AG AS Supply Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	07/01/2015
Nylon Polymer Company LLC	Agreement of Lease By and Between DSM Chemicals North America, Inc. And Nylon Polymer Company, LLC	DSM Chemicals North America Holding Inc.	Lease: Building and Land	03/16/1997
Praxair Inc.	Amendment No. 5 to the Praxair Crude CO2 Purchase Supply Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	05/01/2012

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
PraxAir Inc.	Amend.3 CO2 Purchase and Sale Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	06/01/2006
PraxAir Inc.	Amendment 4 CO2 Purchase Sale Agreement	DSM Chemicals North America Holding Inc.	Sales Rep/Agency	06/01/2006
The Scotts Company LLC	Scotts Manufacturing and Supply Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	10/01/2015
CPS	Ammonium Sulfate Supply Agreement	Fibrant. LLC	Supply Agreement	01/01/2015
American Railcar Leasing LLC	Master Service Contract, No. MSC C-9235	DSM Chemicals North America LLC	Lease: Equipment	06/01/2015
Great Walton Railroad Company	Storage Track Agreement	Fibrant, LLC	Track Space Lease	06/10/2016
DSM Coating Resins, Inc.	Service Level Agreement	DSM Chemicals North America Inc.	Service Agreement	02/18/2015
Enviance Inc.	Second Amendment to Application Service Provider Customer Agreement	DSM Chemicals North America Inc.	Service Contract	03/31/2015
GATX Corporation Rail North America	Renewal of Contract No. 2123, Rider No. 12	DSM Chemicals North America Inc.	Freight Services Agreement	08/31/2014
GATX Corporation Rail North America	Rider 20 Renewal Agreement	Fibrant, LLC	Freight Services Agreement	04/15/2016
Union Tank Car Company	Renewal Proposal for Rider A014	DSM Chemicals North America Inc.	Freight Services Agreement	10/31/2012
Honeywell International Inc.	Tolling Agreement	Fibrant, LLC	Sales Tolling Agreement	08/31/2016

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
General Electric Railcar Services Corporation GE Capital Rail Services	Riders No. 22 -A and -B to Car Leasing Agreement 6082-01	DSM Chemicals North America Inc.	Lease: Equipment	07/08/2011
Union Tank Car Company	Renewal Proposal for Rider A013	DSM Chemicals North America Inc.	Lease: Equipment	07/01/2015
Wells Fargo Equipment Finance Inc. d/b/a Midwest Railcar Capital Equipment Company	Extension No. 1 to Schedule #1 By and Between Wells Fargo Equipment Finance and DSM Chemicals North America, Inc.	DSM Chemicals North America Inc.	Lease: Equipment	11/01/2013
Wells Fargo Equipment Finance Inc. d/b/a Midwest Railcar Capital Equipment Company	Wells Fargo Equipment Finance, Inc. d/b/a Midwest Railcar Capital Equipment Company Schedule #2 and Memorandum of Schedule #2 to Full Service Master Lease Agreement	DSM Chemicals North America Inc.	Lease: Equipment	01/16/2013
Wells Fargo Equipment Finance Inc. d/b/a Midwest Railcar Capital Equipment Company	Schedule #3 to the Full Master Lease Agreement	DSM Chemicals North America Inc.	Lease: Equipment	01/16/2013
Wells Fargo Equipment Finance	First Amendment of Full Service Master Lease Agreement	DSM Chemicals North America Inc.	Lease: Equipment	01/18/2013

Counter Parties	Contract Title	Debtors	Contract Type	Effective Date
Inc. d/b/a Midwest Railcar Capital Equipment Company				
DSM Engineering Plastics, Inc.	Amendment No. 1 to Service Level Agreement	Fibrant, LLC	Service Agreement	04/15/2016
DSM Engineering Plastics, Inc.	Service Level Agreement	DSM Chemicals North America Inc.	Service Agreement	02/18/2015
PotashCorp	Ammonia Supply Agreement	Fibrant LLC	Purchase Contract / Purchase Order	01/01/2016
Flint Hills Resources LP	Cyclohexane Sales Agreement	DSM Chemicals North America Inc.	Sales Contract/Trade Agreement	01/01/2014