

Form JTG15 (07/15)

**United States Bankruptcy Court
Western District of Michigan**
One Division Ave., N.
Room 200
Grand Rapids, MI 49503

<p>IN RE: Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):</p> <p>Energetx Composites, LLC 725 E. 40th Street Holland, MI 49483 Tax ID: 26-3514071</p> <p style="text-align: right;">Debtor</p>	<p>Case Number 15-01016-jtg</p> <p>Chapter 7</p> <p>Honorable John T. Gregg</p>
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NOTICE TO PARTIES IN INTEREST OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, Federal Building, U.S. Courthouse, Room 114, 410 W. Michigan Avenue, Kalamazoo, MI 49007 on **October 29, 2015 at 10:00 AM** to consider and act upon the following matter:

Trustee's Motion for Sale of Personal Property

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the Clerk of the United States Bankruptcy Court, One Division Ave., N., Grand Rapids, Michigan 49503, and should be received by the Clerk at least 7 (seven) days before the above hearing date. A copy of your responses should also be mailed upon the opposing party and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion and may enter an order granting relief requested.

DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

Dated: October 7, 2015

/S/
Kim Davis
Deputy Clerk

A copy of this notice returned to Cody H. Knight, Esq. on October 7, 2015 for service upon the mailing matrix.

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site (www.miwb.uscourts.gov) provided the person has a PACER login and password, or by visiting the clerk's office of the United States Bankruptcy Court located at One Division Ave., N., 2nd Floor, Grand Rapids MI 49503. Information about a PACER login and password may be obtained by either calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.psc.uscourts.gov>

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

ENERGETX COMPOSITES, LLC,

Case No.: 15-01016

Chapter 7 – Filed: 02/26/2015

Debtor.

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MOTION FOR SALE OF PERSONAL PROPERTY
FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363
WITH COURTROOM AUCTION

NOW COMES Thomas C. Richardson, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Sale of Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction (“Motion”), hereby says as follows:

JURISDICTION

1. That jurisdiction over this case and proceeding exist in this Court under 28 U.S.C. §1334(a) and (b) and by reference from the District Court in accordance with 28 U.S.C. §157(a). Determination of this Motion is a core proceeding, as defined in 28 U.S.C. §157(b), arising under the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*, “Bankruptcy Code”).

2. Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §1409(a).

BACKGROUND

3. On February 26, 2015 (“Petition Date”) Energetx Composites, LLC (“Energetx”) filed for relief under Chapter 7 of the Bankruptcy Code.

4. The Trustee is the duly appointed and acting Chapter 7 Trustee in this proceeding.

5. Prior to the bankruptcy, Energetx was engaged in the business of manufacturing wind turbine blades.

6. Energetx's two primary secured creditors are purported to be NCTI – EC, LLC (“NCTI”) and Robert L. Slikkers (“Mr. Slikkers”) (collectively, “Secured Creditors”). Each has consented to the sale of the property that is subject to this Motion and believes the sale price to be fair.

7. The Trustee has received an offer from S2 Yachts (“Purchaser”) to purchase certain assets comprising of the Debtor’s remaining physical assets as more fully described in the attached Exhibits “A” and “B”. Exhibit "A" contains a list of equipment to be sold (“Equipment”) and Exhibit “B” contains the list of the Debtor’s inventory to be sold (“Inventory”, collectively “Property”).

8. The offer price to purchase the Property is \$92,769.00.

9. A significant portion of the Inventory is expired or out of date and is hazardous. It has to be disposed of properly. The legal disposal all hazardous Inventory must be handled through a licensed and qualified firm using the most expedient methods and means to protect the environment. The Purchaser has agreed accept full responsibility of properly disposing of all expired raw material Inventory in accordance with State and Federal requirements. Any other party desiring to purchase the Property must also agree to do the same.

10. **The Purchaser shares a connection with the Debtor.** The Debtor rented space from the Purchaser. The Purchaser and the Debtor have some common ownership. The Purchaser and the Secured Creditors have some common ownership. The Purchaser may be a creditor of the Debtor.

11. The Trustee has consulted with the Debtor’s principals and the Secured Creditors and each believes that the offer made by the Purchaser is fair. The Trustee understands the potential conflict of interest but still believes the Debtor's and Secured Creditors' opinion as to

value is important.

12. The Trustee has sought the opinion of an independent third-party appraiser ("Miedema Appraisals) regarding the value of the Property. Through discussions with Miedema Appraisals, the Trustee believes that the Purchaser's offer is fair, especially when one factors in that it will be sold without an auctioneer's commission or fees and that it divests the estate of its remaining physical assets. Further, as previously mentioned, the Purchaser will dispose of the remaining Inventory at its own expense according to both State and Federal law.

13. Earlier in these proceedings, the Trustee was contacted by at least three separate parties (Corporate Assets, Inc., PPL Group, LLC and New Mill Capital) who were at one time interested in making a bid on some or all of the Debtor's assets. The Trustee will provide notice to these parties as well.

RELIEF REQUESTED

14. This Motion seeks to sell the Property to Purchaser pursuant to 11 U.S.C. § 363(b) & (f).

15. The Trustee requests that this Court grant this Motion and enter an Order which:

- a. Approves a sale of the Property, pursuant to §363(b)&(f) of the Bankruptcy Code;
- b. Waives the 14 day stay contained in Fed. R. Bankr. P. 6004;
- c. Provides that all liens, claims or encumbrances in the Property to be sold, shall attach to sale proceeds in the same rank and priority;
- d. Approves the Trustee's "Carve-Out" agreement as defined further herein; and
- e. Authorizes the Trustee to accept a back-up bidder; and
- f. Authorizes the Trustee to execute such documents that may be necessary to effectuate the sale.

ARGUMENT AND AUTHORITY

16. The Trustee seeks approval of the sale of the Property, pursuant to 11 U.S.C. § 363(b), which provides in relevant part that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

17. The sale of the Property is to a party related to the Debtor. However, the Trustee submits that it is in the best interests of the estate.

18. As the Debtor is closed and must liquidate its assets and vacate its space as soon as possible, the Property must be sold and the Trustee submits that the sale to the Purchaser is the best way of selling the remainder of the Debtor’s assets.

19. This Court has discretion to determine whether a sale of assets should be approved. *See, In re Embrace Systems Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995).

20. In determining whether a sale of assets outside the ordinary course of business should be approved pursuant to 11 U.S.C. § 363(b), the Trustee has the burden of establishing that a valid business purpose exists. *See, In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *see also, In re Stephens Industry, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986).

21. Once a valid business purpose has been articulated, however, a presumption arises that the trustee’s decision to sell the assets was made on an informed basis, in good faith and in the honest belief the action was in the best interests of the estate. *See, In re Integrated Resources, Inc.*, 147 B.R. 650, at 656 (S.D.N.Y. 1992); *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. 111. 1995) (the business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company).

22. The Trustee has received a fair offer for the sale of the Property and, pursuant to

this Motion, will expose the same to competitive bidding.

23. This sale is of the remainder of the Debtor's physical assets and selling them pursuant to this Motion to the Purchaser or highest bidder reduces administrative costs.

24. The Secured Creditors are the only parties which may claim a lien in the Property.

25. The Trustee is still negotiating a "carve out" agreement with the Secured Creditors, but it has agreed that no-less than 10% of the sale proceeds will be retained by the bankruptcy estate as a "carve out" ("Carve Out").

26. The sale of the Property should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f)(2) as the Secured Creditors consent to the sale of the Property.

27. To the extent there are other creditors which may claim a lien in the Property, the Trustee may sell the Property free and clear of their liens for the following reasons:

- a. The personal property tax liens on the Property will be paid in full. As such, the Trustee may sell the Property free and clear of such interests pursuant to 11 U.S.C. § 363(f)(1);
- b. To the extent any purported lien holders do not object to the sale, each has been deemed to have consented to the sale. *See, FutureSource LLC v. Reuters Ltd.*, C.A.7 (Ill.) 2002, 312 F.3d 281, certiorari denied 123 S.Ct. 1769, 538 U.S. 962, 155 L.Ed.2d 513; *see also, Veltman v. Whetzal*, 93 F.3d 517, 520 (8th Cir.1996); *contra, see In re Roberts*, 249 B.R. 152, 154-57 (Bankr.W.D.Mich.2000). As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(2);
- c. Pursuant to 11 U.S.C. § 506(a), the value of a creditor's lien is limited to the value of its collateral. As the value of the collateral will be determined by the sale, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(3). (*See generally, In re Becker Indus., Inc.*, 63 B.R. 474 (Bankr. S.D.N.Y. 1986) and *In re Terrance Gardens park P'ship*, 96 B.R. 707 (Bankr. W.D. Tex. 1989);
- d. As any other lien holder's claim is not of public record, their lien would be subject to *bona fide* dispute. As such, the Property may be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(4);

and

- e. Creditors with liens in the Property could be compelled to accept a money satisfaction of their lien rights, such as a Chapter 11 proceeding. As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(5).

28. The sale of the Property to Purchaser, should be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(1)(2)(3)(4) & (5).

AUCTION PROCESS

29. That the sale of the Property shall be sold "As Is, Where Is", with the Trustee making no representations, warranties, statements or promises with respect to the same, including, but not limited to, description, fitness for purpose, merchantability, quantity, the conditions or the quality of any matter or thing whatsoever, with any and all conditions and warranties expressed or implied by law being deemed not to apply to the sale of the Property.

30. The Purchaser or any successful bidder shall take the Property with all of its faults.

31. An auction of the Property will be held at the hearing scheduled for this Motion. Any party desiring to place a bid must be present at the hearing and be prepared to bid.

32. The Trustee will take bids for Property as one lot beginning with an opening bid of \$94,000.00 with subsequent bids being in increments of at least \$1,000.00. In addition, the prospective purchaser must purchase the entire Inventory and to dispose of the same, at its own expense, through a licensed and qualified firm in accordance State and Federal requirements.

33. **All parties desiring to purchase must provide evidence of ability to close.**

34. The Trustee may seek authority to accept a back-up bidder.

35. The Trustee shall review all bids received and, on the basis of such factors as the

Trustee may determine in his sole discretion, including without limitation, the financial and contractual terms of each bid and factors concerning the speed, certainty of consummation of the transactions contemplated by each bid, and ability to properly dispose of the Inventory.

CONCLUSION

36. The Trustee submits that the sale of the Property to Purchaser, subject to the terms of this Motion, including, but not limited to, the "Carve Out", is in the best interests of the estate and its creditors.

WHEREFORE, your Trustee prays:

A. That this Court enter an Order authorizing the sale of the Property on the terms and conditions set forth herein, pursuant to 11 U.S.C. § 363(b).

B. That the Court enter an Order authorizing the sale of the Property be free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds in the same rank, validity and priority that existed as of the Petition Date.

C. That the Trustee be authorized to execute a Trustee's Bill of Sale in conformance with the terms herein and such other documents as may be reasonably necessary.

D. That the Trustee be authorized to pay all applicable personal property taxes without further Order of this Court.

E. Approve the "Carve Out" agreement of 10% of the sale price as described in the Motion.

F. That the Trustee be authorized to accept a back-up bidder.

G. That this Court waive the provisions of Federal Rules of Bankruptcy Rule 6004(h).

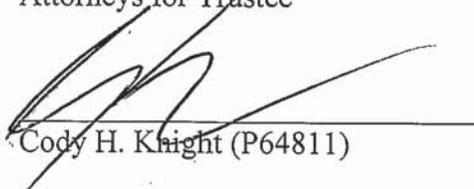
H. That this Court order such other relief as it finds just and equitable.

Respectfully submitted,

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: October 7, 2015

By:

A handwritten signature in black ink, appearing to read 'Cody H. Knight', is written over a horizontal line. The signature is stylized and cursive.

Cody H. Knight (P64811)

BUSINESS ADDRESS:

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