

**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.

\_\_\_\_\_/ /

**ORDER APPROVING MOTION FOR AN EXPEDITED HEARING REGARDING  
MOTION FOR SALE OF PERSONAL PROPERTY FREE AND CLEAR OF  
LIENS PURSUANT TO 11 U.S.C. § 363 WITH COURTROOM AUCTION**

**PRESENT: HONORABLE JOHN T. GREGG**  
United States Bankruptcy Judge

**THIS MATTER** having come to be heard upon the Debtor's Motion for an Expedited Hearing Regarding Motion for Sale of Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction (“Motion to Shorten Notice”); and the Court being otherwise fully advised in the premises;

**IT IS THEREFORE ORDERED:**

1. That the Motion to Shorten Notice is granted.
2. That Notice of the Motion for Sale of Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction is hereby shortened to permit a hearing on **June 18, 2015 at 10:00 a.m. at the Federal Building, U.S. Courthouse, 410 West Michigan Avenue, Kalamazoo, Michigan;** and
3. Any written objections to the relief requested in the Motion for Sale of Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction shall be filed by no later than June 17, 2015 at 12:00 p.m.
4. That service of this Order and the Motion for Sale of Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction shall be served upon all creditors and parties in interest by close of business on June 2, 2015.

This Document Prepared By:

**RAYMAN & KNIGHT**, 141 E. Michigan Avenue, Suite 301, Kalamazoo, MI 49007  
Telephone: (269) 345-5156

**END OF ORDER**

**Signed: June 1, 2015**



*John T. Gregg*  
John T. Gregg  
United States Bankruptcy Judge

**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.

\_\_\_\_\_/ /

**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 Interim 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 believe the sale price to be fair.

7. The Trustee has received an offer from Molded Fiber Glass Companies (“Purchaser”) to purchase certain assets of the Debtor’s remaining assets as more fully described in the attached list (“Property”). (*See*, Exhibit “A”).

8. The offer price to purchase the Property is \$385,000.00.

9. The Debtor scheduled the Property as having a value of \$441,159.00. 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 has considered the costs of rigging and hauling the Property, which could be in excess of \$85,000.00 as well as the cost associated with hiring an auctioneer and the fact that the Property will be sold as-is. After consideration and with the understanding that the sale of the Property will be subject to competitive bidding, the Trustee believes that the Purchaser’s offer is fair and is in the best interest of the estate.

10. The Trustee has been contacted by at least three separate parties (Corporate Assets, Inc., PPL Group, LLC and New Mill Capital) who may also be interested in making a bid on the Property.

### **RELIEF REQUESTED**

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

12. 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.

13. Due to time constraints, and the immediate need to use the assets being sold, the Trustee has also filed a motion with the Court to expedite a hearing on this Motion.

#### **ARGUMENT AND AUTHORITY**

14. 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."

15. The sale of the Property is to an unrelated party.

16. 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 majority of the Debtor's assets. The Purchaser is in need of the Property as soon as possible or will have to buy similar assets elsewhere.

17. 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).

18. 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).

19. 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 interest 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).

20. 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.

21. This sale is a significant portion of the Debtor's assets and selling them pursuant to this Motion to the Purchaser or higher bidder reduces administrative costs.

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

23. 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").

24. 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.

25. 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. Although there are no known personal property tax liens on the Property, to the extent any exists, the sale price is sufficient to pay these claims 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 Chapter 11 proceeding. As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(5).

26. 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**

27. 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.

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

29. 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.

30. The Trustee will take bids for Property in any lots parties desire so long as the total amount of all bids for the Property is at least than \$390,000.00, which shall be the opening bid for the Property as one lot.

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

32. The Trustee may seek authority to accept a back-up bidder or bidders.

33. The Trustee shall review all bids received and, on the basis of such factors as the Trustee may determine in his sole discretion, after consultation (if appropriate) with Secured Creditors and other parties in interests without limitation, the Secured Creditors' approval of a bid, the financial and contractual terms of each bid and factors concerning the speed, certainty of consummation of the transactions contemplated by each bid, identify the highest and otherwise best offer for the Property.

### **CONCLUSION**

34. 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 at least 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.

**RAYMAN & KNIGHT**  
Attorneys for Trustee

Dated: June 1, 2015

By: \_\_\_\_\_/s/\_\_\_\_\_  
Cody H. Knight (P64811)

BUSINESS ADDRESS:  
141 E. Michigan Avenue, Suite 301  
Kalamazoo, MI 49007  
Telephone: (269) 345-5156



**EXHIBIT "A"**

A KMT Robotic Center w/Frames (White).

A Stewart monorail and support columns, 10 metric ton cap. Use with 10 m ton GH hoist.

A GH hoist, 10 metric ton capacity, wire rope (26m root end lift).

A Laser Tracker.

A Busch Vacuum Pump double unit Horizontal Tank #17A & 17B.

A Busch Vacuum Pump double unit Horizontal Tank #18A & 18B.

A Busch Vacuum Pump double unit Horizontal Tank #10A & 10B.

A Busch Vacuum Pump double unit Horizontal Tank #19.

A Busch Vacuum Pump double unit Horizontal Tank #8.

A Busch Vacuum Pump double unit Horizontal Tank #9.

Six Horst Wagon (AB45).

MVP Universal Proportionner (Infusion Gun), manufactured by Magnum Venus Plastech.