

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: :
 : Case No. 06-51848
CEP HOLDINGS, LLC, et al.,¹ : (Jointly Administered)
 :
Debtors. : Chapter 11
 :
 : Honorable Marilyn Shea-Stonum
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**MOTION FOR ORDER GRANTING AUTHORITY TO SELL REAL PROPERTY
LOCATED IN LAPEER, MICHIGAN PURSUANT TO SECTION 363(b)**

CEP Holdings, LLC and its affiliated debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors” or “CEP”) in the above-captioned Chapter 11 cases (the “Cases”), hereby move (the “Motion”) for Order Granting Authority to Sell Real Property Located in Lapeer, Michigan pursuant to Sections 363(b). In further support of this Motion, the Debtors represent as follows:

BACKGROUND

A. The Filing and Jurisdiction

1. On September 20, 2006 (the “Petition Date”), the Debtors each filed a voluntary petition in this Court for relief under title 11 of the Bankruptcy Code. The Debtors

¹ The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. An official committee of unsecured creditors was appointed in these cases on September 28, 2006.

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

4. The statutory predicates for the relief requested herein is Bankruptcy Code Sections 363(b).

B. The Proposed Sale Transaction

5. Pursuant to this Motion, the Debtors request authority to sell their real property located at 290 McCormick Drive, Lapeer, Michigan (the “**Lapeer Plant**”). The Lapeer Plant consists of a parcel of real estate and a manufacturing facility.

6. Attached hereto as Exhibit A is a copy of the proposed purchase agreement (as amended, the “**Purchase Agreement**”) by and among the Debtors and Marvin Engineering Co. and Daniel Schreiber (collectively, the “**Purchaser**”) dated December 18, 2006. The Debtors respectfully request authority to enter into the Purchase Agreement.

7. The key terms of the Purchase Agreement include:

a. Purchase Price: \$2,042,500.00

- b. Deposit: Purchaser has paid the Debtors a \$100,000 deposit.
- c. Purchased Assets: The Lapeer Plant including certain fixtures/equipment which by agreement with Bidity Auctions Worldwide, Inc. are not subject to Bidity's auction of the machinery and equipment at the Lapeer Plant.
- d. Commission: A broker's commission of \$107,500 is to be paid at closing by Purchaser. Such amount is not included in the Purchase Price.
- e. Contingencies: All contingencies, including environmental and financing, must be satisfied or waived by December 20, 2006.
- f. Closing: Closing must occur on or before March 7, 2006.

8. Wachovia Capital Finance Corporation (Central) and the Committee have each been involved with the negotiation of the Purchase Agreement and have consented to the same.

RELIEF REQUESTED

9. The Debtors request an order of this Court authorizing the Debtors to enter into the Purchase Agreement and consummate the transaction (the "**Transaction**") contemplated thereby.

APPLICABLE AUTHORITY

10. The Debtors seek authority, pursuant to Section 363(b), to sell the Lapeer Plant, including certain fixtures/equipment, free and clear of all liens claims and encumbrances. Section 363(b) provides in pertinent part that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). In general, a debtor may sell property of the estate outside of the ordinary course of business where the sale of such property represents an exercise of the debtor's sound business

judgment. *See e.g., Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *See also In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Work Recovery, Inc.*, 202 B.R. 301, 303 (Bankr. D. Ariz. 1996) (affirming that a debtor selling estate property should do so with good business judgment); *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (affirming the sound business test as “a more sensible approach for providing creditors with a measure of protection outside the plan-confirmation process”); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business judgment test of *In re Lionel Corp.*).

11. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re The Ohio Corrugating Co.*, 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985); *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (“It is a very well-established principle of bankruptcy law that the objective of bankruptcy sales and the [debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”)

12. The Debtors believe that the proposed Transaction will accomplish a “sound business purpose” and will maximize the value of Debtors’ interest in the Lapeer Plant in the most expeditious way possible. As set forth above, the Transaction will be the result of good faith arm’s length negotiation with a disinterested bidder, the Purchaser. The Debtors have determined that the sale as proposed herein will best further the intended purpose of

expeditiously liquidating Debtors' estates and maximizing returns for creditors. For these reasons, the Debtors submit that the proposed Transaction will be undertaken in good faith and will be for fair value within the meaning of 11 U.S.C. § 363(m). The Debtors further submit that the notice procedures requested herein will provide all parties with adequate notice and time to object to the sales requested hereunder.

13. With respect to assets being disposed by the Debtors, the proposed Transaction satisfies the requirements of Section 363(f) for a sale free and clear of liens, claims, encumbrances and interests. Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property as an entity other than the estate only if –

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or
- (4) such interest is in bona fide dispute;
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

14. Because Section 363(f) is drafted in the disjunctive, satisfaction of any of these five (5) requirements will suffice to approve any proposed sale of some or all of the Property. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793-96 (Bankr. D. Del. 2002) (Section 363(f) is written in the disjunctive; the court approved the sale “free and clear” where only one of the five subsections of section 363(f) were met); *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988).

15. The Debtors propose that liens, if any, against the Lapeer Plant will be transferred from the Lapeer Plant to the proceeds of such sale to the same extent and with the same priority and validity prior to the closing of such Transaction.

Notice

16. Contemporaneously with the filing of this Motion, the Debtors have provided notice by electronic mail on the following entities:

- a. All creditors (if any) asserting a security interest, lien, encumbrance or other interest against all or any portion of the Lapeer Plant;
- b. The Office of the United States Trustee;
- c. All parties who have requested notice in these Chapter 11 cases; and
- d. all other parties on the Master Service List maintained in this case.

The Debtors respectfully submit that such notice is proper under the circumstances of this Motion.

No Prior Request

17. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court authorize the Debtors to sell the Lapeer Plant and grant such other relief as is just and proper.

Dated: December 20, 2006
Cleveland, Ohio

Respectfully submitted,

CEP HOLDINGS, LLC, et. al.,
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.
One of Their Attorneys

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