

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

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In re: : Case No. 06-51848  
: (Jointly Administered)  
CEP HOLDINGS, LLC, et al.,<sup>1</sup> :  
: Chapter 11  
Debtors. :  
: Honorable Marilyn Shea-Stonum  
: :  
: Hearing Date: 2/13/07 at 9:30 a.m.  
: Objection Deadline: 2/9/07 at 4:00 p.m.  
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION,  
PURSUANT TO SECTION 363 OF THE BANKRUPTCY  
CODE, FOR ENTRY OF AN ORDER AUTHORIZING THEM  
TO SELL REAL PROPERTY OF THE DEBTORS' ESTATES LOCATED  
IN CRESTLINE, OHIO OUTSIDE THE ORDINARY COURSE OF BUSINESS**

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**”), pursuant to section 363 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order authorizing them to sell real property located in Crestline, Ohio, pursuant to the terms of the purchase agreement (the “**Purchase Agreement**”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference, by and between Creative Engineered Polymer Products, LLC (“**CEPP**” or the “**Seller**”) and Mosier Industrial Corp. (the “**Buyer**”). In support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors are: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

## JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein is section 363 of the Bankruptcy Code.

## BACKGROUND

4. On September 20, 2006 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to an order entered by the Court on September 26, 2006, the Cases are being jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 28, 2006, the United States Trustee appointed an official committee of unsecured creditors. No trustee or examiner has been appointed.

6. On the Petition Date, the Debtors maintained a manufacturing facility in Crestline, Ohio at 900 South Wiley Street that consisted of approximately 164,520 square feet on approximately 29.8 acres of land (the “**Wiley Facility**”). Approximately two blocks from the Wiley Facility, the Debtors also maintained a warehouse located at 825 West Livingston Avenue, Crestline, Ohio that consisted of two parallel pre-engineered metal buildings of roughly 75,000 square feet and 20,000 square feet on approximately 11.23 acres of land (the “**Livingston Facility**” and, together with the Wiley Facility, the “**Property**”). The Wiley Facility and the Livingston Facility were both used in connection with the Debtors’ businesses both prior to and after the Petition Date.

7. Pursuant to the Debtors' liquidation under Chapter 11 of the Bankruptcy Code, the Debtors operations at the Wiley Facility and the Livingston Facility have ceased. In October of 2006, the Debtors began exploring the potential disposition of the Property in order to maximize the value of the Debtors' estates. On January 25, 2007, the CEPP executed the Purchase Agreement with the Buyer. The key terms of the Purchase Agreement are as follows:

- a. Purchase Price: \$650,000.00, subject to charges and prorations as set forth in the Purchase Agreement.
- b. Deposit: Buyer has placed a \$65,000.00 deposit into escrow.
- c. Purchased Assets: All of CEPP's right, title, estate and interest in and to the lands more particularly described on Exhibit A to the Purchase Agreement, located in the City of Crestline, County of Crawford, State of Ohio, known by the street addresses of 825 West Livingston Avenue and 900 South Wiley Street, together with all appurtenant rights, easements and privileges.
- d. Debtors' Closing Charges: (i) The cost of any and all state or local real estate transfer taxes, fees or other charges relating to the conveyance of the Property; (ii) prorated real estate taxes and assessments and any other appropriate proration amounts; (iii) the cost of recording the deeds; and (iv) one-half of the cost of the escrow fee.
- e. Buyer's Closing Charges: (i) One-half of the cost of the escrow fee; (ii) the costs of title examination, the title commitment and the title policies; and (iii) any proration amounts chargeable to the Buyer.
- f. Commission: None.
- g. Closing Date: Three business days following the date on which the Bankruptcy Court approves the Purchase Agreement; provided, however, that in the event that the Bankruptcy Court approves the Purchase Agreement during the due diligence period, then the sale will close on a date that is three business days following the date on which the due diligent period expires.

8. This Court's approval of the Purchase Agreement is a condition to closing the sale of the Property under the Purchase Agreement. *See* Purchase Agreement at ¶ 9(a)(i).

Accordingly, by this Motion, the Debtors hereby seek authority to sell the Property pursuant to the terms of the Purchase Agreement.

### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek the entry of an order, pursuant to section 363 of the Bankruptcy Code, authorizing the Debtors to sell the Property free and clear of all liens, claims, encumbrances and interests pursuant to the terms of the Purchase Agreement.

### **BASIS FOR RELIEF REQUESTED**

10. The sale of the Property pursuant to the terms of the Purchase Agreement is warranted under section 363 of the Bankruptcy Code and applicable case law.

**A. The Sale of the Property Is Warranted Under Section 363(b) of the Bankruptcy Code**

11. The Sale of the Property is warranted under section 363(b) of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code authorizes asset sales outside of the ordinary course of business and provides 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).

12. The sale of property outside the ordinary course of business should be approved by the Court if the Debtors can demonstrate a “sound business purpose” for the proposed transaction. *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *accord Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (holding that a debtor can sell property of the estate outside of the ordinary course of business if he has an “articulated business justification”); *In re Cont’l Airlines, Inc.*, 780 F.2d 1223, 1126 (5th Cir. 1986) (finding that “there must be some articulated business justification for using, selling, or leasing property outside the ordinary course of business”); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (holding that judge determining a section 363(b)

application must consider whether there is a “good business reason” to grant the relief requested therein).

13. Here, allowing the Debtors to sell the Property is supported by a sound business purpose. In particular, the Debtors no longer conduct business at their manufacturing and warehouse facilities in Crestline, Ohio. The Property no longer is needed by the Debtors in order for the Debtors to conduct business and currently represents a drain on the Debtors’ estates. While in possession of the Property, the Debtors must pay taxes, insurance, security and maintain the Property and incur the costs associated therewith. The failure to sell the Property on a timely basis will result in significant cost to the Debtors’ estates. Further, the Debtors believe that the purchase price offered by the Buyer is fair and reasonable given market conditions in Crestline, Ohio and will serve to maximize the value of the Debtors’ estates. Accordingly, the Debtors submit that a sound business purpose exists for this Court to authorize the sale of the Property pursuant to section 363(b) of the Bankruptcy Code.

**B. The Sale of the Property Free and Clear of Liens, Claims and Encumbrances Is Warranted Under Section 363(b) of the Bankruptcy Code**

14. The sale of the Property free and clear of liens, claims and encumbrances is warranted under section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code provides in relevant part:

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

- (1) applicable nonbankruptcy 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;

- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

15. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the sale of the Property free and clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options and other interests. *See Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that “the language of section 363(f) is in the disjunctive and the sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met”); *In re Shary*, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993) (“[T]he five conditions enumerated under 363(f) are disjunctive and, as such, a sale thereunder can be authorized if the trustee can prove any of the five conditions.”).

16. The Debtors satisfy at least two of the requirements in section 363(f) of the Bankruptcy Code. First, the Wachovia Capital Finance Corporation (Central) (“**Wachovia**”), who holds a lien on substantially all of the Property, supports the sale of the Property. Accordingly, the Debtors will obtain any necessary consent on or before the hearing on this Motion, thereby satisfying section 363(f)(2) of the Bankruptcy Code.

17. In addition, all holders of interests in the Property, including Wachovia, could be compelled to accept a money satisfaction of their interests in legal or equitable proceedings in accordance with section 363(f)(5) of the Bankruptcy Code. Such legal or equitable proceedings include proceedings to confirm a plan of reorganization, under which the holder of a lien may be compelled to accept payment in satisfaction of its lien pursuant to section 1129(b)(2)(A) of the

Bankruptcy Code. In fact, section 1129(b)(2)(A) of the Bankruptcy Code specifically allows a debtor to sell property subject to a lien free and clear of such lien if such lien attaches to the net proceeds of the sale, subject to any claims and defenses the debtor may possess with respect thereto. The Debtors submit that any interests in the Property will immediately attach to the net proceeds related thereto.

18. In sum, the sale of the Property free and clear of liens, claims and encumbrances is warranted under section 363(f) of the Bankruptcy Code, and is supported by a sound business purpose as required by section 363(b) of the Bankruptcy Code.

#### **NOTICE**

19. Notice of the Motion has been given to the parties listed on the Core Group and the 2002 Service List maintained by the Debtors and any other parties in interest directly affected by this Motion, including all parties with an interest in the Property.

20. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the Debtors request the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: January 29, 2007  
Cleveland, OH

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

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

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