

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

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IN RE:)	
)	Chapter 11
ROCKFORD PRODUCTS CORPORATION, et al.)	
)	Case No. 07 B 71768
Debtor.)	Jointly Administered
)	
<hr/>)	Hon. Manuel Barbosa

NATIONAL CITY COMMERCIAL CAPITAL, GENERAL ELECTRIC CAPITAL CORPORATION, NMHG FINANCIAL SERVICES, INC., AND CANON FINANCIAL SERVICES, INC.'S OBJECTION TO DEBTORS' MOTION REQUESTING (I) AN ORDER(A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

NOW COMES National City Commercial Capital ("National City"), General Electric Capital Corporation ("GECC"), NMHG Financial Services, Inc. ("NMHG"), and Canon Financial Services, Inc. ("Canon") (collectively, the "Lessors"), by and through counsel, and for their Objection to Debtors' Motion Requesting (I) an order (A) authorizing the sale of substantially all of the Debtor's assets free and clear of all liens, claims, encumbrances and other interests, and (B) granting related relief, states as follows:

BACKGROUND

1. On July 25, 2007, (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code
2. The Debtors are operating and managing their businesses as Debtors-in-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code.
3. On August 9, 2007, Debtors filed their Motion for (I) an Order (A) approving sale procedures in connection with the sale of certain of the debtor's assets, (B) approving the form and

manner of notice, (C) scheduling a sale hearing, and (D) granting related relief; and (II) an Order (A) authorizing the sale of certain of the Debtor's assets free and clear of all liens, claims, encumbrances and other interests; and (B) granting related relief.

4. On August 15, 2007, this Court entered an Order approving the sale procedures in connection with the sale of certain of the debtor's assets, (B) approving the form and manner of notice, (C) scheduling a sale hearing for November 15, 2007 and (D) granting related relief.

5. On September 5, 2007, this Court entered an Order (A) approving the asset purchase agreement between the debtor and RB Distribution, Inc., (B) authorizing the sale of certain of the debtors' assets free and clear of all liens, claims, encumbrances and other interest, and (C) granting related relief.

6. On October 29, 2007, Debtor's filed its Motion for (I) an Order (A) approving sale procedures in connection with the sale of substantially all of the Debtor's assets, (B) approving the form and manner of shortened notice, (C) scheduling a sale hearing, and (D) granting related relief; and (II) an order (A) authorizing the sale of substantially all of the Debtor's assets free and clear of all liens, claims, encumbrances, and other interests, and (B) granting related relief. ("Motion 2").

7. On October 31, 2007, this Court entered an Order pursuant Bankruptcy Code Section 105 and 363 and Bankruptcy Rules 2002 and 6004 (A) approving sale procedures, (B) approving the form and manner of shortened notice, (C) scheduling a sale hearing, and (D) granting related relief. This Order was amended on November 2, 2007.

8. On November 5, 2007, the Debtors entered into an Asset Purchase Agreement ("Asset Purchase Agreement") to sell all or substantially all of its assets used in its Cold Formed Products Division (the "Assets") to Rockford Acquisition, LLC (the "Buyer").

9. On November 12, 2007, the Debtors filed a Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases relating to the sale of all or substantially all of Debtor's remaining assets. On November 13, 2007, the Debtor filed a supplement to the Notice of Assumption.

10. The objecting Lessors entered into various leases and disguised sales contracts for leased equipment with the Debtor. With respect to all such contracts the Lessors timely filed UCC-1 financing statements reflecting their interests.

11. The Lessors assert the following general objections:

I. Lack of Notice.

12. The Debtor filed an Amended Asset Purchase Agreement and the Sale Order on the evening of November 13, 2007, giving the Lessors only one day to object. The shortness of the objection period is unreasonable and violates the Lessors' due process rights.

II. The Debtor Has Failed to Articulate An Adequate Basis for the Court to Authorize the Sale of the Debtor's Assets Free and Clear of All Liens and Interests Without the Protections Normally Afforded Creditors Under Chapter 11.

13. Under §365(a) of the Bankruptcy Code, the Debtors-in-Possession have a general right to assume or reject the Lease Agreements, subject to Bankruptcy Court approval.

14. Absent an assumption of the Lease Agreements, Debtors cannot transfer their interest in the Leased Equipment to a purchaser free and clear of the Lessors' interests. If the Debtors assume the Lease Agreements, they must cure or provide adequate assurance that they will promptly cure any defaults and provide adequate assurance of future performance pursuant to §365(a) and (f) of the Bankruptcy Code.

15. Pursuant to the Lease Agreements, the Debtors have no right to "assign, transfer, pledge, hypothecate or dispose of this Lease or equipment or any interest therein." There is no

authority under the Bankruptcy Code or otherwise which allows the Debtors to sell the Leased Equipment to a potential buyer without the Lessors' consent.

16. Bankruptcy Code § 363(f) sets forth the requirements for a sale free and clear of liens:

(f) 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 non-bankruptcy law permits a 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.

17. The Lessors do not consent to the sale of its Leased Equipment unless it receives the full payment of the Debt paid immediately out of the sales proceeds including its attorneys' fees and costs prior to the release of its Lien.

18. There is no non-bankruptcy law that permits a transfer without payment of Lessors' Leased Equipment and clear of National City's lien.

19. There is no allegation by the Debtor that the price at which the Leased Equipment will be sold is greater than the aggregate value of all liens on such property.

20. There is no dispute that the Lessors have a valid lien on the Leased Equipment.

21. The only subsection of Section 363 of the Bankruptcy Code that could apply to Debtor's request to sell the Collateral is subsection (5) which turns on whether National City could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest in the Equipment. Since the proposed sale is simply a promise to pay and no money is being offered, the

Debtor cannot invoke Section 363 of the Bankruptcy Code to authorize the proposed transfer over National City's dissent.

III. The Order Granting the Sale Motion is Improper Because the Equipment is Not Adequately Identified or Valued and the Debtor has Failed to Provide Adequate Information With Which the Lessors May Value the Bids at Sale.

22. No appraisal or valuation of the Leased Equipment has been produced.

23. There is no evidence that the sale will fully compensate National City, GECC, NMHG or Canon as secured or undersecured creditors.

24. The Debtor has not provided adequate information with which the Lessors may properly value the bids at sale.

IV. To the Extent the Lease Agreements are Treated as Disguised Sales, the Going Concern Value is Applicable and the Lessors Request a Valuation In Order to Effectively Evaluate the Sale Bids.

25. "The central focus of the going concern value is the willing buyer-willing seller standard. The goal is to determine, on a case-by-case basis, the approximate price at which the property of the debtor would change hands between an informed seller and buyer. The court should not use that value which would be obtained through a forced or quick sale." National Rural Utilities Co-op Finance Corp. v. Wabash Valley Power Ass'n, Inc., 111 B.R. 752, 768 (1990).

26. If the Lessors' Lease Agreements are treated as disguised sales, the Lessors demand a valuation so that it may effectively analyze the appropriateness of the bids at sale.

27. For the foregoing reasons, the Lessors object to the inclusion of its Leased Equipment until such time as said Lease Agreements are assumed and assigned and adequate information regarding the Leased Equipment to be sold is provided along with evidence of financial viability of the Buyer.

V. To the extent any lease is a disguised sale, the Lessors' liens must attach to the sales proceeds.

28. The Sale Order fails to provide for the Lessors' liens to attach to the sales proceeds, in violation of 11 U.S.C. §363(e) and (f).

National City Commercial Capital Leases

29. On September 26, 2006, National City, as Lessor, and the Debtors, as Lessee, entered into Lease Agreement Number 77777000 ("Lease Agreement 1").

30. On March 27, 2007, National City, as Lessor, and the Debtors, as Lessee, entered into Lease Agreement Number 92254000 ("Lease Agreement 2").

31. On May 8, 2007, National City, as Lessor, and the Debtors, as Lessee, entered into Lease Agreement Number 92035000 ("Lease Agreement 3").

32. In the Notice of Assumption and Supplement, the Buyer seeks to assume Lease Agreements 1, 2, and 3.

33. The cure amounts reflected in the Asset Purchase Agreement on Lease Agreement 1, 2 and 3 are \$0.00.

34. National City disputes this cure amount to the extent that November payments are currently due in Lease Agreement 1 and Lease Agreement 2.

35. The correct cure amount in Lease Agreement 1 reflecting the November payments now due and owing is \$5,675.24.

36. The correct cure amount in Lease Agreement 2 reflecting the November payments now due and owing is \$4,749.36.

37. Furthermore, National City's leases are disguised sales contracts and each lease has \$1.00 purchase options. In consideration for allowing the Debtor to assume and assign these sales contracts rather than paying National City as a secured party, National City agrees to such treatment

provided: a) National City's lien attaches to the buyer; b) National City is given a general release as to preference liability; and c) the Court authorizes the post-petition payments under Sections 549, 365, and 1108.

General Electric Capital Corporation and NMHG Financial Services, Inc.'s Leases

38. Between 1991 and 2007 the Debtor entered into fifty-two (52) leases with GECC and NMHG. The NMHG leases are incorrectly identified as Fitzgerald Equipment Co., Inc. Pursuant to the Notice of Assumption and assignment the Debtor intends to assume and assign Lease Nos. 14, 16, and 26-31.

39. To the extent any of the remaining leases are not assumed and assigned, then GECC and NMHG request an order modifying the stay. To the extent any of the remaining leases have \$1.00 purchase options, GECC and NMHG are secured creditors for the value of their liens. See 11 U.S.C. §363(e), (f) and 506(a). Furthermore, to the extent GECC and NMHG's leases are disguised sales contracts and each lease has \$1.00 purchase options. In consideration for allowing the Debtor to assume and assign these sales contracts rather than paying GECC and NMHG as a secured parties, GECC and NMHG agree to such treatment provided: a) GECC and NMHG's liens attach to the buyer; b) GECC and NMHG are given a general release as to preference liability; and c) the Court authorizes the post-petition payments under Sections 549, 365, and 1108.

40. Since the buyer continues to operate the business, the lien should be valued based on a going concern rather than liquidation value. See 11 U.S.C. §506(a).

Canon Financial Services, Inc.'s Leases

41. The Debtor has not identified any leases for assignment.

42. Canon incorporates its general objections.

WHEREFORE, National City Commercial Capital, General Electric Commercial Corporation, NMHG Financial Services, and Canon Financial Services respectfully request that this Court uphold the Lessors' objections with respect to the Leased Equipment and for any further relief as this Court deems just.

NATIONAL CITY COMMERCIAL CAPITAL,
GENERAL ELECTRIC CAPITAL CORPORATION,
NMHG FINANCIAL SERVICES, AND CANON
FINANCIAL SERVICES, INC.

Dated: November 14, 2007

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