IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION AT ABINGDON

IN RE:	)	
	)	**CHAPTER 11**
CLINCH MOUNTAIN FINISHING	)	
& LOGISTICS CORP.,	)	**CASE NO. 10-72574**
	)	
Debtor.	)	

MEMORANDUM DECISION

The matter before the Court is the Debtor's Motion to Sell substantially all of its assets pursuant to 11 U.S.C. § 363 (the "Motion") through an expedited court-supervised process prior to the filing of any plan of reorganization or liquidation. To this Motion the United States Trustee has filed an Objection, as have two claimants against the Debtor, VFI Associates, LLC and Reconstituted VFI, LLC (collectively "VFI"), which assert that certain equipment which they own has been incorporated into the Debtor's manufacturing line.[1] The resulting contested matter was heard by the Court on December 1, 2010 in Abingdon. Because the matter in question is strongly contested and not free of doubt, the Court took it under advisement to permit its more careful consideration. Having now done so and having provided the parties an additional opportunity to submit written argument, the matter is now ready for decision. That decision is to deny the Debtor's Motion upon the rationale contained in this Memorandum Decision without prejudice to the filing of an amended or supplemental motion seeking the same relief.

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[1] In addition VFI Associates is listed in the Debtor's Schedule F as an unsecured creditor in the amount of $185,403.55.

FINDINGS OF FACT

The Debtor filed a petition under chapter 11 of the Bankruptcy Code in this Court on October 29, 2010. Since that time the Debtor has continued to operate with the support of New Peoples Bank, its bank and principal secured creditor, which holds a so-far unchallenged security interest in its operating assets, including its inventory, receivables and other cash collateral. Essentially the Debtor has been able to continue operating in chapter 11 by virtue of the Bank's consent to the former's continued use of the latter's cash collateral for that purpose. Both the Debtor and the Bank hope to effect in this case a sale of the Debtor's assets as soon as practicable, preferably while operating as a going concern, subject to the Bank's right to credit bid at such a sale. The Debtor's Motion to pursue that strategy was filed on November 12, 2010, the same day it filed the balance of its bankruptcy schedules. It noticed the Motion for hearing on December 1 and also filed a motion to shorten notice from twenty-one to eighteen days. The Objections to the Motion were filed on November 30. In addition VFI filed an objection to the motion to shorten notice. At the beginning of the hearing the Court took under advisement the motion to shorten notice. After hearing the testimony of the Debtor's president and chief executive officer, Mr. Gary Lawson, as to the very tenuous nature of the Debtor's business operations, and VFI having failed to offer any evidence or persuasive argument as to how it had been prejudiced by hearing the motion on eighteen rather than twenty-one days notice, the Court will overrule the latter's objection to the motion to shorten notice and will deal with the Motion on the merits.

SUMMARY OF MOTION

The Debtor is a Virginia corporation doing business in Lebanon, Virginia. Its business is the application of a final finish, coloring and protective coating to roughly finished flooring received from its customers. Prior to filing its lines of credit were limited and sales had declined to the point that the business was barely functioning. In addition it is a defendant in various lawsuits which tax its management and income. Consulting with its lead secured creditor, New Peoples Bank, the Debtor has decided that it is in the best interest of its creditors that it place its assets on the market for sale. It believes that it will receive an offer from a related party and that it is appropriate to expose its assets to a public, court-supervised auction to be held at a date and time established by the Court and with notice given to all creditors and public advertising of the availability of assets in order to determine if there is a higher and better offer for its assets. The Debtor seeks entry of an order that would first establish bidding procedures and then establish a date upon which the Court will hear and conduct an auction of its assets to sell the assets to the highest bidder at such auction on a cash sale basis. The Motion asserts that a sale free and clear of liens will maximize the value of the assets of the estate with any lien, claim or interest in the purchased assets attaching to the sales proceeds with the same validity, priority, force, and effect as it had prior to the sale. The only secured creditor affected would be New Peoples Bank. The Debtor asserts that there is a need for a transaction to be completed quickly as the Debtor does not have significant liquid assets to continue the operations of the business indefinitely without additional capital or the sale of assets. These procedures are alleged to be part of the confirmation of a chapter 11 plan of liquidation which the Debtor plans to propose. The Motion proposes the adoption of specific bidding procedures

which are alleged to be the same ones previously approved by the Court in the *Bostic Ford*[2] case. Finally, the Motion seeks the Court's approval of the sale to the highest bidder at the auction and authorization of the Debtor to complete the transaction, as well as approval of the notice of the Motion. A copy of the Debtor's proposed Bidding Procedures[3] is appended to this Decision.

SUMMARY OF OBJECTIONS

The United States Trustee objected to the Motion on the following grounds:

(1) The notice to creditors is inadequate in that it fails to inform the creditors that the sale, if approved, would constitute the sale of virtually all of the Debtor's assets from which there would likely be no distribution to unsecured creditors. The Motion constitutes a de facto plan without making full disclosures otherwise required of a chapter 11 debtor.

(2) The notice also fails to fully disclose the nature and connection of the Debtor to the unnamed related party referred to in the Motion. The chief financial officer of the Debtor is a 25% owner of Green Mountain Industries. The Debtor's chief executive officer is a former vice president of the secured lender and allegedly anticipates pleading guilty to federal fraud charges that arose, in part, out of a loan to Debtor in the amount of $40,000.

(3) The proposed bidding procedures are particularly advantageous to the presumed related party (Green Mountain Industries). No disinterested party could complete a review of the Debtor's financial history and prospects prior to a January 5, 2011 auction date.

(4) Nothing in the proposed procedures requires the Debtor to engage in any marketing

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[2] *In re Bostic Ford Sales, Inc.*, Case No. 10-70628.

[3] These Procedures appear to have been rather hurriedly prepared as the last sentence of section # 8 seems to end mid-sentence.

activity which generally is necessary to maximize interest from disinterested parties.

(5) A reservation of rights set out in section 8 of the proposed procedures gives the Debtor and the Bank the right to basically cancel the sale or any portion of it, which typically chills disinterested parties.

(6) The sale should only be allowed if conducted by a disinterested party under normal business terms and after full notice of all relevant circumstances is provided to creditors.

(7) The Debtor should be required to demonstrate that a sound business purpose exists for a sale of substantially all of its assets. It must prove that a sound business reason or an emergency justifies pre-confirmation sale, that the sale is proposed in good faith, that adequate and reasonable notice is given, and that the purchase price is fair and reasonable. The United States Trustee contends that the Motion fails to meet this test. Accordingly, it ought to be denied.

VFI's Objection makes the following contentions:

(1) The Motion fails to provide creditors with sufficient information with respect to the proposed sale and there is no basis or justification to shorten the time or notice of the Debtor's request to sell all of its assets.

(2) The Motion should be denied because it constitutes an impermissible *sub rosa* plan. The Debtor should be required to file a Disclosure Statement advising all creditors of the reasons for filing the petition, the basis and business reasons for its decision not to seek to reorganize, the identity of the "related party" to whom Debtor wishes to transfer its assets, and the relationship of that party to the Debtor, its management, and/or its equity holders. Such a Disclosure Statement should also provide an itemization of the assets being offered for sale and the Debtor's

analysis of the liquidation value of its assets.

(3) Any sale should be accomplished through a confirmed Chapter 11 plan of liquidation as no sound business reason exists to allow the sale under section 363 of the Bankruptcy Code.

(4) The identity of the related party should be disclosed so that possible claims held by the Debtor and/or its creditors can be determined prior to submission of bids.

(5) Should the sale be allowed, bidders should be permitted to submit a bid on specific assets rather than all of the assets as one package.

(6) VFI owns two lines of wood finishing equipment located in the same facility as the Debtor's equipment. Prior to the filing of the petition, some equipment was removed from VFI equipment without authority and installed on the Debtor's lines. In addition other VFI parts have been cannibalized and installed on the Debtor's lines. The Debtor ought not be permitted to sell, market, or dispose of assets belonging to VFI and the former should not be allowed to sell its assets until VFI has had time to inspect Debtor's equipment for pieces of VFI equipment. Further, an adversary proceeding should be instituted to determine the nature and extent of (I) the Debtor's interest in the assets it intends to sell, and (ii) the liens claimed by New Peoples Bank.

(7) The proposed bidding guidelines, particularly the ability of the Debtor and the Bank to impose additional terms and to withdraw any or all assets from the sale as set forth in section 8 would have a detrimental impact on the marketing of the assets.

(8) Finally, the Objection asks that the Debtor afford VFI and its representatives an opportunity to inspect the wood finishing equipment, that the Motion be denied, and that the Debtor be required to file a Disclosure Statement.

SUMMARY OF HEARING

The Court will attempt to boil down to its essential points the arguments and the evidence at the rather lengthy and highly contested December 1 hearing upon the Motion. Counsel for the Debtor immediately took off the table any sale to a related party and said unequivocally that Green Mountain Industries would not be a bidder at any court sale. He further indicated that, other than the Bank acting as a credit bidder to protect its interest in the assets, the Debtor has no "stalking horse" bidder for its assets to provide a floor for the auction bidding. To support its contention that an expedited sale of its assets is essential, the Debtor offered the testimony of its chief executive officer, Mr. Lawson.

Mr. Lawson testified that he is the president and chief executive officer as well as a 50% owner of the Debtor. The business of the Debtor is to finish wood flooring provided to it by its customers. He became an investor at the time he was working at New Peoples Bank and received his equity in the Debtor when he provided 20,000 shares of Bank stock he personally owned as additional collateral for the company's loans. The Debtor's then president, Mr. Luther Boyd, came to him and requested his help to find some additional investors. After hearing Mr. Boyd's story, he decided that he would like to be an investor himself. After VFI filed lawsuits against the Debtor, Mr. Lawson felt that it was time for Mr. Boyd to step down and therefore asked him to sell to Kenneth Hart's family and Mr. Lawson. Mr. Boyd did so and Mr. Lawson took over as president in October. The District Court entered summary judgment against Mr. Boyd for accepting kickbacks from an equipment manufacturer in California. Mr. Lawson testified that he had been able to pick up some business when he took over and was able to pay down the company's payables quite a bit, but after that the business went down again, which

precipitated the decision to file bankruptcy.

Since the filing the company has been able to pay payroll of about $36,000 a month and its post-petition debts, which range from $15,000 to $20,000 a month. There is no additional income and if the company lost a customer, it would be in trouble. He had learned the previous evening that the company's best customer, which provides about 50% of the Debtor's business, was considering moving its business due to delays in processing its orders resulting from the Debtor's inability to buy the necessary chemicals to finish flooring except on a COD basis. The Debtor has about $10,000 in cash on hand and expects to collect about $25,000 upon its receivables during the coming week. Its payroll is approximately $18,000 for a half month and its other operating expenses are about $16,000 per month. Neither he nor the Hart family has anything left to put into the company. He does not believe that the Debtor can survive as things are going now. He authorized the filing of the Motion in the hope that the equipment would bring enough "to satisfy some people" and to "keep the employees working as long as possible." Since filing the Motion he has received some expression of interest from a potential buyer. He confirmed that Green Mountain Industries, of which his wife owns a 25% interest, will not be a buyer of the equipment.

The Debtor does not have set contracts for its services and is dependent upon its customers providing flooring for it to finish. If its biggest customer leaves or even cuts down its business orders, Mr. Lawson stated that "there's no way I can make payroll or pay my bills." The Debtor hasn't paid the Bank since September. In response to a question from Debtor's counsel as to how much longer he thought that he could keep the company in operation, Mr. Lawson stated, "in my opinion, the company should shut down now; I'll be lucky to get it

through the end of the year." He specifically noted that last winter the company was paying $14,000 to $15,000 a month for electricity and natural gas. He has become familiar with what equipment of the kind owned by the Debtor is bringing in the market, and stated that it "goes for cheap." He stated that in his opinion the equipment would bring $200,000 to $300,000 in a sale. He initially testified that he believed that even with a properly advertised sale of an ongoing business, he thought it would bring the same amount. Subsequently, however, he testified that on the basis of his experience as a banker he would much rather attempt to sell a going business rather than the assets of a closed business. He stated that he didn't believe the Debtor could survive long enough to consider a sale pursuant to the terms of a confirmed plan. More specifically, he testified that he didn't think the company could survive until March or April of 2011. The Debtor owes the Bank something over two million dollars.

Mr. Lawson testified that the Debtor's operations are located in a building owned by a separate entity known as Lambo Properties, which is owned by the Debtor's shareholders. The Debtor has not been paying rent to Lambo, however, so the latter has no income. Both the Debtor and Lambo Properties owe money to the Bank and the loans are cross-collateralized. He thought fair rent would be in the range of $10,000 to $15,000 a month. If the Debtor's property were sold and removed, he thought Lambo's payment to the Bank would be about $20,000 a month.

If the Debtor were to close, Mr. Lawson did not see any point in remaining in Chapter 11. If it closed for a relatively short period of time, he thought that its employees would be willing to be re-hired by a new owner. At this point eleven employees of the Debtor are being paid and five are working without pay. Mr. Lawson stated that he had not contacted business

marketing companies regarding the sale of the business because there was no money available for that purpose. He does not believe that the assets of the company will bring enough to pay the Bank or to provide any distribution to unsecured creditors. In response to questioning from VFI's counsel, he acknowledged that a sander owned by that company had been installed as a part of one of the Debtor's manufacturing lines. In addition to the two manufacturing lines, Mr. Lawson said that there wasn't much else to sell, mainly consisting of some inventory, some boxes and chemical supplies, and two forklifts. He stated that he was not aware of VFI claiming any interest in the two forklifts as its counsel indicated was the case. He hopes to sell the equipment to someone who will want to continue to operate the business where it is now located. He acknowledged that would require negotiation between the successful purchaser and Lambo Properties, which he and the Hart family own. He understands that his customers have other options of companies to provide finishing services and that they are not dependent upon the Debtor to do that work. He would like to try and keep the business operating for a couple of months until it can be sold and he can take care of his employees. His wife and his partner's children are now working in the business without pay. One of the two production lines owned by the Debtor is disassembled and in storage, which occurred about two months before the bankruptcy filing. Two of the production lines located in the same building as the Debtor's equipment are the property of VFI.

At the hearing, in addition to Debtor's counsel, VFI's counsel and the Assistant United States Trustee, there were also appearances by Joyce Kilgore, Esq., counsel for the Bank, and David Hutton, Esq., who stated that he was appearing on behalf of some unspecified unsecured creditors. Ms. Kilgore stated that the Bank wanted to see a sale of the ongoing

business rather than its discrete assets, believing that would obtain a better overall result. Mr. Hutton indicated that he did not wish to be heard. The Assistant United States Trustee stated that it was obvious that the case would never make it to confirmation of a plan and stated that he intended to file a motion to dismiss or convert the case and notice the same for a hearing on the January 5, 2011 docket. Counsel for VFI supported the position taken by the Assistant United States Trustee and argued that no evidence had been presented to establish a sound business purpose for a sale of all of its assets pursuant to 11 U.S.C. § 363 so early in the case. He also suggested that the fact that Mr. Lawson, the Debtor's CEO, had been a senior officer of the Bank might furnish a basis for inquiry as to the possible existence of some ground for equitable subordination of its security interest. Although a representative of VFI was present at the hearing, he was not offered as a witness. The Court noted that it did not wish to receive evidence at the hearing upon the Motion concerning VFI's ownership claims to some of the equipment which the Debtor proposes to sell, but advised counsel that it would not approve any sale by the Debtor of VFI's property and therefore such issues might need to be resolved on an expedited basis. At the time of the December 1 hearing, the section 341 first meeting of creditors at which the Debtor might be examined by creditors had not taken place but was scheduled for December 10. On November 30, the day before the hearing upon the Motion, the United States Trustee filed a notice of Appointment of Unsecured Creditors Committee consisting of three members. There was no indication at the hearing that any member of that Committee was there.

COURT'S FACTUAL DETERMINATIONS

The Court finds that VFI did not establish that it was in any way prejudiced by hearing the Motion upon eighteen rather than twenty-one days notice. On the basis of the testimony of the Debtor's CEO, the Bank's position as articulated at the hearing by its counsel, and the Court's utilization of its judicial experience in similar matters, the Court finds that while a sale of the Debtor's assets while it is operating as an ongoing business cannot be guaranteed to achieve a better sale result than the piecemeal sale of its assets by, for example, a Chapter 7 Trustee, a sale structured to permit sale of all the operating assets as a group while the company continues to have a customer base, or by offering such assets individually or in designated lots, with the best aggregate result being the one which is ultimately approved by the Court, offers the best possible opportunity to achieve the highest aggregate sales price for such assets. Stated somewhat differently, a sale of assets while the business is an ongoing concern offers three possible outcomes: a sale to a purchaser interested in continuing that existing business, a sale to a purchaser who wants to utilize them in a different business, or a sale of specific assets to one or any number of possible purchasers. A sale of such assets after the seller has ceased operations would substitute for that first possible outcome a sale to a purchaser who might attempt to re-start the non-operating business. The Court believes that it is apparent that for such a potential purchaser, a business which is operating and has customers is more valuable than one which has discontinued its business operations. For purchasers simply of specific assets, there does not appear to be any basis for believing that a sale of such assets after the business has ceased operating would yield a better result than one conducted before that stage has been reached. In summary, there seems to be a possible upside to a sale while the business is in an operating

mode, but no apparent downside or greater risk. Accordingly, the Court finds that a reasonable business purpose has been demonstrated for an attempted sale of the company's assets while it continues to operate.

CONCLUSIONS OF LAW

This Court has jurisdiction over this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. The Court concludes that a motion to approve a sale of the Debtor's assets pursuant to 11 U.S.C. § 363 is a "core" bankruptcy proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O).

This case presents the difficult issue of when a bankruptcy court should be willing to approve a sale of substantially all of a debtor's assets used in the conduct of its business during the early weeks of a Chapter 11 case without the protections offered by a disclosure statement and confirmed plan of liquidation. That specific issue was presented on an incomparably larger scale in the 2009 sales of Chrysler and General Motors which occurred on a very expedited basis, to say the least, in their respective Chapter 11 bankruptcy cases. There seems to have been something of an evolution in bankruptcy courts' willingness to approve such sales. Specifically, *Collier on Bankruptcy* notes as follows: "Historically, there was disagreement on the issue of whether and under what circumstances a chapter 11 debtor may sell substantial assets under section 363. It is now generally accepted that section 363 allows such sales in chapter 11, even when there is no emergency requiring immediate action." 3 *Collier on Bankruptcy* ¶ 363.02[3], at p. 363-16 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010) (footnotes omitted). Nevertheless, "courts closely scrutinize such sales" and may refuse to

approve them when they undertake to "dictate the terms of a plan or go materially beyond converting the estate's assets to cash in a way that is not necessary to preserve an operating business for the buyer." *Id.* at p. 363-17 (footnotes omitted). For this latter proposition *Collier* cites two 2009 decisions, one from this Court's sister court, the Bankruptcy Court for the Eastern District of Virginia, *In re On-Site Sourcing, Inc.*, 412 B.R. 817 (Bankr. E.D. Va. 2009) (Mayer, J.), and the other from the Southern District of Texas, *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 415-24 (Bankr. S.D. Tex. 2009) (Steen, J.). The treatise then goes on to summarize the necessary elements required by bankruptcy courts to approve a sale of substantially all of a debtor's assets before confirmation of a plan: (1) the sale is "supported by a sound business reason and is based on a sound exercise of business judgment"; (2) adequate and reasonable notice to parties in interest has been given: and (3) the sale has been proposed in good faith. 3 *Collier on Bankruptcy* ¶ 363.02[4], at pp. 363-18 to -19. Whatever their other deficiencies may be, the Court sees little, if any, indication that the proposed Bidding Procedures venture beyond what might be reasonably necessary to permit a sale of an operating business to a new owner or that they constitute a *sub rosa* plan. Indeed, it seems highly unlikely that any plan will ever be proposed in this case, much less confirmed.

Gulf Coast Oil notes that a debtor-in-possession "must exercise fiduciary duty in determining whether and how to propose a sale of assets" and that "[i]f entities that control the debtor will benefit, or will potentially benefit, from the sale[,] the court must carefully consider whether it is also appropriate to defer to their business judgment." 404 B.R. at 424, *quoted in On-Site Sourcing*, 412 B.R. at 828. That is an issue in this case as Mr. Lawson, the Debtor's CEO, is also a guarantor of its indebtedness to the Bank as well as indebtedness of a commonly

owned separate entity, Lambo Properties, also owed to the Bank with the debts of both companies being cross-collateralized. In addition, according to the suggestion made by the United States Trustee and not disputed, he may be facing a federal charge of bank fraud against the Bank relating to a loan it made to the Debtor. Lastly, Mr. Lawson and the other shareholders of the Debtor are also the owners of Lambo Properties, the Debtor's landlord and an obvious beneficiary of any sale of the Debtor's assets to any purchaser who might desire to continue to operate the Debtor's existing business in its existing location. Under these circumstances, it cannot be surprising that he is motivated to support and favor the interests of the Bank and its expressed preference for how the loans ought to be liquidated, and to promote a sale of the assets as a whole to one purchaser who might wish to lease the Debtor's existing business location. Of course the Bank can be expected to act in its own interests, as it may see them, and no criticism ought to be made out of that so long as the Bank does nothing improper to advance such interests. If, in fact, the Bank is blameless in its financing of the Debtor and has a valid, perfected first security interest in the latter's assets securing a valid indebtedness far exceeding the reasonable realizable value of such assets, there is no reason to ignore its stated preference as to the best method to sell its collateral. To this point anyway there has been no specific suggestion that the Bank has been guilty of any misconduct which might provide a basis to negate or subordinate its purported security interest in the Debtor's assets for the benefit of the latter's other creditors. If evidence were to surface to suggest otherwise, of course the interests of other creditors would be implicated by the proposed sale.

DECISION

The Court concludes that it should deny approval of the Motion, without prejudice to the Debtor's right to file an amended or new motion seeking similar relief or to the Court's consideration of any motion which may be filed to dismiss or convert this case, for the following reasons:

1. Although the Debtor indicates its intention that the Bank shall have a right to credit bid to the extent of its secured claim against the Debtor's assets, the proposed Bidding Procedures make no allowance for any such bidding and such bidding would appear to be inconsistent with such Procedures. If credit bidding is to be authorized, provision should be made for how a successful credit bid would be treated if the Bank's security interest were eventually negated or subordinated, presumably that the Bank would be liable to the bankruptcy estate for the amount of such bid.

2. As counsel for the Debtor candidly stated at the hearing upon the Motion and as the Motion itself sets forth, the proposed Bidding Procedures are the same ones which purportedly were adopted in the *Bostic Ford* case, which involved the sale of an automobile dealership. No showing has been made that any thought has been given as to whether they are the most appropriate ones for the sale of the Debtor's business assets. Indeed they seem to be ones which Debtor's counsel has recommended simply because they were approved for use in a different case involving a different kind of business, rather than being the result of the Debtor's business judgment as to what procedures are best designed to yield the best possible sale of the Debtor's assets. The testimony of the Debtor's CEO does not support any conclusion that the Debtor has exercised an independent business judgment with respect to the appropriateness of these

Procedures.

3. The proposed Bidding Procedures contemplate a sale of the Debtor's assets in their entirety, which is in accord with the eventual result which its CEO hopes will occur. Although they would provide some discretion to the Debtor in consultation with the Bank as to withdrawal of assets from the sale and announcing new conditions for the sale, they clearly do not envision the alternate possibility of selling the assets individually or in appropriate lots. The testimony of Mr. Lawson does not indicate that such a possibility was even considered or that any advice had been sought from auctioneers and/or other experts in the sale of assets of the kind at issue here.

4. The proposed sale date, especially at this season of the year, simply does not provide sufficient time for a well thought out, properly advertised, and expertly conducted sale to take place. Neither does it allow adequate time for any disputes as to ownership of assets claimed by the Debtor as to its property to be fairly resolved, even on a very expedited basis.

5. While a pre-confirmation sale of the Debtor's assets may be appropriate, to authorize such a sale even prior to the first meeting of creditors and before the Unsecured Creditors' Committee has had a reasonable opportunity to begin to function and evaluate the proposed sale is just too quick under the circumstances presented in this case. Furthermore, the notice to the creditors, which does not address the conflicting interests of the Debtor's principals, a description of the assets proposed to be sold, and the effect of such a sale upon the subsequent conduct of this case, including specifically the possibility or probability that any such sale would be followed very quickly by a conversion of the case to chapter 7 with no likely distribution to general or even administrative creditors, is inadequate.

An order in accordance with the above decision denying the Motion will be entered contemporaneously herewith.

This 9th day of December, 2010.

William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE

BIDDING PROCEDURES

Clinch Mountain Finishing & Logistics Corp. ("CMFL") shall conduct a sale by auction (the "Auction") of substantially all of its assets. The Bidding Procedures were approved by order dated December__, 2010, (the "Sale Procedures Order") of United States Bankruptcy Court for the Western District of Virginia, Roanoke Division in the Chapter 11 proceeding of Clinch Mountain Finishing & Logistics Corp. case number 10-72754.

The following Bidding Procedures shall apply to the Auction:

1. BIDDING DEADLINE. Any proposal by a bidder for the purchase of the Purchased Assets must be submitted in writing so that is received by CMFL no later than 4:30 PM Eastern standard time on December 31, 2010. All bids shall be submitted to CMFL at the following address: Copeland & Bieger, P.C., attention Robert T. Copeland 212 W. Valley St., Abingdon, VA 24210 or by facsimile transmission to 276-628-4711 or by e-mail to rcopeland@copelandbieger.com .

2. REQUIREMENTS FOR BID. Any bid must be:

(a)For cash;

(b) A written irrevocable offer: (i) stating that the bidder offers to consummate the Transaction; accompanied by the bidder's tax identification number and either payment of an earnest money deposit of TEN THOUSAND DOLLARS ($10,000) by certified or cashier's check made payable to Clinch Mountain Finishing & Logistics Corp. or an irrevocable Letter of Credit from a financial institution in the amount of TEN THOUSAND DOLLARS($10,000.00) and delivered to counsel for the corporation at the address shown above;

(c) for the assets of the Clinch Mountain Finishing & Logistics Corp.; and

(d) Supported by sufficient proof that the bidder or representative is legally empowered to both bid on behalf of the bidder and also to complete and sign on behalf of the bidder a binding and enforceable purchase agreement.

3. QUALIFIED BIDS. For any Bid to be considered a Qualified Bid the Bid must comply with all Bid Requirements of paragraph 2 above.

4. AUCTION. The CMFL auction shall be conducted on January 5, 2011 at 11:00 AM Eastern Standard Time in the United States Bankruptcy Court for the Western district of Virginia, located in Abingdon, Virginia or such other place and time as directed by the Bankruptcy Court. For a Bid to be considered, a bidder must appear in person at the Auction or through a duly authorized representative. If multiple Qualified Bids are received, each such

bidder shall have the right to continue to increase its Qualified Bid at the auction. Only bidders that have submitted a Qualified Bid may participate in the auction unless the court, for cause, orders otherwise. At the auction, bidding will proceed starting with the highest Qualified Bid made by any bidder. Any subsequent bid at the auction after the initial overbid shall be at least $20,000 more than the highest previous bid. All bids at the Auction must satisfy the Bid Requirements (other than compliance with the Bid Deadline, which is applicable only to the initial Qualified Bids). Bidding shall continue until the highest and best bid has been made and no other bidder who has submitted a Qualified Bid in attendance at the auction desires to bid. The bidder (or bidders) that, is acceptable to New Peoples Bank and the debtor, prevails at the auction by presenting the highest and best Qualified Bid is referred to as the "Prevailing Bidder".

5. HEARING AND SALE FREE AND CLEAR OF LIENS. A hearing shall commence immediately following the conclusion of the Auction, or such other time designated by the Bankruptcy Court, for the purpose of entry of an order approving the sale of the purchased assets to the prevailing bidder (the "sale hearing"). Sale of the assets shall be free and clear of any and all liens, claims, interest, rights and encumbrances of any sort whatsoever against CMFL.

6. CLOSING. The closing of the sale of the Purchased Assets to the Prevailing Bidder will occur in accordance with the terms of the executed purchase agreement or other purchase agreement, or as otherwise ordered by the court.

7. FAILURE TO CONSUMMATE PURCHASE. If for any reason the Prevailing Bidder fails to consummate a purchase of the Purchased Assets, or any part thereof, the next highest and best Qualified Competing Bid for the purchased assets shall be treated as the back-upper bidder (the "Back-up Bidder") and by bidding on the purchased assets: agrees that its highest bid shall remain irrevocable pending the closing of the sale of the Purchased Assets to the Prevailing Bidder and (b) consents to the holding of its deposit in escrow under the earlier of (i) the closing date of the sale the purchased assets the Prevailing Bidder or (ii) the 31st day after the date set for the auction. If the Prevailing Bidder fails to close on the Purchased Assets, the backup bidder will automatically be deemed to submit the highest and best qualified competing bid without further order of the Bankruptcy Court.

8. RESERVATION OF RIGHTS: DEADLINE EXTENSIONS. CMFL. reserves the right in consultation with New Peoples Bank to: (a) impose at or prior to the Auction, additional terms conditions on the sale of the purchased assets consistent with the sales procedures order subject to Bankruptcy Court approval, if necessary; (b) extend the deadline set forth in the bidding procedures, adjourn the Auction at the Auction and/or adjourn the Sale Hearing in open court without further notice; (c) withdraw from the Auction any or all of the purchased assets at any time prior to or during the Auction or cancel the Auction; (d) seek guidance or relief from the bankruptcy court as

to any issues relating to the Auction; and (e) seek all relief CMFL deems appropriate in connection with the sale, CMFL hereby reserving all rights and expressly waived herein where the purchase agreement