



**Dated: October 05, 2017**  
**The following is SO ORDERED:**

  
Paulette J. Delk  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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IN RE:

AMERICAN CONTAINER, INC.,

Case No. 16-26399-PJD

Debtor.

Chapter 11

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AGREED ORDER GRANTING DEBTOR'S EXPEDITED MOTION FOR AN ORDER (I) (A) APPROVING SALE PROCEDURES IN CONNECTION WITH SALE OF DEBTOR'S REAL ESTATE, (B) APPROVING EXPENSE REIMBURSEMENT, (C) SCHEDULING AN AUCTION AND HEARING TO APPROVE THE TRANSACTION AND (II) APPROVING THE PROPOSED SALE

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This cause was heard on October 3, 2017 upon the Motion of American Container, Inc. (the "Debtor" or "American"), for entry of (I) an order approving sale procedures in connection with sale of the Debtor's real estate (the "Bidding Procedures"), (b) approving the expense reimbursement, and (c) scheduling an auction and hearing approving the transaction and approving the form and manner of notice thereof; (the "Motion"), and the Objection thereto filed on behalf of Renasant Bank, successor by merger to Merchants & Farmers Bank ("Renasant" or "Bank"), and based on statements of counsel and the record as a whole, it appears that the Motion should be granted, subject to the conditions contained herein.

IT IS, THEREFORE, ORDERED that the Agreement for the Purchase and Sale of Real Estate (the “Agreement”) between American and D&D Corrugated, LLC (“D&D” or “Prospective Purchaser”), attached as Exhibit A to the Motion, and the sale of the real estate described and set out therein (the “Real Estate”), be and is hereby Approved free and clear of liens, subject to Qualifying Bids and the conduct of an Auction according to the guidelines and other requirements set out in this Order. In the event no Qualifying Bids are submitted by the Bid Deadline of **October 20, 2017 at 5:00 pm prevailing Central Time** (“Bid Deadline”), American shall submit for entry, without the necessity of further hearing, an Order Approving the sale of the Real Estate to the Prospective Purchaser pursuant to all the terms and conditions set out in Agreement, free and clear of all liens, claims and encumbrances with such liens claims and encumbrances of Renasant to attach to the proceeds of the Sale (“Sale”). The Order will expressly provide that Renasant, as holder of first valid and perfected liens encumbering the Real Property, shall be paid cash at closing in the amount of \$1,900,000.00. Over and above the specified \$1,900,000.00 cash payment to Renasant, the Order will also provide that \$10,000.00 of the sale proceeds shall be deposited in the trust account of Beard & Savory, PLLC, for use in payment of administrative expenses. Said Order shall determine the purchaser to be a good faith purchaser entitled to the protections of §363(m) of the Bankruptcy Code, waive the 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, and authorize disbursement of the sale proceeds as set out in the Motion.

IT IS FURTHER ORDERED that the following Bid and Auction Procedures be and are hereby Approved:

**A. Bid Deadline.** A Qualified Bidder that desires to make a bid for consideration shall submit via electronic mail, facsimile or other delivery service, written copies of its bid to Russell W. Savory, 119 South Main Street, Suite 500, Memphis, Tennessee 38103 [russ@bsavory.com](mailto:russ@bsavory.com) so that it **actually received by October 20, 2017 at 5:00 pm prevailing Central Time** (“Bid Deadline”).

**B. Bid Requirements.** To be deemed a "Qualifying Bid," a bid must be received from a

Qualifying Bidder by a date no later than the Bid Deadline that:

1. states such Qualifying Bidder offers to purchase the Real Estate, upon the terms and conditions substantially as set forth in the Agreement, or pursuant to an alternative arrangement that the Debtor determines is no less favorable than the terms and conditions of the Agreement;
2. is accompanied by a duly executed purchase agreement for purchase and sale of real estate ("Purchase Agreement") with evidence of Board of Director or other governing approvals;
3. states such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Purchase Agreement without financing contingencies of any kind and provides written evidence in support thereof;
4. states such Qualifying Bidder's offer is irrevocable until the closing of the Sale if such Qualifying Bidder is the Prevailing Bidder;
5. contains reasonable provisions for the Debtor to make a determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Purchase Agreement;
6. does not request or entitle such Qualifying Bidder to any break-up fee, expense reimbursement or similar type of payment;
7. fully discloses the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;
8. will result in value to the Debtor's estate that is at least \$1,975,000.00;

9. provides certified funds of \$100,000.00 payable to Beard & Savory, PLLC, to be held in trust as a Good Faith Deposit.

**C. Rejection of Bid.** Notwithstanding the foregoing and except with regard to a secured creditor exercising its credit-bid rights, the Debtor shall be entitled to reject any bid, in his discretion, on any commercially reasonable grounds, including but not limited to the following:

1. the bid is on terms that are materially more burdensome or conditional than the terms set out in the Motion;
2. the bid requires any indemnification of such Qualified Bidder;
3. the bid is not received by the Bid Deadline;
4. the bid includes a non-cash instrument or similar consideration;
5. the bid requires any regulatory or other approval that would delay the closing;
5. the bid does not satisfy Section B herein;
6. the bid contains any material conditions to closing;
7. The bid is not in the best interests of creditors.

Any bid rejected pursuant to this Section shall not be deemed to be a Qualified Bid.

**D. Notice of Qualified Bidder(s).** The Debtor shall provide counsel for Renasant, via email, notice of any other Qualified Bidder(s) other than the Prospective Purchaser by Noon, prevailing Central Time, on October 21, 2017, including their identity and proposed bid amount(s).

**E. Auction Process.**

(a) **Time and Place of Auction.** In the event that the Debtor timely receives one or more Qualifying Bids, the Debtor shall determine which Qualifying Bid is the highest and best value to the Debtor. Thereafter, the Debtor shall conduct an auction (the "Auction"). The Auction will commence on October 23, 2017 at 2:00 p.m. Prevailing Central Time.

The Auction will be conducted at the offices of Beard & Savory, PLLC, 119 South Main Street, Suite 500, Memphis, Tennessee 38103 or at such other place designated by Debtor's Counsel. Unless previously communicated, the Prospective Purchaser shall confirm, via email, with Renasant's counsel before 9:00 a.m., prevailing Central Time, on October 23, 2017, that it has fully secured necessary financing and funding to close the Sale.

(b) Qualified Participants. Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Prospective Purchaser, a Qualified Bidder that has submitted a Qualified Bid, and Renasant Bank, and their respective representatives, are eligible to attend the Auction. Debtor's counsel shall conduct the Auction. Any secured creditor asserting an interest in assets which may be auctioned and their respective representatives are permitted to attend the Auction and exercise their respective credit-bid rights, provided however, that Renasant Bank shall agree that it will exercise its credit-bid rights if and only if the Prospective Purchaser provides notice contemplated herein that it is unable or unwilling to purchase the Real Estate, as required by E(a) herein, and another Qualified Bidder is designated other than the Prospective Purchaser or Renasant. However, in the event that the Prospective Purchaser confirms that it has an inability to close the Sale as contemplated by "E(a)" herein and another Qualified Bidder has been established other than the Prospective Purchaser, Renasant is expressly authorized herein to "credit bid" at any prospective Auction.

(c) Bidding Process and Selection of Successful Bidder. At the commencement of the Auction, the Debtor shall identify the prevailing highest and best Qualified Bid(s). In the event of equal Qualified Bids, the Debtor, in its sole discretion, may select one of the Qualified Bids as the opening bid. Excluding Renasant, bidding shall proceed initially in increments of \$10,000.00. As the auction proceeds, the Debtor may, in its discretion, determine and announce bid increments as it sees fit in the best interest of the bankruptcy estate subject to Renasant's right to bid at monetary increments it solely deems appropriate. Upon completion of the Auction, the Debtor shall

select the bidder (the "Successful Bidder"), if any, that have submitted the bid, which, in the Debtor's reasonable judgment, represents the highest and best offer and is in the best interest of the Debtor's estate and its creditors (the "Successful Bid").

(d) Debtor's Discretion. The Debtor shall conduct the Auction in accordance with this Section E. The Debtor, in its discretion, may further conduct the Auction in any manner deemed reasonably prudent to obtain the highest and best result for the estate, but in no event shall any Sale result in Renasant receiving less than \$1,900,000.00 "net" from the closing of same.

(e) Sale Approval. If the Prospective Purchaser remains the best and highest bid at the close of the auction then the Debtor will submit an Order approving the sale as out in in the first decretal paragraph of this Order. If a another bid is selected by the Debtor then the Court shall approve the sale as modified by the auction results. There will be no further bid solicitation procedure or periods following conclusion of the Sale Hearing except as may be further allowed by the Court;

(f) Dispute Resolution. Should there be a dispute as to the best and highest bid then the Sale Hearing shall be continued and the Bankruptcy Court shall hold a hearing to hear and resolve any dispute(s) which may exist between bidders, the Debtor and/or Renasant. The Bankruptcy Court retains the jurisdiction to determine such other times and dates as it deems appropriate to hear any dispute relative to the Auction, and said hearing may be held upon an emergency notice as deemed appropriate in the sole discretion of the Bankruptcy Court.

**F. Sale Hearing**. In the event of an Auction, a hearing to approve the results will take **on October 24, 2017 at 11:00 a.m. prevailing Central Time**. Objections to approval of the results of the Auction must be filed **on or before October 24, 2017 at 9:00 a.m. prevailing Central Time**.

**G. Return of Good Faith Deposit**. The Good Faith Deposit shall be returned to any bidder whose bid was not the Successful Bid. The Good Faith Deposit submitted by the Successful Bidder shall be applied against the payment of the purchase price, as defined in the relevant Asset Purchase

**H. Closing.** Closing shall take place as soon as practicable, but in any event no later than October 30, 2017. Should the Prospective Purchaser fail to complete the closing of the Sale of the Real Property, including payment of \$1,900,000.00 "net" to Renasant by October 31, 2017 as required herein, then the Bank's agreement to accept the referenced amount for the release of its respective liens and other collection rights shall be deemed null and void. Further, as set forth herein, the Debtor's Amended Plan of Reorganization [Dkt. #136] shall thereafter immediately be set for hearing at the Court's next earliest convenient date.

**I. Expense Reimbursement.** If the Prospective Purchaser is subsequently outbid at auction, it shall be entitled to an Expense Reimbursement of \$15,000.00 (the "Expense Reimbursement"), paid from the settlement proceeds of the Sale unless the Prospective Purchaser is the ultimate successful bidder, in which case it shall receive no Expense Reimbursement. However, in no event shall the payment of the Expense Reimbursement result in Renasant receiving any less than \$1,900,000.00 at the prospective closing of the Sale.

**J. Reversion to Pending Amended Plan.** In the event that the Prospective Purchaser confirms it has an inability to close the Sale as contemplated by "E(a)" herein and no other Qualified Bidder is established, the pending Amended Plan of Reorganization [Dkt. #136] shall be set immediately for hearing at the Court's next earliest convenient date following the course of events set forth in "E" herein.

**K. Failure to Close.** In the event the Prospective Purchaser or any other Qualified Bidder other than Renasant fails to timely close the sale and Renasant does not receive on or before October 31, 2017 net proceeds of \$1,900,000.00 in good and sufficient funds, the pending Amended Plan of Reorganization [Dkt. #136] shall immediately be set for hearing at the Court's next earliest convenient date without motion by Renasant. Further, Renasant reserves any and all rights provided same under Title 11 of the United States Code in the event the Prospective Purchaser fails to close the Sale as

required herein.

**L. Notices.** Any notices due Renasant herein shall be made to its counsel, D. Andrew Phillips, at [aphillips@mitchellmcnutt.com](mailto:aphillips@mitchellmcnutt.com).

Approved by:

/s/ Russell W. Savory

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901-523-1110

/s/ D. Andrew Phillips (with permission)

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/s/ R. Lee Webber (with permission)

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901-522-0050

Parties to be served:

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