

Judge Marc Barreca

Chapter 11

Hearing: November 8, 2018 at 9:30 am

Response Date: November 11, 2018

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:

BK No. 18-13174

DISTRIBUTION RESOURCES INC,

DEBTOR

2ND MOTION TO SELL ASSETS OF
THE ESTATE UNDER 11 U.S.C. §
363(B) WITH NOTICE OF HEARING
AND PROOF OF SERVICE AND
DECLARATION OF PAUL PRUSI

NOTICE OF HEARING and PROOF OF SERVICE

PLEASE TAKE NOTICE that the Debtor's Motion to Sell Assets of the Estate in this case will be heard on the date below and the clerk is directed to note this issue on the appropriate calendar.

Calendar Date: Thursday, November 8, 2018, at 9:30 AM

Response Date: November 1, 2018

Before: Judge Marc Barreca

Hearing Location: Seattle courtroom

Unless a creditor or other party in interest objects and files a response or objection by the response date above, the court may enter an order without further notice or hearing.

Copies of this Motion have been mailed on this date to all parties via ECF and/or via USPS mail pursuant to the attached mailing matrix. Copies of the contract will not be mailed but can be made available upon request to Debtor's counsel at feinstein1947@gmail.com or kpscordato@gmail.com or via ECF.

1 **MOTION TO SELL ASSETS OF THE ESTATE**
2 **OUTSIDE THE ORDINARY COURSE OF BUSINESS**

3 Comes now the Debtor, Distribution Resources Inc., by and through its
4 attorney of record, Larry B. Feinstein, and moves the Court as follows:

5 The Debtor operates a warehouse facility in Kent, Washington at 23001 54th
6 Avenue So., Kent, WA. The business lost its major clients, causing the Debtor to
7 miss payments and default on its warehouse lease. The Debtor holds, distributes
8 and warehouses merchandise from its clients with a value in excess of
9 \$10,000,000. Had the Debtor just “closed its doors and filed Chapter 7,” it would
10 take a long time for the customers to obtain their goods, transport the goods to
11 their final port of call, and then collect on the warehousing bills of lading due to the
12 estate. And the debtor would have a lot of unhappy customers!!

13 As such, the Debtor elected to file a liquidating Chapter 11 proceedings,
14 allowing the Debtor to continue to operate in a wind-down mode, ship customer
15 goods in the warehouse to their intended destinations, bill for the warehousing and
16 shipping, and basically “keep the customers happy.” By doing so, there would be
17 an ongoing goodwill value to the business. The Debtor has met with and discussed
18 a sale of the business, and several discussions just prior to the filing convinced the
19 Debtor that it had to be open and operating to preserve any value for the estate
20 and the creditors, allowing the Debtor to then file a liquidating Chapter 11 plan.

21 The Debtor has filed a Motion to fix a claims bar deadline, so that it may
22 propose a liquidating plan of the assets of the estate within the next 30 days.

1 It is noted on the Debtor's sworn Schedules, the Debtor has normal office
2 furniture, equipment, vehicles, and other assets with a net value of about
3 \$149,118. However, about half of that is cash on hand, deposits, and other liquid
4 assets that would not be sold as part of any sale of the business; thus, a Chapter
5 7 liquidating trustee might gross \$75,000 from the sale of the base tangible
6 personal property in the estate. A copy of the Debtor's current Balance Sheet
7 setting for the assets of the estate and the estimated value of same are attached
8 hereto as an exhibit. The Debtor contends that if those same personal property
9 assets were sold by a Chapter 7 trustee at an auction, the net amount received
10 would be significantly less than the Debtor's current book value of the assets. A
11 sale of the assets in the ordinary course would bring considerably more value to
12 the estate.

13 **I. Terms of the Sale**

14 The Debtor has previously negotiated a sale of the business to DC
15 Resources, LLC, but that deal fell apart when the Buyer and the Landlord could
16 not reach an agreement on a long term lease.

17 **A.** However, the major client of the Debtor, which warehouses the largest
18 portion of the Debtor's space, is working with the Landlord for a scaled down
19 portion of the building and will continue to warehouse its own merchandise at the
20 location. The Debtor intends to allow the lease to be automatically rejected under
21 Section 365 of the Bankruptcy Code.

22 The client, **Western Glove Works**, with headquarters at 555 Logan

1 Avenue, Winnipeg MBR3A OS4, Canada, has offered to purchase the attached
2 Exhibit 1 list of assets from the estate for \$56,545. The purchaser is not affiliated
3 with the Debtor, not an insider, and is a arms length sale. This is at or exceeds the
4 liquidation value of the assets if the assets were to be auctioned off and in the best
5 interest of the estate to maximize their value, and the client is willing to pay a
6 premium market value for the equipment in place rather than purchasing same in
7 the open market.

8 **B.** The Debtor has received an offer from **TriCon Logistics**, located at 2511
9 70th Ave. E., Fife, WA., to purchase about \$20,750 of additional assets not needed
10 by the Debtor in the ordinary operations of its business, as set forth on Exhibit 2,
11 and request the Court approve a sale of the additional personal property items
12 attached hereto on the same terms (i.e. free and clear of all liens, if any; and all
13 proceeds shall be escrowed to fund the Debtor's liquidating Plan and not be used
14 for daily or other operating expenses thus directly benefiting the estate.

15 **C.** The Debtor has received an offer from **SBS Transportation**, located at
16 917 E 11th Street, Tacoma, WA, to purchase about \$5,635 of additional assets not
17 needed by the Debtor in the ordinary operations of its business, and request the
18 Court approve a sale of the additional personal property items attached hereto as
19 Exhibit 3 on the same terms (i.e. free and clear of all liens, if any; and all proceeds
20 shall be escrowed to fund the Debtor's liquidating Plan and not be used for daily
21 or other operating expenses) thus directly benefiting the estate.

22 As with the prior sale referenced above that fell apart, no receivables, cash

1 on hand, deposits, and other liquid assets would be sold as part of any sale of the
2 business.

3 The sales herein would be free and clears of any liens, if any, and the
4 proceeds of sale shall be escrowed to fund the Plan and not be used for operations,
5 thus directly benefiting the estate. Also, the sales might have some price
6 adjustment, as the Buyer's haven't thoroughly inspected the main items, such as
7 the forklifts, electric pallet jacks, computers, etc. so the Debtor requests to be able
8 to negotiate some price adjustments as may be necessary, but for not less than
9 seventy-five percent of the price listed on the Exhibits.

10
11 Under Section 363(b)(1) of the Bankruptcy Code, "the trustee, after notice
12 and a hearing, may use, sell, or lease, other than in the ordinary course of
13 business, property of the estate." Such a sale would be subject to the leases and
14 liens which would attach to the proceeds of the sale in order of priority.

15 In approving the sale of assets outside the ordinary course of business and
16 outside of a Chapter 11 Plan pursuant to Section 363(b) of the Bankruptcy Code,
17 courts have adopted the "sound business purpose" test established by the Second
18 Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). *See also, Stephens*
19 *Industries, Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Nicole Energy*
20 *Services, Inc.*, 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008.) *See*, 7 LAWRENCE P.
21 KING, COLLIER ON BANKRUPTCY 363.02[4] (15th ed. rev. 1997) (stating that
22 "[i]t is now generally accepted that section 363 allows such sales in chapter 11,

1 provided, however, that the sale proponent demonstrates a good, sound business
2 justification for conducting the sale prior to confirmation"); *see also, Myers v. Martin*
3 (*In re Martin*), 91 F.3d 389, 395 (3d Cir. 1996) (stating that it would defer to a
4 trustee's judgment so long as there is a legitimate business justification); *Official*
5 *Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d
6 141,145 (2d Cir. 1992) (holding that "the bankruptcy court was within its discretion,
7 based on its consideration of all factors, ... to determine that a good business
8 reason existed"); *Stephens Indus., Inc. v McClung*, 789 F.2d 386, 390 (6th Cir.
9 1986) (adopting the sound business purpose test).

10 A debtor must consider its fiduciary duties to all creditors and interest
11 holders for the court to approve the proposed sale. In addition, the bankruptcy
12 court must conclude that the debtor satisfied its fiduciary obligations and
13 established a valid business justification to conduct the sale outside of a plan.
14 Courts will also consider whether the fiduciaries that control the debtor are truly
15 disinterested with regards to the sale – if the fiduciaries that control the debtor's
16 decisions in connection with the sale will directly benefit from the sale, then the
17 court must carefully consider whether it is appropriate to defer to their business
18 judgment.

19 In the instant matter, the principals of the Debtor are neither affiliated nor
20 have any interest in the buyers; there is no major secured creditor in the estate
21 (other than a fork lift and a single equipment lease) that the principals have
22 guaranteed. So, there is no insider benefit from the sale.

1 If substantially all of the assets of a debtor can be sold under section 363(b),
2 without prior confirmation of a Chapter 11 Plan, then the sale can be accomplished
3 much earlier in the Chapter 11 process, resulting in significantly lower legal and
4 accounting fees, and a much quicker sale, as is here. This is the process favored
5 by creditors to liquidate collateral through a Chapter 11 sale process.

6 The Debtor has filed a concurrent motion to fix a claims bar deadline if one
7 has not already been established in a Section 105 case management order,
8 allowing creditors the opportunity to file claims before any of the proceeds of the
9 sale are disbursed. A motion to assume and assign the existing lease is also
10 contemplated with the sale. Any such future motions would be on shortened time,
11 if necessary, to effectuate closing on or about November 30, 2018.

12 Wherefore, the Debtor requests an order authorizing the sale under Section
13 363(b) outside the ordinary course of business, free and clear of liens and
14 encumbrances, as stated above.

15 Dated this 10th day of October, 2018.

16 /s/ LARRY B FEINSTEIN
17 Larry B. Feinstein, WSBA #6074
18 Kathryn P. Scordato, WSBA #41922
Attorneys for Debtor

19 **DECLARATION OF PAUL PRUSI**

20 I, PAUL PRUSI, duly sworn upon oath under penalty of perjury under the
21 laws of the State of Washington, declare and state as follows:

22 I am the managing member of the Debtor and make this Declaration as

1 such. The facts contained in the preceding Motion to Sell, and that because the
2 first sale noted fell through, this second sale to the two parties set forth in the
3 Motion are true and correct to the best of my knowledge and belief. The Debtor
4 nor I have an interest in the buyer(s) and will not obtain an interest in the buyers.
5 These are arm's length transactions, as I have been trying to sell the business as
6 an ongoing entity for several months in the open market place, and these are the
7 best, highest offers obtained, and will generate the best return for the estate. It is
8 in the best interest of the Debtor and the estate to accept these offers.

9 In addition, the Debtor is currently marketing the additional personal
10 property assets for the approximate fair market value as indicated on the attached
11 Exhibit 4, with some flexibility as to final price. The Debtor requests authority to
12 sell said assets on the same terms and conditions as to the three sales above, to
13 any non-insider third party Buyer for the sales price or for within 75% of the sales
14 price listed without further order of the court.

15 Dated this 10th day of October, 2018.

16 /s/ Paul Prusi
17 Paul Prusi, Managing Member, Debtor
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Distribution Resources, Inc.

Propose Asset Sale to WGW

4 -60' runs of motor driven conveyor line	\$7200.
10-10' sections of gravity conveyor line	\$1500.
Mitsubishi electric forklift FB20KT/charger	\$10000.
Mitsubishi electric pallet jack (2)/charger	\$8000.
Jungheinrich electric pallet jack (2)/charger	\$7000.
5 – pallet jacks	\$625.
4 – hand trucks	\$270.
11 – desk top computers/monitors	\$1375.
office furniture and fixtures	TBD
4 – Zebra Z4 label printers	\$3400.
3 - HPLaserJet P4015n document printers	\$1500.
1 – Ricoh MP4000 copy machine/scanner	\$850.
25 - picking carts	\$625.
41 – Z bar hanging racks	\$2050.
Stretch wrap machine	\$1500.
Pallet floor scale	\$650.
Mitel VoiP phone/paging system/15 phones	\$10000.
corrugated boxes, tape, stretch wrap, labels, ribbon	TBD

Distribution Resources, Inc.

Propose Asset Sale to TriCon Logistics

2511 70th Avenue East, Suite D | Fife, WA 98424

4 -60' runs of motor driven conveyor line \$7200.

10-10' sections of gravity conveyor line \$1500.

Jungheinrich electric pallet jack (2)/charger \$7000.

3 – pallet jacks \$450.

4 – desk top computers/monitors \$500.

office furniture and fixtures TBD

2– Zebra Z4 label printers \$1700.

10 - picking carts \$250.

Stretch wrap machine \$1500.

Pallet floor scale \$650.

corrugated boxes, tape, stretch wrap, labels, ribbon TBD

Distribution Resources, Inc.
proposed asset sale to: SBS Transportation
917 E 11th Street
Tacoma WA 98421

2 -60' runs of motor driven conveyor line	\$3600.
20-10' sections of gravity conveyor line	\$3000.
Jungheinrich electric pallet jack (2)/charger	\$7000.
5 – pallet jacks	\$625.
2 – hand trucks	\$135.
3 – desk top computers/monitors	\$375.
office furniture and fixtures	TBD
4 – Zebra Z4 label printers	\$3400.
3 - HPLaserJet P4015n document printers	\$1500.
1 – Ricoh MP4000 copy machine/scanner	\$850.
25 - picking carts	\$625.
Stretch wrap machine	\$1500.
Pallet floor scale	\$650.
2 – 30' flex line gravity conveyor	\$2000.
1- copy machine	\$375

EXNIBIT 4

Distribution Resources, Inc.

proposed asset sale to Third Parties, including the current proposed buyers who may want to purchase these additional assets

6 – Desk Top Computers	\$750.
24 –Desks/Chairs	\$1500.
1 – Conference Room Table/6 chairs	\$300.
7 – 10’ sections of gravity conveyor line	\$1050.
20 – lunchroom tables/90 chairs	\$750.
Misc. Shipping Supplies (cartons/tape)	\$8500.

5:57 AM
09/07/18
Accrual Basis

Distribution Resources, Inc
Balance Sheet
As of August 31, 2018

	<u>Aug 31, 18</u>
ASSETS	
Current Assets	
Checking/Savings	
1000-00 · Checking	<u>172,850.51</u>
Total Checking/Savings	172,850.51
Accounts Receivable	
1100-00 · Accounts Receivable	<u>602,127.38</u>
Total Accounts Receivable	602,127.38
Other Current Assets	
1098-00 · Undeposited Cash	18,963.42
1155-00 · Loan to Shareholder	20,333.98
1200-00 · Inventory-002	17,859.45
1360-00 · Prepaid Deposits	15,723.91
1400-00 · Inventory-001	305.27
1500-00 · Equipment	268,904.88
1510-00 · Furniture & Fixtures	5,494.02
1520-00 · Vehicles	33,899.00
1540-00 · Software	8,450.38
1549-00 · Accumulated Depreciation	-274,361.33
2120 · Payroll Asset	<u>-5,890.38</u>
Total Other Current Assets	<u>109,682.60</u>
Total Current Assets	<u>884,660.49</u>
TOTAL ASSETS	<u>884,660.49</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2000-00 · Accounts Payable	<u>382,025.88</u>
Total Accounts Payable	382,025.88
Other Current Liabilities	
2100-00 · Contracts payable	190.07
2150-00 · Line of Credit	-951.15
2200-00 · Federal W/H tax payable	3,418.00
2210-00 · Fica W/H tax payable	6,552.78
2212-00 · Medicare tax payable	1,532.56
2220-00 · Dept. of L & I Tax Payable	17,908.04

5:57 AM
09/07/18
Accrual Basis

Distribution Resources, Inc
Balance Sheet
As of August 31, 2018

	<u>Aug 31, 18</u>
2225-00 · Accrued SUTA Tax	7,368.18
2226-00 · Accrued FUTA Tax	<u>195.35</u>
Total Other Current Liabilities	36,213.83
Total Current Liabilities	<u>418,239.71</u>
Total Liabilities	418,239.71
Equity	
Retained Earnings	192,078.52
3000-00 · Equity Net Worth	50,858.66
3010-00 · Common Stock	205,229.00
Net Income	<u>18,254.60</u>
Total Equity	<u>466,420.78</u>
TOTAL LIABILITIES & EQUITY	<u><u>884,660.49</u></u>

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:	BK No. 18-13174
DISTRIBUTION RESOURCES INC,	ORDER ON MOTION TO SELL
DEBTOR	ASSETS OF THE ESTATE UNDER
	11 U.S.C. § 363(B)

This matter having come on for hearing on the Debtor’s Motion to Sell Assets other than in the ordinary course of business under Section 363(b) of the Bankruptcy Code; and the Court reviewing the Motion and the Declaration of Paul Prusi; and no objections being filed to the proposed sale; and the Debtor asserting the sale is in its best business judgment to be in the best interest of the company and the estate; now, therefore it is

ORDERED that the Debtor may sell those certain assets set out in the 2nd Motion to Sell Assets of the Estate, filed under ECF #_____, by and between the various purchasers designated in the Motion on the terms and for the prices set forth in the Motion, and as may be modified or amended by the parties as necessary to effectuate the closing on the terms agreed to and approved herein [accounting for scribner errors, minor date or description modifications, or other routine closing

1 changes and modifications that do not materially change the offers submitted by
2 more than 25% on any specific items or items]. The sale shall be free and clear of
3 any liens and encumbrances and all liens and encumbrances, if any, shall attach
4 to the proceeds of the sale in their rank priority. All funds from the asset sales shall
5 be held by the Debtor and not be used for daily operating expenses, and disbursed
6 only upon confirmation of a Plan or further order of the court.

7 /// end of order///

8 Presented by;

9 /s/ LARRY B FEINSTEIN

Larry B. Feinstein, WSBA #6074

10 Kathryn P. Scordato, WSBA #41922

11 Attorneys for Debtor
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Label Matrix for local noticing
0981-2
Case 18-13174-MLB
Western District of Washington
Seattle
Tue Oct 16 16:37:49 PDT 2018

U.S. Bankruptcy Court
700 Stewart St, Room 6301
Seattle, WA 98101-4441

Alliance Packaging
1000 SW 43rd St
Renton, WA 98057-4832

Cintas Corp.
6800 Cintas Blvd
Cincinnati, OH 45262

Davis Door Service
2021 S Grand st
Seattle, WA 98144-4526

Express Services
9701 Boardwalk Blvd
Oklahoma City, OK 73162-6029

GBS Systems
7202 NE 175th St.
Kenmore, WA 98028-3506

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

NW Shipping
25046 Lake Fenwick Rd
Kent, WA 98032-4278

Puget Sound Energy
10885 NE 4th
Bellevue, WA 98004-5579

Distribution Resources, Inc.
23001 54th Ave. S.
Kent, WA 98032-6443

A-1 Pallets Inc
7752 S. 259th St.
Kent, WA 98032-7316

CPT Kent
KG Investment Mgmt.
11225 SE 6th
Bellevue, WA 98004-6477

City of Kent
220 4th Ave. S.
Kent, WA 98032-5895

De Lage Landen Financial Servi
1111 Old Eagle School Dist.
Wayne, PA 19087-1453

FedEx
942 S. Shady Grove Rd
Memphis, TN 38120-4117

Georgia Pacific Corrugated LLD
1203 Fones Rd
Olympia, WA 98501-2715

Long Business Forms
7 N. Wenatchee Ave.
Wenatchee, WA 98801-2246

Paul Prusi
2424 NW Hillpine Ct.
Bend, OR 97703-6817

Pure Water Systems
5505 N Cumberland Ave.
Ste 3307
Chicago, IL 60656-4758

Vortman & Feinstein PS
929 108th Ave NE, Suite 1200
Bellevue, WA 98004-4787

Allegiance Staffing
400 Industry Dr.
Seattle, WA 98188-3426

CPT Kent Valley Industrial LLC
KG Investment Management
11225 SE 6th St, #215
Bellevue, WA 98004-6477

Comcast
One Comcast Center
1701 John F Kennedy Blvg
Philadelphia, PA 19103-2899

Dept of LNI
315 5th Ave. S
Seattle, WA 98104-2679

GB Systems Inc.
7202 NE 175th St
Kenmore, WA 98028-3506

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Magnum Print solutions
5300 4th Ave. S
Seattle, WA 98108-2217

Prologis
1321 Auburn Way N
Auburn, WA 98002-4110

Regency Washingtín Health
1800 9th Ave.
Seattle, WA 98101-1358

Republic Services
18500 N Allied Way
Phoenix, AZ 85054-3101

Rouge Motor Freight
23001 54th Ave. S
Kent, WA 98032-6443

Seko
1100 Arlington Heights Rd
Ste 600
Itasca, IL 60143-3111

Supply Source
120 County Line Rd SW
Unit 102
Pacific, WA 98047-2123

ULine
12575 Uline Dr.
Pleasant Prairie, WI 53158-3686

United States Trustee
700 Stewart St Ste 5103
Seattle, WA 98101-4438

Washington Lift Truck
700 S Chicago St
Seattle, WA 98108-4394

Washington State Taxing Agencies
Dina Yunker Frank, Asst Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Windstream
4001 Rodney Pariam Rd.
Little Rock, AR 72212-2490

Zions Bancorporation,N.A.dba
The Commerce Bank of Washington
601 Union Street
Seattle, WA 98101-2365

Kathryn Scordato
Vortman & Feinstein PS
929 108th Ave NE, Ste 1200
Bellevue, WA 98004-4787

Larry B. Feinstein
929 108th Ave. N.E.
Suite 1200
Bellevue, WA 98004-4787

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service
915 2nd Ave MS W244
Seattle WA 98174

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Courtesy NEF

(u)Washington State Tax Agencies

(u)ZB, N.A. dba The Commerce Bank of Washing

End of Label Matrix
Mailable recipients 41
Bypassed recipients 3
Total 44