

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

GENERAL CAPACITOR, LLC,

CASE NO. 19-40279-KKS
CHAPTER 11

Debtor.

**DEBTOR'S MOTION TO APPROVE SALE OF THE DEBTOR'S
INTELLECTUAL PROPERTY FREE AND CLEAR OF ALL LIENS,
CLAIMS, AND ENCUMBRANCES**

General Capacitor, LLC (“Debtor”), by and through the undersigned counsel, pursuant to sections 363 and 105(a) of the Bankruptcy Code and Fed. R. Civ. P. 2002 and 6004, moves the Court for the entry of an order approving the sale of its intellectual property (“IP”) free and clear of all liens, claims and encumbrances. In support of this Motion, the Debtor states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Motion pursuant to 28 USC § 157(b) and 1334(b). This is a core proceeding pursuant to 28 USC § 157(b).
2. Venue for this Motion is proper before this Court pursuant to 28 USC §§ 1408 and 1409.
3. The code sections and rules that this Motion is requesting relief under are Sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002 and 6004.

Background

4. The Debtor filed a petition for relief commencing the instant case on May 16, 2019.
5. Prior to ceasing operations in the early 2019, the Debtor was the developer and manufacturer of lithium-ion capacitors.

6. Because this is a liquidation case, the Debtor intends on selling its assets and then subsequently filing a Chapter 11 Plan of Liquidation that will propose to pay creditors with funds received from the sale of the Debtor's assets.
7. The Debtor's assets consist of both physical and intangible assets. By this Motion, the Debtor is only seeking authority to sell its intangible assets.
8. Because this is a liquidation case, the Debtor intends on selling its assets and then subsequently filing a Chapter 11 Plan of Liquidation that will propose to pay creditors with funds received from the sale of the Debtor's assets.
9. The Debtor solicited offers from over thirty (30) companies for its IP via electronic mail on August 28, 2019.
10. The companies that the Debtor solicited offers from were companies that the Debtor believed would be the most interested in this type of IP.
11. The Debtor received three offers for the purchase of the IP.
12. The highest bidder as of the date of this Motion is Phoenix Zwell, LLC, a California Limited Liability Company ("Buyer").
13. The Debtor has reached an agreement to sell its IP to Buyer for the sum of \$300,000.00 subject to Court approval for the benefit of the creditors of the estate. The "Agreement" is attached hereto as Exhibit A.
14. The material terms of the Agreement are as follows:
 - a. Purchase Price: \$300,000.00
 - b. Source of Financing: None. This is a cash purchase.
 - c. Contingencies: None, other than approval by this Court.

d. Other material terms: The Debtor is only selling *its interest* in the IP. Other entities, namely Florida State University and Honeywell International, Inc., may claim a right or interest in the IP. This sale is intended to be subject to any other entity's valid interest(s) in the Debtor's IP.

15. The sale contemplated in the Agreement is "as-is, where-is" with no warranties express or implied.

Relief Requested

16. The Debtor requests entry of an order approving the sale of the IP free and clear of liens, claims, and encumbrances.

17. The Bankruptcy Code permits a trustee or debtor-in-possession to sell a debtor's assets outside the ordinary course of business. Section 363(b)(1) of the Bankruptcy Code provides in part 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 USC § 363(b)(1). Courts have held that transactions should be approved under Section 363(b)(1) when they are supported by a sound business reason. *See Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *see also In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1993); *In re Gulf State Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). In reviewing such a proposed transaction, courts should give substantial deference to the business judgment of the debtor-in-possession or trustee. *See e.g., Esposito v. Title Inc. Co. of Pa. (In re Fernwood Mkts)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987).

18. The sale of the IP to the highest bidder serves a sound business purpose and should be approved. The Debtor submits, based on the exercise of its business judgment, that the terms of the Agreement are fair and reasonable.
19. The Debtor believes that Conwell Business Law, LLP (“CBL”) claims to have a valid lien on the Debtor’s IP. (*See* Claim No. 2).
20. Because the Debtor has not yet determined whether it will file an objection to CBL’s Claim, the Debtor requests that the Court approve the sale as requested but require that all funds from the sale of the IP be held in trust pending further Order of this Court.
21. Even if CBL does not consent to the sale and the holding of funds in trust, the Debtor submits that this Court can authorize such a sale free and clear of all liens, claims, and encumbrances pursuant to 11 U.S.C. § 363(f)(3) and (4).
22. The Debtor also requests that the Court find that Buyer or the eventual highest bidder constitutes a good faith purchaser of the IP pursuant to 11 U.S.C. § 363(m) such that the reversal or modification on appeal of the sale of the IP shall not affect the validity of the sale to the buyer whether or not the buyer knew of the pendency of the appeal.
23. Section 363(m) of the Bankruptcy Code provide that the reversal or modification of a transaction authorized under § 363(b) of the Bankruptcy Code does not affect the validity of the sale to an entity that acquired the property in good faith. *See e.g., In re Adamson Co., Inc.*, 159 F.3d 896 (4th Cir. 1998); *In re Stadium Management Corp.*, 895 F.2d 845 (1st Cir. 1990).

24. While the Bankruptcy Code does not define “good faith purchaser,” courts in construing Section 363(m) have stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbott’s Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986); *see also In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Vanguard Oil & Serv. Co.*, 88 B.R. 576, 580 (E.D.N.Y. 1988).
25. The sale, whether to Buyer as contemplated or a higher bid received prior to Court approval, is the product of good faith, arm’s-length negotiations between the Debtor and the potential buyers and is on commercially reasonable terms. Accordingly, the Debtor requests a finding that the sale is subject to the protections afforded to “good faith” purchasers a under Section 363(m) of the Bankruptcy Code.
26. The Debtor, in the exercise of its business judgment, has concluded that the sale as described above best and most efficient option for maximizing the value of the assets involved for the benefit of the Debtor’s estate and its creditors.
27. Additionally, the Debtor requests that the order approving the sale following the auction provide that the stay period under Rule 6004(h) and 6006(d), and any other applicable stay periods, be waived, such the that sale may occur immediately upon entry of the sale order.

WHEREFORE, the Debtor respectfully requests the entry of an order (1) granting the instant Motion and approving the sale of the Debtor’s IP free and clear of liens, claims, and encumbrances; (2) determining that the eventual buyer is a “good faith” purchaser subject to the protections of 11 USC § 363(m), 3) waiving the stay periods to the

effectiveness of the sale order, and 4) awarding such other relief that this Court deems just and proper.

Dated: September 22, 2019

Respectfully submitted,

Bruner Wright, P.A.

By: /s/ Byron Wright III
Byron Wright III
Florida Bar No. 118971
Robert C. Bruner
Florida Bar No. 0065876
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CERTIFICATE OF SERVICE

I, Byron Wright III, hereby certify that a true and accurate copy of the above document was served on the following in the manner stated below:

- 1. Served by the Court via Notice of Electronic Filing (NEF):** I have confirmed that the foregoing document was served by the Court via NEF on September 22, 2019 to the following persons at the email addresses noted herein:

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- 2. Served by U.S. Mail:** The foregoing document was served by first class, postage prepaid, U.S. Mail on the parties listed on the attached mailing matrix.

Date: September 22, 2019

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Label Matrix for local noticing
1129-4
Case 19-40279-KKS
Northern District of Florida
Tallahassee
Sun Sep 22 15:56:53 EDT 2019

Florida Dept. of Labor/Employment Security
c/o Florida Dept. of Revenue
P.O. Box 6668
Tallahassee, FL 32314-6668

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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).

IRS
Department of the Treasury
Internal Revenue Service
955 S. Springfield Ave.
Bldg A
Springfield, NJ 07081

U.S. Securities & Exchange Commission
Branch of Reorganization
3475 Lenox Rd., N.E. Suite 100
Atlanta, GA 30326-1323

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

(u)General Capacitor International, Inc.

(d)*Linda Zhong

c/o Nicole Grimal Helmstetter, Esq.
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(d)Internal Revenue Service +
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End of Label Matrix	
Mailable recipients	80
Bypassed recipients	7
Total	87

EXHIBIT A

INTELLECTUAL PROPERTY SALE AGREEMENT
BY AND BETWEEN PHOENIX ZWELL, LLC AND
GENERAL CAPACITOR, LLC (DIP)

WHEREAS, General Capacitor, LLC, a Florida Limited Liability Company hereinafter referred to as "GC, LLC" or "Seller," and Phoenix Zwell, LLC, a California Limited Liability Company hereinafter referred to as "Phoenix" or "Buyer" have agreed to the sale of certain Intellectual Property to Phoenix;

AND WHEREAS, GC, LLC has agreed to the sale of the property, subject to the approval of the United States Bankruptcy Court for the Northern District of Florida, for the sum of Three Hundred Thousand Dollars, (\$300,000.00);

AND WHEREAS, Buyer will acquire GC, LLC's rights, title, and interest to the identified Intellectual Property and exploit such property

NOW, IT IS AGREED THE PARTIES WILL BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS OF SALE:

1. Phoenix will acquire GC, LLC's ownership rights all Intellectual Property described in Schedule A, as well as any and all technology, property rights and technical information, patents, trademarks, copyrights, system designs and any other intellectual property rights, whether registered or not, relating to the Intellectual Property described in Schedule A.
2. Phoenix by this sale acquires GC, LLC's rights to ALL trade secrets, and other proprietary know-how, public information, non-proprietary know-how and invention disclosures, any information of a technical or business nature, all documented research, developmental or engineering work, all information that can be used to define a design or process or procedure produce or support or operated the Intellectual Property. Finally, all drawing, patterns, formulas, designs, technical data and related instructions manuals, records and procedures.
3. GC, LLC irrevocably sells and transfers to Phoenix all rights, title, all registration rights, and all rights to prepare derivative works that it so owns in and to the Intellectual Property.
4. The sale contemplated herein is subject to Honeywell International Inc.'s rights in number six (6) as seen in Schedule A, as set forth in the Master Services Agreement dated April 5, 2018.
5. This sale is also subject to any ownership rights or other interests validly claimed by Florida State University, or any other entity in the Intellectual Property.
6. Phoenix will pay GC, LLC, within seven (7) days of the execution of this Sale Agreement, the a refundable deposit in the amount of Fifty Thousand Dollars (\$50,000.00) to Bruner Wright, P.A.'s trust account to be held pending Bankruptcy Court approval of this Sale Agreement.
7. Within seven (7) days of any Order Granting Approval of this Sale Agreement by the United States Bankruptcy Court for the Northern District of Florida, Phoenix shall pay the

remaining sum of Two Hundred Fifty Thousand Dollars US Currency (\$250,000.00) to Bruner Wright, P.A.'s trust account.

8. In the event this Sale Agreement is not approved by the Bankruptcy Court through no fault of Phoenix, GC, LLC shall refund the deposit referenced above to Phoenix.
9. Seller has the right power and authority to enter into this Sale Agreement, subject to the approval of the United States Bankruptcy Court for the Northern District of Florida.
10. This Sale Agreement is binding upon heirs and assigns of the parties, and shall be governed by the laws of Florida, USA.
11. This Sale Agreement contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.
12. This Sale Agreement may be amended only by a writing signed by both parties.
13. Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Sale Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.
14. Buyer agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Sale Agreement.
15. If any term, provision, covenant or condition of this Sale Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Sale Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
16. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Sale Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
17. Each person signing this Sale Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Sale Agreement. Each party represents and warrants to the other that the execution and delivery of the Sale Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Sale Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

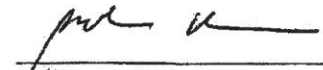
SELLER
General Capacitor, LLC


Authorized Signature

Jim Zheng, Board Director
Print Name and Title

9/17/2019
Date

BUYER
Phoenix Zwell, LLC


Authorized Signature

Pam Chen, President
Print Name and Title

9/12/2019
Date

SCHEDULE A

Patent and other Intellectual Property

No.	Date	Patent Name	Patent Type	Patent application process or related documents		Patent Assess Office	Patent Acceptance and Recording		Remark
				No.	Procedures and related file names		Application No./Patent No.	Serial number	
1	6/19/2018	HIGH PERFORMANCE LITHIUM-ION CAPACITOR LAMINATE CELLS	US PATENT	1	Provisional patent application Oct 2014	US PATENT & TRADEMARK OFFICE	US 10,002,717 B2		
				2	Non-Provisional patent application Oct 2015				
				3	USPTO ACTION AR, DOC. 11212017				
				4	USPTO ACTION AR, DOC. 03052018				
				5	Patent Application Final Allowed Doc. 05302018				
2	11/6/2018	WIDE OPERATING TEMPERATURE RANGE ELECTROLYTES FOR LITHIUM-ION CAPACITORS ACHIEVING HIGH PERFORMANCE	US PATENT	1	Provisional patent application Dec 2014	US PATENT & TRADEMARK OFFICE	US 10,121,605 B2	#3 ON APPENDIX A FERRARO	
				2	Non-Provisional patent application Dec 2015				
				3	USPTO ACTION AR, DOC. 10102017				
				4	USPTO ACTION AR, DOC. 05182018				
				5	Patent Application Final Allowed Doc. 09242018				
3	9/14/2017	PROCESS FOR LITHIUM LOADED ELECTRODE MANUFACTURING FOR LITHIUM-ION CAPACITORS	US NON-PROVISIONAL PATENT APPLICATION	1	Provisional patent application March 2016	US PATENT & TRADEMARK OFFICE	PUB. NO.: US 2017/0263388 A1		
				2	Non-Provisional patent application March 2017				
				3	USPTO ACTION AR, DOC. 11122018				
				4					
				5					
4	10/19/2017	METHOD OF NEGATIVE ELECTRODE PRE-LITHIATION FOR LITHIUM-ION CAPACITORS	US NON-PROVISIONAL PATENT APPLICATION	1	Provisional patent application April 2016	US PATENT & TRADEMARK OFFICE	PUB. NO.: US 2017/0301485 A1		
				2	Non-Provisional patent application April 2017				
				3	USPTO ACTION AR, DOC. 06282018				
				4	#2 ON APPENDIX A FERRARO				
				5					
5	6/12/2018	LITHIUM-ION CAPACITOR	US NON-PROVISIONAL PATENT APPLICATION	1	Provisional patent application June 2017	US PATENT & TRADEMARK OFFICE	APPLICATION NO.: 16/005,777		
				2	Non-Provisional patent application June 2018				
				3					
				4					
				5					
6	3/14/2018	NOVEL ULTRA-THIN LITHIUM-ION CAPACITOR WITH ULTRA-HIGH POWER PERFORMANCE	US PROVISIONAL PATENT APPLICATION	1	Provisional patent application March 2018	US PATENT & TRADEMARK OFFICE	APPLICATION NO.: 62/642,890		
				2					
				3					
				4					
				5					

7	4/16/2018	HYBRID LITHIUM-ION BATTERY CAPACITOR (H-LIBC) ENERGY STORAGE DEVICES	US PROVISIONAL PATENT APPLICATION	1 Provisional patent application April 2018					US PATENT & TRADEMARK OFFICE	APPLICATION NO.: 62/658,082
				2	3	4	5			
8	UNAPPLIED	LIC Pouch/Laminate Cell Manufacturing Process	TRADE SECRET	1						
				2						
				3						
				4						
				5						
9	UNAPPLIED	Manufacturing Formation Process of LIC Energy Storage Device	TRADE SECRET	1						
				2						
				3						
				4						
				5						
10	UNAPPLIED	Process for Manufacturing High Performance Wet Coating Method based Positive and Negative Electrodes for Li-Ion Capacitors	TRADE SECRET	1						
				2						
				3						
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