

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA**

IN RE:

HECK INDUSTRIES, INC.

CASE NO. 16-10516

DEBTOR

CHAPTER 11

**MOTION FOR ORDER APPROVING SALE PURSUANT
TO SECTIONS 363(b) AND 363(f) OF THE BANKRUPTCY CODE**

NOW INTO COURT, through undersigned counsel, comes Heck Industries, Inc. (“Heck”), as debtor and debtor-in-possession (the “Debtor”), which respectfully moves this Court for entry of an order approving the sale of certain property pursuant to 11 U.S.C. §363(b) and dispensing of the 14 day requirement under F.R.B.P. 6004(h) (the “Motion”). In support thereof, the Debtor respectfully submits as follows:

Jurisdiction and Venue

1.

The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2.

The statutory predicates relief requested herein are Sections 105 and 363 of Title 11 of the Bankruptcy Code.

Facts

3.

On April 29, 2016 (“Petition Date”), the Debtor filed a petition for relief under Chapter 11 of title 11 of the U.S. Code (the “Bankruptcy Code”). Since that time the Debtor has continued to

operate its business as debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108. No trustee or examiner has been appointed in this Bankruptcy Case, although a creditors' committee has been appointed.

4.

The Debtor is the owner of a concrete supply business which has operated throughout Louisiana since 1957. Through this Motion, the Debtor seeks approval of the sale of two (2) batch plants: one located in Moreauville, Louisiana (the "Moreauville Plant") and one located in Mansura, Louisiana (the "Mansura Plant")¹, four (4) cement trucks², one (1) pick-up truck and one (1) loader (collectively, the "Assets") to Bayou Ready Mix, LLC (the "Purchaser"). A copy of the Agreement to Purchase Assets (the "Agreement") is attached hereto as Exhibit "A".

5.

Through this Motion, the Debtor desires to proceed forward with the sale of the Assets for a lump sum of \$550,000.00 plus other consideration. Schedule A to the Agreement includes a breakdown of the specific Assets being sold and the purchase price for each. The sale was negotiated through arms-length transactions and the Purchaser is not related to the management of the Debtor although the members of the Purchaser, Brian Bordelon and Thomas Bordelon, are currently employed by the Debtor. Following approval of this Motion, Brian Bordelon will immediately cease his employment with the Debtor and the employment of Thomas Bordelon will

¹ The land on which the Mansura Plant is located is owned by Wallace E. Heck, Jr. ("Mr. Heck") individually. Mr. Heck has an agreement to sell the land on which the Mansura Plant sits to the same Purchaser for a price of \$25,000.00. A copy of the agreement is attached hereto as Exhibit "B".

² Although there are five (5) cement trucks listed on Schedule A of the Agreement to Purchase Assets, truck number 442 belongs to Altex Enterprises, LLC, and is not an asset of the Debtor.

terminate at the end of the year. The Purchaser has advised the Debtor that it is prepared to close in the next few weeks.

6.

One of the creditors included on the Debtor's *Schedule F* [Doc. 145, as amended by Doc. 196 and Doc. 264] is 3-B Trucking, LLC ("3-B"), an entity in which Brian Bordelon is a member, and which claims to be owed \$191,360.58 by the Debtor for services rendered prior to the chapter 11 filing. As additional consideration for the sale and the Non-Compete described below, 3-B has agreed to waive its claim in its entirety against the estate and to pay the Debtor \$10,000 per year for two (2) years. 3-B and the Debtor have agreed to enter into a non-compete agreement ("Non-Compete") wherein the Debtor shall agree not to do business in the Avoyelles Parish area for a period of two (2) years from the closing of the sale. A copy of the Non-Compete is attached hereto as Exhibit "C".

7.

As this Court is aware, the Assets to be sold may be subject to a security interest in favor of Investar Bank ("Investar") or Buzzi Unicem USA ("Buzzi") although the position and interest of each is unclear at this time due to multiple adversary proceedings having been filed to challenge the validity of the security interest and the ranking of the lien³.

³ See *Complaint to Determine Validity, Priority and Extent of Security Interest in Certain Estate Property* filed by Investar Bank and bearing adversary proceeding number 16-01023; see also *Complaint* filed by the Official Committee of Unsecured Creditors against Buzzi and bearing adversary proceeding number 16-01031; see also *Complaint* filed by the Official Committee of Unsecured Creditors against Investar and bearing adversary proceeding 16-01028.

Law and Argument

8.

Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets, a sale of a debtor’s assets should be authorized when there is an articulated business justification for doing so. *See Licensing by Paolo v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983).

9.

Whether a transaction has a sufficient articulated business justification depends on the facts of the case. *See In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). A bankruptcy court should consider “all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike.” *Continental*, 780 F.2d at 1226; *Lionel*, 722 F.2d at 1071. Relevant factors may include: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition on the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.” *See Continental*, 780 F.2d at 1226; *Lionel*, 722 F.2d at 1071; *In re Delaware & Hudson*

R.R. Co., 124 B.R. 169, 176 (D. Del. 1991); *In re Condere Corporation*, 228 B.R. 615, 628 (Bankr. S.D. Miss. 1998).

10.

Once a debtor has articulated a valid business justification, “a presumption [arises] that the officers and directors of a corporation, in making a business decision for that corporation, act only after they have been appropriately informed and after they have honestly determined that the action to be taken is in the best interest of the corporation.” *In re Performance Nutrition, Inc.*, 239 B.R. 93, 111 (Bankr. N.D. Tex. 1999). When applying the “business judgment” standard, courts show deference to a debtor’s business decisions. *See, e.g., Atkins v. Hibernia Corp.*, 182 F.3d 320, 324 (5th Cir. 1999); *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Group, Ltd.)*, No. Civ. A. 3:04-CV-2411-M, 2005 WL 440379, *2 (N.D. Tex. Feb. 23, 2005) (“great judicial deference is given to [the debtor in possession’s] exercise of business judgment”).

11.

The value to the Debtor and its estate of the proposed sale of the Assets and the ancillary Non-Compete is \$761,360.58, although the Debtor will receive \$570,000 in cash, \$20,000 of which is deferred. The claim of 3-B is one of the largest unsecured, non-disputed claims against the Debtor. The waiver of that claim will reduce the total unsecured debt to the benefit of the entire estate. In addition, the Debtor will save approximately \$390,000.00 per year in operating costs of the Mansura plant. The Debtor currently has \$350,331.84 in annual gross payroll costs for the labor associated with the Mansura plant. The Debtor also has between \$30,000.00 - \$40,000.00 annually in costs for utilities, service contracts for computer software, and other expenses associated with the operation of the Mansura plant. Thus, the operational expense

savings to the Debtor will greatly benefit the estate as it will result in additional cash being available to the creditors of the estate.

12.

In this proceeding, the sale of the property will generate additional cash for the Debtor to be distributed to creditors of the estate. However, as there are competing security interests in the proceeds of the proposed sale, the Debtor desires to hold that portion of the sale proceeds to be paid at closing, \$550,000, in escrow until a decision is rendered in connection with the question of the validity and priority of the Investar and Buzzi liens, or until such time as the parties and Official Committee of Unsecured Creditors (the "UCC") reach an agreement as to the distribution of the proceeds.

13.

The Debtor also requests the 14 day stay provided in F.R.B.P. 6004(h) be dispensed with so that the closing of the sale can occur and, if an agreement is reached with respect to the distribution of proceeds, the proceeds could then be immediately distributed upon such agreement resulting in a reduction of interest accruing on the indebtedness owed to Investar and/or Buzzi.

Notice

14.

Notice of this Motion has been given to (i) the Debtor, (ii) the secured lenders, (iii) the Office of the U.S. Trustee, (iv) counsel for the UCC, and (v) all parties who requested notice.

15.

Conclusion

The Debtor submits that the proposed sale of the Assets is in the best interest of the estate and suggests this Court enter an order approving same free and clear of all claims, liens and

encumbrances, with the proceeds of the sale to be held in the Debtor's trust account until a determination or agreement is reached concerning use thereof.

WHEREFORE, the Debtor respectfully requests that, following notice and a hearing, this Court enter an order (i) approving the sale of certain property pursuant to 11 U.S.C. §363(b); (ii) dispensing of the 14 day stay requirement under F.R.B.P. 6004(h); and, (iii) for any and all other relief to which it may be entitled.

Respectfully submitted by:

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Counsel for the Debtor

Agreement to Purchase Assets

This AGREEMENT TO PURCHASE ASSETS (hereinafter "Agreement") is entered into on the 28th day of July, 2016, by and between HECK INDUSTRIES, INC., a Louisiana corporation with a domicile address of 5415 Choctaw Drive, Baton Rouge, LA 70805 ("Seller"), represented herein by its duly authorized representative, Wallace Heck, Jr.; and BAYOU READY MIX, LLC, A Louisiana limited liability company with a domicile address of 278 Industrial Boulevard, Mansura, LA 71350, ("Purchaser"), represented herein by its duly authorized representatives, Thomas Bordelon and Brian Bordelon, (Seller and Purchaser are hereinafter, collectively, the "Parties").

Purchaser does hereby agree to purchase and Seller does hereby agree to sell, convey, transfer and assign, with full warranty of title, the assets listed on the attached Schedule A (collectively, the "Assets").

The Assets shall be sold and purchased for the price of Five Hundred and Fifty Thousand dollars an no/100 (\$550,00.00) dollars, and other valuable considerations (the "Purchase Price").

Each of the Parties agree to retain and pay for their own attorney, and each Party shall bear its own closing costs in connection with the closing of the transaction contemplated herein.

All personal property ad valorem taxes, assessments, rents, charges, other similar charges or fees, and all prepaid expenses and prepaid revenue, relating to the Assets, are to be prorated to date of closing, with Seller to be responsible for all such expense and entitled to all revenue attributable to the Assets and earned up to and as of the day of closing, and the Purchaser to be responsible for all such expenses and entitled to all revenue attributable to the Assets after the day of closing.

Seller hereby represents warrants and agrees that prior to closing of the transaction contemplated herein:

1. All statements and other information furnished relative to this Agreement and/or the transaction contemplated herein, has and/or shall fairly reflect the ownership, transferability, condition, and encumbrances if any, of the Assets.
2. There are no, nor shall there be any, undisclosed liabilities, claims or pending or threatened litigation, and Seller will defend and hold Purchaser harmless from same (including attorney fees and expenses of litigation) if any shall arise from actions which took place prior to closing as relates to the Assets.
3. The Assets are to be conveyed herein free and clear of any and all defects, liens and encumbrances except such may be otherwise herein expressly assumed by Purchaser. Seller agrees to pay for any action required to remove any defects from title or bill of sale or other instrument in order to make it good and marketable. The Buyer and Seller represent and warrant there are no brokers involved in this transaction.


4. Seller has or shall have good and marketable title to all of the Assets to be sold by the transaction contemplated herein; and, if Seller is a corporation that the corporation is duly organized, existing, and in good standing under the laws of the State of Louisiana; and the execution and delivery of this Agreement has been duly authorized by the board of directors and by the shareholders.
5. Seller shall provide full and complete disclosure to Purchaser of all information as may be material to a purchaser's decision to acquire the Assets.
6. At date of sale closing, material inventory will be taken on site and sold to Buyer at cost. Inventory is not included in asset purchase price, it will be at cost in addition to asset purchase price.

This Agreement constitutes the sole and entire agreement between the Parties hereto and no modification or amendment shall be binding unless in writing and attached hereto and signed by all Parties to this agreement.


WITNESS the hands and seals of Purchaser and Seller this day, month and year below written who each sign below through their respective unauthorized representative. Each Party acknowledges that each has read this Agreement in its entirety, understands its contents, and has had the opportunity to seek legal counsel and to contribute to its drafting.

SELLER:
HECK INDUSTRIES, INC.

BUYER:
BAYOU READY MIX, LLC



BY: Wallace Heck, Jr.
Its: President



Thomas Bordelon
Its: Member



Brian Bordelon
Its: Member

SCHEDULE A

Moreauville Plant - \$90,000

- Rex Logo 7 CY Batch Plant
- Manufactured 1980
- Command batch computer system
- 5000 gallon water tank

Mansura Plant – \$305,900

- APECO 10 CY Batch Plant – rated at 120 cy per hour
- Manufactured in 1986 – not really used until 1992
- Command batch computer system
- 8000 gallon auxiliary water tank

Ready Mix Trucks

• 660	MACK 2006 DM690S	1M2B209C66M030858	\$ 25,500
• 662	MACK 2006 DM690S	1M2B209C46M303857	\$ 26,300
• 442	MACK 2004 DM690S	1M2B209C54M029987	\$ 24,800
• 664	MACK 2006 DM690S	1M2B209C76M030853	\$ 25,500
• 665	MACK 2006 DM690S	1M2B209C06M030838	\$ 25,500

Pick Up Truck

• 277	2005 GMC 1500HD	1GDJC32405E234864	\$ 1,500
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Loader

• 522	2009 Caterpillar 928HZ	CXK00296	\$ 25,000
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