

Motion Date and Time: February 21, 2018 at 10:00 a.m. (Prevailing Eastern Time)
Opposition Date and Time: February 14, 2018 at 4:00 p.m. (Prevailing Eastern Time)

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Proposed Counsel for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Case No: 17-13469-mkv

LEVEL SOLAR INC,¹

Chapter 11

Debtor.

**NOTICE OF MOTION OF DEBTOR FOR AN ORDER APPROVING
THE SALE OF CERTAIN ASSETS OF THE DEBTOR'S ESTATE FREE
AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. §§ 105 AND 363 AND RELATED RELIEF**

PLEASE TAKE NOTICE that Level Solar Inc., as debtor and debtor in possession (the “Debtor” or “LSI”), hereby gives notice of its motion (the “Motion”)² for an Order Approving the Sale of Certain Assets of the Debtor’s Estate Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363 and Related Relief, all as more fully set forth in the Motion, and will move on February 21, 2018, at 10:00 a.m., or as soon thereafter as counsel may be heard, before the Honorable Mary Kay Vyskocil, United States Bankruptcy Judge,

¹ Federal Tax Id. No. xx-xxx 0893

² Capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in the Motion.

at the United States Bankruptcy Court, One Bowling Green, Courtroom 501, New York, New York 10004-1408, for entry of an order granting the Motion.

PLEASE TAKE FURTHER NOTICE that any response to the Motion must be made in writing, state with particularity the grounds therefore, shall conform to the United States Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and shall (a) be served upon: (i) the Office of the United States Trustee, 201 Varick Street, Rm 1006, New York, New York 10014 (Attention: Benjamin J. Higgins, Esq.); and (ii) the Debtor, Shipman & Goodwin LLP, 400 Park Avenue, Fifth Floor, New York, New York 10022 (Attn: Michael T. Conway, Esq.); and (b) electronically filed with the Clerk of the Court through the Court's website at www.nysb.uscourts.gov, in accordance with General Order M-242 (General Orders and the User's Manual for the Electronic Case Filing System), with a copy to the Chambers of the Honorable Mary Kay Vyskocil, together with proof of service thereof, so as to be received no later than **4 p.m. Prevailing Eastern Time on February 14, 2018 (the "Objection Deadline")**.

PLEASE TAKE FURTHER NOTICE that, unless objections are timely received, the Motion may be granted without further notice.

PLEASE TAKE FURTHER NOTICE that the Hearing may be adjourned from time to time, without notice, other than by announcement of the adjourned date in open court or by posting such adjourned date on the Court's calendar on the aforementioned date.

Dated: January 22, 2018
New York, New York

SHIPMAN & GOODWIN LLP

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Case No: 17-13469-mkv

LEVEL SOLAR INC,¹

Chapter 11

Debtor.

**MOTION OF DEBTOR FOR AN ORDER APPROVING
THE SALE OF CERTAIN ASSETS OF THE DEBTOR'S ESTATE FREE
AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. §§ 105 AND 363 AND RELATED RELIEF**

Level Solar Inc., as debtor and debtor in possession (the "Debtor" or "LSI"), hereby moves pursuant to sections 105 and 363 of title 11 of the United States Code 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code"), and such other, further and different relief as this Court may deem just and proper (the "Motion"), and in support of the Motion respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court.

¹ Federal Tax Id. No. xx-xxx 0893

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1, and 9006-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

3. On December 4, 2017 (the “Petition Date”), the Debtor commenced with this Court a voluntary case under the Bankruptcy Code. The Debtor is authorized to continue to operate its businesses and manage its properties as Debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in this chapter 11 case.

4. Information regarding the Debtor’s business, capital structure, and the circumstances leading to the commencement of this chapter 11 case is set forth in the *Declaration of Richard Pell Pursuant to Rule 1007-2* (the “Pell Declaration”), which was filed with the Court on December 7, 2017 [Docket No. 8] in this case.

5. The Debtor has determined that there exists property of the Debtor’s Estate that is no longer being used in the Debtor’s business and is depleting the Debtor’s Estate in that the Debtor is required to insure and store this property. Included in this property is a 2015 Isuzu NPR-XD bearing Vehicle Identification Number JALC4W167F7002852 (the “Asset”).

6. Pursuant to the negotiation with the Debtor’s CEO, Wolfs Jackson Dodge (“Wolfs”) has made an offer to purchase the Asset for \$20,000 as set forth in the letter annexed hereto as Exhibit “A.” The Debtor proposes to sell the Asset to Wolfs in exchange for a payment of \$20,000.00 to the Debtor’s Estate (the “Sale”).

Private Sale

7. The Debtor seeks to sell the Asset by private sale rather than a public sale pursuant to Rules 6004(f)(1) of the Bankruptcy Rules, which provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.”

8. In the Debtor’s business judgment, the Asset is not the type of asset that is necessary to the Debtor’s reorganization effort and will merely be a drain on the Estate. The offer by Wolfs is deemed by the Debtor, after reviewing similar sales for similar assets on the open market to be a fair price. Furthermore, the Trustee believes that the costs associated with marketing and selling the Asset at a public auction would far outweigh the potential benefit to be derived from a public sale of the Asset. *See* accompanying Declaration of William Frey.

9. The sole obligation of the Debtor to Wolfs, or its successors or assigns, under the terms of the Sale, is to execute and deliver documents evidencing and effectuating the transfer of the Asset as may become necessary following entry of the proposed Order submitted with this Motion so long as the Debtor is so empowered. The costs of the fulfilling such limited, post-sale obligations shall be borne by Wolfs or its successors or assigns. Neither the Debtor or the Estate have any further obligations to Wolfs, or its successors or assigns, related to recovery on the Asset.

10. As such, the Sale proposed for the Asset represents a fair and reasonable sale price for such asset and is the highest and best offer for the sale of the Asset in the Debtor’s business judgment. The Debtor further submits that the sale of the Asset, in accordance with the terms of the Sale, serves the best interest of the Debtor’s Estate and its creditors. Accordingly, the Debtor respectfully requests that the Court approve the Sale.

Basis for the Relief Requested

11. By this Motion, the Debtor seeks an order, pursuant to 11 U.S.C. §§ 105 and 363(b), (f) and (m), authorizing the Debtor to sell the Asset to Wolfs free and clear of all liens, claims, interests and encumbrances.

12. Section 363(b) of the Bankruptcy Code provides, in pertinent part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b), (1); *see In re Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992). In addition, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

13. The proposed use, sale, or lease of property of the estate may be approved under section 363(b) of the Bankruptcy Code if it is supported by sound business justification. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Ionosphere Clubs, Inc.*, 184 B.R. 648 (S.D.N.Y. 1995); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Martin (Myers v. Martin)*, 91 F.3d, 395 (3d Cir. 1996). Moreover, pursuant to section 105, the Court has expansive equitable powers to fashion any order or decree which is in the interest of preserving or protecting the value of the Debtors’ assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986).

14. The Debtor’s authority to sell the Asset is amplified in Bankruptcy Rule 6004(f)(1), which in relevant part states that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.”

15. In *Lionel*, one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor or trustee

could demonstrate an “articulated business justification” for the sale. *In re Lionel*, 722 F.2d at 1070. The Court further held that the factors to be considered in determining whether a sound business reason exists include the following:

“the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing...the effect of the proposed disposition...of the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.”

Id. at 1071.

16. If a sound business justification exists, then a presumption attaches that the decision was informed, in good faith and in the honest belief that the action was in the best interests of the estate. *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992).

17. In addition to requiring sound business reasons to approve a sale pursuant to Section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. *See, e.g., In re Channel One Communications*, 117 B.R. at 494-97; *In re Indus. Valley Refrig. & Air Cond. Supplies, Inc.*, 77 B.R. 15 (Bankr. E.D. Pa.1987).

18. As stated herein, the Debtor does not believe the Asset has a value to the Estate and, conversely, is merely a burden in the sense that the Debtor is required to maintain insurance with respect to the Asset and to find and pay for a location to store the Asset pending the outcome of this bankruptcy case, and costs of marketing and sale of the Asset if the Sale is not approved. Moreover, the Debtor is not aware of any other potential buyer willing to pay more for the Asset.

19. Accordingly, the Debtor submits that the sale of the Asset is a prudent exercise of its business judgment under the circumstances and is in the best interest of the Debtor’s Estate

and its creditors. The purchase price for the Sale is reasonable and has been negotiated at arm's length. Accordingly, the Trustee respectfully requests that the Court grant the Motion.

Waiver of Stay

20. Pursuant to Bankruptcy Rule 6004(h), an order authorizing the sale of property is stayed for fourteen (14) days after the entry of the order unless the Court orders otherwise. The Debtor is not aware of any lien or encumbrance relating to the Asset. The Debtor requests that the Court order that such stay not apply with respect to the sale of the Asset.

Notice

21. Notice of this Motion has been given to (a) the Office of the United States Trustee; and (b) all parties having filed a Notice of Appearance with the Court or having made a request for service in this case or having an interest in the subject of the Motion. The Debtor submits that such notice is proper and adequate and no further notice is required. The Debtor further requests that this Court determine that such notice is adequate and that other and further notice be waived.

22. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that this Court grant the relief requested in the Motion, together with such other, further and different relief as the Court deems just and proper.

Dated: January 22, 2018
New York, New York

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Case No: 17-13469-mkv

LEVEL SOLAR INC,¹

Chapter 11

Debtor.

DECLARATION OF WILLIAM FREY

I, William Frey, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Chief Executive Officer of Level Solar Inc., a Delaware Corporation (“Level Solar” or the “Debtor”). I am knowledgeable and familiar with the business and financial affairs of the Debtor. I am above 18 years of age and I am competent to testify.

2. I submit this Declaration in support of Debtor’s *Motion for an Order Approving the Sale of Certain Assets of the Debtor’s Estate Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363 and Related Relief* (the “Motion”).

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge. I am authorized to submit this Declaration on behalf of the Debtor.

4. Previously, the Debtor was in the business of, among other things, installing solar panels on the roof of customer homes.

¹ Federal Tax Id. No. xx-xxx 0893.

5. In order to carry out these installations, the Debtor used several vans and trucks to transport the solar panels and related parts and equipment needed for installation. Some of these vehicles were leased, but a small number were purchased by the Debtor.

6. Currently, the Debtor owns five vans and two box trucks, none of which are in use, but the Debtor nonetheless maintains insurance on these vehicles and has reached temporary agreements to store the vehicles.

7. For the past few months I have been exploring the potential for sale of these vehicles so that the Debtor could cease paying for insurance and storage and to avoid any other potential liability associated with the vehicles.

8. On or about January 15, 2018, I received an indication of interest on the part of Wolfs Jackson Dodge (“Wolfs”) to purchase a 2015 Isuzu box truck currently owned by the Debtor (the “Asset”).

9. A true and correct copy of this correspondence is annexed hereto as Exhibit “1.”

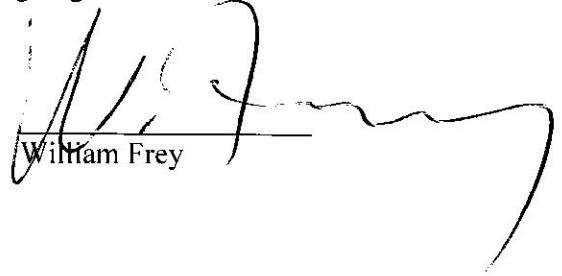
10. Following receipt of this correspondence from Wolfs, I began a review of the market for the Asset and determined that there was no true readily available market where we could expect a “quick” sale other than through a “fire sale” at auction or by accepting the offer from Wolfs.

11. I reviewed a number of sales venues where Isuzu trucks were marketed for sale and determined that the proposed purchase price, while possibly slightly lower than some advertised retail prices for similar trucks, was in line with the wholesale prices for the same vehicles.

12. Based on my review of the market I discussed the proposed sale with the Debtor’s Board of Directors and it was decided that, in the exercise of our business judgment, we should seek permission of the Court to accept Wolfs’ offer and sell the Asset.

I swear under penalty of perjury that the foregoing is true and correct.

Dated: January 22, 2018



William Frey

Exhibit 1

From: wolfs jackson dodge [mailto:wolfdodge@gmail.com]
Sent: Monday, January 15, 2018 12:32 PM
To: Bill Frey <Bill@greenwichfin.com>
Subject: Isuzu

Mr. Frey

In regard to the 2015 Isuzu NPR-XD vin Number JALC4W167F7002852 please advise the courts that we have an interest in purchasing this vehicle for \$20,000. This indication of interest is contingent upon final inspection of the vehicle and delivery of the vehicle to our showroom.

We are pleased to be working with you and Level Solar and hope to be able to accommodate your vehicle needs in the future.

Sincerely,

Brad Wolf

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Case No: 17-13469-mkv

LEVEL SOLAR INC,¹

Chapter 11

Debtor.

**ORDER APPROVING THE SALE OF CERTAIN ASSETS OF THE
DEBTOR'S ESTATE FREE AND CLEAR OF LIENS, CLAIMS,
INTERESTS, AND ENCUMBRANCES PURSUANT TO 11
U.S.C. §§ 105 AND 363 AND RELATED RELIEF**

Upon the Motion, dated January 22, 2018 (the "Motion"),² of Level Solar Inc. (the "Debtor" or "LSI"), requesting the entry of an Order Approving the Sale of Certain Assets of the Debtors' Estates Free and Clear of Liens, Claims, Interests and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363 and Related Relief; and the Court having jurisdiction to consider the Motion and requested relief in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided; and it appearing that no other notice need be provided; and the Court having read and considered the Motion; and any objections to the Motion having been resolved, withdrawn, or otherwise overruled by the Court; and the Court having determined that the proposed sale of the Asset reflects the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and is designed to maximize the value to be achieved for the Asset; and the Court having determined that the legal and factual bases set forth

¹ Federal Tax Id. No. xx-xxx 0893

² Capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in the Motion.

in the Motion and at any hearing thereon establish just and sufficient cause for the relief granted herein; it is

ORDERED that:

1. The Motion is granted.
2. The terms and conditions described in the Motion are approved in their entirety.
3. Pursuant to 11 U.S.C. § 363(b), the Debtor is authorized to sell the Asset to *** for the consideration described in the Motion.
4. Pursuant to 11 U.S.C. § 363(f), the sale of the Asset to Wolfs (“Sale”) shall be free and clear of any and all liens, claims, and encumbrances, with such liens, claims, and encumbrances, if any, to attach to the proceeds of the Sale with the same force, effect, and priority as such liens, claims, and encumbrances have on the Estate’s right to the Asset, as appropriate, subject to the rights and defenses of the Debtor and any party in interest with respect thereto.
5. The Debtor and its professionals are authorized to take such action as is necessary to effectuate the terms of the Sale, together with all additional instruments and documents that may be reasonably necessary to implement the Sale, with fees and costs of preparation of such additional instruments and documents to be borne by Wolfs or its successors.
6. Wolfs is granted the protections provided to a good faith purchaser under 11 U.S.C. § 363(m).
7. The transfer of the Asset to Wolfs pursuant to the Sale constitutes a legal, valid, and effective transfer of the Asset; and shall vest Wolfs with all right, title, and interest in and to the Asset.
8. The fourteen-day stay under Bankruptcy Rule 6004(h) is waived.

9. This Court reserves jurisdiction over the provisions of this order and to hear and determine all matters arising from the implementation of this order.

Dated: _____

Mary Kay Vyskocil
UNITED STATES BANKRUPTCY JUDGE

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Proposed Counsel for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Case No: 17-13469-mkv

LEVEL SOLAR INC,¹

Chapter 11

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CERTIFICATE OF SERVICE

I, **MICHAEL T. CONWAY**, an attorney duly admitted to the practice of law in this state, certify the following to be true under the penalties of perjury: on January 29, 2018, I served the foregoing **MOTION OF DEBTOR FOR AN ORDER APPROVING THE SALE OF CERTAIN ASSETS OF THE DEBTOR'S ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105 AND 363 AND RELATED RELIEF** on all parties who have requested notice and any interested parties via ECF, as well as by as by e-mail and first class mail to the Office of the United States Trustee.

Dated: New York, New York
January 29, 2018

/s/ Michael T. Conway
Michael T. Conway

¹ Federal Tax Id. No. xx-xxx 0893