

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	Response Deadline: February 10, 2017 at 4:00 p.m.
	:	Hearing Date: February 28, 2017 at 10:00 a.m.

**DEBTOR’S MOTION FOR AUTHORITY TO SELL CERTAIN EQUIPMENT FREE
AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. § 363**

Limitless Mobile, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), by its undersigned counsel, hereby moves this Court (the “Motion”) for authority to sell certain equipment free and clear of liens, claims, and encumbrances pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”). In support of the Motion, the Debtor avers as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtor consents to the entry of final orders or judgments of the Court pertaining to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

3. On December 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and

1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case (the “Chapter 11 Case”).

4. On December 16, 2016, an Official Committee of Unsecured Creditors (the “Committee”) was appointed in this Chapter 11 Case.

5. The Debtor, successor to Keystone Wireless, LLC, is a Delaware corporation formed in 2013 with a mission to construct a broadband network and provide wireless telecommunications services to nine (9) rural and underserved counties of central Pennsylvania. The Debtor has built a \$40 million state-of-the-art 3G/4G LTE network that has increased access to reliable, high quality mobile phone and home internet services in rural areas.

6. As part of its restructuring strategy, the Debtor has determined it is necessary to downsize its retail operations. To that end, the Debtor has decided to close five out of its six retail locations, and focus its marketing efforts on the wholesale of wireless telecommunications services to nationwide service providers who do not have established infrastructure in central Pennsylvania. As part of this strategy, the Debtor suspended wireless service provided to retail customers on January 7, 2016.

7. The change in the Debtor’s business model has rendered certain equipment owned by the Debtor obsolete and/or unnecessary to the Debtor’s business going forward, including certain equipment stored by the Debtor at a warehouse in which the Debtor leases space (collectively, the “Warehouse Equipment”). The Warehouse Equipment is described more specifically in the Purchase Order attached hereto as “Exhibit A”.

Relief Requested

8. On or about January 10, 2017, the Debtor received an offer (documented by Exhibit A hereto) from Telecycling, LLC (the “Buyer”) for the purchase of the Warehouse

Equipment for a lump sum payment of \$73,400.00 (the “Purchase Price”). The Purchase Price would be payable by the Buyer immediately upon entry of a final Order by this Court approving the sale. The proposed Buyer has no affiliation or connection with the Debtor whatsoever. The Purchase Price was negotiated by the Debtor and the Buyer in good faith and at arm’s length.

9. By this Motion, the Trustee seeks authorization to sell the Warehouse Equipment to the Buyer for the Purchase Price (subject to higher or better offers as set forth herein) free and clear of all liens, claims and encumbrances (the “Sale”). The Sale is on an “as is, where is” basis and is without any warranty, either express or implied.

10. For every month that the Warehouse Equipment remains property of the Debtor’s bankruptcy estate, the Debtor incurs rental charges for the leased space in which the Warehouse Equipment is stored. Accordingly, the prompt sale of the Warehouse Equipment is in the best interests of the Debtor’s estate.

11. The Debtor believes in its reasoned business judgment that the proposed Purchase Price is reasonable given the likely resale value of the Warehouse Equipment (after consideration of appropriate marketing and closing costs). Nevertheless, to ensure maximization of the value of the Warehouse Equipment, the Debtor proposes that the Sale be subject to higher or better offers from third parties that may be presented in open court at the hearing on this Motion, should any responses indicating higher or better offers be conveyed to the Debtor on or before the Response Deadline of February 10, 2017 at 4:00 p.m.

12. For the Sale to be viable, pursuant to 11 U.S.C. § 363(f) it must be free and clear of any and all liens, claims, encumbrances, security interests, mortgages, pledges, charges, indentures, loan agreements, options, rights of first refusal, offsets, recoupments, rights of recovery, judgments, orders and decrees of any court or governmental entity, interest, successor,

products, tax and other liabilities and claims against the Debtor or its property, of any kind or nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or noncontingent, liquidated or unliquidated, matured or unmatured, known or unknown (collectively, the “Liens and Claims”).

13. The Liens and Claims shall attach to the proceeds of the Sale, to the extent and with the priorities provided under applicable non-bankruptcy law, as such laws may be modified by the Bankruptcy Code.

Basis for Relief

14. By this Motion, the Debtor seeks the entry of an Order approving the Sale to the Buyer free and clear of the Liens and Claims, subject to any higher or better offers from third parties that may be presented in open court at the hearing on this Motion, should any responses indicating higher or better offers be conveyed to the Debtor on or before the Response Deadline of February 10, 2017 at 4:00 p.m.

15. Section 363(b) of the Bankruptcy Code authorizes a trustee to sell assets outside of the ordinary course of business. As a general rule, a trustee must show that each of the following elements have been met before a Section 363(b) sale may be approved: (1) that a sound business reason exists for the proposed transaction; (2) the sale has been proposed in good faith; (3) the sale price is fair and reasonable; and (4) that accurate and reasonable notice has been provided for the transaction. In re Stroud Ford, Inc., 163 B.R. 730 (Bankr. M.D. Pa. 1993). Here, the proposed Sale meets each of these factors.

16. Courts have made it clear that a debtor-in-possession’s showing of a sound business justification requires a debtor “to justify the proposed disposition with sound business

reasons.” In re Baldwin United Corp., 43 B.R. 898, 906 (Bankr. S.D. Ohio 1984). Whether there are sufficient business reasons to justify a sale depends on the facts and circumstances of each case. In re Industrial Valley Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987).

17. Here, the Debtor has no further operational use for the Warehouse Equipment and is incurring a monthly rental expense to store it. Sale of the Warehouse Equipment is therefore supported by sound business judgment.

18. Moreover, the Sale has been negotiated by the Debtor with a third party at arm’s length. The Debtor has therefore proposed the Sale in good faith.

19. Finally, the Purchase Price is based on a reasonable per unit price for each component of the Warehouse Equipment, as set forth in greater detail on Exhibit A. While the Debtor believes that the Purchase Price is reasonable for the Warehouse Equipment, given its likely resale value, interested parties may present a higher or otherwise better offer at the hearing on this Motion if such intention to present a higher or better offer is conveyed to the Debtor on or before the Response Deadline of February 10, 2017 at 4:00 p.m.

20. To promote potential higher and better offers, the Debtor will serve this Motion and notice of the response deadline and hearing on all known creditors and parties in interest. If no higher or otherwise better offers are presented, the Court should conclude that the Purchase Price is reasonable.

21. Regarding a sale of assets free and clear of liens and encumbrances, section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 354 (Bankr. E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met).

22. The Debtor believes that the Rural Utilities Service (“RUS”) and Tower Bridge LLM Partners, LLC (“TB”) assert liens against the Warehouse Equipment.

23. To the extent RUS, TB, or any other parties in interest that assert Liens and Claims against the Warehouse Equipment do not consent to the Sale, such liens will attach to the Purchase Price received by the Debtor with the same force, effect and priority as such liens have on the Warehouse Equipment, subject to the rights and defenses, if any, of the Debtor and any party in interest with respect thereto. Moreover, the parties asserting a claim against the Warehouse Equipment can be compelled to accept a money satisfaction of such claim. Accordingly, the Debtor submits that the Sale of the Warehouse Equipment free and clear of the Liens and Claims satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

Notice

24. The Debtor has provided notice of this Motion via first-class mail, postage prepaid to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor’s prepetition secured lenders, Rural Utilities Service and Tower Bridge LLM

Partners, LLC; (c) counsel to the Committee; (d) all parties requesting notice pursuant to Bankruptcy Rule 2002, and (e) all known creditors.

25. Due to the relief requested, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order, substantially in the form attached hereto as “**Exhibit B**” authorizing the sale of the Warehouse Equipment to the Buyer through the Sale, free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. § 363(b) and (f).

Dated: January 20, 2017

/s/ Jesse N. Silverman

DILWORTH PAXSON LLP

Martin J. Weis (No. 4333)

Jesse N. Silverman (No. 5446)

One Customs House – Suite 500

704 King Street

P.O. Box 1031

Wilmington, DE 19899-1031

Telephone: (302) 571-9800

Facsimile: (302) 571-8875

-and-

DILWORTH PAXSON LLP

Lawrence G. McMichael

Jennifer L. Maleski

Catherine G. Pappas

Admitted pro hac vice

1500 Market St., Suite 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Facsimile: (215) 575-7200

Counsel for the Debtor and Debtor in Possession

EXHIBIT A

[Purchase Order]

EXHIBIT B

[Proposed Order]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
LIMITLESS MOBILE, LLC,	:	Case No. 16-12685 (KJC)
	:	
Debtor.	:	Re: D.I. _____
	:	

**ORDER AUTHORIZING THE SALE OF CERTAIN EQUIPMENT CERTAIN
EQUIPMENT FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. § 363**

Upon consideration of the Debtor’s Motion for an Order for Authority to Sell Certain Equipment Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. § 363 (the “Motion”)¹, and any objections thereto,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtor is hereby authorized to sell the Warehouse Equipment for no less than the Purchase Price to the Buyer.
3. The Sale shall be free and clear of any Liens and Claims, as that term is defined in the Motion.
4. The Liens and Claims (if any), as defined in the Motion, shall attach to the proceeds of the Sale, to the extent and with the priorities provided under applicable non-bankruptcy law.

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion.

5. The sale of the Warehouse Property shall be on an “AS IS/WHERE IS” basis without any warranty, either express or implied, by the Debtor.

Dated: _____ 2017

Honorable Kevin J. Carey
United States Bankruptcy Judge