

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

MID-SOUTH GEOTHERMAL, LLC

Case No. 18-21498-DSK

Chapter 11

Debtor.

**MOTION TO APPROVE SALE OF CERTAIN PERSONAL PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES;
EXPEDITED HEARING REQUESTED**

Comes now Mid-South Geothermal, LLC (“Debtor”), by and through counsel, and files this Motion to Approve Sale of Certain Personal Property Free and Clear of Liens, Claims, Interests and Encumbrances; Expedited Hearing Requested pursuant to 11 U.S.C. § 363(b) and (f) and FED. R. BANKR. P. 6004 and in support of said motion would show to the Court as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334, FED. R. BANKR. P. 9019 and 11 U.S.C. § 363 and FED. R. BANKR. P. 6004. This is a core proceeding within the meaning of 28 U.S.C. § 1511(b)(2)(A),(M),(N) and (O). Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the requested relief are 11 U.S.C. § 105(a) and FED. R. BANKR. P. 9019 and 11 U.S.C. § 363 and FED. R. BANKR. P. 6004.

BACKGROUND FACTS

3. On February 20, 2018, Debtor filed with this Court its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

4. The Debtor owns multiple pieces of equipment, including a 1987 Ingersoll Rand T4W Rig and attachments (the “Property”).

5. The Debtor has received an offer to (the “Offer”) to purchase the Property by (the “Purchaser”) for a gross purchase price of \$100,000.00 (the “Purchase Price”). In addition to the Purchase Price, Purchaser will move the Property at its own expense. There are no financing contingencies under the Offer requiring this Court’s approval of the sale and the release of all liens, including, without limitation. A copy of the proforma invoice evidencing the terms of the transaction is attached hereto as Exhibit A.

RELIEF REQUESTED

6. By this Motion the Debtor seeks this Court’s approval of the sale of the Property free and clear of liens, claims, interests and encumbrances in exchange for \$100,000.00 and turnover of the original certificate of title by James Wyatt and K & W Drilling, Inc.

SALE OF PROPERTY

7. The Debtor believes that the consummation of the transaction is in the best interest of this estate, and creditors insofar as the offer will produce immediate cash to the estate.

8. The Property is subject to competing claims by Debtor’s primary lender, Regions Bank, and K&W Drilling, Inc. and James Wyatt, individually. Debtor intends to escrow the sale proceeds pending further Court order.

A. The Transaction Meets the Requirements of 11 U.S.C. § 363

9. Under section 363(b) of the Bankruptcy Code, the 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). Courts interpreting section 363(b) in the chapter 11 sale of business context

have held that transactions should be approved when they are supported by the Debtor's sound business judgment. *Stephens Indus., Inc. v. McClung*, 1189 F.2d 386, 390 (6th Cir. 1986); *In re Continental Airlines, Inc.*, 1180 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 1122 F.2d 1063, 10111 (2d Cir. 1983).

10. The business judgment test generally requires the Debtor to establish (i) that a sound business purpose justifies the sale outside the ordinary course of business; (ii) that adequate and reasonable notice has been provided to interested parties; (iii) that the Debtor has obtained a fair and reasonable price; and (iv) good faith. *See In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Phoenix Steel*, 82 B.R. at 335-56.

The Transaction is Supported by Sound Business Judgment

11. The Debtor is attempting to reorganize and develop a plan of reorganization. The Debtor submits that the offer by the purchasers for the Property represents a fair price for the assets being purchased and Debtor no longer has a need for the Property.

12. The Debtor believes the Contract submitted by the Purchaser will result in fair and adequate value to the estate.

The Debtor Will Provide Reasonable and Notice to Interested Parties

13. In satisfaction of the requirements of Rule 2002 of the Federal Rules of Bankruptcy Procedure, the Debtor intends to serve copies of this Motion on all creditors and interested parties.

The Proposed Sale Price is Fair and Reasonable

14. The purchase price provided represents fair and reasonable purchase price for the Property and the Debtor believes that the offer is the highest and best offer it will receive for it.

The Sale Was Negotiated in Good Faith

15. The Purchaser is not an “insider” of the Debtor within the meaning of 11 U.S.C. § 101(31); and the transaction proposed herein is the product of good faith, arm’s length negotiations. The Debtor requests that the Court find that the Purchaser is a “good faith purchaser” of the estate’s interest in the Property under 11 U.S.C. § 363(m).

B. Request For Approval of Sale Free and Clear of Liens, Claims, Interests and Encumbrances.

16. The Debtor requests that the Court authorize the sale of the Property, free and clear of all liens, claims, interests and encumbrances which may be asserted against the Property with the proceedings being escrowed by Debtor pending further order of the Court and that the Court order K & W Drilling, Inc. and James Wyatt to turn over the certificate of title.

17. The Debtor is aware of the lien claim, interest and encumbrance of Regions Bank and K&W Drilling, Inc. and James Wyatt, individually.

REQUEST FOR EXPEDITED HEARING

18. The Debtor requests an expedited hearing on the Motion due to the Purchaser’s need for the Property.

WHEREFORE, the Debtor respectfully prays that this Court approve the sale of the estate’s interest in the Property, and for such other further and general relief to which it may be entitled.

Respectfully submitted,

By: /s/ Steven N. Douglass
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Counsel to the Debtor and Debtor in Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the preceding Application was electronically filed through the Court's ECF system and served this 10th day of October 2018, by operation of the Court's electronic noticing system and/or via first class mail upon the Unsecured Creditors Committee, Limited Notice List and all who have requested electronic notice in this case.

/s/ Steven N. Douglass
Steven N. Douglass



Bill of Lading

Date	S.O. No.
10/9/2018	21196

East West Drilling, Inc.
157 Buffalo Creek RD
Mifflinburg, PA 17844

Ship To
EAST WEST DRILLING 157 BUFFALO CREEK RD MIFFLINBURG, PA 17844

	P.O. No.	Ship Date	Ship Via	FOB	Project
		10/9/2018			
Item	Description				Ordered
DRILL RIG - EWD	1987 INGERSOLL-RAND T4W DRILL FROM KNOXVILLE, TN TO MIFFLINBURG, PA PICK UP AT; Corum Well Drillings & Pump Services 7311 Asheville Highway Knoxville, TN 37924 Scott Triplett 901-748-9095 BILL & DELIVER TO; EAST WEST DRILLING INC. 157 BUFFALO CREEK ROAD MIFFLINBURG, PA 17844 TEL: 570.966.7312 Sales Tax				1