

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)
) BK 16-81243
)
PLANET MERCHANT PROCESSING,)
INC.,)
)
Debtor.)

**MOTION FOR ORDERS PURSUANT TO 11 U.S.C. §§ 105(a) AND 363 AUTHORIZING
AND APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES, AND AUTHORIZING BIDDING PROCEDURES**

COMES NOW Planet Merchant Processing, Inc. ("Debtor") and hereby moves (the "Motion") this Court for entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363 of title 11 of the United States Code, and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, authorizing and approving: (a) the sale (the "Sale") of substantially all of the Debtors' assets, free and clear of all liens, claims, encumbrances and interests except those interests of certain parties under 11 U.S.C. §365(n)(1), and with any liens, claims, encumbrances and interests to attach to the proceeds of the Sale, to Planet Group, Inc. ("PGI") pursuant to the terms set forth herein, or to such other Successful Bidder determined pursuant to the Bidding Procedures attached hereto; and (b) granting related relief. In support of this Motion, the Debtor represents as follows:

Background and Status of Case

1. On August 17, 2016, the Debtor filed a Chapter 11 Petition in bankruptcy. The Debtor is a one-product software company. The software is called A360. A360 facilitates the back-end processing of debit and credit transactions in accordance with rules established by Visa, Master Card, Discover, and American Express (collectively, the "Associations").

2. On the date the bankruptcy petition was filed, the Debtor had four executory contracts with four separate customers. These customers were TransFirst, L.L.C., EVO Merchant Services, L.L.C., WorldPay and First American Payments Systems (the "Customers"). The Debtor's sole source of income was from these four contracts. However, because the Debtor had lost money on each of these four contracts over the prior four (4) years, the Debtor chose to reject these contracts in bankruptcy.

3. On August 17, 2016, the Debtor filed motions to reject each of the four executory contracts with the Customers. Initially, the Customers objected to the Debtor's motions to reject executory contracts. However, in September of 2016, the Customers withdrew their objections to these motions. As a result, in September of 2016, the Court sustained all four of the Debtor's motions to reject executory contracts. Pursuant to 11 U.S.C. §365(n)(1)(B), all of the Customers have elected to retain their rights in the Debtor's intellectual property under their contracts with the Debtor as of the day prior to the filing of the bankruptcy.

4. After the Court sustained the Debtor's motions to reject executory contracts, the Debtor reduced its workforce from 26 to 8 workers. While the Debtor engaged in efforts to restructure its contracts with the Customers, these efforts were ignored or rejected by the Customers. In fact, in a recent pleading filed by EVO Merchant Services, EVO stated that it "intends to have no further relationship with the Debtor."

5. Additionally, contrary to the representations of the Customers at the hearing on the Motion for Preliminary Injunctions, it appears the Customers did not need the software upgrades from the Debtor by October 15, 2016 which was the alleged dated the Associations required the Customers to comply with the Fall Regulations.

6. On November 15, 2016, Planet Group, Inc., the Parent Company of the Debtor ("PGI"), filed a Proof of Claim wherein it asserted an unsecured, non-priority claim in the amount of \$12,370,928.30 against the Debtor. As of the date of this Motion, no other claims have been filed against the Debtor.

7. The Debtor maintains its position that a combination of the Debtor's software along with the employees of PGI which know how to operate and maintain the software, would have a significant value. However, the Debtor has received no offers to purchase only its software and it is unaware of any other party which may be interested in purchasing the Debtor's software other than Planet Group, Inc. Further, the Debtor previously tried to market itself and its assets with the help of a national marketing firm for several months, without success, and therefore believes it is unlikely it will receive any benefit from additional marketing efforts, which may be costly and result in further delays.

8. For the foregoing reasons, the Debtor believes it is in the best interest of the estate to sell its assets now for the highest and most valuable offer.

Proposed Sale of Assets

9. On or about November 15, 2016, PGI submitted an offer to the Debtor wherein it proposed to purchase all of the Debtor's software, including software upgrades and intellectual property relating thereto, and the Debtor's equipment and furniture, for a total purchase price of \$12,420,928.40. This purchase price consists of a release of PGI's claim against the Debtor in the amount of \$12,370,928.40 along with fifty thousand dollars (\$50,000.00) in cash. PGI has agreed that the sale of these assets is on an "as is" basis with all faults, and subject to any interests which the Customers may have in the Debtor's software.

10. After evaluating various strategic alternatives, the Debtor has concluded that the best mechanism for maximizing the value of the Debtors assets is through the sale of its assets pursuant to 11 U.S.C. § 363.

11. Therefore, the Debtor submits that it is in the estate's best interest to sell substantially all of the Debtors' assets to PGI or to the Successful Bidder under the bidding procedures proposed herein. The sale will provide the best economic opportunity: (a) to realize the value of the assets, (b) to pay all creditors the most which they could receive on their claims.

Assets To Be Sold

12. The Debtor proposes to offer the following assets for sale (the "Sale Assets"):

- (a) A360 software, including software updates, improvements and documentation;
- (b) E360 software, including all software updates, improvements and documentation;
- (c) Transaction Rejection and Repair ("TRR");
- (d) Balance Reconciliation ("BR").
- (e) All furniture and equipment

13. All of the assets of the Debtor not specifically identified above are excluded from the proposed sale.

14. The sale of the Sale Assets is on an "as is" basis with all faults. Debtor warrants only title and ability to transfer the Sale Assets to PGI or a Successful Bidder subject to Bankruptcy Court approval, and makes no representations or warranties, express or implied, in connection with the Sale Assets, including but not limited to representations and warranties regarding merchantability, fitness for particular purpose or against infringement.

A. The Sale Should be Authorized Pursuant to Section 363(b)(1).

15. Section 363(b)(1) of the Bankruptcy Code provides: "[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." For the same reasons, the Debtor submits that the sale to PGI or the Successful Bidder under the bidding process set forth herein should be approved pursuant to this section. The Debtor, however, further submits that the PGI offer represents the highest and best offer for the Sale Assets. The consideration to be paid by PGI is fair and reasonable, and thus any higher bid will also be fair and reasonable. Any doubt as to the reasonableness of the purchase price is dispelled by the fact that the marketing of the Sale Assets has been subject to competing bids, thereby enhancing the Debtor's ability to receive the highest and best offer for the Sale Assets.

16. The final element for the approval of a sale under section 363 of the Bankruptcy Code is the requirement that interested parties receive adequate notice. Notice of the Sale will have been given as allowed by the Bankruptcy Court. The Sale thus satisfies all of the requisite conditions for authorization under section 363(b) of the Bankruptcy Code.

B. The Sale Satisfies the Requirements of 11 U.S.C. § 363(f) for a Sale Free and Clear Of Liens, Claims, Encumbrances and Interests Except Those Interests which the Four Customers May Have under 11 U.S.C. 365(n)(1).

17. The Debtor recognizes that the four Customers referenced herein have claimed certain rights under 11 U.S.C. §365(n)(1) and the Debtor submits that PGI or the Successful Bidder will acquire the Sale Assets subject to any rights to continuing use and possession of the software as it existed on the Petition Date which are available under 11 U.S.C. §365(n)(1). With respect to any and all other claims, liens, or interests in the Sale Assets, the Debtor proposed to sell the Sale Assets free and clear of any such claims, liens or interests. Pursuant to section

363(f), the Debtor-in-Possession may sell the Debtors' assets, including the Sale Assets, free and clear of all liens, claims, encumbrances. Each lien, claim or encumbrance other than those asserted by the four Customers as noted above, satisfies at least one of the five conditions of section 363(f), and the Debtor submits that any such lien, claim or encumbrance will be adequately protected by direct payment from the sale proceeds, or by attachment to the net proceeds of the Sale, subject to any claims and defenses the Debtor may possess for the benefit of the bankruptcy estate with respect thereto. Accordingly, the Debtor requests that the Sale Assets be transferred to PGI or the Successful Bidder under the bidding process, free and clear of all liens, claims, interests and encumbrances other than any rights the Customers may have to the continued use and possession of the software as it existed on the Petition Date which are available under 11 U.S.C. §365(n)(1), with any such liens, claims, interests and encumbrances to attach to the proceeds of the Sale.

C. A Finding of Good Faith of PGI Pursuant to Section 363(m) is appropriate.

18. Section 363(m) of the Bankruptcy Code provides the following:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11 U.S.C. § 363(m). While the Bankruptcy Court does not define "good faith," the Seventh Circuit in *In the Matter of Andy Frain Services, Inc.*, 798 F.2d 1113 (7th Cir. 1986) held that:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between

the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

798 F.2d at 1125 (emphasis omitted)(quoting *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978).

The Debtor submits the Agreement is an arm's-length transaction, in which PGI has at all times acted in good faith and the fact that its offer will be subject to the bidding procedures set forth herein further reflects the its good faith. The Debtor, therefore, requests that the Court make a finding that PGI or the Successful Bidder has purchased the Sale Assets and assumed the Assumed Contracts in good faith within the meaning of section 363(m) of the Bankruptcy Code.

ADEQUATE NOTICE

19. The Debtor will provide notice of the hearing on this Motion to (i) all entities known to have asserted any lien, claim, interest or encumbrance in or upon the Sale Assets; (ii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (iii) the United States Trustee's office; (iv) the Internal Revenue Service; (v) PGI, and (vi) all entities on the Service list for this case including all creditors and parties-in-interest.

BIDDING PROCEDURES

The Bidding Procedures which the Debtor will apply regarding the sale of substantially all of the Debtor's assets are attached hereto as Exhibit A.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order which:

- (i) approves the Sale of the Debtor's property as set forth herein;
- (ii) approves of the payment of the proceeds from the proposed sale into a separate, interest bearing, debtor-in-possession bank account and further provides

that such funds shall remain in such account until the Court approves of the distribution of such funds after notice to all creditors and parties-in-interest;

- (iii) provides that all liens, if any, on the property to be sold will attach to the proceeds of the sale;
- (iv) approves the bidding procedures attached hereto, and
- (v) grants such other relief as is just and equitable.

Dated: November 23, 2016.

Respectfully submitted:

PLANET MERCHANT PROCESSING, INC., Debtor

By: s/ Sam King
Sam King, NE # 19942
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2016, I caused filing of the foregoing document with the Clerk of the Bankruptcy Court using the CM/ECF system of the United States Bankruptcy Court for the District of Nebraska.

s/ Sam King

Exhibit A - BIDDING PROCEDURES

Auction and Bidding Procedures

Assets to be Sold

The assets of the Debtor Planet Merchant Processing, Inc. (the "Debtor") to be sold are set forth and described in the motion to which this Exhibit is attached (the "Purchased Assets").

The Bidding Process

The Debtor and its agents shall (i) determine whether any entity is a Prospective or Competing Bidder (hereinafter defined), (ii) assist in providing information, which it determines in its sole discretion to be reasonable and necessary about the Purchased Assets, to any Prospective or Competing Bidder, (iii) receive offers from Prospective Bidders, and (iv) negotiate any offers made to acquire the Purchased Assets (collectively, the "Bidding Process"). PGI shall be deemed a Prospective or Competing Bidder based on the purchase offer which it submitted.

Neither Debtor nor its agents shall be obligated to furnish any information of any kind whatsoever to any entity that is not determined to be a Prospective or Competing Bidder; provided, however that the foregoing clause shall not apply to PGI. The Debtor and its agents, reserve the right to adopt such other rules and procedures for the Bidding Process not addressed herein, which rules will better promote the goals of the Bidding Process, which are not inconsistent with any Bankruptcy Court order and which will protect and preserve the value of the Debtor's assets.

Participation Requirements

Only Competing and Prospective Bidders may receive information about the Purchased Assets from the Debtor. A Prospective Bidder is an entity that has and delivered evidence reasonably satisfactory to Debtor, establishing such Prospective Bidder's financial capability to timely consummate a purchase of all the Purchased Assets, prior to receipt by the Prospective Bidder of any information from Debtor.

Qualified Bids and Competing Bidders

Only Qualified Bids are eligible for consideration at the Auction. A "Qualified Bid" is a bid that:

1. Is made in writing and submitted so as to be received by the Debtor's attorneys and PGI's attorney (at the addresses set forth below) (the "Notice Parties") and no later than December 19, 2017 at 4:00 p.m. Central Standard Time (the "Bid Deadline");
2. States that the Prospective Bidder offers to acquire the Purchased Assets on the same terms and conditions as the offer from PGI;
3. Provides all consideration is to be paid in cash at closing, except for that portion of the consideration provided by PGI relating to the release of its claim;

4. Contains evidence satisfactory to Debtor that the Prospective Bidder submitting the bid has unrestricted and unconditional access to immediately available funds sufficient to acquire the Purchased Assets;
5. Is in cash and greater than or equal to the sum of \$6,000,000.00 plus \$100,000.00 (the "Overbid Increment");
6. Is irrevocable until the Closing of a purchase of the Purchased Assets; and
7. Is accompanied by a deposit (by means of a certified bank check from a United States Bank or wire transfer delivered to an account designated by Debtor), in the amount of \$15,000.00 (the "Deposit"). If a Successful Bidder (as that term is defined herein) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder. The Deposit will be held in the Trustee's depository accounts until the closing of a purchase of the Purchased Assets.

Auction

By participating in the Auction as defined below, each Competing Bidder (as well as PGI) shall be deemed to acknowledge and represent that it has had an opportunity to obtain information regarding the Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith the Auction, except as expressly stated in the Bidding Procedures.

A. The proposal of PGI to purchase the Purchased Assets for the price of \$12,420,928.40 which consists of a release of its claim against the Debtor in the amount of \$12,370,938.40 and \$50,000.00 in cash, constitutes a Qualified Bid with the value of a cash bid of \$6,000,000.00 for all purposes. If the Debtor does not receive any competing Qualified Bids, no Auction need be conducted, and the Debtor shall report that fact to the Court and the Notice Parties at the Sale Hearing and proceed with a sale of the Purchased Assets to PGI in accordance with the terms of the Agreement. If the Debtor receives a competing Qualified Bid by the Bid Deadline, then, within 24 hours following the Bid Deadline, Debtor shall notify PGI, the Notice Parties and all Competing Bidders by facsimile notice that the Debtor will conduct an auction ("Auction"). The Auction will be conducted at the law offices of the Debtors' Attorneys, McGill, Gotsdiner, Workman & Lepp, PC, L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska, commencing at 10:00 a.m., on December 21, 2017.

1. At least one (1) business day before the Auction and for purposes of analysis only, the Debtor shall give PGI and all other Competing Bidders a copy of the highest and best Qualified Bid received. Debtor shall inform PGI and each Competing Bidder expressing an interest in participating in the Auction of the identity of all Competing Bidders that may participate in the Auction.

2. Only PGI, Debtor, Competing Bidders and a representative from the Office of the U.S. Trustee, and each of their respective professionals, representatives and counsel are entitled to attend the Auction, and only PGI, and the Competing Bidders are entitled to make any subsequent bids at the Auction.

3. The Auction shall begin initially with the highest Qualified Bid and subsequently continue in minimum increments of at least \$100,000.00. The opening bid, which does not need to be re-submitted at the Auction, is the highest competing Qualified Bid submitted before the Auction by a Competing Bidder (the "Opening Bid"), which must include \$6,000,000.00, plus the Overbid Increment. At the Auction, PGI shall have the right to submit further bids. Bidding at the Auction will continue with each successive bid exceeding the previous bid by no less than \$100,000.00, until Debtor determines the highest and best offer for the Purchased Assets (the "Successful Bid").

4. The holder of the Successful Bid ("Successful Bidder") will be determined by the Debtor in its sole discretion by considering, among other things: (1) the total consideration to be received by Debtor; (2) the likelihood of the Successful Bidder's ability to close a transaction; and (3) the net benefit to the estate, taking into account PGI's rights to the Break-up Fee.

5. The Debtor may conduct the Auction in the manner it determines will result in the highest and best offer for the Purchased Assets.

Acceptance of Qualified Bids

Upon the selection of the Successful Bidder, the Debtor will immediately file a report to the U.S. Bankruptcy Court which identifies the Successful Bidder and describes the successful bid. A hearing will be held on January 4, 2016 in the U.S. Bankruptcy Court, Hruska Federal Building, 111 South 18th Plaza, Omaha, Nebraska (the "Sale Hearing") at which time any objections to the proposed sale to the Successful Bidder will be heard and the Court will then determine whether to approve the sale to the Successful Bidder.

Closing

The closing of the purchase and sale of the Purchased Assets will take place on or before January 9, 2017.

Following the Sale Hearing approving the sale of the Purchased Assets, if such Successful Bidder fails to consummate an approved sale, the Debtor shall be authorized but not required to consummate a sale with the holder of the Back-up Successful Bid without further order of the Bankruptcy Court.

If the Successful Bidder fails to consummate the sale, the Debtor shall be authorized but not required to consummate a sale with the holder of the Back Up Successful Bid without further Order of the Bankruptcy Court.

All Qualified Bids shall remain Qualified Bids until the Closing.

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