

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

In re:)	Chapter 11
)	
REVSTONE INDUSTRIES, LLC, <u>et al.</u> , ¹)	Case No. 12-13262 (BLS)
)	
Debtors.)	Jointly Administered.
)	Related Docket No. 1750
)	

GENERAL MOTORS LLC’S OBJECTION TO DEBTOR REVSTONE INDUSTRIES, LLC’S MOTION FOR ORDER (A) AUTHORIZING RELEASE OF SEGREGATED SALE PROCEEDS RESULTING FROM SALE OF THE DEBTOR’S EQUITY INTEREST IN REVSTONE WALLACEBURG CANADA, INC. OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) AND GRANTING RELATED RELIEF

General Motors LLC (“GM”), by and through its undersigned counsel, for its objection (this “Objection”) to *Debtor Revstone Industries, LLC’s Motion for Order (A) Authorizing Release of Segregated Sale Proceeds Resulting from Sale of the Debtor’s Equity Interest in Revstone Wallaceburg Canada, Inc. Outside the Ordinary Course of Business; (B) and Granting Related Relief* (the “Motion”) [Docket No. 1750], states as follows:

Preliminary Statement

1. Through the Motion,² the Debtor seeks to disburse the escrowed Segregated Proceeds from the sale of the RWCI Shares because, the Debtor alleges, either: (a) GM has no lien on the Segregated Proceeds; or (b) if GM does have a lien on the Segregated Proceeds, there are more than sufficient funds in escrow with the TPOP estate (the “TPOP Escrow”) to fully

¹ The Debtors in these Chapter 11 Cases and the last four digits of their respective federal tax identification numbers are: Revstone Industries, LLC (7222); Spara, LLC (6613); Greenwood Forgings, LLC (9285); and US Tool & Engineering, LLC (6450). The location of the Debtors’ headquarters and the service address for each Debtor is: Revstone Industries, LLC, et al., c/o Huron Consulting Group, Inc., 900 Wilshire Drive, Suite 270, Troy, MI 48084, Attn: John C. DiDonato, Chief Restructuring Officer.

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

satisfy GM's secured claims. These positions are both in stark contrast with the Debtor's prior actions and statements in these chapter 11 cases, and are incorrect.

2. First, the Sale Support Agreement—as approved by a final order of this Court—provides that GM is entitled to the proceeds from the sale of the Aarkel business. The Debtor's contention that it has complied with the Sale Support Agreement, yet the Segregated Proceeds do not arise from sale of the Aarkel business, defies logic and common sense.

3. Second, with respect to the Sale Objection, the purpose of the parties' stipulation to resolve the Sale Objection was to incentivize GM to provide a release of GM's lien on the Aarkel assets—a requirement imposed by the proposed purchaser and desired by the Debtor to facilitate the closing of the sale. GM agreed to provide the release solely on the condition that the Segregated Proceeds were placed in an interest-bearing escrow account. The Debtor agreed to escrow the Segregated Proceeds to preserve GM's rights thereto, and through the Motion the Debtor seeks to re-trade that negotiated resolution. Though the Debtor's circumstances have not changed since the entry of the Sale Order, and the Debtor has presented no compelling need for a release of the Segregated Proceeds, the Debtor seeks to undo the parties' settlement.

4. Importantly, the Motion represents the Debtor's effort to disadvantage GM and to impair the Court's ability to appropriately analyze all of GM's claims. The Debtor is attempting to do this by bifurcating critical interrelated issues. If, as the Debtor asserts, GM does not have a lien on the Segregated Proceeds from the *sale of the RWCI Shares* because it was a stock sale and not an asset sale, then the sale was not a qualifying *sale of the assets of the Aarkel business* as expressly required by the Sale Support Agreement, and as acknowledged by the Debtor in the Payment Motion Objection (as defined below). Despite the fact that this would constitute an incurable default under the Sale Support Agreement, the Debtor continues to argue that GM

should nonetheless forgive its loans because the Debtor claims that it has substantially complied with the Sale Support Agreement. The Court should not separate the determination of GM's rights to the Segregated Proceeds and the Debtor's argument that it has complied with the Sale Support Agreement. These issues are so interrelated that they cannot, and should not, be decided separately. This is especially true because depending on when it fits the Debtor's purpose, the Debtor has inconsistently claimed that the Aarkel transaction does, and now does not, comply with the Sale Support Agreement, without taking into account the impact of such positions on GM's claims.

5. For the foregoing reasons, the Court should deny the Motion.

Factual Background

6. On July 18, 2013, GM, Chrysler Group LLC and the Debtor and certain of its subsidiaries (the "Revstone Group") executed the Sale Support Agreement. On August 23, 2013, this Court entered the Sale Support Agreement Order authorizing Metavation and the Debtor to execute the Sale Support Agreement.

7. In connection with the financial incentives provided by GM to Metavation pursuant to the Sale Support Agreement, the Revstone Group pledged to GM the Sale Support Collateral, which included, among other things, "proceeds from the sale of each Business (other than proceeds from Metavation and Eptec Damper Businesses, and the Operating Contech Facilities)." Sale Support Agreement at p. 36.³ One such Business was non-debtor Aarkel, and Section 2.7 of the Sale Support Agreement required that "Aarkel will consummate . . . the sale of Aarkel's assets and business . . . by no later than September 30, 2013." Sale Support Agreement

³ The Sale Support Agreement defines "Business" as "the business and operations and *all assets* whether now owned or hereafter acquired of each of Metavation, the Eptec Damper Business, the Eptec Non-Damper Business, Contech, CLS, and Aarkel." Sale Support Agreement at p. 31 (emphasis added).

at §2.7. Pursuant to the Sale Support Agreement, the proceeds of the sale of any Sale Support Collateral would be paid to GM at the closing of such sale, and would reduce the amount of GM's Retained Participations accordingly. Sale Support Agreement at §5.4.

8. Through the Sale Motion, the Debtor sought approval of the sale of the equity of RWCI, the parent company of Aarkel, to Zynik Capital Corporation (the "Wallaceburg Sale").

9. GM filed the GM Objection to ensure that the Wallaceburg Sale, and the distribution of the proceeds thereof, did not seek, deliberately or through omission, to set aside or otherwise impair the valid liens, claims, security interests and obligations owing to GM by the Debtor and its non-Debtor subsidiaries and affiliates, some of which liens, claims, security interests and obligations had been previously approved and allowed by final orders of this Court.

10. To resolve the GM Objection, while at the same time preserving GM's rights to the Segregated Proceeds, the Debtor and GM agreed to the inclusion of the following negotiated language in Paragraph 15 of the Sale Order:

At Closing of the Sale, the Debtor shall segregate from the proceeds of the Sale of the Shares and place into a segregated, interest bearing account the principal amount of \$6,400,000 (together with any interest earned on such principal sum, the "GM Claim Funds"). Any Liens, Claims and Encumbrances that GM asserts arising from or in connection with the Sale and the Sale Support Agreement, shall, subject to the Debtors' defenses and those of the members of the Revstone Group, all of which are expressly preserved and not waived, attach to the GM Claim Funds with the same priority, validity, force and effect as now exist or may arise at closing of the Sale.

...

Except as provided in the GM Limited Release, the Debtors and GM reserve, and do not waiver, any and all other claims or defenses available to each party under the Sales Support Agreement, including, without limitation, any and all claims or defenses relating to the milestones set forth in §2.7 of the Sales Support Agreement.

Sale Order at ¶15.

11. The Wallaceburg Sale closed on or around July 4, 2014, more than nine months later than the September 30, 2013 deadline established in section 2.7 of the Sale Support Agreement.

Objection

A. The Court Should Not Release the Segregated Proceeds Under Either of the Debtor's Inconsistent Positions

12. In the Motion, the Debtor asserts that it fully satisfied its obligations under the Sale Support Agreement with the closing of the Wallaceburg Sale. However, that assertion contradicts the Debtor's prior acknowledgement that "[t]he Sale Support Agreement required the Debtor and certain affiliates to sell their assets by certain dates." *Debtor's Preliminary Objection to the Motion to Compel Immediate Payment of First Priority Secured Claim of General Motors LLC* [Docket No. 490] (the "Payment Motion Objection") at ¶1. The Debtor cannot simultaneously argue that a sale of the RWCI Shares satisfied its obligations under the Sale Support Agreement, yet claim that GM has no rights in the proceeds of that sale. Under either of the Debtor's contradictory positions, the Court should not order the release of the Segregated Proceeds until an adjudication of GM's claims.

13. Though the Debtor now contends that the Sale Support Agreement did not grant any liens, claims, or encumbrances to GM on the RWCI Shares, the indisputable intent of the parties was for GM to have a lien in the proceeds of the sale of the Aarkel business as part of the Sale Support Agreement's heavily-negotiated collateral package. To resolve GM's Sale Objection, the Debtor informed GM that the Wallaceburg Sale was structured as an equity sale instead of an asset sale for tax purposes, and that GM's lien on the proceeds of that sale would apply just as it would if the Debtor had sold the Aarkel assets. This agreement was reflected in the Sale Order, which provides that GM's rights under the Sale Support Agreement attached to

the Segregated Proceeds. For the Debtor to argue that GM does not have a lien in the Segregated Proceeds because the Wallaceburg Sale was an equity sale would eviscerate a critical piece of GM's collateral under the Sale Support Agreement.

14. The Debtor supports its new position with a series of unavailing arguments premised on the notion that, had the Debtor intended to grant GM a security interest in the RWCI Shares, it would have sought approval of such a lien under Section 364(c) of the Bankruptcy Code. However, the Sale Support Agreement was approved by the Court on both an interim and final basis, upon notice to all parties in interest. In fact, the Court held an extensive evidentiary hearing to determine the propriety of the Sale Support Agreement before its approval. By now arguing that the failure to explicitly mention section 364(c) of the Bankruptcy Code in the Sale Support Agreement moots a critical portion of the Sale Support Agreement. The Debtor is relying on semantics—as opposed to the intent of the parties—to re-trade a Court-approved transaction.

15. If the Court agrees that GM has—or may have—a lien in the proceeds of the Wallaceburg Sale, then the Segregated Funds should remain in escrow pending a full resolution of GM's claims.

16. If, however, the Court accepts the Debtor's new argument that GM does not have a lien in the proceeds of the Wallaceburg Sale because it was an equity sale, then not only is the Debtor in default under the Sale Support Agreement by its own prior admissions, but such default is incurable. In the Payment Motion Objection, after acknowledging that the Sale Support Agreement required a sale of the Aarkel assets, the Debtor stated that "The closing of the [Aarkel sale] is necessary to make GM's claim forgiveness effective, nothing more." Payment Motion Objection at ¶24. Therefore, because the Debtor has sold the RWCI Shares,

even assuming the sale of the Aarkel assets was all that was needed to make GM's forgiveness effective (which GM contends it was not), it is now impossible for the Debtor to sell the Aarkel assets and comply with that requirement of the Sale Support Agreement. In light of this incurable event of default under the Sale Support Agreement, GM is entitled to payment under GM's *Motion to Compel Immediate Payment of First Priority Secured Claim* [Docket No. 471] (the "GM Payment Motion") as a matter of law. Following the full and complete satisfaction of GM's claims, the Debtor would be entitled to the release of any remaining funds in escrow. However, until the final adjudication of the GM Payment Motion, the Segregated Proceeds should remain in escrow.

B. The Debtor Has Provided No Basis for Re-Trading the Parties' Recent Agreement

17. Despite GM's concerns about the Wallaceburg Sale and the structure thereof, as previously set forth in the Sale Objection, GM recognized the importance to the Debtor of the Wallaceburg Sale, and GM worked diligently with the Debtor negotiate terms in the Sale Order that ultimately permitted the sale to close.

18. Though the Court entered the Sale Order less than three months ago, the Debtor now seeks to unilaterally re-trade the deal. The Debtor's rhetoric that "GM's refusal to agree to release the Segregated Proceeds is all about GM's desire to obtain leverage against the Debtor's other creditors" and that ". . . GM is trying to exercise leverage in connection with its pending dispute with the Debtor by punitively seeking to force the Debtor to 'double reserve' for GM's asserted claims and this scheme to advantage itself at the expense of other creditors should not be countenanced" is both inaccurate and disingenuous. Motion at p. 3. All interested creditors in the TPOP case and the above-captioned cases were provided notice of the Sale Motion and the proposed Sale Order—including the concept of the Segregated Proceeds—and none objected.

19. It is also telling that the Debtor has provided no reason for the release of the Segregated Proceeds, let alone a compelling reason, and merely says that “. . . the Segregated Proceeds should be immediately released to the Debtor as funds generally available for use in connection with the Debtor’s chapter 11 case.” Motion at p. 3. There is no reason why these funds must be released now, and no reason why such funds should be released prior to the Court’s adjudication of the GM Payment Motion. The Debtors have no ongoing operations, and keeping the Segregated Proceeds in escrow does not cause any diminution in value to the estate. In fact, the Segregated Proceeds are being held in an interest-bearing account, so additional proceeds are being generated (although, it should be noted, the interest due on account of GM’s secured claim continues to accrue).

20. GM should not be penalized for working with the Debtors to resolve the GM Objection while still protecting GM’s bargained-for rights. GM should receive the benefit of its bargain, both pursuant to the Sale Support Agreement and the Sale Order, and the Segregated Proceeds should be held in escrow until a final adjudication of GM’s claims. GM has been working diligently with the Debtor to push the GM Payment Motion toward a resolution, and GM should not be penalized while that process continues moving forward.

C. GM Should Not be Required to Forego its Right to Collateral Held By Separate Debtors

21. The TPOP chapter 11 case and the above-captioned chapter 11 cases are neither jointly administered nor substantively consolidated. In addition, given the Debtor’s repeated challenges to GM’s valid claims, GM continues to incur additional (and potentially substantial) litigation costs, all of which the Debtor will be required to reimburse (with interest) pursuant to the Sale Support Agreement. As such, until the amount and treatment of GM’s claims are

approved by a final order of this Court, GM cannot agree to, and the Court should not order, the release of any of the escrowed funds.

22. Though there is some overlap between the obligations secured by the Segregated Proceeds and the TPOP Escrow, the two escrow accounts largely constitute separate collateral to secure separate obligations. Each escrow account was established by court order following an agreement between the parties and notice and a hearing. Each escrow account was established as a way for GM to protect its rights while the Debtor proceeded with important transactions, and there has yet to be an adjudication of GM's rights that the accounts were set up to protect.

23. To be clear, as GM acknowledged in the GM Payment Motion, in the event GM receives payment on account of its claims from either or both of the bankruptcy estates, the amount of GM's overall claims will be reduced accordingly. However, until that time occurs, GM should not be required to give up its rights to any funds being held in escrow.

D. This Motion Should be Held In Abeyance Until Resolution of the GM Payment Motion

24. Given the interconnected nature of the relief sought in the GM Payment Motion and the relief sought by the Debtor in the Motion, and the contradictory positions taken by the Debtor in connection with these motions, the prudent approach is to resolve both motions concurrently. Otherwise, whatever decisions the Court makes in connection with this Motion may have serious implications on the resolution of the GM Payment Motion. GM made this request to the Debtor, and the Debtor refused.

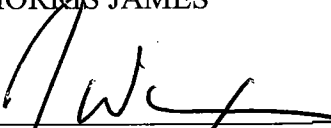
Conclusion

25. The Motion fails to provide any cognizable basis for the immediate relief requested by the Debtor. Either GM has a security interest in the Segregated Proceeds or the Debtor has committed an incurable default under the Sale Support Agreement. Under either interpretation of the Sale Support Agreement, GM has not yet received the benefit of its bargain, and the TPOP Escrow and Segregated Proceeds should remain intact pending a final adjudication of GM's claims. Therefore, GM requests that the Court deny the Motion.

Respectfully submitted,

Dated: September 24, 2014

MORRIS JAMES



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

REVSTONE INDUSTRIES, LLC,

Debtor.

Chapter 11

Case No. 12-13262 (BLS)

AFFIDAVIT OF JAMIE L. DAWSON, PARALEGAL


STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, Jamie L. Dawson, certify that I am, and at all times during the service, have been an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on September 24, 2014 I caused to be served:

GENERAL MOTORS LLC'S OBJECTION TO DEBTOR REVSTONE INDUSTRIES, LLC'S MOTION FOR ORDER (A) AUTHORIZING RELEASE OF SEGREGATED SALE PROCEEDS RESULTING FROM SALE OF THE DEBTOR'S EQUITY INTEREST IN REVSTONE WALLACEBURG CANADA, INC. OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) AND GRANTING RELATED RELIEF

Service was completed upon the following individuals listed below as indicated thereon.

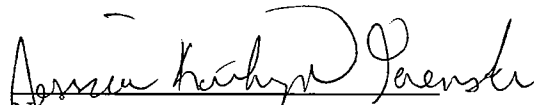
Date: September 24, 2014



Jamie L. Dawson

SWORN AND SUBSCRIBED before me this 24th day of September, 2014.





Notary

VIA HAND DELIVERY

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