

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In Re:)	
)	
REPLOGLE HARDWOOD FLOORING)	Chapter 11
COMPANY, LLC <i>et al.</i>,)	Case No. 17-bk-12172
)	Judge Croom
Debtor.)	Jointly Administered

MOTION FOR AUTHORITY TO SELL OR TRANSFER ASSETS PURSUANT TO 11 U.S.C. §363 FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

Comes the Debtors, Replogle Hardwood Flooring Company, LLC and Replogle Enterprises G.P. (the “Debtors”), pursuant to Bankruptcy Rules 6004(c) and 11 U.S.C. § 363, and moves the Court for authority to sell substantially all assets to Fox Hardwood Company, LLC or its assignee (“Buyer”), a creditor herein, free and clear of all liens, claims, and encumbrances, pursuant to 11 U.S.C. §363 and would show the Court as follows:

1. On September 29, 2017 (the “Petition Date”), the Debtors filed voluntary petitions in the United States Bankruptcy Court for the Middle District of Tennessee for relief under Chapter 11 of the Bankruptcy Code. The Debtor’s cases were administratively consolidated by order of this Court on November 1, 2017. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses as debtors-in-possession. No trustee or examiner has been appointed in this case, nor has any official creditors’ or equity security holders’ committee been formed.

2. This Court has jurisdiction over this case and this motion pursuant to 28 U.S.C. § 1334 and pursuant to 28 U.S.C. § 157(b)(2)(A), this is a core matter. Venue in this case and of

this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The Debtors do not have sufficient ongoing cash flow to successfully operate these businesses through Chapter 11. It is necessary to obtain debtor-in-possession financing, or to immediately sell the assets of the Debtors. If the Debtors are unable to quickly sell its assets or obtain significant post-petition financing, it will be unable to meet its basic obligations such as payroll, insurance, and taxes, and will be forced to cease operations.

4. The Debtors previously filed a motion to approve debtor-in-possession financing, which was met with an objection by one of the two secured creditors. Based upon that objection, the proposed DIP lender withdrew his financing offer. Since that time, the Debtors have worked to identify a buyer for the assets and to negotiate a fair market sales price.

5. By this Motion, the Debtors seek authority to sell, convey, transfer, assign and/or deliver to the Buyer all of the personal property of the Debtors, plus the personal property owned by Nathan and Betty Replogle individually¹ but used in the operation of the Debtors' businesses (the "Purchased Assets"), as identified in the proposed letter of intent attached hereto as Exhibit A (the "LOI").² The Purchased Assets represent substantially all of the assets of the Debtors.

6. The Buyer has agreed to purchase the Purchased Assets in exchange for payment of \$900,000, \$500,000 for the equipment used in the new sawmill line and \$400,000 for the balance of the assets.³ The Buyer wishes to purchase the Purchased Assets in order to continue

1 Nathan and Betty Replogle will be filing a similar motion in their individual case, seeking approval of this sale.

2 The LOI also contemplates that Nathan and Betty Replogle will lease certain real estate to the Buyer, with a possible sale of that real estate for \$400,000 following an environmental inspection. Nathan and Betty Replogle, individually, will file a motion to approve the lease contemplated by the LOI. The sale of these assets is contingent upon the approval of that lease.

3 The LOI proposes to purchase assets from three different estates: Nathan and Betty Replogle, Replogle Hardwood Flooring, LLC and Replogle Enterprises, G.P. While the Buyer has not broken the sales price out among those three estates, it is irrelevant because all three estates are debtors on the obligations to Centennial Bank and Tennessee BIDCO, the secured creditors holding senior interests in the Purchased Assets.

the operations of a hardwood floor manufacturing facility, and it intends to continue employing most if not all of the Debtors employees. This is very important to the Debtors as their operation is one of the largest employers in rural Henry, Tennessee.

7. Most of the Purchased Assets are purportedly subject to liens. Upon information and belief, Centennial Bank claims a first priority lien on the equipment used in the new sawmill line, and Tennessee BIDCO claims a first priority lien on the majority of the other Purchased Assets.⁴ Centennial Bank's secured loan is believed to be in the amount of \$863,342.78, and Tennessee BIDCO's secured loan is believed to be in the amount of \$3,514,467.29.

8. Upon the completion of the sale as approved by the Court, valid, perfected, and unavoidable liens, claims and encumbrances shall attach to the sale proceeds to the same extent, and in the same priority, as the pre-petition liens, claims and encumbrances. This includes, but is not limited to, the liens on the Purchased Assets asserted by Centennial Bank and Tennessee BIDCO.

9. Section 363(b)(1) of the Bankruptcy Code provides 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). Accordingly, the Court may authorize the sale other than in ordinary course of business of all of a Chapter 11 debtor's assets under Section 363(b)(1) when a sound business purpose dictates such action. *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (approving sale of radio station's assets where debtor could not meet its payroll and other operating expenses); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re New Era Resorts, LLC*, 238 B.R. 381, 387 (Bankr. E.D. Tenn. 1999) (sale of Chapter 11

⁴ It is anticipated that the Buyer will provide a breakdown of the sales price prior to the sale. Some of the \$400,000 may be for the purchase of unencumbered assets of the Debtors' estates.

debtor's only asset approved pursuant to Section 363(b)); *In re Allison*, 39 B.R. 300, 301-302 (Bankr. D.N.M. 1984) ("The clear weight of authority authorizes the sale of all or substantially all of the debtor's assets pursuant to § 363(b) in a Chapter 11 proceeding even absent a disclosure statement, plan and vote of the creditors."). Given the Debtor's inability to continue operating and servicing its debt going forward, the Debtors maintain that such sound business purpose exists here.

10. Section 1146(c) of the Bankruptcy Code states that the "transfer . . . or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." 11 U.S.C. § 1146(c). Courts have broadly construed this provision to include sales and transfers that occur outside of a Chapter 11 plan of reorganization and before or after confirmation of a Chapter 11 plan. *See In re Jacoby-Bender, Inc.*, 40 B.R. 10, 16 (Bankr. E.D.N.Y. 1984), *aff'd*, 758 F.2d 840 (2d Cir. 1985) (post-confirmation sale of assets exempted from tax by § 1146(c) of the Bankruptcy Code); *see also, City of New York v. Smoss Enters. Corp. (In re Smoss Enters. Corp.)*, 54 B.R. 950, 951 (E.D.N.Y. 1985) (holding that § 1146(c) applied to preconfirmation sale of property when "the transfer of property was essential to the confirmation of a plan"). In so holding, courts have focused on whether the sale and transfer is "necessary to the consummation of the plan." *Jacoby-Bender*, 758 F.2d at 842; *In re Beulah Church of God in Christ Jesus, Inc.*, 316 B.R. 41, 51 (Bankr. S.D.N.Y. 2004) (finding transfers integral to confirmation of plan to be exempt from tax under § 1146(c) of the Bankruptcy Code because "Congress did not intend to impose an arbitrary and illogical temporal distinction on sales necessary or integral to a Chapter 11 plan."); *In re Permar Provisions, Inc.*, 79 B.R. 530, 534 (Bankr. E.D.N.Y. 1987) (applying § 1146(c) of the Bankruptcy Code to sale of property prior to filing of Chapter 11 plan where a

plan could not have been confirmed absent sale); *but see, In re Hechinger Inv. Co. of Delaware, Inc.*, 355 F.3d 243 (3d Cir. 2003); *In re NVR, LP*, 189 F.3d 442 (4th Cir. 1999); *In re 310 Assocs., L.P.*, 282 B.R. 295 (S.D.N.Y. 2002).

11. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtor requests that any order approving the sale or transfer of the customers be effective immediately by providing that the 14-day stay under Bankruptcy Rule 6004(h) is waived.

12. This Sale Motion shall be provided to all creditors and parties in interest in these proceedings and shall be served on all persons pursuant to Bankruptcy Rule 6004(c) by first class mail addressed to the business address of such persons notwithstanding Bankruptcy Rule 9014. The Debtors submit that no further notice need be given or service need to be made.

WHEREFORE, the Debtor moves the Court for an entry of an Order:

- a. Approving the form and manner of notice of sale proposed by the Debtors in this Motion;
- b. Approving the sale of the Purchased Assets (as defined herein) free and clear of all interests; and
- c. Granting such other and further relief as is appropriate.

DATED: November 10, 2017

Respectfully submitted:

/s/ Phillip G. Young
Phillip G. Young, Jr.
Thompson Burton PLLC
6100 Tower Circle, Ste. 200
Franklin, TN 37067
615-465-6008
phillip@thompsonburton.com

Attorneys for the Debtors

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served through the Court's ECF system on all parties requesting notice, and served via United States Mail on all parties listed on the attached mailing matrix, this the 10th day of November, 2017.

/s/ Phillip G. Young
Phillip G. Young, Jr.



SHERRARD
ROE
VOIGT
HARBISON

Mark Carver

Writer's Direct Dial (615) 742-4558
mcarver@srvhlaw.com

November 1, 2017

BY EMAIL

Philip Young, Esq.
phillip@thompsonburton.com

Re: Letter of Intent; Replogle

Dear Philip:

This letter is a non-binding letter of intent on behalf of entities to be formed by my client Fox Hardwood Lumber Company, LLC ("Fox") to acquire the real and personal property described below. The closing of the acquisition of real property and personal property by Fox shall be subject to satisfaction of certain contingencies including receipt of an environmental site assessment satisfactory in Fox's sole discretion, approval of financing, execution of definitive transaction documents, due diligence, and bankruptcy court approval.

Subject to the contingencies, Fox would proceed as follows:

1. NEWCO 1 (Real Property NEWCO) would acquire the following real estate:
 - a. Hardwood Showroom, disclosed on p. 15 of 57 of Replogle Hardwood Flooring Company, LLC petition.
 - b. The assets highlighted on Exhibit A, from pages 17-21 of the Nathan and Betty Replogle bankruptcy petition.
2. NEWCO 2 (Personal Property NEWCO) would acquire the following personal property:
 - a. All personal property of Replogle Enterprises. This would include all personal property located at the real property acquired by NEWCO 1 even if such personal property is not listed on the asset list.
 - b. All personal property of Replogle Hardwood Flooring. This would include all personal property located at the real property acquired by NEWCO 1 even if such personal property is not listed on the asset list.
 - c. All personal property of Nathan and Betty Replogle, except for the property listed under "personal assets" beginning on p. 21 of Docket No. 12 in Case

Philip Young, Esq.
November 1, 2017
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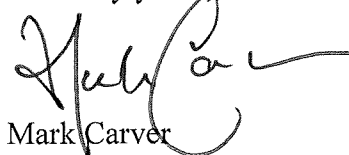
No. 17-12183 (in other words, Fox would purchase all the personal property used in the operations of the business).

The total purchase price for the assets listed above would be \$400,000 for the real estate assets and \$ 900,000 for the personal property assets, for a total purchase price of \$1,300,000. The purchase would be on a free-and-clear basis (*e.g.*, no claims or liens) and subject to other customary protections for a purchaser at a § 363 sale.

In addition, in order to permit the transaction to occur, and to permit Debtors to make payroll and keep the doors open, Fox is willing to provide debtor-in-possession financing, subject to the approval by Fox of (i) the terms of the purchase of the real property and assets and (ii) the use of the financing (*e.g.*, payment of employees, employment taxes, utilities and other essential operating items) prior to release of such funds to pay such items from time-to-time. Such financing would be on a super-priority, senior secured basis along with customary DIP lender protections, including budgetary/lock box approval. Fox would intend to install a turnaround officer (likely Mr. Fox's son) to assist with the operations of the businesses in this period.

If Debtors would like to proceed with evaluating the above proposal, please contact me.

Sincerely yours,



Mark Carver

cc: Tommy Fox
Mike Abelow, Esq.

SCHEDULE A/B EXHIBIT - REAL ESTATE ASSETS			
Map/Parcel	Owners	Acreage	Assessed Value
14600102000	Joint	1.1	1,550.00
14600103000	Joint	1.8	111,160.00
14600104000	Joint	21.1	6,850.00
14600200000	Joint	5.9	7,520.00
14600300000	Joint	2	16,025.00
15100200000	Joint	250	26,475.00
14500200000	Joint	117	20,375.00
13400300000	Joint	205.9	74,400.00
14500300000	Joint	250.7	42,925.00
14700400000	Joint	72.8	115,075.00
14700401000	Joint + Lissa Wright**	10.3	39,075.00
14700402000	Joint + Lissa Wright**	4.2	1,375.00
14700601000	Joint	27.5	7,025.00
14700801000	Joint	85.3	10,475.00
14600900000	Joint	8.8	2,750.00
145100902000	Joint	3	17,080.00
14600902000	Nathan Replogle	Unk	7,400.00
14600903000	Joint	1	5,150.00
14601000000	Joint	13.5	3,575.00
14601001000	Joint	34.6	13,075.00
14601002000	Nathan Replogle	Unk	375.00
14601100000	Joint	17.7	8,300.00
146HB01300000	Joint	Unk	7,720.00
146HB01301000	Joint	Unk	1,680.00
146HB01400000	Nathan Replogle	Unk	6,300.00
146HB01500000	Joint	Unk	11,000.00
146HB01600000	Joint	Unk	9,360.00
146HB01700000	Joint	Unk	13,000.00
146HB01800000	Joint	Unk	27,520.00
15701800000	Joint + Replogle Ent.	165.7	30,300.00
13901901000	Joint	8.8	18,520.00
16402000000	Joint	26	12,100.00
2502400000	Joint	115.8	18,525.00
14602701000	Joint	Unk	720.00
14602800000	Joint	12	51,520.00
14602801000	Joint	Unk	5,160.00
14602802000	Joint	22.3	296,560.00
14602900000	Joint	1.7	48,200.00
14602901000	Joint	10.1	32,160.00
14603001000	Joint	3.8	1,475.00
13803201000	Joint	11.5	6,125.00
13803204000	Joint	1.1	1,325.00
13803209000	Joint	6.3	3,225.00

1380321100	Joint	17.4	3,700.00
13803214000	Joint	9	5,525.00
13803215000	Joint + Clements et al.**	6.1	36,225.00
13803701000	Joint	176	37,400.00
13803800000	Joint + V. Dicus	15	54,275.00
13803900000	Joint	80	26,700.00
14603900000	Nathan Replogle	2	5,925.00
13803902000	Joint	42.5	11,900.00
14604313000	Joint	6.5	14,825.00
14604340000	Joint	4.5	125,680.00
13404700000	Joint	15.7	7,675.00
14605101000	Nathan Replogle	Unk	1,825.00
16401804000	Joint	25.3	5,875.00
			1,478,035.00

* Results based on search of Tennessee Trustee land records, available at
<https://tennesseetrustee.org/search.php>

*All real property located in Henry County, Tennessee

** Debtors assert this property is listed in error based on a prior conveyance
and is not property of the bankruptcy estate

SCHEDULE A/B EXHIBIT - NON REAL ESTATE ASSETS	
1985 USAF MC5 DIESEL AIR COMPRESSOR IR P-250-W-D-M0595, DEUT7F4L912HO	1800.00
1995 WHITE GMC DAY CAB WET KIT 4V1VDBJG5SN687419EF 9132 MI	4350.00
2001 INTL EAGLE PRO SLEEPER 2HSCHAMR61CO11767, EF 10 SPEED, 9900I DET 60, 12.7L	8500.00
2008 VOLVO DD13 L6 12.8L 425 HP 4V4NC9EH38N499301 10 SP 340K	24450.00
311 STENNER 2 HEAD BAND SAW 105, GANG , 20' CONVEYOR MISSING BELT, 12' INFEED, STACKER, STACKER, CONVEYOR	12500.00
318 PRECISION GRINDER 4811 CHIPPER MISSING PEDS, W MECHANICAL VIBRATING CONVEYOR, BLOWER	32500.00
69 FRUEHAUF MULCH TRAILER FG28-FZ-40 HPK-153320	800.00
74 GINDY TRAILER FF2S400A61 112151E	800.00
74GD TRAILER 731T43 66590	800.00
77 FRUEHAUF FG8-F2-45 CHY-247163	1450.00
78 BUD TRAILER YF2S400A5C 160899E	1250.00
78 LOG TRAILER 1905 OWENS EQUIP OOS	650.00
79 GD VAN TRAILER 611T-45 B14897	1450.00
79 MILLER SSV-33-45-SSWW 79-0246-161	1250.00
87 WALKING FLOOR TRAILER 1BBW8STT45000001	4500.00
90 GRATE DANE FPWS-248-FKL FLAT BED MM023001	2850.00
94 UTILITY FLAT BED FS20CHAE 1UUF52483SA308908	3850.00
AC 200HP ELECTRIC MOTOR	225.00
ACOM TRAILER UNK MULCH	800.00
BALDOR PEDESTAL GRINDER 532	45.00
BARKO 160A	3500.00
BARKO 275B TRM 19059	9000.00
BEAR TRACKER 4WIR 2 WD YAMAHA	1200.00
BELL INDUSTRIES F500 SAW SHARPENER	85.00
BELL SKIDDER OOS NDT	4250.00
BLUE MULCH MACHINE	4250.00
BONEYARD, 45' FLATBED, LOADER BUCKET, DOZER BLADE, GRAVEL BLADE., TANKER TRUCK, KILN DEBARKER, ROPS,	6500.00

BONEYARD, BARKO B160 , BARKO B160, LOG TRAILER , CHEVY BUS, FREIGHTLINER DUMP TRUCK, CHEVY FUEL TRUCK, NISSAN 90 LIFT, INT HARV BOOM TRUCK, HUSKY LOG LOADER, HUSKY LOG LOADER, IH SKIDDER, PROGRAMED 2000, INTL TRANSTAR II CABOVER, GALION GRADER, FLINER CAB, RUNNING GEAR, INTL 4900, INTL 1800 FLATBED, FORD F250 SERVICE TRUCK, CAT 160B, CAT 750B, JD 648E	12500.00
CAT EL300 4NE00828 GRAPPLE	14000.00
CUSTOM ROLLING CART FOR GEARS STEEL	145.00
CUSTOM ROLLING CART FOR GEARS STEEL	145.00
DEWALT RIP SAW MODEL GE	325.00
DEWALT RIP SAW MODEL GE	325.00
DIEHL SL50 RIPSAW OOS	1850.00
DUST COLLECTION SYSTEM AND TRUCK LOADER	18500.00
ESAB POWERCUT 875	550.00
FIAT ALLIS 150C MOTOR GRATER	2300.00
FORD 600 FUEL TRUCK F600CEB43165	2200.00
FORD SUPER D SERVICE TRUCK DSL 2FDLF47M6KCB23725	1250.00
FRUEHAUF FB9-F2-40 MULCH TRAILER MAJ-139725	800.00
FRUEHAUF MULCH TRAILER FBZ9-FZ-40 MAY-525050	800.00
GREEN SCRAG MILL MEASURING SYSTEM W FEEDS OOS	8250.00
GROVE MZ66B MANLIFT	2250.00
HASKO HSEM 23345BB END MATCHING MACHINE	6250.00
HASKO HSEM 9714503 END MATCHING MACHINE	6250.00
HUSKY BRUTE XL-245	12500.00
INLT OIL TRUCK	4650.00
INTL DUMP 96 2HSFHAER3TCO11109 9400 EF 8 SP, 787K DUMP	9800.00
INTL LOADSTAR 1600 OOS	850.00
INTL TRANSTAR EAGLE 4300 OOS WRECK	800.00
KOHLER GENERATOR 45R82	1450.00
LAWSON STACKER OOS H82 TILT HOIST	8500.00
LF TRAILER UNK	2500.00
LOG TRAILER C14 25427959	2200.00
LOG TRAILER UNK L16	1200.00
MACHINIST STAND	45.00
MCDONOUGH M600-1 RESAW BAND SAW	2200.00
MCDONOUGH M600-1 RESAW BAND SAW	2200.00
MCLAIN EZ PACK WALK FLOOR TRAILER BENT FRAME	2500.00
MEREEN JOHNSON 431 ARBOR GANG RIPSAW	18500.00
MILLER 1A VERTICAL COOLER	175.00
MILLER SYNCROWAVE 300	375.00
MISC. MOTORS, FEEDS, COMPRESSORS, TRANSFORMERS, POWER SUPPLIES, GRINDERS, BLOWERS, DUST COLLECTION	10000.00

MISC. OOS TRANSFORMERS, SHAPERS, BLOWERS MOTOR RIPPERS, SPACERS, CROWNS, BARR-MULLIN WS, PILGRIM 18X80 LATHE, DELTA RIP SAW 4UNITS, WEINIG U17DL, OLIVER STRAIT O PLANE, POWER FEED 2 UNITS, CUT OFF SAW OPTIMAL, DISC FLO BLOWER 2 UNITS	3200.00
MOTOR AND PUMP	65.00
MULCH TRAILER UNK	800.00
OLIVER 170 PLANER 208024 170-1311-L OOS	3200.00
OOS 648G DEERE	3200.00
OOS IH TRUCK WITH FUEL TANK	1250.00
PEDESTAL FAN	35.00
PEDESTAL FAN	35.00
PEER LF TRAILER 1PLE04228PPD13006	5500.00
PETE SLEEPER J119843	7500.00
PORTABLE STEEL DOCK	1850.00
SCHURMAN 10DAG-60 GANG SAW	3200.00
SCRAG MILL BIG ORANGE UNK MAKE POSSIBLY COOPER	6500.00
STEEL FRAME ALUMINUM DECK FB TRAILER 451 007913 TRANSCRAFT EAGLE	6500.00
TRAILMOBILE MULCH TRAILER 138057	1250.00
V4 TRAILER UNK	800.00
V4 TRAILER UNK	800.00
V4 TRAILER UNK FRUEHAUF MULCH	800.00
WALK FLOOR TRAILER FRUEHAUF	3250.00
WEINIG SHARPENER R929 RONDONAT	1250.00
WEINIG UNIMAT 17A MOLDER OOS	1800.00
PERSONAL ASSETS	
CHEST FREEZER	35.00
UPRIGHT FREEZER	25.00
REFRIGERATOR	25.00
REFRIGERATOR	25.00
REFRIGERATOR	25.00
MISC COOKWARE	200.00
VULCAN 6 BURNER W GRIDDLE	350.00
FRYER	175.00
24" PREP UNIT	245.00
4 BIN STEAM TABLE	125.00
24" GAS GRILL	35.00
48" GRIDDLE	85.00
EQUIPMENT STAND	25.00
OLD TABLETOP FRYER	5.00
REFRIGERATOR	25.00
TEA DISPENSER	35.00