

DAVID A. KASEN, ESQUIRE
KASEN & KASEN
Society Hill Office Park
Suite 3
1874 E. Marlton Pike
Cherry Hill, NJ 08003
Telephone (856) 424-4144
Fax (856) 424-7565
Attorneys for Debtor
dkasen@kasenlaw.com
ID# DK1778

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of: : Chapter 11
: :
SAMWIN, LLC, : Case No. 16-12420/JNP
: :
Debtor. : Hearing Date: 1/5/17 at 10:00 a.m.
: :
:

**NOTICE OF DEBTOR’S MOTION (I) TO AUTHORIZE THE SALE
OF CERTAIN ESTATE PROPERTY FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES, PURSUANT TO 11 U.S.C. §§ 1107(a)
AND 363 AND FED. R. BANKR. P. 2002, 6004 AND 9014; AND (II)
WAIVE THE FOURTEEN (14) DAY STAY IMPOSED BY FED. R.
BANKR.P. 6004(h)**

TO: ALL CREDITORS AND PARTIES IN INTEREST
(See Attached List)

Debtor, Samwin, LLC, has filed papers with the Court seeking an Order Authorizing the sale of certain estate property, free and clear of liens, claims and encumbrances, pursuant to 11 U.S.C. §§ 1107(a) and 363 and Fed.R.Bankr.P. 2002, 6004 and 9014; and waiving the fourteen day stay imposed by Fed.R.Bankr.P. 6004(h).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not

have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief requested, or if you want the Court to consider your views on the motion then on or before December 29, 2016, you or your attorney must:

File with the Court a written request for a hearing or, if the Court requires a written response, an answer, explaining your position at the U.S. Bankruptcy Court, Mitchell Cohen Federal Court House, 401 Market St., Camden, New Jersey 08101.

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

You must also mail a copy to:

David A. Kasen, Esquire
KASEN & KASEN
1874 E. Marlton Pike, Suite 3
Cherry Hill, NJ 08003

Attend the hearing scheduled to be held on January 5, 2017 at 10:00 a.m. in Courtroom # 4C, U.S. Bankruptcy Court, Mitchell Cohen Federal Court House, 1 John F. Gerry Plaza, 4th & Cooper Streets, 4th Floor, Camden, New Jersey.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

KASEN & KASEN
Attorneys for Samwin, LLC, Debtor

BY: /s/ David A. Kasen
DAVID A. KASEN, ESQUIRE

Dated: December 12, 2016

DAVID A. KASEN, ESQUIRE
KASEN & KASEN
Society Hill Office Park, Suite 3
1874 E. Marlton Pike
Cherry Hill, NJ 08003
Telephone (856) 424-4144
Facsimile (856) 424-7565
Attorneys for Debtor(s)
ID# DK1778

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of: : Chapter 11
: :
SAMWIN, LLC, : Case No. 16-12420/JNP
: :
Debtor(s). : Hearing Date:
: :
: Oral Argument Requested

**DEBTOR’S MOTION TO (I) AUTHORIZE THE SALE OF CERTAIN ESTATE
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES,
PURSUANT TO 11 U.S.C. §§ 1107(a) AND 363 AND FED. R. BANKR. P. 2002,
6004 AND 9014; AND (II) WAIVE THE FOURTEEN (14) DAY STAY IMPOSED
BY FED. R. BANKR. P. 6004(h)**

Samwin, LLC, the above-captioned debtor (hereinafter the “**Debtor**” or the “**Seller**”), by and through its undersigned counsel, hereby submits this motion (the “**Motion**”) to (i) authorize the sale of certain estate property free and clear of liens, claims and encumbrances, pursuant to sections 1107(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and (ii) waive the fourteen (14) day stay imposed by Rule 6004(h) of the Bankruptcy Rules. In support of this Motion the Debtor respectfully avers as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper in this District pursuant to 28 U.S.C. § 1409.
3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).
4. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 1107(a), 363 and 105(a). The procedural predicates for the relief sought herein are Bankruptcy Rules 6004 and 9019.

BACKGROUND

5. On February 10, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "**Court**").
6. The debtor is the owner of certain liquid CO₂ extraction equipment manufactured for the debtor by Allied Separations.
7. There are no security interests, liens or encumbrances on said liquid CO₂ extraction equipment.
8. The debtor has filed a Plan of Liquidation to fund payment pursuant to the Plan of the obligations due to creditors of the debtor.
9. In order to fund said Plan, the debtor needs to sell the liquid CO₂ extraction equipment manufactured for it by Allied Separations.
10. The debtor has obtained an offer to purchase said equipment from MC Finance and Management, LLC acting for Southern Humboldt Distribution, LLC. A

copy of the Purchase and Sale Agreement negotiated between the debtor and MC Finance and Management, LLC is attached hereto marked Exhibit A.

11. The sale price for said liquid CO₂ extraction equipment is \$300,000.00, less repayment of up to \$100,000.00 to be advanced by MC Finance and Management, LLC for the purpose of refurbishing , upgrading and installing said equipment, and less \$25,00.00 previously lent by MC Finance and Management, LLC to the debtor as a post-petition administrative loan, which was approved by the Bankruptcy Court pursuant to Order of the Court dated May 26, 2016.

RELIEF REQUESTED

12. The Debtor seeks authority to sell said liquid CO₂ extraction equipment pursuant to the terms and conditions set forth in the Purchase and Sale Agreement attached hereto as Exhibit A. Specifically, the Debtor seeks a Court Order (i) authorizing and approving the sale of said equipment pursuant to the terms and conditions of the Purchase and Sale Agreement attached hereto as Exhibit A, free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. §§ 105 and 363, and (ii) waiving the fourteen day stay imposed by Rule 6004(h) of the Bankruptcy Rules.

The Proposed Sale

13. The material terms of the sale proposed herein (the “**Proposed Sale**”) are as follows:

- a. Terms of Sale. The Seller is to sell said liquid CO₂ extraction equipment manufactured by Allied Separations to MC Finance and Management, LLC acting for Southern Humboldt Distribution Co., LLC, as per the terms and conditions set forth in the Purchase and Sale Agreement attached hereto marked Exhibit A.

- b. Conditions of Sale. There are no conditions of sale.
 - c. Closing and Other Deadlines. The sale contemplates that the refurbishing, upgrading and installation of said CO₂ extraction equipment can be completed by March 31, 2017.
 - d. Proof of Funds. N/A
 - e. Tax Exemption. N/A
 - f. Record Retention. N/A
 - g. Assumption and Assignment of Contract and Leases. N/A
 - h. Credit Bid. None
 - i. Broker Fee. N/A
14. The following special provisions apply to the Proposed Sale:
- a. Sale to Insider. No.
 - b. Agreements with Management. N/A
 - c. Releases. None.
 - d. Private Sale/No Competitive Bidding. Yes, this is a private sale.
 - e. Interim Agreements with Proposed Buyer. None
 - f. Use of Proceeds. The Sale proceeds will be used to fund the Debtor's Plan of Liquidation if confirmed by the Court.
 - g. Sale of Avoidance Actions. None
 - h. Requested Findings as to Successor Liability. None
 - i. Sale Free and Clear of Unexpired Leases. None
 - j. Relief from Bankruptcy Rule 6004(h). Yes

BASIS FOR RELIEF REQUESTED

15. Chapter 11 debtors in possession have, with limited exception, “all the rights... and powers... of a trustee serving in a case under this [Chapter 11].” 11 U.S.C. § 1107(a).

Sale of Estate Property Outside of the Ordinary Course of Business

16. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession “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).

17. Courts within the Third Circuit have held that transactions under § 363(b) must be supported by sound business judgment. *See e.g. In re Summit Global Logistics, Inc.*, No. No. 08-11566, 2008 Bankr. LEXIS 896 at * 28 (Bankr. D.N.J. Mar. 26, 2008) (adopting the ruling in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *See also D’Antonio v. Bella Vista Assocs., LLC (In re Bella Vista Assocs., LLC)*, Case No. 07-18134/JHW, Adver. No. 07-2241, 2007 Bankr. LEXIS 4348 at *39-40 (Bankr. D. N.J. Dec. 18, 2007); *In re Congoleum Corp.*, No. 03-51524, 2007 Bankr. LEXIS 1707 at * 6 (Bankr. D. N.J. May 11, 2007).

18. In accordance with *Lionel* and subsequent precedent within the Third Circuit, the sound business judgment standard is comprised of four basic requirements: (1) a sound business purpose for the sale; (2) the proposed sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the buyer has acted in good faith. *In re Summit Global Logistics, Inc.*, Jointly Administered under Case No. 08-11566, 2008 Bankr. LEXIS 896 at *26-29 (Bankr. D. N.J. March 26, 2008); *D’Antonio v. Bella Vista Assocs., LLC (In re Bella Vista Assocs., LLC)*, Case No. 07-18134/JHW, Adver. No. 07-2241, 2007 Bankr. LEXIS 4348 at *39-40 (Bankr. D. N.J. Dec. 18, 2007).

19. The good faith requirement, although not expressly contained in section 363(b), has been grafted on to the approval of sales in the Third Circuit because that requirement appears in § 363(m) governing appeals, and because of the Third Circuit's decision in *In re Abbotts Dairies. In re Congoleum Corp.*, No. 03-51524, 2007 Bankr. LEXIS 1707 at * 6 (Bankr. D. N.J. May 11, 2007). The *Abbotts Dairies* court held that when a bankruptcy court authorizes a sale of assets pursuant to § 363(b)(1), it is required to make a finding with respect to the good faith of the purchaser. *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986). Although neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define 'good faith,' courts applying § 363(m) have held that the phrase encompasses one who purchases in 'good faith' and for 'value.' *Id.*

20. Here, the Proposed Sale satisfies the sound business judgment test, as the Debtor, in its discretion, has decided to sell the liquid CO₂ extraction equipment manufactured for it by Applied Separations that it owns, and in the opinion of the Debtor, the sale price for said equipment is fair and reasonable. The Debtor made efforts to sell said equipment to others in the industry, and this sale represented the highest obtainable price.

21. Second, the Proposed Sale will generate fair value. The debtor has been attempting to liquidate the equipment being sold, and the price to be paid by the proposed purchaser represents the highest obtainable price.

22. Third, by the date that this Motion is returnable, the Debtor will have provided adequate and reasonable notice of same.

23. Fourth, the Proposed Sale satisfies the good faith requirement set forth in the Third Circuit's decision in *Abbotts Dairies*. Specifically, by marketing the property

and obtaining the highest obtainable price, the debtor satisfies the good faith requirement. The funds will be used to pay the creditors pursuant to the debtor's Plan of Liquidation.

Sale of Estate Property Free and Clear of Liens and Encumbrances

24. Section 363(f) of the Bankruptcy Code provides that:

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).

25. The five conditions enumerated in 11 U.S.C. § 363(f) are disjunctive and, as such, a sale thereunder can be authorized with the satisfaction of any one of the five conditions. *See Folger Adam Sec. Inc. v. De Matties/McGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000) (explaining that property may be sold free and clear if “any one of [the] five prescribed claims is met”); *See also D’Antonio v. Bella Vista Assocs., LLC (In re Bella Vista Assocs., LLC)*, Case No. 07-18134/JHW, Adver. No. 07-2241, 2007 Bankr. LEXIS 4348 at *11 (Bankr. D. N.J. Dec. 18, 2007).

26. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *In re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) (“Bankruptcy courts have long had the authority to

authorize the sale of estate assets free and clear [pursuant to § 105] even in the absence of § 363(f).”).

27. Here, the Debtor has satisfied § 363 of the Bankruptcy Code because there are no security interests, liens or encumbrances on the property being sold.

28. Failure to file a timely objection after receiving notice of the sale is deemed to be consent for purposes of section 363 of the Bankruptcy Code. *See Hargrove v. Pemberton (In re Tabore, Inc.)*, 175 B.R. 855 (Bankr. D.N.J. 1994).

29. Accordingly, the Debtor submits that the Court should approve the Proposed Sale free and clear of all liens, claims and encumbrances.

Waiver of Fourteen Day Stay Period and Expedited Relief

30. The Debtor requests that the Court waive the requirements under Bankruptcy Rule 6004(h), so that the sales approved by the Court may close immediately rather than being subject to the fourteen day waiting period outlined in Rule 6004(h).

31. 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.” Fed. R. Bankr. P. 6004(h).

32. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, COLLIER suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY, ¶ [6004.11], 6004-18 (Alan N. Resnick & Henry J. Sommer eds., 16th

ed.). COLLIER further provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a stay, unless the Court determines that the need to proceed sooner outweighs the interests of the objecting party. *Id.*

33. In order to maximize the value of the Debtor's liquid CO₂ extraction equipment and achieve the highest and best offer, the Debtor hereby requests that the Court waive the fourteen day stay period under Bankruptcy Rule 6004(h).

WAIVER OF MEMORANDUM OF LAW

34. The Debtor submits that this Motion does not present novel issues of law requiring the citation to any authority other than the authority cited herein, and accordingly, respectfully requests that the Court waive the requirement contained in Local Rule 9013-2 that a separate memorandum of law be submitted.

35. The Debtor reserves his right, however, to submit a memorandum of law with respect to this Motion in the event that opposition is received.

CONCLUSION

36. In accordance with the foregoing, the Debtor respectfully requests entry of an Order granting the relief requested herein and such other and further relief as this Bankruptcy Court deems just and proper.

Respectfully submitted,

KASEN & KASEN
Attorneys for Debtor(s)

BY: /s/ David A. Kasen
DAVID A. KASEN, ESQUIRE

Dated: December 12, 2016

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is between **Samwin, LLC**, a New Jersey Limited Liability Company and a Chapter 11 Debtor in Bankruptcy in a case pending before the United States Bankruptcy Court for the District of New Jersey under Case No. 16-12420 ("Samwin"), as **Seller**, and **MC Finance and Management, LLC**, a California Limited Liability Company ("MCFM"), acting for Southern Humboldt Distribution Company, LLC ("SHDC"), which MCFM controls, as **Buyer**.

RECITALS:

WHEREAS, Samwin is the owner of certain liquid CO₂ extraction equipment manufactured by Applied Separations for Samwin; and

WHEREAS, said liquid CO₂ extraction equipment needs to be refurbished and upgraded for the purposes of the intended use of said equipment by MCFM; and

WHEREAS, certain information and documentation relating to the costs and timing of said refurbishing and upgrading of the liquid CO₂ extraction equipment has been exchanged between SHDC and Applied Separations, the manufacturer of said equipment; and

WHEREAS, it appears that up to an additional One Hundred Thousand (\$100,000.00) Dollars will be required for the refurbishing and upgrading and installation of said equipment, which is to be installed in Humboldt County, California at the place of business of SHDC; and

WHEREAS, MCFM has previously advanced to Samwin the sum of Twenty-Five Thousand (\$25,000.00) Dollars for the purpose of relocating substantially all of the equipment of Samwin from its leased premises in Pennsauken, New Jersey to Allentown, Pennsylvania on premises controlled by Applied Separations;

EXHIBIT " A "

NOW, THEREFORE, the parties hereto agree that:

1. MCFM shall advance such funds up to an additional One Hundred Thousand (\$100,000.00) Dollars for the purposes of refurbishing and upgrading and installation of the liquid CO₂ extraction equipment.

2. Upon confirmation of the refurbishing and upgrading of the liquid CO₂ extraction equipment which was manufactured by Applied Separations for Samwin and the installation in the premises of SHDC in Humboldt County, California to the reasonable satisfaction of SHDC, MCFM shall pay to Samwin the sum of Three Hundred Thousand (\$300,000.00) Dollars, less the actual amount advanced by MCFM for the refurbishing and upgrading of the liquid CO₂ extraction equipment and the installation of said equipment in the premises of SHDC in Humboldt County, California, and less the Twenty-Five Thousand (\$25,000.00) Dollars previously loaned to Samwin that was approved by the Bankruptcy Court pursuant to the Bankruptcy Court Order of May 26, 2016.

3. Each of the parties hereto shall cooperate with and assist every other party in every reasonable and appropriate manner in order to accomplish all of the purposes of this agreement. Each of the parties represents and warrants to every other party that each and every statement set forth hereinabove is true, correct and complete to the best knowledge, information and belief of such party. Each of the parties represents and warrants to every other party that it is not aware of any fact or circumstance that would make any statement set forth hereinabove not true, correct and complete.

4. It is anticipated that the refurbishing, upgrading and installation of the CO₂ extraction equipment can be completed by March 31, 2017. It is further agreed that the purchase

and sale of said liquid CO₂ extraction equipment as set forth in this agreement is subject to the approval of the United States Bankruptcy Court for the District of New Jersey, and it is understood that if said sale is not approved by the United States Bankruptcy Court for the District of New Jersey, then this agreement is null and void.

5. It is further understood and agreed by the parties hereto that there are no representations or warranties with respect to the equipment being sold, other than those set forth herein.

IN WITNESS WHEREOF, each of the parties has executed this Purchase and Sale Agreement to be effective as of the 6th day of December, 2016.

SELLER:

SAMWIN, LLC

By: _____

Managing Member

BUYER:

MC FINANCE AND MANAGEMENT, LLC

By: _____

Managing Member

CONSENTED TO BY:

APPLIED SEPARATIONS

By: _____

[Handwritten Signature]
ROLE SEALAKE PRES/CEO

and sale of said liquid CO₂ extraction equipment as set forth in this agreement is subject to the approval of the United States Bankruptcy Court for the District of New Jersey, and it is understood that if said sale is not approved by the United States Bankruptcy Court for the District of New Jersey, then this agreement is null and void.

5. It is further understood and agreed by the parties hereto that there are no representations or warranties with respect to the equipment being sold, other than those set forth herein.

IN WITNESS WHEREOF, each of the parties has executed this Purchase and Sale Agreement to be effective as of the 6th day of December, 2016.

SELLER:

SAMWIN, LLC

By:  _____

Managing Member

BUYER:

MC FINANCE AND MANAGEMENT, LLC

By:  _____

Managing Member

CONSENTED TO BY:

APPLIED SEPARATIONS

By: _____