

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
STOP ALARMS)	CASE NO. 17-57661 (JRS)
HOLDINGS, INC., <i>et al.</i>)	
)	
DEBTORS.)	JOINTLY ADMINISTERED
)	

MOTION OF TRUSTEE TO SELL ASSETS FREE AND CLEAR
OF LIENS PURSUANT TO 11 U.S.C. § 363

Michael Collins, Chapter 11 Trustee (“Trustee”) by and through counsel and pursuant to 11 U.S.C. § 363, moves to sell substantially all operating assets of Stop Alarms, Inc. pursuant to the term sheet attached as **Exhibit A** (the “Term Sheet”). In support of this Motion, the Trustee asserts and alleges as follows:

JURISDICTION

1. The Court has jurisdiction over the parties and subject matter of this action pursuant to 28 U.S.C. §§ 157(a) and 1334.
2. Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).
3. This proceeding is a core proceeding under 28 U.S.C. § 157(b).
4. The Trustee consents to the Bankruptcy Court entering a final order adjudicating the Motion pursuant to *Wellness Int’l Network Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

BACKGROUND

5. On April 28, 2017 (the “Petition Date”), the Debtors commenced these jointly administered cases by filing voluntary petitions for relief under chapter 11 of title 11 of the

United States Code, 11 U.S.C. §§ 101 to 1532 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Northern District of Georgia.

6. On June 22, 2017, the United States Trustee moved for the appointment of a chapter 11 trustee to administer the Debtors’ cases. (the “Trustee Motion”) [Dkt Entry No. 87].

7. On July 25 2017, the Court granted the Trustee Motion. [Dkt Entry No. 123].

8. On July 27, 2017 (the “Appointment Date”), the United States Trustee appointed Michael E. Collins as the Trustee pursuant to the Notice of Appointment of Chapter 11 Trustee and Setting of Bond. [Dkt Entry No. 126]. The Trustee continues to serve in this capacity.

9. No official committee of unsecured creditors has been formed in these cases.

10. Since his appointment as trustee in the case, the Trustee has reviewed the operating results of the Debtors and evaluated the prospects of proposing a reorganization plan or plans in the case. Based on his review and business judgment, the Trustee has determined that a liquidation of the assets of the Debtors is the best option for maximizing the value of the Debtors’ estate.

11. Historically, Stop Alarms, Inc. (“SAI”) generated the cash flow needed to meet its operating expenses through approximately 3,000 security monitoring accounts, which generated substantial recurring monthly revenue (the “RMR Accounts”). Within the year prior to the Petition Date, the managers of the Debtors sold almost all of the RMR Accounts to Alarm Funding Associates, LLC (“AFA”) in four separate transactions. While the transactions with AFA were for fair value, a substantial amount of the funds generated in those transactions were not used to pay off SAI’s debt or fund SAI’s operations, but were transferred out of Debtors to insiders of the Debtors. The resulting reduction of recurring monthly revenue left SAI barely able to meet its current operating expenses and unable to service its long-term debt. The

projected future cash flow of the business is simply less, in present value terms, than the cash consideration that could be received upon a liquidation sale of the assets.

12. Over the last few months, the Trustee has negotiated with three separate groups interested in purchasing the assets of SAI free and clear of all liens. Two of the offerors made earn-out purchase offers under which they would provide limited up-front consideration with the remainder of the consideration paid over a ten-year period without guaranties. The total consideration to be paid under each of these offers was approximately \$550,000 based on the estimated assets at Closing. The third offeror, Frase Protection, Inc. (“Frase”), has made an all-cash offer for the assets, excluding cash, of approximately \$300,000 based on the estimated assets at closing. Including the operating cash to be retained by the estate, the Frase offer effectively totals approximately \$450,000.

13. All of the assets of SAI that are proposed to be sold, with the exception of the vehicles, are subject to perfected security interests of Joe and Trae Carney (the “Carneys”) securing a total debt of approximately \$888,000. Consequently, none of the offers includes consideration sufficient to fully satisfy the Carney’s lien.

RELIEF REQUESTED

14. The Trustee requests the Court approve the sale of substantially all of the Debtors’ operating assets to Frase pursuant to 11 U.S.C. § 363 (the “Asset Sale”).

15. The Trustee, in consultation with the Carneys, has determined that the offer of Frase is the best offer for the assets even though the total consideration offered by Frase is less than the total consideration offered by the other offerors. As presently calculated, Frase’s offer has a total cash consideration of approximately \$300,000, plus the estate will retain

approximately \$150,000 in cash.¹ Each of the other offerors proposed consideration of approximately \$550,000 for the assets, including cash, but the bulk of the consideration would be paid over a ten-year period. After discounting for the time value of money, the risk of default on payments over the ten-year term, and the cost of monitoring the payments over the payment term, the Trustee believes, in the exercise of his business judgment, that the all-cash offer made by Frase is materially better than all other offers. Additionally, Frase has indicated an intent to employ most, if not all, of the existing employees of the Debtors.

16. The assets proposed to be sold shall be sold free and clear of all liens, claims and encumbrances with such liens, claims and encumbrances to attach to the proceeds of the sale with the same priority, pursuant to 11 U.S.C. § 363(f). The assets to be sold include certain vehicles that are not subject to any perfected lien because no lienholder is indicated on the respective certificates of title. Accordingly, the SAI estate will retain the consideration for those vehicles. Additionally, the Carneys, who hold the first lien on the assets, have consented to a carveout from their lien in the amount of \$15,000.00 to fund the expenses of the Debtors' estates in consummating this sale.

17. The assets that will not be sold include, but are not limited to: all causes of action, including avoidance actions, against former officers and directors of the Debtors, insiders of the Debtors and transferees (initial and mediate) of assets of the Debtors; all cash held by the estate (such cash being subject to the lien of the Carneys); and certain inventory and personal property that Frase has elected to not purchase. Any category of asset not specifically identified in the Term Sheet shall remain property of the SAI estate.

¹ As noted on the Term Sheet, the purchase price to be paid is a formula based upon the actual assets on hand at Closing. For example, Frase will pay 37 times SAI's RMR at closing and will pay 70% of the book value of accounts receivable that are less than 90 days old. As a result, the total consideration to be paid will be determined at the Closing.

18. After Court approval of the sale and upon closing of the same, the Trustee intends to convert the Debtors' chapter 11 cases to chapter 7. A motion to convert contingent on the closing of the Asset Sale has been filed contemporaneously with this Motion. Upon closing of the asset sale, there will be no further ongoing operations of SAI and the remaining assets to be pursued will be avoidance actions and other claims that can be handled under chapter 7 of the Bankruptcy Code.

19. The Asset Sale should be approved as an exercise of the Trustee's business judgment. The proper standard for evaluating a trustee's proposed motion to sell is the business judgment test. *In re Diplomat Const., Inc.*, 481 B.R. 215, 218–19 (Bankr. N.D. Ga. 2012). Under this test, if a trustee establishes sound business reasons for the terms of the proposed sale, the sale should be approved. *Id.* at 219. Moreover, “[t]he Trustee is responsible for the administration of the estate and his judgment on the sale and the procedure for the sale is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.” *Id.*

20. The Asset Sale is in the best interests of the SAI estate and sound business reasons exist to support the Trustee's business judgment. The Asset Sale will maximize value for the SAI estate, generate cash for the SAI estate, and will provide the possibility for the employees of SAI to maintain gainful employment.

21. The Trustee further requests a finding that Frase, which is not an insider of and is not otherwise related to the Debtors or their owners, is a good faith purchaser in accordance with 11 U.S.C. § 363(m).

**WAIVER OF STAY UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 6004(H)**

22. The Trustee respectfully requests the Court waive the 14 day stay provided by Federal Rule of Bankruptcy Procedure 6004(h). Waiver of the stay established by Federal Rule of Bankruptcy Procedure 6004(h) is proper when no objection is made to the sales procedures or when a sufficient business reason exists to waive the stay. *In re Borders Grp., Inc.*, 453 B.R. 477, 486 (Bankr. S.D.N.Y. 2011). Waiving the 14 day stay will allow the Trustee to consummate the Asset Sale on the timeline requested by Frase. Therefore, sufficient business reason exists to waive the stay, even if an objection were made to the Trustee's requested waiver.

WHEREFORE, the Trustee requests that (i) he be authorized to sell the Assets pursuant to the Term Sheet attached as **Exhibit A**; (ii) the Court waive the 14 day stay established by Federal Rule of Bankruptcy Procedure 6004(h); (iii) and the Court grant any other relief that is necessary and appropriate.

EXHIBIT A

PROPOSED TERM SHEET
In re Stop Alarms, Inc.
January 22, 2018

The purpose of this Term Sheet is to set forth the basic proposed terms upon which Michael E. Collins ("Trustee"), the Chapter 11 Trustee of Stop Alarms, Inc. ("Debtor") agrees to sell, and Frase Protection, Inc. ("Buyer") (the Trustee and Buyer, collectively, "Parties") agrees to buy, certain assets of the Debtor pursuant to Section 363 of the Bankruptcy Code in Case No. 17-57661 (the "Bankruptcy Case") filed April 28, 2017 (the "Petition Date") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court").

This Term Sheet shall not be binding on the Parties until reflected in the Approval Order(s) (defined below) entered by the Bankruptcy Court upon appropriate Motion(s) filed by the Trustee in the Bankruptcy Case.

The Parties hereby agree to the following terms relating to the purchase and sale of the Purchased Assets (the "Sale"):

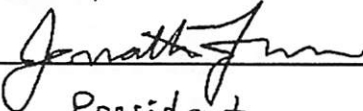
1. The Purchased Assets shall include the following assets of Stop as of the Closing Date:
 - a. All transferable RMR accounts of Stop.
 - b. All accounts receivable.
 - c. All intangible assets, including but not limited to intellectual property assets (e.g., "Stop Alarms" name, marks, logos), goodwill, phone numbers, service records, customer lists, data bases, internet websites and IP addresses.
 - d. The following motor vehicles:
 - i. 2012 Ford Transit, VIN *097646
 - ii. 2013 Ford Transit, VIN *171557
 - iii. 2000 Ford F-150, VIN *
 - iv. 2006 Ford Ranger, VIN *A07895
 - e. Inventory and Furniture (as determined by Buyer).
2. The Purchased Assets shall not include any asset not covered in ¶ 1, above, including but not limited to the following assets, all of which are preserved for the benefit of the Stop bankruptcy estate:
 - a. Any vehicles owned by Stop that are not specifically identified in ¶ 1, above;
 - b. Any avoidance claims of the Stop bankruptcy estate and related claims against initial or mediate transferees of avoided transfers;
 - c. Any claims and causes of action against former officers and directors of Stop;
 - d. Any claims and causes of action against insiders of Stop;
 - e. Any claims under policies of insurance existing as of the Petition Date.
3. The Purchase Price of the Purchased Assets shall be determined at Closing as the sum of the following:

- a. The assets identified in ¶ 1.a.: thirty-seven times (37x) the existing RMR value for all accounts that are under enforceable contract and assignable
 - b. The assets identified in ¶ 1.b.: 70% of book value for all accounts receivable less than 90 days old
 - c. The assets identified in ¶ 1.c.: \$10,000
 - d. The assets identified in ¶ 1.d.: The "rough trade-in" value of the vehicle based on Edmunds
 - e. The assets identified in ¶ 1.e.: \$10,000
4. Buyer shall pay the Purchase Price in cash or certified funds at Closing. The Closing shall occur within five days of entry of an order by the Bankruptcy Court approving the Sale, unless otherwise agreed by the Parties.
 5. The Sale is conditioned upon approval by the Bankruptcy Court. The Sale is also subject to a 10-day due diligence period beginning upon execution of this Term Sheet during which time Buyer may terminate the Term Sheet for any reason and shall be relieved of all obligations hereunder.
 6. The Purchased Assets shall be transferred free and clear of all liens, claims and encumbrances of any kind, and are sold "as is, where is" with no representations and warranties of any kind other than the Trustee's capacity to transfer title to the Purchased Assets. The Buyer is a good faith purchaser for value under Section 363(m) of the Bankruptcy Code.
 7. After Closing, the Trustee shall reasonably cooperate with Buyer to prepare such documentation as is necessary to accomplish the transfer of the Purchased Assets in accordance with the terms herein.

IN WITNESS WHEREOF, this Term Sheet is executed by the Parties on the day and date first set forth above.

BUYER:

~~Frase Security~~ Frase Protection, Inc.

By: 

Its: President

TRUSTEE:

Michael E. Collins, Trustee of Stop Alarms, Inc.



Respectfully submitted,

SEYFARTH SHAW LLP

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Counsel for the Chapter 11 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2018, a copy of the foregoing was sent via ECF to all parties registered to receive electronic notice in the case and via U.S. mail, postage prepaid to the attached mailing matrix:

/s/ Michael E. Collins
Michael E. Collins

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