

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
)	
TD MANUFACTURING, LLC)	
EIN: 47-1730944)	Case No. 17-14243-MER
)	Chapter 11
Debtor.)	

**MOTION TO APPOINT AND COMPENSATE DICKENSHEET & ASSOCIATES
INC. AS AUCTIONEER TO THE DEBTOR AND AUTHORIZING SALE BY
AUCTION OF PROPERTY OF THE ESTATE**

The Debtor and Debtor in Possession, TD Manufacturing, LLC (“Debtor”), by and through its attorneys, Buechler & Garber, LLC., for its Motion to Appoint and Compensate Dickensheet & Associates, Inc. (“Dickensheet”) as Auctioneer to the Debtor and Authorizing Sale by Auction of Property of the Estate, respectfully states as follows:

Background

1. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on May 9, 2017 (the “Petition Date”). The Debtor remains a Debtor-in-Possession.
2. The Debtor is a metal fabrication and powder coating business operating in the Greeley area.
3. The Debtor has numerous pieces of equipment and machinery that it is not utilizing (the “Unnecessary Equipment”). The Debtor wishes to liquidate the Unnecessary Equipment by way of auction. The Unnecessary Equipment is identified on the list attached hereto as Exhibit A.
4. The Unnecessary Equipment is encumbered by the following secured claims:
 - a. Colorado Lending Source; and
 - b. TBK Bank.

Auctioneer

5. The Trustee desires to hire Dickensheet to handle all liquidation matters pertaining to the Unnecessary Equipment, including conducting an auction.
6. Dickensheet has substantial experience in providing services of this nature.

7. To the best of the Debtor's and Dickensheet's knowledge, Dickensheet does not hold or represent an interest adverse to the Debtor's estate, and its employees have no connection or conflict of interest with the estate, the Debtor, its creditors, any of the Debtor's officers, directors, or shareholders, any other party in interest, their respective attorneys and accountants, the United States Trustee's Office, or any person employed in the Office of the United States Trustee. *See* Affidavit of Dickensheet attached hereto as Exhibit B.

8. Dickensheet is to be compensated as follows: 15% commission on gross sales of the Unnecessary Equipment plus expenses associated therewith including costs of sale to secure, market and sell the Unnecessary Equipment. The Debtor seeks authority to reimburse the expenses of Dickensheet and compensate Dickensheet for its 15% commission without further motion, notice to parties in interest or action of the Court, Dickensheet to be paid from the proceeds from the sale of the Unnecessary Equipment.

9. The appointment of Dickensheet is in the best interest of the estate as a professional is required to provide the liquidation services Dickensheet is to provide. The sale of the Unnecessary Equipment will reduce the secured claims and reduce the cost and expense associated with the Unnecessary Equipment, including insurance. The use of an auctioneer will assure the Unnecessary Equipment is promptly liquidated and is exposed to the market place to assure the highest and best offer is received.

10. Upon appointment by the Court, Dickensheet will how to best market and auction the Unnecessary Equipment. Dickensheet will schedule and market and conduct an auction in due course. The Unnecessary Equipment will be auctioned at the Debtor's principal place of business, at the location of the Assets, or conducted by way of online auction.

11. Dickensheet will conduct the auction as soon as is practicable. The auction to be conducted by Dickensheet is designed to attract as many potential bidders as possible. There will be an opportunity for potentially bidders to view and inspect the Unnecessary Equipment prior to the auction. The Debtor believes that it is impractical if not impossible to obtain an absolute date certain for the auction at this time, because Dickensheet schedules its auctions with some flexibility, and it is uncertain if or when the Court will approve this Motion. Therefore, the Debtor believes it is proper and in the best interest of the estate that parties in interest be advised to confirm with Dickensheet the exact time for the auction of the Assets. For the specific date

and time of the auction, Dickensheet should be contacted at 1501 W. Wesley, Denver, CO 80223, (303) 934-8322 (tele) (303) 934-8252 (fax) website: www.dickensheet.com. The Debtor believes that it is appropriate and not oppressive upon creditors or parties in interest that they be asked to contact Dickensheet by telephone, fax, or mail, as such numbers and address are shown above and on the Rule 9013 notice if they desire to find out the date and time of the auction of the Unnecessary Equipment.

The Sale

12. Section 363(b) of the Bankruptcy Code provides authority for a trustee and, through the application of Bankruptcy Code section 1107(a), a debtor-in-possession, “after notice and a hearing, [to] use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code allows the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

13. The Bankruptcy Court’s power to authorize a sale under section 363(b) is to be exercised at the Court’s discretion. In re WPRV-TV, Inc., 983 F.2d 336, 340 (1st Cir. 1993); New Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983).

14. Courts have authorized a sale of a debtor’s assets pursuant to section 363(b) of the Bankruptcy Code or in the absence of a reorganization plan where there is a “sound business purpose.” In re Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991); Titusville Country Club v. Penn Bank (In re Titusville Country Club), 128 B.R. 396 (Bankr. W.D.Pa. 1991); In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15 (Bankr. E.D.Pa. 1987). See also, Stephens Indus., Inc. v. McClune, 789 F.2d 386 (6th Cir. 1986); In re Lionel Corp., 722 F.2d at 1071 (setting forth the “sound business purpose” test in the context of a sale of assets under section 363(b) of the Bankruptcy Code).

15. It is in the best interests of the Debtor, its estate and its creditors to sell the Unnecessary Equipment as soon as possible as it will reduced the secured claims and the costs and expenses associated with the Unnecessary Equipment.

16. Courts have also required that the sale price be fair and reasonable and that the sale be the result of good-faith negotiations with the buyer. In re Abbotts Dairies of Pa., 788 F.2d 143, 147-50 (3rd Cir. 1986); In re Tempo Technology Corp., 202 B.R. 363, 367 (D. Del. 1996), aff'd sub nom. Diamond Abrasives Corp. v. Temtechco, Inc. (In re Temtechco, Inc.), 141 F.3d 1155 (3d Cir. 1998); In re Industrial Valley, 77 B.R. at 22; In re Stroud Ford, Inc., 163 B.R. 730 (Bankr. M.D. Pa. 1983); See also In re Ewell, 958 F.2d 276 (9th Cir. 1992) (declining to set aside or modify a sale pursuant to section 363 of the Bankruptcy Code because the price was fair and reasonable and the buyer was a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code).

17. While the Bankruptcy Code does not define “good faith,” courts have held that for purposes of section 363(m), a “good faith purchaser” is one who buys “in good faith” and “for value” and that lack of good faith is shown by fraud, collusion, or an attempt to take grossly unfair advantage of other bidders. In re Abbotts Diaries of PA., 788 F.2d at 147; In re Tempo Technology Corp., 202 B.R. at 367.

18. A sale process conducted by auction will assure the assets are exposed to the market place and any sale is at arm’s length.

19. The Debtor requests authorization to sell the Unnecessary Equipment free and clear of liens, claims and encumbrances and other interests. Section 363(f) of the Bankruptcy Code authorizes a debtor in possession to sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the 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).

20. The Debtor believes it can obtain the consent of any valid lien holders.

21. To the extent it cannot, all lienholders could be compelled to accept a money satisfaction of their interests, thereby satisfying § 363(f)(5) of the Bankruptcy Code. See, e.g., In re James, 203 B.R. 449, 453 (Bankr. W.D.Mo. 1997); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 463-64 (E.D. Mich. 1995); WPRY-TV, Inc., 143 B.R. at 321. Courts considering this issue have held that the “cramdown” provision under the Bankruptcy Code constitutes such a “legal or equitable proceeding” and permits a sale free and clear pursuant to section 363(f)(5). See, e.g., Grand Slam U.S.A., Inc., 178 B.R. at 464; Scherer v. Federal National Mortgage Association (In re Terrace Chalet Apartments), 159 B.R. 821, 829 (N.D. Ill. 1993); In re Healthco Int’l, Inc., 174 B.R. 174, 176-77 (Bankr. D.Mass. 1994).

Payment of Secured Claims and Closing Costs

22. The sale proceeds will be used to satisfy all sale and closing cost and then liens, claims and encumbrances upon the Unnecessary Equipment in the order of their priority to the extent proceeds exist.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, a proposed form is filed herewith, (a) approving Dickensheet to be appointed to act as the auctioneer to the Debtor; (b) authoring Dickensheet to sell the Unnecessary Equipment by way of an auction free and clear of liens, claims and encumbrances; (c) authorizing Dickensheet to be paid from proceeds of the sale; (d) pay liens, claims and encumbrances upon the Unnecessary Equipment in the order of their priority to the extent proceeds exist and (e) and for such further and additional relief as to the Court may deem just and proper.

Dated: August 14, 2017

Respectfully submitted,

By: /s/ Aaron A. Garber

Aaron A. Garber #36099

BUECHLER & GARBER, LLC

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Denver, CO 80202

Telephone: (720) 381-0045

Telecopy: (720) 381-0382

Email: aaron@bandglawoffice.com

EXHIBIT A

Storage Building

1/2T Floor Mounted Jib Crane
HD Horizontal Twin Screw Commercial Air Compressor-
Ser.#2977 (not working)
Tool Bin Rack
TH 64731 Control Box, Furnace Room-Oven (not working)
Mop Bucket

Outside Storage Area

Detrex Chemical Industries Unit (not working) (Scrap Value)
Speedbelt Model 13287 Sander (not working) (Scrap Value)

Powder Coat Building

Ridgid Pipe Threader
Metal Bander Unit
5gal. Paint Pot
2- 4-Drawer File Cabinets @\$5.00 ea. ~ \$10.00
Fremont Phosphatizing Hi-Pressure Washer-NOT WORKING
4 Nordson Model DSUS SHSLNX08CI Powder Coat Applicators-
4 NOT WORKING @ \$65.00 ea. = \$260.00
1- WORKING @\$300.00 "100.
Nordson Rotary Sieve- NOT WORKING
Deimco Vertical Reciprocating Unit-Type B DVLP-12- NOT WORKING
Wagner Prima Sprint Paint Guns
1 Broken @ \$300.00

Fabrication Area

Vicon 9' x 24' Plasma Welding Table wNicon Dual Twin Drive wi
Hypertherm HyPerformance Model HOPR260XD Plasma Welder
Accu-Kut 9'S" x 25' Cutting Table w/AKS Cutting System wi Hypertherm
Hyspeed Model HSD 130 Plasma Welder
2T 40'w Overhead Crane wi 100' Rails
5T 40'w Overhead Crane wi 1 00' Rails
Miscellaneous Drill Bits
HD Commercial Lincoln Ultimate-El Hostile Duty Floor Drill Press
Target Metal Cutoff Saw
Steel Max Model 06F0316 Magnetic Base Machinist Drill
7 Drawer tool caddy

Precision Tooling Room

Hem, Inc., Model Cycloa-C Metal Band Saw
LNS Quick - Load Magazine Type Bar Feeder
Jones & Lamson Optical Comparator/Measuring Machine/Mercury Arc
Projection Lamp- NOT WORKING
8 Drawer Tool Cabinet

15 Drawer Tool Cabinet

Hotsy Model 5508 Power Washer- NOT WORKING

Red Devil Paint Shaker, Paint Can Holder, & Sprayers

Micrometers, 2 Bore Indicators

Fowler Trimos 300+ Digital Height Gauge

Yale NE040LAN36ST I 07 Electric Forklift w/2,843 .7hrs.-NOT WORKING

2 -Presto Hydraulic Lift Tables

Hobart Model 72SC3-IS Accu-Charger

2000 PCC Olofsson PTH2015 Five Axis CNC Lathe (2 ea. Axis are not fully functional)

7 Drawer Tool Cabinet

Metal Chop Saw

Fabricating Building

Thermal Arc Welder

Trinco Model DP850 Dry Blast Dust Collector & Trinco Model 60X48SUPC

Dry Blast Sandblaster Unit

Out in the Field

1972 22' Tandem/Dual Sand Trailer

1981 Kellogg 22' Tandem/Dual Sand Trailer (damaged)

Additional

10'x' X 44' "Break Room" Trailer on West End

24' Morgan Storage Trailer box of Powder Coat Building

Fabrication Area

2 Wheel bottle cart with hoses and victor gauges

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

IN RE:

TD Manufacturing, LLC) CASE 17-14243

DEBTOR

)
)
) CHAPTER 11

AFFIDAVIT OF AUCTIONEER/LIQUIDATOR

The undersigned submits this affidavit in support of employment by the Debtor as set forth in the Debtor's Motion to Appoint Professional as Auctioneer/Liquidator to the Debtor.

STATE OF COLORADO)
)
COUNTY OF DENVER) ss.

I, Christine Dickensheet, of Dickensheet & Associates, Inc., being first duly sworn, do state and aver as follows:

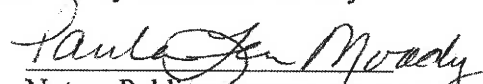
1. I am an experienced Auctioneer/Liquidator licensed to provide these services in the State of Colorado.
2. I maintain an office for the practice of auctioning in Colorado with a mailing address of 1501 W Wesley Avenue, Denver, Colorado 80223. My telephone number is (303) 934-8322.
3. To, the best of my knowledge, information and belief neither I nor any employees, officers or directors of Dickensheet & Associates, Inc., hold any interest adverse to the bankruptcy estate, the Debtors, the Creditors or the United States Trustee. I believe that all employees, officers and directors of Dickensheet & Associates, Inc. are disinterested person with the meaning of 11 U.S.C. 101(14).
4. To, the best of my knowledge, information and belief neither I nor any employees, officers or directors of Dickensheet & Associates, Inc. have any connections with the Debtors, Creditors, any other party of interest, their respective attorneys and accountants or any person employed in the office of the U.S. Trustee.
5. Dickensheet & Associates, Inc. has a blanket bond in the amount of one hundred thousand dollars (\$ 100,000.00). Bond No. 71340408 is a bond issued in the favor of the U.S. Government. This Bond has been in force since October 31, 2012 and is paid up to the next renewal date of October 31, 2017 (the Bond renews continuously until canceled by Principal).
6. Dickensheet & Associates, Inc. has a Motor Vehicle Dealers License and a Dealer's Bond for \$ 30,000.00. Bond No. 3312634 is a bond issued in favor of the State of Colorado. This Bond has been in force since June 1995 and is paid up to the next renewal date of June 30, 2018 (the Bond renews continuously until canceled by Principal).

7. Dickensheet & Associates, Inc. has liability insurance in the amount of \$ 2,000,000.00; it also has theft, fire and casualty insurance of \$ 500,000.00. These policies are issued by EMC Insurance, policy number 4X52487. The insurance is in effect and is paid quarterly through the next renewal date of August 25, 2018..
8. I have agreed to represent the Debtor for reasonable compensation, a fifteen percent (15%) commission on the gross proceeds of the online sale. In addition, I will receive reasonable compensation for my actual and necessary costs of sale to secure, transport, advertise, and store the property to be sold and others.
9. I have not shared nor agreed to share compensation received herein with any person.
10. It is my understanding that the assets to be sold in the within case is furniture, fixtures, equipment and trailers to be sold free and clear from any liens or encumbrances. If applicable, the State of Colorado is hereby directed to issue title to successful purchaser at auction.
11. I would contemplate that the assets of this estate would be placed, after approval of employment and the motion to sell, into the next routinely scheduled auction either on site and/or at our next scheduled auction and that the estate would not, incur unnecessary advertising expenses related to the auction sale(s).
12. After any sale conducted by me, I will submit to the debtors Attorney the proceeds from the sale. At that time I will also submit to the debtors Attorney and the U.S. Bankruptcy Court a Report of Sale containing a complete statement and itemization of all assets and equipment sold, the sale prices, the purchasers and the costs of sale.

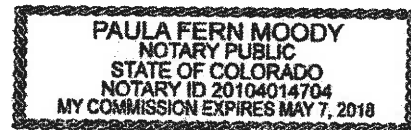
Executed this 14th day of August 2017


Christine Dickensheet

Subscribed and sworn to before me this 14th day of August 2017 by Paula Fern Moody


Notary Public

My Commission Expires: May 7, 2018



UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
)	
TD MANUFACTURING, LLC)	
EIN: 47-1730944)	Case No. 17-14243-MER
)	Chapter 11
Debtor.)	

**ORDER TO APPOINT AND COMPENSATE DICKENSHEET
AND ASSOCIATES, INC. AS AUCTIONEER TO THE DEBTOR AND
AUTHORIZING SALE BY AUCTION OF PROPERTY OF THE ESTATE**

THIS MATTER having come before the Court on the Debtor’s Motion to Appoint and Compensate Dickensheet & Associates, Inc. as Auctioneer to the Debtor and Authorizing Sale by Auction of Property of the Estate (the “Motion”), the Court having reviewed the Motion, and being otherwise fully advised in the premises, and no sustainable objections having be filed, and for cause shown

IT IS HEREBY ORDERED THAT:

Dickensheet & Associates, Inc. (“Dickensheet”) is appointed as auctioneer to the Debtor’s estate. The Unnecessary Equipment (as the term is defined in the Motion) of the estate shall be sold by auction in the manner set forth in the Motion. Dickensheet shall be compensated as follows: 15% commission on gross sales of the Unnecessary Equipment plus expenses associated therewith including costs of sale to secure, transport, advertise, and store the Unnecessary Equipment. The sale of the Unnecessary Equipment shall be free and clear of all liens, claim and encumbrances pursuant to 11 U.S.C. § 363(f), liens and encumbrances to attach to the proceeds from the sale in the order of the priority of the secured creditors. Dickensheet may be paid from the proceeds from the sale of the assets without further order of this Court. The secured creditors with allowed claims encumbering the Unnecessary Equipment may be paid from the proceeds of the sale in their order of priority after all sale and closing costs are paid.

DONE AND ENTERED this _____ day of September, 2017 at Denver, Colorado.

Honorable Michael E. Romero
United States Bankruptcy Judge