

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

CELADON GROUP, INC., *et al.*,

Debtors.

Chapter 11

Case No. 19-12606 (KBO)

Jointly Administered

**Hearing Date: May 21, 2020, at 2:00 p.m.
(ET)**

**Objection Deadline: May 14, 2020 at 4:00
p.m. (ET)**

OBJECTION OF THE HUNTINGTON NATIONAL BANK TO MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO ENTER INTO THE PURCHASE AGREEMENT; (II) APPROVING THE SALE OF THE MEXICAN BUSINESS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (III) AUTHORIZING THE DEBTORS TO TAKE ALL ACTIONS NECESSARY TO CONSUMMATE THE PRIVATE SALE; (IV) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS; (V) APPROVING BIDDER PROTECTIONS; AND (VI) GRANTING RELATED RELIEF

The Huntington National Bank (“**Huntington**”), pursuant to 11 U.S.C. § 363(f), hereby objects to the *Motion Of The Debtors For Entry Of An Order (I) Authorizing The Debtors To Enter Into The Purchase Agreement; (II) Approving The Sale Of The Mexican Business, Free And Clear Of All Liens, Claims, Encumbrances And Other Interests; (III) Authorizing The Debtors To Take All Actions Necessary To Consummate The Private Sale; (IV) Authorizing The Debtors To Assume And Assign Certain Executory Contracts; (V) Approving Bidder Protections; and (VI) Granting Related Relief* [DN 921] (the “**Motion to Sell**”) because the Motion to Sell seeks to sell up to 99 trailers subject to Huntington’s perfected security interest without Huntington’s consent. Despite their claim the contrary, the Debtors have not objected to Huntington’s liens or claims so there is no *bona fide* dispute that might otherwise justify such a



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sale. Moreover, there is no non-bankruptcy law that would permit such a sale without Huntington's consent and Huntington cannot be compelled to accept money in satisfaction of its liens. Finally, the Debtors do not disclose the price for which any of these trailers are being sold, they do not provide that Huntington's liens will attach to those proceeds and, instead, they assert that the proceeds from the sale will be disbursed in accordance with the terms of an order that has not yet been filed with the Court.

In further support of this objection, Huntington makes the following statements and incorporates by reference the statements contained in the accompanying Declaration of Robert S. Burk:

JURISDICTION

1. Huntington agrees that the Court has jurisdiction over these cases and the Motion to Sell. Huntington also agrees that venue of these cases and the Motion to Sell in this district is proper and that the Motion to Sell is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Huntington consents to the entry of a final order or judgment regarding the Motion to Sell by the Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

BACKGROUND

3. On or about August 16, 2011, CTS and Huntington entered into that certain Master Lease Agreement No. 404 (as amended, the "**Lease**") for the purpose of permitting Huntington to finance the acquisition by CTS of certain trailers and other equipment.

4. In accordance with the terms of the Lease, CTS entered into no fewer than three agreements to acquire three different sets of trailers. These agreements were evidenced by the following documents, among others:

- a. Acceptance Certificate and Financing Lease Schedule No. 10 dated as of January 21, 2015, in the original principal amount of \$6,473,500.00 concerning the acquisition of 206 trailers (“**Schedule 10**”). Among other terms and conditions, Schedule 10 required CTS to make monthly payments of \$48,062.06 until February 1, 2022 when it would be required to make a balloon payment in the amount of \$3,518,217.78. Schedule 10 was amended by Acknowledgment No. 1 dated as of June 13, 2019, which resulted in, among other things, the number of trailers subject to Schedule 10 being reduced to 183 and the amount of the monthly payment being reduced to \$35,181.42. Schedule 10 was further amended by Amendment No. 1 to Acknowledgment No. 1 that resulted in, among other things, the amount of the final balloon payment being changed to \$2,575,335.41.
- b. Acceptance Certificate and Financing Lease Schedule No. 12 dated as of March 10, 2015, in the original principal amount of \$6,461,020.00 concerning the acquisition of 250 trailers (“**Schedule 12**”). Among other terms and conditions, Schedule 12 required CTS to make monthly payments of \$49,345.90 until April 1, 2022 when it would be required to make a balloon payment in the amount of \$3,511,435.15. Schedule 12 was amended by Acknowledgment No. 1 dated as of June 13, 2019, which resulted in, among other things, the number of trailers subject to Schedule 12 being reduced to 104 and the amount of the monthly payment being reduced to \$20,527.90. Schedule 12 was further amended by Amendment No. 1 to Acknowledgment No. 1 that resulted in, among other things, the amount of the final balloon payment being changed to \$1,460,757.02; and
- c. Acceptance Certificate and Financing Lease Schedule No. 13 dated as of April 8, 2015, in the original principal amount of \$2,977,810.00 concerning the acquisition of 115 trailers (“**Schedule 13**” and, together with Schedule 10 and Schedule 12, the “**Schedules**”). Among other terms and conditions, Schedule 13 required CTS to make monthly payments of \$22,680.05 until May 1, 2022 when it would be required to make a balloon payment in the amount of \$1,618,380.18. Schedule 13 was amended by Acknowledgment No. 1 dated as of June 13, 2019, which resulted in, among other things, the number of trailers subject to Schedule 13 being reduced to 87 and the amount of the monthly payment being reduced to \$17,157.95. Schedule 13 was further amended by Amendment No. 1 to Acknowledgment No. 1 that resulted in, among other things, the amount of the final balloon payment being changed to \$1,224,339.79.

5. Despite the use of the words “lease” and “rent” used throughout the Lease and the Schedules, each of the Schedules represented a loan arrangement between Huntington as the

lender and CTS as the borrower and owner of the trailers. To this end, each of the Schedules contained the following statement in paragraph G:

“EQUIPMENT OWNERSHIP: Lessee and Lessor agree that Lessee is the owner of the Equipment in compliance with Article 9 of the Uniform Commercial Code and this Schedule constitutes a financing to enable the purchase of the Equipment by the Lessee.”

6. In accordance with the terms of the Lease, CTS granted Huntington a security interest in each of the trailers subject to the Schedules (collectively, the “**Collateral**”). *See* Lease, p. 1. Huntington perfected its security interest in all 374 of the trailers remaining subject to the Schedules by ensuring that its name was duly noted on the certificates of title for each trailer. Because they are voluminous, these certificates of title have not been filed with the Court, but Huntington has previously provided copies of them to CTS and the Official Committee of Unsecured Creditors (the “**Committee**”).

7. In accordance with the terms of the Lease, the amounts due under the Lease and the Schedules are cross-collateralized, with each of the trailers being pledged to satisfy all of the obligations owed by CTS to Huntington under the Lease and the Schedules. *See* Lease, p. 2.

8. As reflected in the proof of claim Huntington filed with the Debtors’ claims agent (Claim No. 912) the principal and interest remaining due under the Lease and each of the respective Schedules on December 9, 2019 was \$7,001,137.95, broken down into the following components:

Schedule 10

| | |
|---------------------------|-----------------------|
| Principal | \$3,299,717.80 |
| Interest | <u>\$10,706.85</u> |
| Sub-total for Schedule 10 | \$3,310,424.65 |

Schedule 12

| | |
|---------------------------|-----------------------|
| Principal | \$1,995,124.18 |
| Interest | <u>\$7,158.05</u> |
| Sub-total for Schedule 12 | \$2,002,282.23 |

Schedule 13

| | |
|---------------------------|------------------------------|
| Principal | \$1,682,490.09 |
| Interest | <u>\$5,940.98</u> |
| Sub-total for Schedule 13 | <u>\$1,688,431.07</u> |

Grand total of all three Schedules **\$7,001,137.95**

9. On January 15, 2020, Huntington filed the *Motion of The Huntington National Bank for Relief from the Automatic Stay* [DN 291] (the “**Motion for Relief**”) seeking to exercise its state law and contractual rights to recover and liquidate its collateral. Neither the Debtors nor any other party objected to the relief sought in the Motion for Relief. An agreed form of order granting the Motion for Relief was entered by the Court on January 27, 2020 [DN 354] after being submitted under a Certification of Counsel to which the Debtors and Committee assented [DN 351].

10. Since that time, Huntington has taken steps to recover and liquidate many of the trailers that were subject to its liens, selling them via a secured party’s sale and applying the net proceeds to the amounts due under the Lease and the associated Schedules.

11. As of April 22, 2020, Huntington had sold 267 trailers in this manner and applied net proceeds of \$3,356,829.06 to the amount due under the Lease and associated Schedules, leaving a balance of \$3,644,308.89.

12. The liquidation process is ongoing and as of May 5, 2020, there were 99 trailers subject to Huntington’s liens that have not yet been recovered by Huntington (the “**Remaining**

Trailers”), at least fourteen (14) of which Huntington believes are located in Mexico. This belief is based upon the tracking information provided to Huntington by the Debtors.

13. On April 30, 2020, the Debtors filed the Motion to Sell requesting, among other things, authority to sell certain businesses (defined as the “**Mexican Debtors**” in the Motion to Sell) and assets located in Mexico to White Willow Holdings, LLC (the “**Purchaser**”) free and clear of all liens, claims, and encumbrances. According to the Term Sheet accompanying the Motion to Sell [DN 912-2], the assets being sold to the Purchaser include “certain tractors and trailers owned by Sellers located in Mexico, regardless of whether such tractors and trailers are being use in the operation of the business.” *See* Term Sheet, p. 2, par. 2.

14. While the Motion to Sell expressly notes that the Purchaser intends to acquire the assets owned by the Debtors that are not the Mexican Debtors, there is no other information filed with the Motion to Sell that identifies which trailers are being sold to the Purchaser.¹ *See* Motion to Sell, n. 6.

15. After reviewing the Motion to Sell, Huntington shared the list of Remaining Trailers with the Debtors in an effort to determine which, if any, of the Remaining Trailers were included within the assets being sold under the Motion to Sell. The Debtors, however, have been unable or unwilling to identify which, if any, of the Remaining Trailers are intended to be sold to the Purchaser.

16. To the extent the Remaining Trailers are included in the assets being sold to the Purchaser, the Motion to Sell proposes to sell them free and clear of Huntington’s liens. The Motion to Sell does not, however, identify the proceeds attributable to the sale of the Remaining Trailers (or any trailers). Nor does it provide that Huntington’s liens will attach to the proceeds

¹ CTS is the owner of the Remaining Trailers and CTS is not one of the Mexican Debtors that is proposed for sale in the Motion to Sell.

from that sale. Instead, the Motion to Sell states that all of the proceeds from the sale will be distributed in accordance with the “Sale Order” that has not yet been filed with the Court. See Motion to Sell, p. 17.

17. Huntington does not consent to the Debtors’ sale of the Remaining Trailers.

18. Although the Motion to Sell asserts that the Debtors have a *bona fide* dispute with Huntington’s claims and liens, that statement is incorrect as to Huntington. Indeed, the Debtors and Committee consented to stay relief on all of the trailers in which Huntington holds a lien to permit Huntington to take possession of and sell the trailers.

RELIEF REQUESTED

19. To the extent that any or all of the Remaining Trailers are included within the assets being sold by the Motion to Sell, Huntington requests this Court to deny the Motion to Sell.

ARGUMENT

20. The Debtors cannot sell any or all of the Remaining Trailers free and clear of Huntington’s liens because they cannot satisfy any of the requirements of 11 U.S.C. § 363(f).

21. As noted in the Motion to Sell, the Debtors must establish that one of the five conditions noted in § 363(f) exists. *See In re Revel AC, Inc.*, 802 F.3d 558, 564 (3d Cir. 2015) (“§ 363(f) places the burden squarely on Revel’s shoulders”).

22. The sole condition mentioned by the Debtors in the Motion to Sell is that Huntington’s liens are the subject of a *bona fide* dispute. This statement, however, is not true. Huntington has filed a proof of claim and neither that claim nor Huntington’s liens against the Remaining Trailers has been met with an objection, formally or otherwise. To the contrary, there was no objection filed by the Debtor, the Committee, or any party to Huntington’s Motion for

Relief. If the Debtors or Committee disputed Huntington's liens they would not have stipulated to stay relief, allowing Huntington to take possession of and conduct secured party sales of the trailers.

23. The Third Circuit has held that, “‘Bona fide dispute’ in the § 363(f)(4) context means that there is an objective basis—either in law or fact—to cast doubt on the validity [of a claim or interest].” *In re Revel AC, Inc.*, 802 F.3d at 573 (discussing whether there was a *bona fide* dispute concerning whether a lease was a “true lease”). Courts utilizing the objective inquiry typically require that the debtor establish an evidentiary record supporting a genuine dispute or, at the least, articulate in a pleading or argument sufficient facts to conclude that a *bona fide* dispute exists. *See In re NJ Affordable Homes Corp.*, 2006 WL 2128624, *8 (Bankr. D. N.J. June 29, 2006) (citing *In re Taylor*, 198 B.R. 142, 162 (Bankr. D. S.C. 1996) and *In re Milford Group, Inc.*, 150 B.R. 904, 906-07 (Bankr. M.D. Pa. 1992)).

24. The Debtors, however, have failed to present any evidentiary material, alleged facts, or any other basis to undermine the validity and viability of Huntington's claims and liens associated with the Remaining Trailers.

25. Because there has been no objection or other dispute raised with respect to Huntington's claims and liens, there can be no *bona fide* dispute that would justify a sale of the Remaining Trailers free and clear of those claims and liens.

26. The Debtors have not alleged that any other provision of 363(f) justifies the relief they are seeking. There is no law that would permit a sale free and clear of Huntington's liens without Huntington's consent and Huntington does not consent.

27. Similarly, Huntington cannot be compelled to accept money in satisfaction of its liens and, in any event, no money is being offered to it and the Debtors have not argued this

point. The Motion to Sell does not reveal the price at which the Remaining Trailers are being sold, nor does it provide that Huntington will either receive those proceeds or a lien against those proceeds. Instead, the Debtors assert that the proceeds will be distributed according to a proposed Sale Order that they have not yet filed with the Court.

CONCLUSION

To the extent that any of the Remaining Trailers are to be sold to the Purchaser, Huntington requests that this Court deny the relief sought in the Motion to Sell. Huntington also reserves the right to supplement this Objection if and when the Debtors file a proposed Sale Order.

Dated: May 14, 2020

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
/s/ Curtis S. Miller
Curtis S. Miller, Esq. (No. 4227)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
cmiller@mnat.com

-and-

RIEMER & BRAUNSTEIN LLP
Jeffrey D. Ganz, Esq.
100 Cambridge Street, 22nd Floor
Boston, Massachusetts 02114
(617) 880-3568
jganz@riemerlaw.com

Counsel to The Huntington National Bank