

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case
No. 10-bk-02800-PMG)

**ORDER PURSUANT TO SECTIONS 105, 363 AND 503 OF THE BANKRUPTCY CODE
(A) APPROVING THE ASSET PURCHASE AGREEMENT, AND (B) APPROVING THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S NON-PERFORMING ASSETS,
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

This matter is before the Court on the motion of Michael Phelan, the chapter 11 trustee (the "Chapter 11 Trustee") of the consolidated chapter 11 cases of Lydia Cladek, Inc. (the "Debtor") dated July 6, 2010 (the "Motion") for (A) an order (the "Bidding Procedures Order") (i) authorizing the Chapter 11 Trustee to conduct an Auction¹ for the sale of the Debtor's Non-Performing Assets, (ii) establishing Bidding Procedures, including payment of a Break-Up Fee, (iii) scheduling dates for the Auction, Sale Hearing, and Objection Deadline, and (iv) approving the form and manner of notices, and (B) an order (i) approving the Asset Purchase Agreement, and (ii) approving the sale of the Debtor's Non-Performing Assets, free and clear of all liens, claims, encumbrances, and interests; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion on July 27, 2010 and on the sale on August 19, 2010 (collectively, the "Hearings"); and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28

¹ Capitalized terms used but not specifically defined herein shall have the respective meanings ascribed to them in the Motion.

U.S.C. § 157(b)(2); (iii) notice of the Motion and the Hearings was sufficient under the circumstances and no other or further notice need be given; and (iv) the Court having determined that the legal and factual bases set forth in the Motion and at the Hearings establish just cause for the relief granted herein, and the objections, if any, to the relief requested in the Motion and at the Hearings having been overruled or resolved.

Based upon the foregoing, the Court makes the following findings of fact and conclusions of law and enters the following order (the "Sale Order").

The Court hereby enters the following Findings of Fact:

A. The Asset Purchase Agreement was proposed, negotiated and entered into by the Chapter 11 Trustee and the Purchaser² in good faith, from arms'-length bargaining positions and without fraud or collusion. The Purchaser is not an "insider" or "affiliate" of the Debtor, as each such term is defined in the Bankruptcy Code. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Chapter 11 Trustee nor the Purchaser engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or would allow for the application of section 363(n) of the Bankruptcy Code.

B. The Purchaser will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement pursuant to this Sale Order (the "Closing"), at any time after the entry of this Sale Order, unless a stay pending appeal is in effect at the time of the Closing.

² "Purchaser" as used herein, means the Winning Bidder chosen at the Auction.

C. The purchase price to be paid by the Purchaser in accordance with the terms of the Asset Purchase Agreement constitutes full and adequate consideration and reasonably equivalent value for the Non-Performing Assets. Such purchase price to be paid by the Purchaser is the highest and best offer for the purchase of the Non-Performing Assets and is superior to any competing Qualified Bids, if any, for the Non-Performing Assets as determined at the Auction, if any.

D. The Chapter 11 Trustee has provided interested parties (including all parties asserting Liens (as defined below) in the Non-Performing Assets, if any) with proper notice of the Motion, the Sale Hearing and the Auction in accordance with 11 U.S.C. §§ 102(1), 105(a), and 363, Bankruptcy Rules 2002 and 6004, Local Bankruptcy Rule 2002-1 and the order approving the Bidding Procedures Order. Such notice was good and sufficient, appropriate under the circumstances and no other or future notice of the Motion, the Sale Hearing or the Auction shall be required. A reasonable opportunity to object or be heard on the relief requested was afforded to all parties in interest.

E. The Chapter 11 Trustee marketed the Assets and conducted the sales process in compliance with the Bidding Procedures Order, the Bankruptcy Code and all other applicable orders entered in this case. The Chapter 11 Trustee has given all interested parties a reasonable opportunity to make a highest or otherwise best offer for the Non-Performing Assets. In his sound business judgment the Chapter 11 Trustee determined that the purchase price to be paid by the Purchaser was the highest or otherwise best offer for the Non-Performing Assets and has good business reason to sell the Non-Performing Assets prior to filing a plan of reorganization pursuant to 11 U.S.C. § 363(b).

F. The Chapter 11 Trustee (i) has full power and authority to execute and consummate the transaction contemplated by the Asset Purchase Agreement and all related documents and (ii) no consents or approvals, other than those expressly provided for in the Asset Purchase Agreement, are required to consummate the transactions contemplated by the Asset Purchase Agreement.

G. The Chapter 11 Trustee's transfer of the Non-Performing Assets to the Purchaser pursuant to the Asset Purchase Agreement and any related transfer documents, will be sufficient to constitute a legal valid and effective transfer of the Non-Performing Assets. The Chapter 11 Trustee's transfer of the Non-Performing Assets to the Purchaser vests the Purchaser with good and valid title in and to the Non-Performing Assts free and clear of any and all Liens, if any.

H. The Chapter 11 Trustee may sell and transfer the Non-Performing Assets in accordance with the terms and conditions of the Asset Purchase Agreement free and clear of all Liens because any entity with any Liens in the Non-Performing Assets (i) has consented to the sale or is deemed to have consented to the sale, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Liens or (iii) otherwise falls within the provisions of 11 U.S.C. § 363(f) and therefore, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied. Holders of Liens, if any, who did not object, or who withdrew their objections to the Motion are deemed to have consented to the sale pursuant to 11 U.S.C. § 363(f)(2).

I. The Court's approval of the Assets Purchase Agreement and the sale is in the best interest of the Debtor's estate.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:**

{JA545265;2}

1. The Motion is hereby GRANTED in its entirety.
2. All objections to the entry of this order or to the relief requested in the Motion, if any, that have not been withdrawn, waived or settled at or before the Sale Hearing are denied and overruled on the merits.
3. The sale of the Non-Performing Assets pursuant to the Asset Purchase Agreement and each of its terms and conditions are hereby approved in their entirety pursuant to section 363(b) of the Bankruptcy Code, and the Chapter 11 Trustee and Purchaser are hereby authorized and directed to take all actions necessary to consummate the Asset Purchase Agreement on the terms set forth therein.
4. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Non-Performing Assets and all of the Debtor's right, title and interest therein shall be transferred to the Purchaser at Closing, free and clear of all liens, claims, encumbrances and interests (collectively, the "Liens") whether arising prior to or subsequent to the commencement of the Debtor's chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise, with all such Liens, if any (including the disputed Liens asserted by Bernard Reller pursuant to his objection to the sale of the Non-Performing Assets [Doc. No. 213]), to attach to the sale proceeds in the order of their priority, and with the same validity, force and effect which they now have against the Non-Performing Assets.
5. All persons and entities holding Liens of any kind and nature with respect to the Non-Performing Assets are hereby barred from asserting such Liens against the Purchaser, its successors and assigns, or the Non-Performing Assets.
6. On and after the Closing, each of the Debtor's creditors asserting a Lien is authorized and directed to execute such documents and take all other actions as may be

necessary to release its Lien on or against the Non-Performing Assets being transferred pursuant to the Asset Purchase Agreement, as such Lien may have been recorded or otherwise exist; *provided, however*, that the failure of any such creditors to comply with the provisions of this paragraph 6 shall in no way limit the release, discharge and termination of any such Lien against the Non-Performing Assets purchased as otherwise provided in this Sale Order.

7. As to the Asset Purchase Agreement and the Non-Performing Assets transferred thereby, this Sale Order (a) is and shall be effective as a determination that, on the Closing, all Liens existing as to the Non-Performing Assets prior to Closing have been unconditionally released, discharged and terminated, and (b) is and shall be binding upon and govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Non-Performing Assets.

8. Each and every federal, state, and local government agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement, including but not limited to, a copy of this Sale Order.

9. The Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the relief granted hereunder, including the release of all Liens on or against the Non-Performing Assets.

10. This Court retains jurisdiction to (i) implement and enforce the terms and provisions of this Sale Order and the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements, if any, executed in connection therewith, including, without limitation, any disputes relating thereto, and (ii) to determine any disputes relating to or concerning the receipt, use, application or retention of the proceeds from the Asset Sale.

11. Nothing contained in any plan of reorganization or liquidation confirmed in this case or the order confirming such plan shall conflict with or derogate from the provisions of the Asset Purchase Agreement or this Sale Order.

12. The Purchaser is a purchaser in good faith of the Non-Performing Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code and for that reason, any reversal or modification of this order on appeal will not effect the validity of the sale to the Purchaser, unless such authorization is duly stayed pending such appeal.

13. The transfer of the Non-Performing Assets will not result in the Purchaser having any liability for any Lien except for those expressly assumed in the Purchase Agreement and will not subject the Purchaser to any liability for Liens against the Debtor or the Non-Performing Assets.

14. The terms and provisions of the Asset Purchase Agreement, together with any terms and provisions of this Sale Order, shall be binding in all respects upon, and shall inure to the benefit of, the Chapter 11 Trustee, the Debtor, its estate and creditors, the Purchaser, and its successors and assigns, and any affected third-parties, including but not limited to, all non-debtor parties asserting Liens or other claims against or interests in the Debtor's estate or any of the Non-Performing Assets to be sold to the Purchaser pursuant to the Asset Purchase Agreement.

15. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with their terms without further order of this Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

16. The failure to specifically include any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety. To the extent of any inconsistency between this Order and the Asset Purchase Agreement, the Asset Purchase Agreement shall control.

17. The Purchaser provided reasonably equivalent value and fair consideration for the Non-Performing Assets under the Bankruptcy Code and under the laws of the United States and any of the United States or any of its territories or possessions. For that reason, the transfer may not be avoided under 11 U.S.C. § 363(n). The Purchaser shall inure to all of the Debtor's rights under the Non-Performing Assets and shall (i) have all of the benefits afforded to a "holder in due course" as defined in Article 3 of the uniform commercial code as enacted by each of the states of the United States (the "Uniform Commercial Code"), (ii) be deemed to have taken the Non-Performing Assets for value for purposes of the Uniform Commercial Code and (iii) have all of the rights of a holder under the Uniform Commercial Code.

18. This Court retains exclusive jurisdiction to (a) enforce and implement the Asset Purchase Agreement and any and all instruments or agreements executed in connection therewith, (b) resolve any disputes, claims or controversies arising out of or relating to the Asset Purchase Agreement and (c) interpret, implement and enforce the provisions of this Order.

19. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). The provisions of Bankruptcy Rule 6004(h) staying the effectiveness of this Sale Order are hereby waived, and this Sale Order shall be effective immediately upon entry hereof.

DATED: This 19th day of August, 2010, in Jacksonville, Florida.



Paul M. Glenn
Chief United States Bankruptcy Judge