

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

IN RE:

LYDIA CLADEK, INC.,

CASE NO.: 3:10-bk-02805-PMG  
(Consolidated by Prior Court Order  
With Case No. 3:10-02800-PMG)

Debtor.

Chapter 11

**BERNARD RELLER, INDIVIDUALLY AND AS ASSIGNEE,**  
**(1) OBJECTION TO SALE OF CERTAIN PERFORMING AND NONPERFORMING**  
**ASSETS;**  
**(2) NOTICE OF RIGHT/INTENT TO CREDIT BID, and**  
**(3) REQUEST TO PROHIBIT OR CONDITION THE SALE OF COLLATERAL ON**  
**ADEQUATE PROTECTION**

COMES NOW, BERNARD RELLER, Individually and as Assignee (“RELLER”), and files his (1) Objection to Sale of Certain Performing and Non-Performing Assets; (2) Notice of Right/Intent to Credit Bid; and (3) Request to prohibit or condition the sale of collateral on adequate protection, and alleges:

1. This Court is well familiar with the procedural history of this Case, which is set forth in the Trustee’s Motion for approval of the auction sale of assets, and for other relief (Docket #152). RELLER files this Objection/Notice/Request pursuant to this Court’s Orders approving sales of performing and non-performing assets entered on July 27, 2010 (Docket #s 192 & 193).

2. On or about July 2, 2010, the Chapter 11 Trustee filed Notices and Motions seeking approval of his auction sale of certain assets (Dockets 152 & 158). For convenience, RELLER will adopt the Trustee’s description of these assets as the “performing” and non-performing” assets.

3. The performing and non-performing assets consist of automobile loans due to the Debtor, and then given to various lenders or “investors” as collateral security for their claims.

4. RELLER owns and holds a perfected security interest in approximately 88 of the performing and non-performing assets that the Trustee seeks to sell. RELLER’S claim to these assets is based upon certain loan documents and UCC-1 financing statements, copies of which are attached to RELLER’S Proof of Claim filed with this Court. A copy of RELLER’S Proof of Claim (Claim 904-1) is being provided to counsel for the Trustee and will be provided to any party in interest requesting one from RELLER’S undersigned counsel.

5. In addition, RELLER has agreed to accept and is in the process of documenting an assignment of a claim filed by Anita Spring (“Assignor”), which is secured by approximately 24 of the assets that the Trustee seeks to sell at auction. The claim of the Assignor is also secured by a perfected security interest in the assets, as is show by copies of documents, including UCC-1 financing statements, attached to the Proof of Claim filed by Assignor, Anita Spring (Claim 237-1 and 237-2). Copies of Assignor’s Proofs of Claim are being provided to counsel for the Trustee, the Committee, the Office of the United States Trustee, along with the instant pleading, and will be provided to any party in interest requesting one from RELLER’S undersigned counsel.

6. For purposes of this Objection, both the claim that RELLER held at the commencement of this Case, and the claim(s) of Anita Spring that have been or are being assigned to RELLER and for which RELLER is in the process of documenting this assignment, shall collectively be referred to as “RELLER’S claims” The contracts subject to RELLER’S perfected security interest shall be called the “collateral.”

7. The Trustee has received authority, subject to further objection by the Committee, to auction the performing and non-performing assets. The Court has reserved time to object to the Trustee's sale of the assets through and including five days prior to the auction sale, currently scheduled for August 19, 2010.

8. RELLER has not consented, and in fact objects, to the Trustee's sale of his collateral. The current bid for the collateral is virtually impossible to ascertain because the bidder is paying the Trustee for the collateral on a sliding scale, depending upon how current, or not, the payments are to the Debtor on each individual contract. If a contract is more than 60 days past due, then the bidder is apparently only going to pay the Trustee a very small percentage of the original face amount of the loan.

9. Under 11 U.S.C. §363(b)(2), the Trustee may only use, sell or lease cash collateral if the secured party consents, or unless the Court, after notice and a hearing, authorizes the sale "in accordance with" the provisions of Section 363 of the Code. Section 363 of the Code requires that if a trustee sells collateral free and clear of liens and encumbrances, then the liens must attach to the proceeds of the sale.

10. Under 11 U.S.C. §363(f), the Trustee may only sell property under Subsections (b) or (c) if the party with an interest in the assets, here RELLER, consents and "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. Further, RELLER submits that the proposed sale prices for the performing and non-performing assets are less than the value of those assets.

11. RELLER has not agreed to the Trustee's sale of his collateral. The Trustee cannot prove that the proposed sale will be for more than is owed to RELLER. In fact, it is a

given that the sale price currently being considered by the Trustee is far, far below that which is due and payable on RELLER'S claims.

12. Under 11 U.S.C. §363(k) grants a creditor with a lien on assets to be sold the right to "credit bid" the amount of his/her debt at the sale, unless the Court orders otherwise. RELLER has the right to credit bid at any sale of the 122 contracts subject to his perfected security interest. RELLER hereby notifies the Court, creditors, the prospective purchasers and parties in interest that he does not waive this right to credit bid on his assets at any sale authorized by this Court.

13. RELLER intends to file a separate request with this Court for the Trustee to abandon any interest in his collateral. RELLER submits that the value of his collateral, while far below his debt, significantly exceeds the price currently bid for the collateral.

14. As to the proposed sale itself, RELLER objects on the basis that the breakup fee (\$50,000) is unreasonably large, and appears more related to discouraging competing bids than related to any actual out of pocket expenses put forth by the Bidder. Further, RELLER objects to that portion of the sale process that requires competing bidders to put up, in cash, the downpayment of \$25,000 *plus* the breakup fee of \$50,000, for a total of \$75,000, while the initial bidder only had to put up a purchase-money deposit of \$25,000.00. Further, the way the sale is structured makes it virtually impossible to determine how much a successful bidder must pay for the assets being sold; especially if some of the assets, ie: those under lien to RELLER, are being sold separately.

15. RELLER has previously identified certain of the collateral to the attorney for the Trustee, but this Objection relates to all of the collateral pledged to the Claims, as set forth on the

lists attached to the security agreement(s) and UCC-1's executed, delivered and filed in connection with the Claims, whether performing or non-performing assets.

16. The Trustee proposes to sell the non-performing assets for what appears to be about \$0.01 per \$1.00 of face amount of each note. RELLER submits that if the non-performing assets subject to his lien are released to him he can collect significantly more than this on such assets.

17. RELLER respectfully requests that this Court grant him the following relief:

- a. Entry of an order prohibiting the Trustee from selling RELLER'S collateral unless the sale price exceeds the amount of RELLER'S claim; or alternatively,
- b. Adequate protection of RELLER'S secured claim by having RELLER'S lien attach to the proceeds of the sale of the collateral, and by requiring the Trustee to account for and pay to RELLER all sums collected on account of his collateral since the beginning of this case; and
- c. Requiring the Trustee to segregate and sell RELLER'S collateral separately from the other assets being sold, so that RELLER's right to credit bid for his collateral is preserved; and
- d. Granting him such other and further relief as may be just and proper.

WHEREFORE, BERNARD RELLER, Individually and as Assignee, respectfully requests entry of an Order granting him the relief requested herein.

Respectfully submitted: August 9, 2010.

/s/ Karen K. Specie, Esquire  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing document was electronically filed with the U.S. Bankruptcy Court on this 9<sup>th</sup> day of August, 2010, using CM/ECF, and was served this day on the Chapter 11 Trustee's counsel, counsel for the Official Committee of Unsecured Creditors, upon the Assistant United States Trustee, and upon the Amended Official Service list, and all counsel and parties of record entitled to notice via CM/ECF. *Note: For verification of the date of service by the Bankruptcy Noticing Center or CM/ECF, please check the docket entry for the BNC Certificate of Mailing or CM/ECF notice related to this document. Persons served specifically include:*

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