

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

In re:

AFH AIR PROS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

**Related to Docket Nos. 34, 55, 193, 220, 293,
296, 297, 326, 331, and 337**

DEBTORS' REPLY IN SUPPORT OF SALE MOTION

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), submit this reply (the “Reply”) in support of the *Motion of the Debtors for Entry of Orders (I)(A) Establishing Bidding Procedures Relating to the Sale of the Debtors’ Assets, (B) Approving the Debtors’ Entry into the Stalking Horse Purchase Agreements and Related Bid Protections, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving Form and Manner of Notices Relating Thereto, (E) Scheduling a Hearing to Consider the Proposed Sale, and (F) Granting Related Relief and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [D.I. 34, as amended, D.I. 55] (the “Sale Motion”),² and in response to the Sale Objections (as defined below) filed by certain creditors of the Debtors. In support of this Reply, the Debtors respectfully state as follows:

¹ The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.



Preliminary Statement

1. As stated at the onset of these cases, the goal of these Chapter 11 Cases is to consummate a series of sales of the Debtors' assets that will maximize recoveries for the Debtors' estates and allow the Debtors' businesses to continue as going concerns. To that end, the Debtors entered bankruptcy with six (6) Stalking Horse Purchase Agreements for the sale of all their business units.

2. After running a robust postpetition marketing process, in addition to the two prepetition sale efforts the Debtors undertook, the Debtors did not receive any Qualified Bids by the Bid Deadline. Accordingly, pursuant to the Bid Procedures Order (as defined below), the Debtors cancelled the Auction and designated the Stalking Horse Bidders as the Successful Bidders for their respective assets.³

3. Notably, the Stalking Horse Purchase Agreements provide for the continued employment of almost all the Debtors' employees and for the Stalking Horse Bidders to provide uninterrupted services to the Debtors' customers. The Sales have the support of all the Debtors' key stakeholders, including the Prepetition Secured Parties, the DIP Lenders, and the Official Committee of Unsecured Creditors (the "Committee"). The Debtors believe that the Sale processes were of sufficient length and breadth to reach the full universe of parties likely to be interested. The Sales are the only option that will enable the Debtors to preserve the value of their assets, maintain their business operations for the benefit of vendors and service providers, ensure that most employees will be able to keep their jobs, and maximize the recoveries for the Debtors' estates.

³ As discussed herein, the Debtors and the One Source Stalking Horse Bidder are in dispute over each of the parties' performance under the One Source Stalking Horse Purchase Agreement. Accordingly, at this time, whether the Debtors are moving forward with the One Source Stalking Horse Purchase Agreement at the upcoming Sale Hearing is under review.

Relevant Background

4. On March 18, 2025, the Debtors filed the Sale Motion with the Court. As set forth in the Sale Motion, the Debtors entered into six (6) Stalking Horse Purchase Agreements for the sale of substantially all their Assets, each of which was subject to higher or otherwise better offers.

5. On April 14, 2025, the Court entered the *Order (A) Establishing Bidding Procedures Relating to the Sale of the Debtors' Assets, (B) Approving the Debtors' Entry into the Stalking Horse Purchase Agreements and Related Bid Protections, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving Form and Manner of Notices Relating Thereto, (E) Scheduling a Hearing to Consider the Proposed Sale, and (F) Granting Related Relief* [D.I. 193] (the “Bid Procedures Order”), which approved bidding procedures attached thereto, by which the Debtors solicited and selected the highest or otherwise best offer for one or more sales (collectively, the “Sale”) of all or substantially all of their assets (the “Assets”).

6. On April 17, 18 and 30, 2025, the Debtors filed the Notice of Potential Assumption and Assignment [D.I. 201, 220, and 286] (collectively, the “Cure Notice”), setting forth a schedule of executory contracts and unexpired leases that the Debtors may assume and assign in connection with approval of the Sale of Assets to the Stalking Horse Bidders (or other Successful Bidder) and the associated cure costs, if any.

7. Pursuant to the Bidding Procedures Order, the Bid Deadline was May 5, 2025 at 4:00 p.m. (Eastern Time). The Debtors did not receive a Qualified Bid by such deadline (other than those submitted by the Stalking Horse Bidders). Accordingly, on May 6, 2025, the Debtors cancelled the Auction and designated the six (6) Stalking Horse Bidders as the Successful Bidders for assets covered under their respective Stalking Horse Purchase Agreements [D.I. 310-315].

8. On May 12, 2025, the Debtors filed proposed Sale Orders for each of the Stalking Horse Bidders (other than the One Source Stalking Horse Bidder) [D.I. 344-348].

9. On May 16, 2025, the Debtors filed further revised drafts of the proposed Sale Orders for each Stalking Horse Bidder (other than the One Source Stalking Horse Bidder) [D.I. 363-367] that, among other things, addressed the Sale Objections.

10. The hearing to consider the Sale (the “Sale Hearing”) is scheduled to take place on May 19, 2025 at 1:00 p.m. (prevailing Eastern Time).

11. As of the date hereof, the Debtors and the One Source Stalking Horse Bidder are in dispute over each of the parties’ performance under the One Source Stalking Horse Purchase Agreement. Accordingly, at this time, whether the Debtors are moving forward with the One Source Stalking Horse Purchase Agreement at the upcoming Sale Hearing is under review.

Summary of Sale Objections

12. As of the date hereof, five creditors and the Committee filed limited objections to the Sale (collectively, the “Sale Objections”), as summarized below. Each of the Sale Objections has been resolved or is otherwise moot, as set forth in greater detail below.

13. Creditors’ Committee Objection. On May 11, 2025, the Committee filed the *Limited Objection of the Committee of Creditors Holding Unsecured Claims To Sale of Debtors’ Assets* [D.I. 337] (the “UCC Objection”). Pursuant to the UCC Objection, the Committee contends that the proceeds of the various Sale transactions should not be distributed to the Debtors’ Prepetition Secured Parties pending resolution of the Committee’s lien investigation and an acceptable allocation of the sale proceeds.

14. Texas Taxing Authorities Objection. On May 7, 2025, Eagle Mountain-Saginaw ISD, Plano ISD, Richardson ISD, Cypress-Fairbanks ISD, Harris County ESD #9, Lone Star College System, Dallas County, and Tarrant County (collectively, the “Texas Taxing Authorities”)

filed the *Joint Limited Objection of the Texas Taxing Authorities to the Motion of the Debtors for Entry of Order Approving the Sale of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests and Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and Granting Related Relief* [D.I. 326] (the “Texas Taxing Authorities Objection”), opposing the Sale Motion on the grounds that it seeks to sell assets that are encumbered by the liens of the Texas Taxing Authorities, free and clear without the consent of the Texas Taxing Authorities and without providing for payment at any Sale closing.

15. MB Plano Objection. On May 9, 2025, MB Plano Road, LLC (“MB Plano”) filed the *Objection of MB Plano Road, LLC to Debtors' Proposed Cure Amount* [D.I. 331] (the “MB Plano Objection”), opposing the cure amount set forth in the Cure Notice for its nonresidential real property lease with Debtor Dallas Plumbing Air Pros, LLC (the “MB Plano Lease”). Specifically, MB Plano asserts the cure amount is \$17,059.36.

16. ServiceTitan Objection. On May 2, 2025, ServiceTitan, Inc. (“ServiceTitan”) filed the *Objection of Service Titan, Inc. to the Debtors' Notice of Proposed Assumption and Assignment of Certain Executory Contracts* [D.I. 293] (the “ServiceTitan Objection”), contesting the Debtors' purported assumption of its software contract (the “ServiceTitan Contract”) and the \$0 cure amount, as listed on the Cure Notice. Among other things, ServiceTitan objects to having the ServiceTitan Contract assumed and assigned to the six (6) independent buyers.

17. Zerimar Objection. Zerimar 1500, LLC (“Zerimar”) filed the *Objection to Motion for Sale of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests and Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (Doc 34) and Notice of Proposed Assumption and Assignment of Certain Executory Contracts (Doc 220) by Zerimar 1500, LLC* [D.I. 296] (the “Zerimar Initial Objection”), as supplemented by its *Objection to Proposed Sale Order (ECM Stalking Horse Purchase*

Agreement) (*Doc 348*) by *Zerimar 1500, LLC* [D.I. 355] (the “Zerimar Supplemental Objection” and together with the *Zerimar Initial Objection*, the “Zerimar Objection”), *Zerimar* is the landlord pursuant to a nonresidential real property lease with *East Coast Mechanical, LLC*, dated on or about December 1, 2022 (the “Zerimar Lease”). *Zerimar* argues that the Debtors cannot assume and assign the *Zerimar Lease* because it expired before the Petition Date and is on a month-to-month basis only.

18. RGP Objection. On May 5, 2025, *Resources Connection LLC d/b/a RGP* (“RGP”) filed the *Objection of Resources Connection LLC to the Debtors’ Notice of Proposed Assumption and Assignment of Executory Contracts* [D.I. 297] (the “RGP Objection”), challenging the Debtors’ purported assumption of *RGP*’s engagement letter with one of the Debtors, *Air Pros, LLC* (“Air Pros”), dated August 2, 2024 (the “RGP Contract”). The *RGP Objection* is based on the purported failure by the Debtors to make certain payments to *RGP*, and contends that the cure amount listed in the Cure Notice was incorrect.⁴

Debtors’ Reply

A. The Debtors Have Demonstrated a Sound Business Justification for the Sales.

19. Under section 363(b) of the Bankruptcy Code, a sale of assets outside of the ordinary course of business should be approved if a debtor can demonstrate “some articulated business justification.” *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession . . . to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”).

⁴ *RGP* also raised an issue with its ability to use a \$32,000 retainer that it has on hand for application to amounts due to it, both on account of its prepetition claim and a purported administrative expense claim. As discussed herein, the *RGP Objection* is moot as the *RGP Contract* is not being assumed and assigned to any of the *Stalking Horse Bidders*. Accordingly, the portion of the *RGP Objection* concerning the retainer is likewise rendered moot, as it no longer presents a contract cure issue in light of the Debtors’ decision not to assume the *RGP Contract*.

20. Once a debtor articulates a valid business justification, “the business judgment rule . . . is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (internal quotation marks omitted); *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[A] presumption of reasonableness attaches to a debtor’s management decisions.”).

21. As described in greater detail in the Sale Motion, and as supported by the declarations of Andrew D.J. Hede and Jeffrey Finger filed contemporaneously herewith, the Debtors have a clear and sound business justification for the Sales. Facing a liquidity shortfall, the Debtors determined that an efficient sale of substantially all Assets—whether to the Stalking Horse Bidders or another Successful Bidder—offered the best, and likely only, opportunity to maximize value and preserve going-concern operations for stakeholders.

22. The Stalking Horse Purchase Agreements, which established a floor for bidding on certain Assets, resulted from good-faith, arm’s-length negotiations between the Debtors and the Stalking Horse Bidders. These Stalking Horse Purchase Agreements were subject to higher or better offers, which enhanced the Debtors’ ability to obtain maximum value for the Assets. Entering into the Stalking Horse Purchase Agreements, and proceeding to the Sales with the Stalking Horse Bidders, reflects sound business judgment and serves the best interests of the Debtors, their estates, creditors, and other stakeholders.

23. Following the comprehensive marketing and Sale process, the Sales remain the Debtors’ only viable option to preserve operations, protect jobs, and maintain business continuity. The Debtors believe the transactions will reduce liabilities, maximize estate value, and position the businesses for long-term growth under new ownership.

B. All Sale Objections Have Been Resolved or Are Otherwise Moot

i. Resolution with the Committee Regarding the UCC Objection

24. The Debtors and the Committee have reached a deal in principle that resolves the UCC Objection, and that is supported by the DIP Secured Parties and the Prepetition Secured Parties. The Debtors anticipate that the Committee will withdraw its objection at or prior to the Sale Hearing.

ii. Resolution with the Texas Taxing Authorities

25. The Debtors, the Dallas Plumbing Stalking Horse Bidder, and the Texas Taxing Authorities have agreed to resolve the Texas Taxing Authorities Objection by including the following paragraph in the Dallas Plumbing Sale Order that addresses the Texas Taxing Authorities' liens and claims:

Notwithstanding anything to the contrary in this Sale Order or the Stalking Horse Purchase Agreement, any liens securing the ad valorem tax claims (the "Tax Claims") of the Texas Taxing Authorities owed by Seller for year 2024 and prior pertaining to the Acquired Assets shall attach to the cash proceeds from the Sale to the same extent and with the same priority as the liens they now hold against the property of the Debtors. For the avoidance of doubt, the 2025 Tax Claims of the Texas Taxing Authorities relating to the Seller are Permitted Liens as defined in the Stalking Horse Purchase Agreement. The Buyer assumes full responsibility for the post-Closing 2025 ad valorem taxes and shall be responsible for paying such ad valorem taxes in full, in the ordinary course of business, when due, subject to any claims and defenses of the Buyer with respect thereto. If not timely paid, subject to any claims and defenses of the Buyer, the Texas Taxing Authorities may proceed with non-bankruptcy collections against the Buyer, without leave or approval of the Court. Any dispute regarding the proration of the ad valorem taxes between the Seller and Buyer shall have no effect on Buyer's responsibility to pay the post-Closing 2025 ad valorem taxes. Subject to any claims and defenses of the Buyer, the Texas Taxing Authorities shall retain their respective liens, if any, against the Acquired Assets, as applicable, until paid in full, including any applicable penalties or interest. All parties' rights to object to the priority, validity, amount and extent of the Tax Claims of the Texas Taxing Authorities, and the asserted liens in connection therewith are fully preserved.

iii. Resolution with MB Plano

26. The Debtors and the Dallas Plumbing Stalking Horse Bidder have agreed to MB Plano's asserted cure amount for the MB Plano Lease. Accordingly, Exhibit B to the Dallas Plumbing Sale Order provides for a cure amount of \$17,059.36 for such lease.

iv. Remaining Sale Objections Are Moot as Debtors Are Not Assuming and Assigning the Underlying Executory Contract or Unexpired Lease

27. The ServiceTitan Objection, the Zerimar Objection, and the RGP Objection are each moot because the Debtors are not seeking to assume or assign the underlying executory contract and lease in connection with the Sales.

28. The Cure Notice explicitly sets forth the possibility of the Debtors' assumption and assignment of certain contracts upon approval of the Sales. Indeed, the Cure Notice provides that, "the Debtors *may* assume and assign to the Stalking Horse Bidder(s) or any other Successful Bidder(s) the Assumed Contracts." (s)." *See, e.g.*, Cure Notice [D.I. 201], at ¶ 5 (emphases added). (emphasis added). The Cure Notice also states in plain language that "[t]he *mere listing* of an Assumed Contract on [Schedule A to the Cure Notice] *does not* require or guarantee that such Assumed Contract will be assumed or assumed and assigned by the Debtors at any time Only those Assumed Contracts that are included on a schedule of assumed and acquired contracts attached to the *final* asset purchase agreement with the Successful Bidder(s) . . . will be assumed and assigned to the Successful Bidder(s)." *See, e.g., id.* at ¶ 7 (emphases added).

29. Accordingly, because the Debtors do not intend to assume and assign the ServiceTitan Contract, the Zerimar Lease, or the RGP Contract, each of these parties' objections to the Sales is moot and should be withdrawn and/or should not be considered by the Court at the Sale Hearing.

Conclusion

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court overrule the Sale Objections, enter the Sale Orders for the Sales of the Debtors' Assets, and enter such other and further relief as is just and proper.

Dated: May 16, 2025

Respectfully submitted,

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