

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re

LEO STOLLER,

Debtor.

Chapter 7

Case No. 05-64075

Hon. Jack B. Schmetterer

Hearing Date: May 18, 2007

Hearing Time: 11:00 a.m.

NOTICE OF MOTION

TO: (See Attached Service List)

PLEASE TAKE NOTICE that on **Friday, May 18, 2007 at 11:00 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Jack B. Schmetterer**, U.S. Bankruptcy Court Judge, in Room 682, the courtroom usually occupied by him as a Courtroom in the U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, or in his absence, before such other Judge who may be sitting in his place and stead and hearing motions, and shall then and there present the **Motion of Trustee for Authority to Sell Personal Property at Public Auction Sale and for Related Relief**, a copy of which is attached and herewith served upon you, and shall pray for the entry of an order in conformity with the prayer of said pleading.

AT WHICH TIME AND PLACE you may appear if you so see fit.

Dated: May 4, 2007

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**MOTION OF TRUSTEE FOR AUTHORITY TO SELL PERSONAL
PROPERTY AT PUBLIC AUCTION SALE AND FOR RELATED RELIEF**

Richard M. Fogel, not individually, but as chapter 7 trustee (the “Trustee”) for the estate of Leo Stoller (the “Debtor”), moves for the entry of an order authorizing the Trustee to sell certain personal property of the Debtor’s estate at a public auction and granting related relief, pursuant to 11 U.S.C. § 363(b) and Federal Rules of Bankruptcy Procedure 2002 and 6004. In support of this motion, the Trustee states as follows:

I. JURISDICTIONAL ALLEGATIONS

1. On December 20, 2005 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under chapter 13 of the Bankruptcy Code. The Debtor’s case was converted to a case under chapter 7 on September 1, 2006. The Trustee was duly appointed on September 6, 2006 to administer the Debtor’s estate.

2. The Court has core subject matter jurisdiction to hear and determine this motion pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(A), (B), (D), (K), (M), 1334(b), 1334(e) and Internal Operating Procedure No. 15. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

3. On the Petition Date, the Debtor owned or claimed an interest in certain intellectual property, including trademarks and service marks (the “Marks”) and licenses for certain Marks (the “Licenses”). Prior to the Petition Date, the Debtor had asserted certain claims in connection with the Marks and/or the Licenses through trademark oppositions, lawsuits and cancellation actions for alleged damages and/or infringement (the “Claims”).

4. On the Petition Date, the Debtor owned all of the stock (the “Stock”) of the following incorporated entities: Central Mfg. Inc. (“Central”), Stealth Industries Inc. (“Stealth”), Sentra Industries Inc. (“Sentra”), S Industries Inc. (“S”) and USA Sports Co. Inc. (“USA” and, collectively with Central, Stealth, Sentra and S, the “Corporations”). The Corporations own or claim an interest in certain intellectual property in addition to the Marks and the Licenses and have asserted certain claims for alleged damages and/or infringements in addition to the Claims.

5. The Trustee asserts that, pursuant to the provisions of section 541(a) of the Bankruptcy Code, the Marks, the Licenses, the Claims and the Stock (collectively, the “Assets”) are property of the Debtor’s estate and that they are subject to the exclusive jurisdiction of the Court pursuant to 28 U.S.C. § 1334(e).

6. The Trustee is unaware of any liens, claims or encumbrances against Assets other than the adverse position of the parties subject to the Claims.¹

III. THE PROPOSED SALE

7. Upon his appointment, the Trustee reviewed the docket in the Debtor’s case and various pleadings and documents in an effort to become familiar with the Debtor’s financial affairs. Through this review, the Trustee determined that the Debtor and the Corporations were

¹ The Debtor has claimed a persona property exemption in the Marks in the amount of \$1,300. The Trustee intends to pay the Debtor for his exemption upon the closing of the sale.

extremely litigious parties and that they frequently pursued frivolous claims². Thereafter, he contacted Richard Golding (“Golding”), one of the Debtor’s attorneys at the time, to discuss the case and requested the production of the Debtor’s books and records. Golding advised the Trustee that the Debtor advised him that he had removed the contents of his business office and placed them in a storage facility in River Grove. The Trustee inspected the storage locker and found that it did not contain any books and records.

8. At the first meeting of creditors, the Debtor refused to answer questions about his financial affairs and refused to produce books and records regarding his financial affairs or the Corporations, claiming a right under the Fifth Amendment of the United States Constitution not to do so. The Debtor continues to assert the alleged right not to answer any questions or produce any books and records relating to the Assets.

9. The Trustee has contacted two brokers of intellectual property in an effort to determine the fair market value of the Debtor’s assets and was advised by both parties that there is no market for the Marks or Licenses.

10. In February, 2007, the Trustee received an offer from the Society for the Prevention of Trademark Abuse, LLC (the “SPTA”)³ in the sum of \$10,000.00 for the Marks,

² In at least 12 actions filed by the Debtor in the United States District Court for the Northern District of Illinois prior to the Petition Date, the Debtor’s claims for damages or infringement have been dismissed and the Debtor has been found to be a vexatious litigant. *See e.g. Central Mfg. Co. et al. v. Brett*, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005); *S. Indus. Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796 (N.D. Ill. 1998); *S. Indus. Inc. v. Hobbico, Inc.*, 940 F. Supp. 210, 211 (N.D. Ill. 1996); *See e.g. central Mfg. Co. et al. v. Brett*, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005); *Indus., Inc. v. Ecolab Inc.*, 1999 WL 162785 (N.D. Ill. Mar. 16, 1999); *S. Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796-798-99, 819-20 (N.D. Ill.1998); *S. Indus., Inc. v. Centra 2000, Inc.*, 1998 WL 157067 (N.D. Ill. Mar.31, 1998), *aff’d* by 249 F. 3d 625, 627-29 (7th Cir. 2001); *S. Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 991 F. Supp. 1012 (N.D. Ill.1998); *S. Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp.2d 775 (N.D. Ill. 1998); *S. Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 1998 WL 641347 (N.D. Ill. Sept. 10, 1998); *S. Indus., Inc. v. Kimberly-Clark Corp.*, 1996 WL 388427 (N.D. Ill. July 9, 1996); *S. Indus., Inc. v. Hobbico, Inc.*, 210, 212 (N.D. Ill.1996)

³ The SPTA is a limited liability company (“LLC”) that was formed to acquire, distribute, resell and/or surrender the Marks, Licenses, Claims and Stock. Investors to the LLC include creditors of the Debtor, counsel for creditors of the Debtor and parties that have no connection to the Debtor, his creditors or other parties in interest.

Licenses, Claims and the marks, licenses, claims owned by the Corporations (the “First Offer”). The First Offer was conditioned on the entry of an order by the Court substantively consolidating the non-debtor Corporations with the Debtor’s estate.

11. Pure Fishing, Inc., the Debtor’s largest creditor, filed a motion seeking the entry of a substantive consolidation order. The motion is pending and set for status on May 18, 2007.⁴

12. The Trustee has received a revised offer from the SPTA in the sum of \$7,500.00 for the Assets (the “Revised Offer”), with the offer allocated as follows (the “Individual Allocations”):

A. Marks, Licenses and Claims:	\$5,000.00
B. Central Stock:	\$500.00
C. Stealth Stock:	\$500.00
D. Sentra Stock	\$500.00
E. S Stock:	\$500.00
F. USA Stock:	\$500.00

13. The terms of the Revised Offer have been incorporated in an Asset Purchase Agreement that is attached to this motion as Exhibit 1 (the “APA”). The Marks are set forth on APA Exhibit A. The Licenses are set forth on APA Exhibit B. The Claims are set forth on APA Exhibit C. The SPTA also seeks to purchase any other trademarks, service marks, trademark or service mark licenses and any other claims associated with such marks or licenses that the parties have not been able to identify.

14. The Trustee, who makes no representations or warranties of any kind with respect to the Assets, is of the opinion that the terms of the Revised Offer are fair and reasonable under

⁴ The Court has advised Pure Fishing that the requested relief must be sought by an adversary complaint.

the circumstances of this case.⁵ The Trustee believes that it would be in the best interests of the Debtor's estate to schedule a public auction sale in open court to solicit higher offers for the Marks, Licenses, Claims and Stock.

15. At such sale, the Trustee is prepared to offer the Assets for sale in bulk and for sale in separate lots subject the procedures described more fully below.

IV. BASIS FOR REQUESTED RELIEF

16. Pursuant to the provisions of Section 363(b)(1) of the Bankruptcy Code, a trustee, after notice and a hearing may use, sell or lease, other than in the ordinary course of business, property of the estate.

17. The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when a "sound business purpose" justifies such action. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir.1991) (sale under § 363 involves exercise of fiduciary duty and requires an "articulated business justification"); *In re Del. & Hudson Ry.*, 124 B.R. 169, 176 (D. Del. 1991) and *Stephen Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986).

18. Pursuant to the provisions of section 704(a)(1) of the Bankruptcy Code, the trustee shall collect and reduce to money the property of the estate for which the trustee serves. The alternative to liquidation of property of the estate is abandonment, pursuant to the provisions of section 554 of the Bankruptcy Code. The Trustee submits that the estate's receipt of \$7,500.00, or such higher amount as may be realized at an auction sale, rather than abandonment of those assets to the Debtor is a sound business purpose and an articulated business justification to grant the relief sought herein.

⁵ Although the Debtor stated in his Schedule B that he was the 100% owner of the Stock on the Petition Date, he has not surrendered to the Trustee any books, documents, records or papers relating to the Stock, as required by section 521(a)(4) of the Bankruptcy Code. Accordingly, the Trustee represents and warrants to the SPTA that if it established after the sale of assets that the Debtor has transferred the Stock to a third-party, he will commence an adversary complaint against such transferee(s) to recovery such Stock.

V. THE TRUSTEE'S REQUEST FOR APPROVAL OF BIDDING PROCEDURES

19. As set forth in the APA, the Trustee's agreement to sell the Assets to SPTA is explicitly subject to the right of third parties to bid up the same. To that end, the Trustee seeks this Court's approval of bidding procedures (the "Bidding Procedures") should any third party desire to submit a bid on higher and better terms than SPTA. The specific terms that the Trustee seeks approval of are as follows:

(a) Any competitive bidding for the Assets shall be conducted at an auction (the "Auction") in open Court on May 31, 2007.

(b) To participate in the Auction, an interested party (a "Potential Bidder") must, 24 hours prior to the Sale Hearing, deliver to the Trustee: (i) such information as may be requested to establish such Potential Bidder's ability to close the sale of the Assets in a timely manner, including a demonstration of financial wherewithal to close such sale; (ii) a wire transfer or certified funds to the Trustee equal to \$2,500.00; and (iii) an executed asset purchase agreement in substantially the same form as the APA.

(c) Any Potential Bidder meeting all of the above requirements that wishes to participate in the Auction must acknowledge in writing that it is familiar with, understands and accepts the procedures specified herein. Any person qualifying under all of the above standards shall be entitled to bid to purchase the Assets and will be hereinafter referred to as a "Qualified Bidder." Any bid made by a Qualified Bidder shall be referred to as a "Qualified Bid."

(d) Provided that there is one or more Qualified Bidders, the Trustee will offer the Assets for sale at the Auction in bulk. At the conclusion of the Auction, the Trustee may seek a recess to engage in an analysis (the "Bid Analysis") to determine which Qualified Bid is, in its best judgment, the highest or otherwise best offer(s) (the "Winning Bid"). A person making a Winning Bid shall hereinafter be referred to as a "Winning Bidder". At the conclusion of the Bid Analysis, the Trustee shall ask the Bankruptcy Court to enter an order, substantially in the form of the proposed order appended to this Motion as Exhibit 2 (the "Sale Order"), authorizing the Trustee to consummate the sale(s) at the Winning Bid with the Winning Bidder and to execute such additional documentation as is reasonably necessary to close such sale.

(e) Any bid submitted by a Qualified Bidder with respect to the Assets must be at least Seventy Six Hundred Dollars (\$7,600.00) with all subsequent bids in increments of One Hundred Dollars (\$100.00).

(f) Any bid submitted by a Qualified Bidder with respect to any individual Asset must be at least One Hundred Dollars (\$100.00) higher than the Individual

Allocation for such Asset as provided in paragraph 12 above with all subsequent bids in increments of One Hundred Dollars (\$100.00).

(g) The offers of all Qualified Bidders shall be irrevocable until the earlier of (i) the closing of the sale of the Assets, or (ii) the withdrawal of the Assets for sale by the Trustee.

(h) In the event that a Winning Bidder defaults in the performance of its obligation to purchase the Assets pursuant to a Winning Bid, that person's Earnest Money Deposit shall be forfeited. Notwithstanding the foregoing, such a forfeiture shall not be in full satisfaction of any damages caused to any person by the Winning Bidder's default as described herein. Any person making an Earnest Money Deposit who does not become the Purchaser (viz., the Winning Bidder as specified in the Sale Order as entered by the Bankruptcy Court) shall have its Earnest Money Deposit returned to it by the Debtor within two (2) business days after the conclusion of the Sale Hearing at which the Winning Bid(s) are confirmed.

(i) In the event that a Winning Bidder defaults in the performance of its obligations to purchase the Assets pursuant to a Winning Bid, then the next highest bidder for the Assets shall be required to proceed as the Winning Bidder. Consequently, that person's bid (the "Back-Up Bid") will be treated as the Winning Bid without further notice and hearing and entry of any additional order by the Bankruptcy Court.

(j) The Winning Bidder shall be solely responsible for any sales, transfer or other taxes, if any, applicable to its acquisition of the Assets.

(k) The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Trustee or his respective agents. By submitting a bid, each Qualified Bidder shall be deemed to have acknowledged and represented that (i) it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence regarding the Assets prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, Assets in making its bid; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets by any person whatsoever, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these bidding procedures or, as to the Winning Bidder, the applicable purchase agreement.

(l) Notwithstanding anything to the contrary in the Sale Motion or the APA, a Winning Bid shall have been accepted by the Trustee only upon entry of the Sale Order and the Trustee will not be obligated to take any action related to the sale of the Assets unless and until the Bankruptcy Court enters the Sale Order, which must be in form and substance reasonably satisfactory to the Trustee. The Trustee's presentation to the Bankruptcy Court for approval of a Winning Bid does not constitute the Trustee's acceptance thereof.

20. The Trustee submits that the Bidding Procedures, to the extent required by the circumstances, are necessary and appropriate to facilitate the sale of the Debtor's Assets. "The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate. To accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in conducting the sale." *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); *see also Wintz v. American Freightways, Inc. (In re Wintz Cos.)*, 230 B.R. 840, 844 (8th Cir. BAP 1999); *In re Gould*, 977 F.2d 1038, 1042 (7th Cir. 1992). The Debtor believes that the Bidding Procedures will effectuate these goals and that the foregoing procedures represent the best opportunity to maximize value for the Debtor's estate and creditors.

V. NOTICE

21. The Trustee served a copy of this motion on the Office of the U.S. Trustee, the Debtor and all counsel of records in the case as set forth on the foregoing notice and service list. The Trustee seeks the entry of an order A) scheduling a the Auction to be held in open court on or about May 31, 2007, B) authorizing the Trustee to send notice of the Auction to the Office of the U.S. Trustee, the Debtor, all counsel of record and all creditors that have filed proofs of claim against the Debtor's estate as of the date of this motion, C) authorizing the Trustee to advertise the Auction on the website of the National Association of Bankruptcy Trustees, and D) authorizing the Trustee to accept the Revised Offer of the SPTA for the Marks, Licenses, Claims and Stock, or such higher offer(s) that may be obtained at the Auction, and sell the Marks, Licenses, Claims and Stock free and clear of all interests, liens, claims, and encumbrances. In light of the circumstances of this case, the Trustee believes that such notice is appropriate under the circumstances. Consequently, pursuant to Rules 2002(a)(2) and (h) and 6004(a) of the

Federal Rules of Bankruptcy Procedure, the Trustee requests that other and further notice of this motion or the Court's hearing thereon be waived.

WHEREFORE, by virtue of the foregoing, the Trustee requests that this Court enter the proposed Sale Procedures Order in the form attached hereto and grant such other and further relief as the Court may deem reasonable and just under the circumstances.

Dated: May 4, 2007

Richard M. Fogel, not individually, but as
chapter 7 trustee for the bankruptcy estate of
Leo Stoller

By: /s/ Patrick A. Clisham
One of his attorneys

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