

FILED
11-22-2019
John Barrett
Clerk of Circuit Court
2019CV008498

DATE SIGNED: November 22, 2019

Electronically signed by David Swanson
Circuit Court Judge

**STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE
COUNTY**

IN RE:

**UMS HOLDINGS, LLC
SCHULZ'S RECYCLING, INC.
UMS TRUCKING, LLC**

Case No. 19 CV 8498
Case Code: 30304
Other Debtor Actions

**UNITED MFR, LLC
UNITED MILWAUKEE SCRAP, LLC
UNITED MILWAUKEE SCRAP INTERNATIONAL SALES CORP.**

ORDER APPROVING SALE PROCEDURES

Rebecca R. DeMarb (the "Receiver"), as Receiver for the above-named assignors pursuant to Wis. Stats. Chapter 128, filed with this Court the Receiver's Notice of Motion and Motion for (A) Entry of an Order Approving Auction Terms and Procedures, Scheduling a Sale Hearing and Approving Break-Up Fee, (B) an Order Authorizing Sale of Assets to Winning Bidder Free and Clear of Liens, Claims, and Encumbrances, Deeming Sale of Assets to Winning Bidder to be a Liquidator's

Sale Pursuant to Wis. Stats. § 128.25(6)(c) and Authorizing the Distribution of Sale Proceeds, and (C) Related Relief, as revised (the "Sale Motion"¹)(Docket #26), and served the Notice of Motion for (A) Entry of an Order Approving Auction Terms and Procedures, Scheduling a Sale Hearing and Approving Break-Up Fee, (B) an Order Authorizing Sale of Assets to Winning Bidder Free and Clear of Liens, Claims, and Encumbrances, Deeming Sale of Assets to Winning Bidder to be a Liquidator's Sale Pursuant to Wis. Stats. § 128.25(6)(c) and Authorizing the Distribution of Sale Proceeds, and (C) Related Relief (the "Notice")(Docket #25) upon all known creditors and parties-in-interest, as evidenced by the Affidavits of Mailing on file with the court (Docket #27-31). The Notice and Sale Motion set forth a deadline of November 21, 2019, at 3:00 p.m., for filing and serving all objection to the portion of the Sale Motion requesting approval of the Sale Procedures attached to the Sale Motion as Exhibit B, as well as the Break-Up Fee described in the Sale Motion. No objections to the Sale Procedures or the Break-Up Fee were filed by the November 21, 2019, objection deadline.

Based upon the Sale Motion, upon all the records, files and proceedings had herein, and upon the Court having found cause to enter the following Order after being fully advised in the premises, **IT IS HEREBY ORDERED:**

1. The Sale Procedures attached hereto as Exhibit A, in the same form as were attached to the Sale Motion as Exhibit B, are approved.

¹ Capitalized terms used but not defined herein shall have the meaning as set forth in the Sale Motion.

3. The Break-Up fee of \$750,000 is approved as set forth in the Sale Motion.

4. The hearing on the approval of the sale pursuant to the Sale Motion shall be held on December 4, 2019 at 11:00 a.m., Central Time, before the Honorable David Swanson, Room 413, Milwaukee County Circuit Court Milwaukee County Circuit Court, 901 N. 9th St., Milwaukee, WI 53233.

5. The deadline to object to the approval of the ultimate sale, in accordance with the Notice, is November 29, 2019, at 4:00 p.m.

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AUCTION TERMS AND PROCEDURES

In re UMS Holdings, LLC, et al. Milwaukee County Case No. 19 CV 8498

1. Purchased Assets to be Sold. Rebecca DeMarb, Esq., as Wis. Stats. Chapter 128 Receiver (the "Receiver") of UMS Holdings, LLC, a Delaware limited liability company ("Holdings"), United Milwaukee Scrap, LLC, a Wisconsin limited liability company ("UMS"), UMS Trucking, LLC, a Wisconsin limited liability company ("Trucking"), [United MFR, LLC, a Wisconsin limited liability company ("MFR")], Schulz's Recycling, Inc., a Wisconsin corporation ("Schulz's," together with Holdings, UMS, Trucking and MFR, each a "Company" and collectively, the "Companies"), and her advisors intend to conduct an auction (the "Auction") of the "Purchased Assets," as defined in that certain Asset Purchase Agreement (the "Stalking Horse Purchase Agreement") between the Receiver and Alter Trading Corporation (the "Stalking Horse Bidder") dated November 1, 2019 (the term "Purchased Assets" as used herein shall have the meaning assigned thereto in the Stalking Horse Purchase Agreement), in accordance with the terms and procedures set forth herein.

2. Excluded Assets. The assets of the Receiver described on Schedule 1 attached hereto shall not be offered for sale at the Auction.

3. "As Is, Where Is" Sale. Except to the extent set forth in the Stalking Horse Purchase Agreement, the Purchased Assets will be sold on an "AS IS, WHERE IS" basis with all defects and faults, without any representations or warranties of any kind or nature by the Receiver, Livingstone Partners LLC ("Livingstone"), Silverman Consulting, Inc., BMO Harris Bank N.A. ("BMO"), Associated Bank, National Association, or any other person or entity.

4. Free and Clear of Liens. The Purchased Assets will be sold free and clear of all liens, claims and encumbrances as provided in the order entered by the Wisconsin Circuit Court for Milwaukee County (the "Court") approving the sale, with such liens, claims and encumbrances attaching to the proceeds of each sale in the order of their priority.

5. Due Diligence. Parties interested in conducting due diligence regarding the Purchased Assets should contact Livingstone, the Receiver's investment banker. Contact information for Livingstone is set forth on page 6 of these Auction Terms and Procedures. Prospective bidders that have executed and delivered to the Receiver or Livingstone a confidentiality agreement acceptable to the Receiver (each, a "Potential Bidder") will be afforded access to a virtual proprietary data room maintained by Livingstone that contains information relating to the Purchased Assets (the "Data Room"). The Receiver and Livingstone maintain the right, in their sole discretion, to deny access to the Data Room to any party, including, without limitation, on the basis that such party might use such proprietary information in a competitive manner to the detriment of the Purchased Assets, the Receiver, Companies, the Stalking Horse Bidder, or the Winning Bidder (as defined below). Neither the Receiver nor Livingstone shall be obligated to furnish to any interested party any due diligence information other than the information contained in the Data Room.

6. Stalking Horse Purchase Agreement. The Receiver's obligation to consummate the transactions contemplated by the Stalking Horse Purchase Agreement is subject to higher and better bids at the Auction and Court approval. For purposes of these Auction Terms and Procedures and the Auction, the Stalking Horse Bidder automatically shall be deemed a Qualified Bidder (as defined below) and the Stalking Horse Purchase Agreement automatically shall be deemed a Qualified Bid (as defined below), without the need for the Stalking Horse Bidder to meet the requirements set forth in section 7 below.

7. Qualified Bid Requirements. Only Qualified Bidders may bid at the Auction. A Potential Bidder may become a "Qualified Bidder" only by submitting a bid that is deemed by the Receiver to be a Qualified Bid. A bid submitted by a Potential Bidder shall be deemed a "Qualified Bid" only if its meets all of the following requirements to the satisfaction of the Receiver:

(a) The bid must be submitted to Livingstone via e-mail at greenwood@livingstonepartners.com no later than 4:00 p.m. (Central Time) on November 29, , 2019 (the "Bid Deadline");

(b) The bid must be in writing, substantially in the form of the Stalking Horse Purchase Agreement and duly executed by an authorized representative of the Potential Bidder (a "Modified Purchase Agreement"). The Potential Bidder shall also submit a copy of the Stalking Horse Purchase Agreement clearly marked against the Modified Purchase Agreement (a Word version of the Stalking Horse Purchase Agreement will be made available for this purpose);

(c) The bid must offer to purchase all of the Purchased Assets (*provided that* Receiver reserves the right to accept, after consultation with Agent, Bids offering to purchase assets in addition to the Purchased Assets);

(d) The bid must fully disclose the identity of the Potential Bidder;

(e) The bid must be on terms and conditions no less favorable to the Receiver as those set forth in the Stalking Horse Purchase Agreement, as determined by the Receiver after consulting with BMO Harris Bank, NA, in its capacity as agent for Companies' secured lenders (in such capacity, "Agent");

(f) The bid shall not include a break-up fee, bid protection, or any other similar provision;

(g) The bid must clearly set forth the purchase price to be paid and the payment terms, which purchase price and payment terms the Receiver (after consulting with Agent) believes to be higher or better than those of the bid set forth in the Stalking Horse Purchase Agreement, and the value of such bid, as determined by the Receiver, must be greater than the sum of: (i) the purchase price set forth in the Stalking Horse Purchase Agreement; plus (ii) the amount of the break-up fee set forth in the Stalking Horse Purchase Agreement (the "Break-Up Fee"); plus (iii) \$250,000.00;

(h) The bid must be binding and irrevocable and shall not contain any conditions to the Potential Purchaser's obligation to close the transactions contemplated by such bid, other than those conditions to closing set forth in the Stalking Horse Purchase Agreement.

Without limiting the generality of the foregoing, a bid shall not contain conditions related to (i) financing, (ii) shareholder, member, board of directors, manager, or other internal approval, or (iii) the completion or outcome of any due diligence review;

(i) The bid must be accompanied by an earnest money deposit in an amount not less than \$500,000 (a "Bid Deposit"), in the form of a wire transfer to an account designated by the Receiver, which Bid Deposit shall be held and disbursed by the Receiver pursuant to these Auction Terms and Procedures; and

(j) The bid must be accompanied by information that demonstrates, to the satisfaction of the Receiver (after consultation with Agent), that the Potential Bidder has the financial ability to timely consummate the transactions contemplated by the Modified Purchase Agreement. If requested by the Receiver, the Potential Bidder shall supplement such information to the satisfaction of the Receiver.

8. Effect of Submitting a Bid. By submitting a bid for the Purchased Assets pursuant to section 7 above, each Potential Bidder submitting such bid shall be deemed to have agreed to and acknowledged the following:

(a) Such Potential Bidder shall abide by and honor the terms of these Auction Terms and Procedures and any Auction Rules (as defined below);

(b) If the bid becomes a Qualified Bid, such Qualified Bid shall be irrevocable through the conclusion of the Auction and the designation of the Winning Bid and the Back-Up Bid (if a Back-Up Bid is designated) by the Receiver as provided herein;

(c) Such Potential Bidder (i) has had an opportunity to conduct due diligence regarding the Purchased Assets prior to making its bid and does not require further due diligence, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Purchased Assets in making its bid, and (iii) 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 Purchased Assets, or the completeness of any information provided in connection therewith; and

(d) Such Potential Bidder shall comply with all reasonable requests for additional information by the Receiver or her advisors, and the failure by a Potential Bidder to comply with such reasonable requests for additional information may be a basis for the Receiver to determine that such Potential Bidder is not a Qualified Bidder.

9. Designation of Qualified Bidders. The Receiver shall not consider any bids received after the Bid Deadline. The Receiver shall notify each Potential Bidder whether such Potential Bidder is a Qualified Bidder on or by 4:00 p.m. (Central Time) on the first business day following Bid Deadline (the "Notification Deadline") and shall contemporaneously notify the Stalking Horse Bidder and Agent of such determination(s). The Receiver and her advisors may communicate with any Potential Bidder in advance of the Notification Deadline to cure any deficiencies in any bid that is submitted by the Bid Deadline. The Receiver shall return the earnest money deposits of Potential Bidders that are not deemed Qualified Bidders, within three (3) business days following the Notification Deadline.

10. Modification of Qualified Bids. A Qualified Bidder may not, without the written consent of the Receiver and Agent, modify, amend, or withdraw its Qualified Bid; provided that any Qualified Bid may be improved through bidding at the Auction as set forth below.

11. Sale to Stalking Horse Bidder. If no Qualified Bids are submitted (other than that submitted by the Stalking Horse Bidder), the Stalking Horse Bidder will be deemed the Winning Bidder and the Stalking Horse Purchase Agreement will be deemed the Winning Bid, and the Receiver shall report the same to the Court, cancel the Auction and proceed to seek Court approval of the Stalking Horse Purchase Agreement and the transaction contemplated thereby.

12. Auction.

(a) Where and When. The Auction will take place at the offices of Reinhart Boerner Van Deuren S.C. 1000 North Water Street, Suite 1700, Milwaukee, WI 53202 on December 3, 2019 at 10:30 a.m. (Central Time).

(b) Auction Rules. The Receiver and her advisors shall direct and preside over the Auction and may, in the Receiver's discretion, after consulting with Agent, adopt rules for the Auction that are not inconsistent with terms and procedures set forth in these Auction Terms and Procedures (the "Auction Rules"), including, without limitation, rules setting minimum bid increments of at least \$100,000. The Auction Rules shall be binding on all Qualified Bidders.

(c) Conditions to Bidding. Only Qualified Bidders may bid at the Auction. In order to bid at the Auction, a Qualified Bidder must:

(i) Be present at the Auction in person or by a duly authorized agent;

(ii) Acknowledge in writing its interest in participating in the Auction and its agreement to be bound by these Auction Terms and Procedures and any Auction Rules; and

(iii) If any owner or principal of a Qualified Bidder or any entity formed by a Qualified Bidder to purchase the Purchased Assets includes or will include, directly or indirectly, a current or former shareholder, officer, director, member, manager, or employee of any of the Companies, such Qualified Bidder shall advise the Receiver and Agent of same in writing prior to the date of the Auction.

(d) Opening Bids. The Receiver shall announce at the beginning of the Auction for the Purchased Assets the opening bid, which opening bid shall be the highest or otherwise best Qualified Bid, as determined by the Receiver in her sole discretion after consultation with the Agent.

(e) Bids at Auction. The Auction shall proceed in rounds or otherwise in accordance with the Auction Rules. All bids at the Auction shall be unconditional and irrevocable and, unless otherwise agreed to in writing by the Receiver and the Qualified Bidder, shall be on the same terms and conditions (other than purchase price) as the Qualified Bid submitted by such Qualified Bidder. Bids for a portion of the Purchased Assets will not be allowed (but Receiver reserves the right to accept, after consultation with Agent, Bids offering to

purchase assets in addition to the Purchased Assets). For the avoidance of doubt, for the purposes of comparison to any other bid in connection with each round of bidding at the Auction, the Receiver shall be permitted to include in each bid at the Auction by the Stalking Horse Bidder the amount of the Break-Up Fee. Any bids submitted after the conclusion of the Auction shall not be considered by the Receiver.

(f) Competitive Bidding. All bidding at the Auction must be competitive. Any collusive bidding or other conduct that otherwise operates to limit competition among Qualified Bidders is prohibited. The Receiver reserves the right to expel from the Auction any Qualified Bidder the Receiver believes to be engaging in any such conduct.

(g) Designation of Highest or Otherwise Best Bids. Upon the Receiver determining that the bidding at the Auction has concluded, the Receiver, in her sole discretion, after consultation with the Agent, shall designate the highest or otherwise best bid for the Purchased Assets and the second-highest or otherwise second-best bid for the Purchased Assets. Among the factors the Receiver may take into account in determining the highest or otherwise best bid for the Purchased Assets or the second-highest or otherwise second-best bid for the Purchased Assets are: (i) the terms and conditions of the applicable bid; (ii) the amount and nature of the total consideration; (iii) the likelihood of closing; (iv) the Break-Up Fee payable to the Stalking Horse Bidder; (v) any changes to or deviations from the Stalking Horse Purchase Agreement; and (vi) the net economic effect of such bid on the total value to be recovered by the Receiver for the benefit of creditors of any of the Companies.

(h) Acceptance or Rejection of Highest or Otherwise Best Bid. Subject to the consent of Agent, upon the conclusion of the bidding at Auction, the Receiver shall accept or reject the highest or otherwise best bid for the Purchased Assets. If the Receiver accepts the highest or otherwise best bid for the Purchased Assets, that bid shall be deemed the "Winning Bid" and the Qualified Bidder submitting such Winning Bid shall be the "Winning Bidder." The Winning Bid shall be binding on the Winning Bidder and may be withdrawn only in the event it is not approved by the Court. The Winning Bid shall not be binding on the Receiver until the Court enters an order approving the transactions contemplated by such Winning Bid. If the Receiver rejects the highest or otherwise best bid for the Purchased Assets, such bid shall be deemed terminated and neither the Receiver nor the Qualified Bidder submitting such bid shall have any obligations with respect thereto. The Receiver shall have the right to accept or reject any bid, and Agent shall have the right to consent or not consent to the Receiver's acceptance or rejection of any bid, in both cases without any liability to any Qualified Bidder, provided that Agent's consent shall not be required in the event the Winning Bid is the amount offered by the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement.

(i) Back-Up Bid. Subject to the consent of Agent, upon the conclusion of the bidding at Auction, the Receiver may designate the second-highest or otherwise second-best bid for the Purchased Assets as the "Back-Up Bid," in which case the Qualified Bidder submitting such Back-Up Bid shall be the "Back-Up Bidder." The Back-Up Bid submitted by the Back-Up Bidder shall remain open and irrevocable until the closing of the sale of the Purchased Assets to the Winning Bidder. In the event that, for any reason, the Winning Bidder fails to close the transaction contemplated by its Winning Bid, the Receiver, in her discretion, may elect to regard the Back-Up Bid as the highest or best bid for the Purchased Assets, and if authorized by the

Sale Order to do so, the Receiver may proceed to consummate the transaction contemplated by the Back-Up Bid.

(j) Conclusion of the Auction. The Auction shall conclude immediately following the Receiver's acceptance or rejection of the highest or otherwise best bid for the Purchased Assets and the designation of a Back-Up Bid by the Receiver (if a Back-Up Bid is designated). Subject to the terms of the Stalking Horse Purchase Agreement, the Receiver may (after consultation with Agent) adjourn, continue, or suspend the Auction for any reason without further order of the Court, by filing a notice thereof with the Court and serving such notice on all Potential Bidders.

(k) Court Approval; Sale Hearing. The Receiver's obligation to sell the Purchased Assets is subject to Court approval. The hearing to consider the approval of the sale of the Purchased Assets (the "Sale Hearing") shall be held by the Court at the Milwaukee County Courthouse, Room 413, 901 N. 9th St., Milwaukee, WI 53233, Milwaukee, Wisconsin, on December 4, 2019 at 11:00 a.m. (Central Time). The Receiver shall use her best efforts to have the Court enter an order authorizing the Receiver to consummate the transactions contemplated by the Winning Bid (the "Sale Order"), which Sale Order shall be in form and substance reasonably satisfactory to the Receiver, the Agent and the Winning Bidder. If the Receiver designates a Back-Up Bid, the Receiver shall use her best efforts to have the Sale Order authorize the Receiver to consummate the sale of the Purchased Assets to the Back-Up Bidder pursuant to the terms of the Back-Up Bid in the event the Winning Bidder fails to timely consummate the transactions contemplated by the Winning Bid. The Winning Bidder shall appear at the Sale Hearing and state on the record that it is ready, willing and able to consummate the transactions contemplated by the Winning Bid with no contingencies whatsoever, other than Court approval of such transactions.

13. Closing. The closing of the transactions contemplated by a Winning Bid approved by the Court shall take place remotely by mail, facsimile, and/or e-mail (with all funds transferred by wire transfer) on the sixth business day after the Court's entry of the Sale Order or on such other date as agreed to by the Receiver and the Winning Bidder in writing. In the event the Winning Bidder fails to timely consummate the transactions contemplated by its Court-approved Winning Bid, upon written notice from the Receiver to the Back-Up Bidder, the closing of the transactions contemplated by the Court-approved Back-Up Bid shall take place remotely by mail, facsimile, and/or e-mail (with all funds transferred by wire transfer) no later than six (6) business days following the Back-Up Bidder's receipt of such notice or on such other date as agreed to by the Receiver and the Back-Up Bidder in writing. An appeal of the Sale Order shall not, absent a stay pending appeal or injunction enjoining the closing, relieve the Receiver, the Winning Bidder, or the Back-Up Bidder of the obligation to close a Court-approved sale of the Purchased Assets.

14. Return/Application of Bid Deposits from Qualified Bidders. All Bid Deposits shall be held by the Receiver in her law firm's trust account. Except for the Bid Deposits of the Winning Bidder and the Back-Up Bidder, the Receiver shall return all earnest money deposits to Qualified Bidders within three (3) business days following the conclusion of the Auction. The Receiver shall hold the Back-Up Bidder's Bid Deposit in escrow pending the closing of the transactions contemplated by the Winning Bid. The Back-Up Bidder's Bid Deposit shall be

returned to the Back-Up Bidder within three (3) business days following the closing of the transactions contemplated by the Winning Bid. The Bid Deposit of the Winning Bidder shall be held by the Receiver, credited against the purchase price of the Winning Bid at closing and distributed by the Receiver in accordance with the Sale Order and any financing orders entered by the Court. In the event the Winning Bidder fails to consummate the transactions contemplated by its Court-approved Winning Bid, such defaulting Winning Bidder's Bid Deposit shall be forfeited to the Receiver (and distributed by the Receiver in accordance with the Sale Order and any financing orders entered by the Court) and the Receiver shall have the right to seek all other available remedies and damages against such defaulting Winning Bidder. In such case, provided the Sale Order authorizes the sale of the Purchased Assets to the Back-Up Bidder, the Bid Deposit of the Back-Up Bidder, shall be credited against the purchase price of the Back-Up Bid at closing and distributed by the Receiver in accordance with the Sale Order and any financing orders entered by the Court. In the event the Back-Up Bidder fails to consummate the transactions contemplated by its Back-Up Bid, such defaulting Back-Up Bidder's Bid Deposit shall be forfeited to the Receiver (and distributed by the Receiver in accordance with the Sale Order and any financing orders entered by the Court) and the Receiver shall have the right to seek all other available remedies and damages against such defaulting Back-Up Bidder.

15. Contacts. If you have any questions or would like to request additional information, please contact the following:

Investment Banker for the Receiver

Joe Greenwood
Livingstone Partners LLC
443 North Clark Street, Suite 200
Chicago, IL 60654
Tel: (312) 670-5913
E-mail: greenwood@livingstonepartners.com

Receiver

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Schedule 1

Excluded Assets

1. Cash and cash equivalents;
2. Causes of action in favor of any of the Companies or the Receiver (including, without limitation, causes of action under Chapter 128 or 242 of the Wisconsin Statutes and causes of action against any current or former owners, equity holders, landlords, managers, members, officers, directors, or employees), other than causes of action that are identified on Schedule 2.1(c) to the Stalking Horse Asset Purchase Agreement and arise solely from or relate solely to any of the other Purchased Assets;
3. Refund claims, including insurance and tax refunds;
4. The Companies' rights to the following leased equipment [to be itemized];
5. Licensed software not included in the contracts assumed by the Buyer [NTD: Buyer will require access to Sellers' computers to perform the Transition Services Agreement];
6. Equity interests in any of the Companies;
7. The Companies' charter or organizational documents, minute books, stock ledgers or record books, company seals, tax returns, tax records and files and records relating to any other excluded assets or employees that are not hired by the Buyer as of the Closing Date;
8. The Receiver's and the Companies' rights under this Agreement and any documents executed in connection herewith;
9. All rights with respect to contracts not assumed by the Buyer;
10. Employee benefit plans, programs and arrangements and any trusts, insurance arrangements or other assets held or set aside to fund obligations under such employee benefit plans, programs and arrangements;
11. Insurance policies, including, without limitation, key man life insurance policies, and the claims, cash value, rights and benefits thereunder;
12. The personal computers and other personal effects of the Companies' directors, shareholders and officers, generally described as follows: