

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS

In re:

LeBaron Bonney Company

Debtor.

Chapter 7

Case No. 19-10856-MSH

**MOTION BY CHAPTER 7 TRUSTEE FOR
SUPPLEMENTAL ORDER REGARDING TRUSTEE'S MOTION FOR AUTHORITY
TO SELL PERSONAL PROPERTY
AND REQUEST FOR EMERGENCY DETERMINATION**

Joseph G. Butler, the duly appointed chapter 7 trustee (the "Trustee") of the estate of the above-captioned debtor, LeBaron Bonney Company (the "Debtor") hereby moves for an order in the form submitted herewith (the "Proposed Order") revising the Court's order dated December 10, 2019 (docket no. 49) authorizing the sale by the Trustee of certain personal property of the estate (the "Sale Order") to Eckler Industries Inc. ("Eckler") to reflect the parties' discovery of extensive water damage to the sold property located in Wilton, Maine. As further described below, the Proposed Order requires Eckler to remove the damaged as well as undamaged property, to receive a price reduction of \$9,200 to cover the estimated removal cost, and to be assigned whatever insurance claim the estate has on account of the damaged goods. The Trustee requests emergency determination of this motion – consisting, optimally, of immediate entry of the Proposed Order – as the proposed sale to Eckler is, pursuant to the Sale Order, supposed to close by December 17, 2019. In support of this motion, the Trustee states as follows:

1. The Trustee filed, on November 14, 2019, a Motion for Order Authorizing Sale of Personal Property (docket no. 41) (the "Motion"), pursuant to which the Trustee sought an

order authorizing, the sale, free and clear of all liens, claims, encumbrances and interests of any kind or nature, whether imposed by agreement, understanding, law, equity or otherwise (collectively, with such exclusion, the “Encumbrances”), the Debtor's and the estate’s right, title and interest in and to certain personal property of the estate (the “Sale”) consisting the patterns, inventory, supplier lists, and all intellectual property and other personal property related to the LeBaron Bonney, Hampton Coach and EZ Boy product lines, the office furniture and fixtures, other machinery, fixtures and equipment located both at 6 Chestnut Street, Amesbury, Massachusetts and in Wilton, Maine, the internet domain names <http://www.lebaronbonney.com>, <http://www.hamptoncoach.com> and <http://www.ezboyinteriors.com>, certain inventory and the Debtors telephone numbers (the “Assets”) to SMS Auto Fabrics (“SMS”) for the sum of \$110,000.00.

2. The Court established December 2, 2019 as the last date by which objections or competing offers could be filed and scheduled a hearing on the Sale Motion for December 10, 2019 (docket nos. 43 and 44). The Trustee filed, on November 18, 2019, a certificate of service concerning service of the notice of the Sale (docket no. 46).

3. On November 29, 2019, Eckler submitted an offer in the amount of \$130,000.00 (docket no. 47). No other offers and no objections were filed.

4. SMS did not appear at the hearing on December 10, 2019.

5. On December 10, 2019, the Court entered an order authorizing a sale of the Assets to Eckler for the sum of \$130,000.00. The Sale Order provides, among other things, that

F. The sale is to be AS IS and WHERE IS and WITHOUT ANY WARRANTY by the Trustee.

G. The Purchase Price is to be paid to the Trustee in the form of immediately available funds within five business days following the entry of this order.

H. The Assets are to be removed from the Amesbury, Massachusetts and Wilton, Maine locations within five business days following the payment of the Purchase Price.

6. In addition, the Sale Order provides that if Eckler defaults by failing to timely pay the balance of the Purchase Price to the Trustee, the Trustee shall notify SMS as the Backup Bidder of the default and SMS shall have the right to purchase the Assets for the sum of \$110,000.00.

7. Eckler has surveyed the Assets located in both Amesbury, Massachusetts and Wilton, Maine and has determined (and the Trustee has confirmed) that certain of the assets located in Wilton, Maine have suffered extensive water damage (the "Damaged Goods") such that it would not make economic sense for Eckler to incur the cost of removing the Damaged Goods from the Wilton, Maine location. Eckler estimates that the cost of removing those assets would be approximately \$9200.00.

8. If Eckler were to leave the Damaged Good in the Wilton, Maine location, the estate would incur additional administrative expenses both for the cost of removing the assets and for the additional use and occupation of the premises until the assets could be removed.

9. The Trustee and Eckler have agreed, subject to the entry of an order by the Court, that the amount that Eckler will be required to pay for the Assets will be reduced by \$9,200.00, from \$130,000 to \$120,800 and that, in return, Eckler will remove all of the Wilton, Maine assets, including the Damaged Goods by a date to be determined either by agreement or further order of the Court.

10. Concerning the insurance policies of the estate that the Trustee and the Buyer believe provide coverage for the damage to the Damaged Goods (the “Policies”), the Trustee and Eckler have further agreed, again subject to the entry of an order by the Court, that the Trustee will (a) immediately notify the issuer thereof (the “Insurer”) of the claim arising from the damage to the Damaged Goods (the “Insurance Claim”); (b) promptly, and in any event within the period required by the Policies, submit the Insurance Claim to the Insurer in writing; (c) assign the Insurance Claim to Eckler (which shall be entitled to all proceeds thereof); and cooperate in all respects reasonably requested by the Buyer in relation to the Insurance Claim, including providing any information requested by the Insurer or by Eckler (such as business records of the Debtor relating to the Damaged Assets), communicating with the Insurer, and otherwise assisting in the prosecution of the Insurance Claim, *provided, however*, that once the Insurance Claim has been submitted to the Insurer and assigned to Eckler as provided above, Eckler shall have sole responsibility for and control over prosecution of the Insurance Claim including litigation, negotiations and any possible settlement with the Insurer.

11. The Trustee requests emergency determination of this motion as the Sale Order requires both the Eckler pay the balance of its bid by December 17, 2019, and that it remove the assets from both the Amesbury, Massachusetts and Wilton, Maine locations within 5 business days after paying the balance of its bid and the Trustee, in order to avoid further significant administrative claims against the estate for use and occupation of both the Amesbury, Massachusetts and Wilton, Maine locations, seeks to assure prompt consummation of the sale and removal of the Assets. For these reasons, the Trustee respectfully requests entry of the Proposed Order today.

Joseph G. Butler, chapter 7 trustee of the
Estate of LeBaron Bonney Company,
By his attorney,

Dated: December 17, 2019

/s/Joseph G. Butler

Joseph G. Butler, Esq. (BBO# 544284)

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