

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	§	
	§	
FORD STEEL, LLC,	§	CASE NO. 20-34405
Debtor	§	(Chapter 11)
	§	JUDGE RODRIGUEZ

EXPEDITED MOTION TO (I) SELL REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVE NEW LEASE BETWEEN THE DEBTOR AND THE LANDLORD, (III) APPROVE NEW SUBLEASE BETWEEN DEBTOR AND AN AFFILIATE OF THE DEBTOR, (IV) APPROVE BID PROTECTIONS IN FAVOR OF THE PROSPECTIVE PURCHASER, PURSUANT TO 11 U.S.C. § 363 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6004 AND REQUEST FOR APPROVAL OF AUCTION PROCESS

A HEARING IS REQUESTED SOLELY ON THE APPROVAL OF THE BID PROTECTIONS AND AUCTION PROCESS DURING THE WEEK OF AUGUST 23, 2021; A HEARING IS REQUESTED ON THE BALANCE OF THE RELIEF SOUGHT BY THE DEBTOR IN THIS MOTION PRIOR TO SEPTEMBER 13, 2021

BLR 9013 Notice: This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

EXPEDITED CONSIDERATION HAS BEEN REQUESTED.

**TO THE HONORABLE EDUARDO V. RODRIGUEZ,
UNITED STATES BANKRUPTCY JUDGE:**

NOW COMES Ford Steel, LLC, Debtor-in-Possession herein (“**Ford**” or the “**Debtor**”), with this *Expedited Motion To (I) Sell Real Property Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Approve New Lease Between the Debtor and the Landlord, (III) Approve New Sublease Between Debtor and an Affiliate of the Debtor, (IV) Approve Bid Protections in Favor of the Prospective Purchaser, Pursuant To 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004, and Request for Approval of Auction Process* (this “**Motion**”). In support of this Motion, Ford respectfully shows the Court as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §1334(b). Venue is proper pursuant to 28 U.S.C. §§1408 & 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) & (N).

Background

2. On September 30, 2021, the Debtor filed a Voluntary Petition under Chapter 11 of Title 11 of the United States Code. The Debtor has continued to operate as a Debtor-in-Possession and no trustee has been appointed.
3. The Debtor owns a 6.025 acre commercial property in Porter, Texas consisting of a manufacturing facility and an office building, together with such assets as more fully described in the Purchase and Sale Agreement, itself defined below (the “**Property**”).¹
4. In order to fund its payments under its Chapter 11 Plan, the Debtor has determined that it is in the best interest of all of its creditors to sell the Property to the Purchaser and lease it back from an affiliate of the Purchaser (the “**Landlord**”) under a twenty (20) year triple net lease.

¹To the extent that there is a conflict between the provisions of this Motion and the terms and conditions of the Purchase and Sale Agreement, the terms and conditions of the Purchase and Sale Agreement shall control.

5. On June 22, 2021, the Debtor executed a Non-Binding Letter of Intent with Brennan Investment Group to sell the Property to Brennan Investment Group or its assigns for \$10,825,000.00. Upon closing of the sale, the Debtor would then execute a 20 year triple net lease in favor of the Landlord on the Property.
6. On August 20, 2021, the Debtor and Big Acquisitions LLC (the “**Potential Purchaser**”), an assignee of Brennan Investment Group, executed an Amended and Restated Purchase and Sale Agreement (the “**Purchase and Sale Agreement**”). A copy of the Purchase and Sale Agreement is attached hereto as Exhibit “A” and is incorporated herein for all purposes. A true and correct copy of the proposed triple net lease between the Debtor and the Landlord (the “**Lease**”) is attached hereto as Exhibit “B” and is incorporated herein for all purposes.
7. The Potential Purchaser has required as a condition to its Purchase and Sale Agreement, that this Court approve bid protections in favor of the Potential Purchaser and an auction process, all as more fully set forth below.

Property

8. Ford seeks approval of this Court pursuant to 11 U.S.C. § 363 (b) and Bankruptcy Rule 6004 to sell the Property to the Potential Purchaser pursuant to the terms and conditions of the Purchase and Sale Agreement. A summary of the terms is set forth below.

DESCRIPTION:

Physical Address:

24800 - 24900 Ford Road, Porter, Texas 77365

Legal Description:

A0660 Williams Richard, Tract 4-A, Acres 1.000, Montgomery County, Texas and A0660 Williams Richard, Tract 7-B, Acres 5.0525, Montgomery County, Texas.

DATE

OF CLOSING: On or before November 11, 2021

PLACE OF CLOSING:

First American Title Insurance Company, 30 N. LaSalle Street, Chicago, Illinois 60602

TERMS:

\$10,825,000.00 purchase price with \$2,320,000.00 retained by the Purchaser as a deposit and first year’s rent. Free and clear of all liens, with all valid and unavoidable liens to attach to the proceeds of sale, except as specified below.

NAME OF PURCHASER:

Big Acquisitions LLC or 24800 Ford, LLC. **Please be advised that Herbert Jeffries, Mary Jeffries, and/or a company they own other than the Debtor or H.C. Jeffries Tower Company, Inc., and/or friends and associates shall invest \$1,250,000 with Purchaser as subordinated equity in the Purchaser**

9. **Purchase Price.** Big Acquisitions, LLC or 24800 Ford, LLC (together, the “**Prospective Purchaser**”) has offered to purchase the subject property for a purchase price of TEN MILLION EIGHT HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$10,825,000.00) (the “**Purchase Price**”). **\$1,200,000 of the Purchase Price will be paid by Herbert Jeffries, Mary Jeffries, and/or a company they own other than the Debtor or H.C. Jeffries Tower Company, Inc., and/or friends and associates as a subordinated equity in the Purchaser.**

10. The Debtor proposes to sell the Property free and clear of all liens, claims, encumbrances and other interests, under 11 U.S.C. § 363, with all other valid liens and encumbrances attaching to the proceeds in the same order of priority as existed prior to the sale. It is contemplated that the following commissions, closing costs, title policy, secured and administrative creditors, and the U.S. Trustee shall be paid at closing:

Commission on \$9M at 4.5%	\$405,000.00	
Commission on \$1.825M at	\$91,250.00	

5%		
Title Policy	\$44,315.00	
Closing Costs	\$5,000.00 ²	
Montgomery County	\$274,746.43	With interest at the rate of 12% per annum from date of filing to closing date
SILAC	\$2,618,410.00 ³	Plus attorney's fees
First Financial	\$475,765.00	Plus interest from the date of filing until closing and attorney's fees
Texas Workforce Com.	\$3,362.30	Plus interest from the date of filing to closing.
U.S. Trustee Fees	\$86,600.00	U.S. Trustee fees on the sales price
U.S. Trustee Fees	\$37,675.78	Post-petition fees
Steel & Pipe Supply	\$172,000.00	Administrative Claim
Big Acquisitions, LLC or 24800 Ford, LLC	\$2,320,000.00	First year's rent of \$920,000.00 plus a deposit of a deposit of \$1,400,000.00 ⁴
Internal Revenue Service	Amount in dispute	The Debtor shall hold all remaining proceeds from the sale, including the anticipated equity as set forth in paragraph 16 below, in a separate account pending resolution of the Objection to the IRS' Proof of Claim at which time the claim will be paid in full.

² Estimated

³ This amount may vary. The Debtor has been making monthly payments of \$24,306.81 towards this indebtedness.

⁴ The deposit shall be held until month 42 of the Lease at which time it will be repaid to the Debtor at the rate of \$100,000 per quarter until only \$200,000 remains which shall be maintained as a security deposit through the term of the Lease, provided that the Debtor is not in default on the Lease.

11. Here, the Managing Member of the Debtor believes, in his business judgment, that the sale price is fair and reasonable and in the best interest of creditors and the Estate. The sale will allow all of the Debtor's secured and administrative claims, except for Debtor's Counsel and the IRS, to be paid in full at closing. The secured claim of the IRS shall be determined by the Court and paid within 15 days after the Court's Order Allowing the Claim. The Debtor accordingly requests that the Court approve the sale of the Property at this price in accordance with the terms and conditions of the Purchase and Sale Agreement. Further, by this Motion the Debtor seeks approval of the Lease, which appears as Exhibit B to the Purchase and Sale Agreement, whereby the Debtor will lease the Property back from the Landlord. In addition, by this Motion the Debtor seeks approval of the Sublease to be entered into between the Debtor's Affiliate, H.C. Jeffries Tower Company, Inc. as sublessee, and the Debtor, as sublessor (the "**Sublease**") for the sum of TEN THOUSAND (\$10,000.00) DOLLARS per month.

Connections to the Debtor. Other than as disclosed in paragraph 1 above, the Prospective Purchaser has no known connections to the Debtor or any other creditor or party in interest.

Sale is Free and Clear of Liens. Bankruptcy Rule 6004 requires a motion and order to effectuate a sale free and clear of liens. To the extent valid, all liens, claims, encumbrances and other interests shall attach to the proceeds of the sale in the same order of priority as they existed prior to the sale. Here, a sale free and clear of liens is necessary to induce buyers to purchase the property. It is necessary to file this Motion so that any party-in-interest asserting a lien, whether or not such assertion is known to the Debtor, will be placed on notice that the Property will be sold free and clear of all liens, claims,

encumbrances and other interests. The subject property is property of the Estate and is being sold free and clear of liens, claims, encumbrances and other interests, including all interests of Debtor, with all other valid and unavoidable liens to attach to the proceeds. The only secured debts to be paid at closing are those set forth in paragraph 10 above.

12. **Notice.** Concurrently with the filing of this Motion, the Debtor will mail to all creditors the notice (the “**Notice of Sale**”) attached as Exhibit "C", pursuant to Bankruptcy Rules 2002(c)(1), and 6004. If no timely objections are filed, the Court should enter its order (i) approving the sale of the Property, (ii) approving the payment of fees and expenses, (iii) finding that the Property is wholly owned by the Estate, (iv) approving the Lease, and (vi) approving the Sublease.
13. **Tax consequences.** Although selling the Property may cause the Estate to incur tax liability, the Debtor does not believe that Estate will suffer any negative tax consequences as a result of the subject sale as a result of cost basis or other available deductions, or that the Debtor will be able to pay the taxes incurred as a result of the sale from the sale proceeds. The sale of the Property will benefit the Estate in that it brings in money to the Estate for the benefit of the creditors. The Debtor accordingly believes that the sale of the Property is in the best interests of the Estate.
14. **Net Expected to the Estate.** The Debtor anticipates the net amount to be paid to the Estate, after payment of valid lien(s), property taxes, settlement charges, realtor commission, and administrative claims, including the secured claim of the Internal Revenue Service, to be FIVE HUNDRED SIXTY-THREE THOUSAND EIGHT HUNDRED TEN DOLLARS AND FIFTY-FOUR CENTS (\$563,810.54).⁵

⁵ However, this will be held in a segregated account with the remaining sale proceeds until the Court determines the allowed amount of the IRS’s secured claim.

15. **Request for Waiver of 14-Day Stay.** The Debtor moves the Court to waive the stay provided under FRBP 6004(h).

Deadlines

16. The Debtor and the first lienholder, SILAC, have agreed to certain deadlines to accomplish the sale. These deadlines are:
- a. September 15, 2021, for the entry of an Order Approving Sale;
 - b. October 6, 2021, for the Purchase and Sale Agreement to go hard, including no further inspection period and deposit of hard earnest money with the title company; and,
 - c. November 11, 2021, to close and fund, including payment in full of all creditors listed in paragraph 10, supra.
17. Failure by the Debtor to meet these deadlines will result in the prompt appointment of a Chapter 11 Trustee to monetize the Debtor's assets unless the deadlines are extended either by (a) agreement with SILAC that is filed in this case, or (b) further Court Order on the basis of extraordinary changed circumstances.

Auction Process

18. By this Motion, the Debtor seeks expedited approval of bid protections in favor of the Prospective Purchaser which is required as a condition to the Purchase and Sale Agreement. Specifically, the Prospective Purchaser has asked for a breakup fee of three percent of the Purchase Price and the payment in cash of the expense reimbursement of \$50,000. These are reasonably calculated to promote more competitive bidding by inducing the Prospective Purchaser to provide this bid and would not otherwise have been made without these protections. The Prospective Purchaser has researched the value of the Property and has proposed the sale transaction and documentation that will serve as

a minimum or floor bid on which all other bidders may rely and will provide a benefit to the Estate by increasing the likelihood that the price for which the Property is sold will reflect its true worth. The Prospective Purchaser is unwilling to commit to hold open its offer to acquire the Property under the Purchase and Sale Agreement unless the provisions set forth in the Purchase and Sale Agreement with respect to the allowance and payment of the break-up fee and expense reimbursement are approved. The Prospective Purchaser has required these minimum auction procedures to protect its interests.

19. The Debtor seeks approval of the bid protections in favor of the Prospective Purchaser and an auction process as follows:
 - a. In the event any other third party (“**Subsequent Purchaser**”) desires to bid on the Property, the Subsequent Purchaser must execute a purchase and sale agreement, substantially in the form of the Purchase and Sale Agreement of the Prospective Purchaser, and provide it to the Debtor, together with a \$50,000 Earnest Money Deposit and proof of its ability to close the transactions by no later than 5:00 p.m. one business day prior to the hearing on this Motion.
 - b. If the Subsequent Purchaser timely meets the requirements set forth above, and the purchase and sale agreement is acceptable to the Debtor in the Debtor’s sole discretion, then the Debtor will request a short recess of the hearing on this Motion, as to the sale to the Prospective Purchaser, Lease, and Sublease, to conduct an auction via Zoom or other video conference.

- c. The initial competing offer must exceed the Purchaser's offer by at least \$400,000.00. Subsequent bidding will be in increments of \$100,000.00 or more. All bids will be calculated to account for net proceeds to the Estate, i.e. bids will be adjusted to show net amount after commissions and other expenses as the Court deems necessary.
- d. The successful bidder will be bound by the deadlines set forth in this Motion.
- e. If and only if, the Subsequent Purchaser is successful in outbidding the Prospective Purchaser, the Prospective Purchaser will be entitled to a breakup fee equal to 3% of the Purchase Price together with an expense reimbursement of \$50,000, which shall be deemed allowed administrative expense claims payable to the Prospective Purchaser out of the first proceeds of the sale of the Property.

Prayer

WHEREFORE, Ford Steel, LLC, Debtor-in-Possession herein, respectfully prays that the Court enter an order on an expedited basis, at a hearing to be held during the week of August 30, 2021, approving the bid protections and auction process described above and at a subsequent hearing to be held prior to September 13, 2021: (i) approve the sale of the Property, free and clear of all liens, claims, encumbrances and other interests to the Prospective Purchaser under the terms and conditions of the Purchase and Sale Agreement, (ii) approve the Lease, and (iii) approve the Sublease. In addition, Debtor prays for any further relief, both general and special, legal and equitable, to which it may be justly entitled.

Respectfully submitted,

Cooper & Scully, PC.

Date: August 21, 2021

By: /s/ Julie M. Koenig

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Houston, Texas 77002
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Counsel for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all of the parties listed below by the method of service listed therein, on the 21st day of August, 2021.

By: /s/ Julie M. Koenig
Julie M. Koenig

VIA ECF NOTICE ONLY:

U.S. Trustee
Tara Grundemeier, Counsel for Montgomery County
Bruce Ruzinsky, Counsel for SILAC
Baili Rhodes, Counsel for First Financial
Richard Kincheloe, Counsel for the United States, Internal Revenue Service
Joseph Epstein, Counsel for Steel and Pipe Supply
David Weitman, Counsel for Proposed Purchaser

VIA ELECTRONIC NOTICE AND/OR VIA FIRST CLASS MAIL:

Texas Workforce Commission
P.O. Box 12548, MC-008
Austin, Texas 78711
bankruptcytax@texasattorneygeneral.gov