

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NOVA WILDCAT SHUR-LINE HOLDINGS,
INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10114 (CTG)

(Jointly Administered)

Ref. No. 306

**NEWTECH ELECTRONICS INDUSTRIES LLC’S RESPONSE
AND OBJECTION TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO (A) REJECT THE TRANSITIONAL
SERVICES AGREEMENT WITH NEWTECH ELECTRONICS INDUSTRIES, INC.,
EFFECTIVE AS OF THE REJECTION DATE AND (B) ABANDON ANY
REMAINING CONSIGNED MERCHANDISE AND
(II) GRANTING RELATED RELIEF**

NewTech Electronics Industries LLC (“NewTech”), through undersigned counsel, submits this response and objection to the Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to (A) Reject the Transitional Services Agreement with NewTech Electronics Industries, Inc., Effective as of the Rejection Date and (B) Abandon any Remaining Consigned Merchandise and (II) Granting Related Relief (“Motion to Reject”) (DE#306), and states as follows:

1. Prior to the petition date, on November 17, 2022, NewTech Holdings LLC (“Holdings”) acquired from Debtor Nova Wildcat Shur-Line, LLC (“Shur-Line”) all of the outstanding shares of NewTech for approximately \$7 million in a Stock Purchase Agreement (“SPA”). As the Debtors have stated, “The Debtors used the sale proceeds of approximately \$7.0

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Nova Wildcat Shur-Line Holdings, Inc. (1805); Nova Wildcat Shur-Line, LLC (8851); World and Main (Air), LLC (0035); World and Main (Cranbury), LLC (3903); HBC Holdings LLC (6461); and HBC Chemical LLC (6379) (“Debtors”). The Debtors’ corporate headquarters and service address is 324A Half Acre Road, Cranbury, NJ 08512.

million to effectuate a substantial reduction of the prepetition indebtedness [due to PNC] under the Pre-Petition Credit Agreement.” (DE#23 at ¶61).

2. Contemporaneously with, and as a condition of the purchase, NewTech and Shur-Line entered into a Transitional Services Agreement (“TSA”) pursuant to which Shur-Line agreed to sell NewTech’s merchandise on a consignment basis and then remit the sale proceeds to NewTech (the “Consigned Merchandise”). The TSA was an essential component of the transaction in order to enable NewTech to sell its merchandise through Shur-Line’s Amazon distribution channels. Shur-Line acknowledged in the TSA that the Consigned Merchandise was the property of NewTech, that Shur-Line disclaimed and waived any claim of ownership, and that the Consigned Merchandise would not be treated as an asset of Shur-Line in the event of a bankruptcy or liquidation (TSA ¶4(e), (g) DE#306-2).

3. After the transaction closed, Shur-Line sold NewTech’s Consigned Merchandise, as contemplated by the TSA. However, NewTech has not received any of the proceeds of the sales of its Consigned Merchandise. Post-petition, the Debtors have continued to sell Consigned Merchandise pursuant to the TSA, and have continued to report the amounts due to NewTech pursuant to the TSA. However, the Debtors have still not remitted any of those proceeds to NewTech, despite acknowledging they are due, and despite – even in their March 29, 2023 correspondence which immediately preceded the filing of the Motion to Reject – representing that these proceeds would be paid to NewTech. (“For sales proceeds, less costs, for sales made before 3/31 but where payment is received after 3/31 – these sale proceeds will be paid to Newtech by the estate.” (DE#306-3)).

4. Instead, Shur-Line’s lender, PNC Bank, despite having expressly consented to the TSA, despite having expressly released its liens on the Consigned Merchandise, and despite

knowing such funds constituted the proceeds from sales of NewTech's Consigned Merchandise, has wrongfully converted approximately \$1 million of proceeds from Newtech's Consigned Merchandise, has wrongfully interfered with Shur-Line's performance of the TSA by preventing NewTech from receiving the proceeds of such sales, substantially damaging NewTech's business.

5. Now that the Debtors have sold their business, they wish to reject the TSA. In doing so, they also wish to foist upon NewTech the costs of retrieval of the remaining unsold Consigned Merchandise, rather than return it to its owner, NewTech.

6. NewTech recognizes that the "business judgment" standard for approving a motion to reject sets a low bar, and files this objection to confirm certain clarifications with regard to the consequences of rejection.

7. First, rejection should have no effect on NewTech's entitlement to allowance and payment of an administrative expense for all amounts due for the post-petition sales of Consigned Merchandise. *See, e.g., In re Waste Systems Int'l, Inc.*, 280 B.R. 824, 826 (Bankr. D. Del. 2002) (non-debtor party to executory contract is entitled to administrative expense claim for any benefit conferred upon bankruptcy estate prior to assumption or rejection of contract), citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984).

8. Second, rejection should have no effect on any other administrative expense claim NewTech may have against the Debtors. For instance, NewTech recently learned, and informed the Debtors, that one of its customers mistakenly made payments of approximately \$80,000 to an account in the name of Craig Electronics but held by the Debtors pursuant to the TSA. Despite being informed of the erroneous payment, and despite the Debtors having no entitlement to those

funds, the Debtors have refused to return the payments to either NewTech or the customer, apparently because PNC Bank has retained the funds.

9. Third, rejection should have no effect on any claim NewTech may have or assert against any other party other than the Debtors, including PNC Bank.

10. Finally, NewTech objects to the request for retroactive rejection, particularly when coupled with the request to offload the expense of return of the Consigned Merchandise onto NewTech. As Debtors acknowledge, retroactive rejection is authorized where “the balance of equities favors such relief.” DE#306 at 10, citing *Thinking Machines Corp. v. Mellon Fin. Servs. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1029 (1st Cir. 1995). NewTech would respectfully submit that the equities require, at a minimum, that the Debtors either (a) take appropriate steps to ensure that, upon abandonment, the remaining Consigned Merchandise (which is held in Amazon warehouses) be restored to NewTech’s possession and control; or (b) take appropriate steps, at its expense, to return the Consigned Merchandise to its owner NewTech.

11. Accordingly, NewTech respectfully requests that any order authorizing rejection of the TSA be subject to the foregoing clarifications

Dated: April 13, 2023
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew B. McGuire

Matthew B. McGuire (No. 4366)

919 Market Street, Suite 1800

Wilmington, Delaware 19801

Telephone: (302) 467-4400

Facsimile: (302) 467-4450

Email: mcguire@lrclaw.com

-and-

David L. Rosendorf, Esquire

Kozyak Tropin & Throckmorton

2525 Ponce de Leon Blvd.

9th Floor

Coral Gables, FL 33134

Telephone: (305) 372-1800

Email: dlr@kttlaw.com

Counsel to NewTech Electronics Industries LLC