

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

In re:

Coking Coal, LLC,

Debtor.

Chapter 11

Case No. 24-70529-grs

**OBJECTION OF JOHN DEERE CONSTRUCTION & FORESTRY COMPANY
TO DEBTOR'S MOTION TO (I) APPROVE BIDDING PROCEDURES AND
FORM AND MANNER OF NOTICE OF PROPOSED AUCTION AND SALE,
(II) AUTHORIZE THE DEBTOR TO DESIGNATE A STALKING HORSE BID,
(III) SET HEARING TO CONSIDER APPROVAL OF SALE OF ASSETS OF
COKING COAL, LLC FREE AND CLEAR OF ANY INTERESTS, AND
(IV) GRANTING RELATED RELIEF**

John Deere Construction & Forestry Company ("Deere") objects (this "Objection") to the Debtor's *Motion to (I) Approve Bidding Procedures and Form and Manner of Notice of Proposed Auction and Sale, (II) Authorize the Debtor to Designate a Stalking Horse Bid, (III) Set Hearing to Consider Approval of Sale of Assets of Coking Coal, LLC Free and Clear of Any Interests, and (IV) Granting Related Relief* [Docket No. 133] (the "Bid Procedures Motion"). In support of this Objection, Deere respectfully states:

1. The Debtor entered into four separate Loan Contract – Security Agreements with Deere for the purchase of a 844K Loader, 410E Dump, 724K Loader, and 850L Dozer ("Deere Collateral").¹ The Debtor granted Deere purchase money security interests in the Deere Collateral to secure the repayment of its obligations under the Loan Contract – Security Agreements. In the Bid Procedures Motion, the Debtor attempts to sell

¹ For a more detailed discussion of the relationship between Deere and the Debtor, see *Objection of John Deere Construction & Forestry Company* [Doc. 252].

substantially all of its assets, presumably including the Deere Collateral, without reserving for Deere the ability to credit bid on the Deere Collateral.

2. In order to obtain the Court's authorization to sell the Deere Collateral, the Debtor bears the burden to prove that it has adequately protected Deere's interests. 11 U.S.C. § 363(p)(1). The Debtor has not even alleged that its sale procedures will adequately protect Deere's interests, let alone proven that the proposed sale procedures will do so.

3. Having failed to meet his burden to prove that Deere's interests are adequately protected, the Debtor's Bid Procedures Motion must be denied.

4. Further, Deere must be allowed to credit bid based on its secured claim at any sale of the Deere Collateral. 11 U.S.C. § 363(k). If the Debtor intends to deprive Deere of its right to credit bid, it must establish cause for doing so. *Id.*

5. As the Supreme Court has discussed, the right to credit bid its claim is an important protection for a secured party whose collateral is being liquidated in a bankruptcy sale. *See generally RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012). "The ability to credit-bid helps to protect a creditor against the risk that its collateral will be sold at a depressed price. It enables the creditor to purchase the collateral for what it considers the fair market price (up to the amount of its security interest) without committing additional cash to protect the loan." *RadLAX*, 566 U.S. at 644 n.2.

6. "Although recognition that a secured creditor may bid up to the amount of its claim and still use the claim as a setoff against the purchase price may chill the willingness of third parties to bid at the sale, the right to credit bid enables a creditor, particularly an undersecured creditor, in essence to retake the property when it believes

that the price bid at the sale does not sufficiently reflect the value of the collateral.” 3 Collier on Bankruptcy ¶ 363.06[10]. Accordingly, the proponent of a sale must offer other justification for curtailing a secured creditor’s right to credit bid, because “the chilling of bidding alone is [in]sufficient to justify a limit on a credit bid.” *In re Aéropostale, Inc.*, 555 B.R. 369, 417 (Bankr. S.D.N.Y. 2016).

7. A court should only modify or deny the § 363(k) credit bid right of a secured creditor when equitable concerns give it cause, and it should view such a decision as the “extraordinary exception and not the norm.” *In re RML Dev., Inc.*, 528 B.R. 150, 155-56 (Bankr. W.D. Tenn. 2014).

8. The Debtor has not alleged any cause to deprive Deere of its right to credit bid at the sale of its collateral, let alone established that the circumstances of this case give rise to any such cause. The Debtor’s Bid Procedures Motion must be denied for this reason, as well.

9. Deere does not consent to the sale. Unless the sales price of the Deere Collateral exceeds the debt it secures, the Debtor cannot satisfy 11 U.S.C. § 363(f) and is not entitled to sell the Deere Collateral. *In re Canonigo*, 276 B.R. 257 (Bankr. N.D. Cal. 2002).

10. The proposed sale would circumvent the protections afforded under a chapter 11 reorganization process. Deere is entitled to the protections afforded to secured creditors in chapter 11, including under 11 U.S.C. § 1129(b)(2)(A), i.e., that it be paid the value of its collateral on a date certain.

11. Deere views the Debtor’s attempt to prime its lien on the Deere Collateral in the DIP Financing Motion as tantamount to an admission that there is not equity. With no

equity in the Deere Collateral, it is difficult to perceive any benefit being provided to the Estate. The Debtor should not be attempting to conduct a sale of the Deere Collateral in contravention of Deere's rights as a secured creditor and without its consent.

RESERVATION OF RIGHTS

12. Deere reserves all rights with respect to the Bid Procedures Motion and to supplement, modify, or amend this Objection at any hearing on the Bid Procedures Motion.

WHEREFORE, Deere respectfully requests that this Court (i) sustain this Objection; (ii) deny the Bid Procedures Motion to the extent that it does not adequately protect Deere or allow Deere the right to credit bid at any sale of the Deere Collateral; and (iii) grant Deere such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 20, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all parties of record who have filed a request for notice in this case.

/s/ Brian R. Pollock
Brian R. Pollock