

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION

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In re: : Case No. 14-20292 (AMN)  
: Chapter 11  
Eternal Enterprise, Inc. :  
Debtor :  
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: :  
: RE: ECF No. 1014

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**Order Denying Amended Motion to  
Sell Real Property Pursuant to 11 U.S.C. § 363**

An evidentiary hearing was held on June 5, 2017, to consider the debtor's, Eternal Enterprise, Inc. ("Debtor" or "EE"), Amended Motion to Sell Property Located at 1) 243-255 Laurel Street, Hartford, CT; 2) 252 Laurel Street, Hartford, CT; 3) 270 Laurel Street, Hartford, CT; 4) 360 Laurel Street, Hartford, CT; 5) 154-160A Collins Street, Hartford, CT; 6) 21 Evergreen Avenue, Hartford, CT; 7) 117-145 South Marshall Street, Hartford, CT; and 8) 56 Webster Street, Hartford, CT (the "363 Sale Motion"). The debtor presented evidence in the form of affidavits filed on June 4, 2017 and June 5, 2017, and testimony from representatives of three bidders for various properties, the debtor's principal, and the debtor's accountant.<sup>1</sup>

The court announced findings of fact and conclusions of law on the record at the conclusion of the hearing that, together with this Order, are the court's ruling on the 363 Sale Motion.

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<sup>1</sup> It was noted during the hearing that the accountant, while employed pursuant to a court order in 2014, appears not to have sought allowance of compensation pursuant to 11 U.S.C. § 330 since that time. The debtor has been paying the accountant pursuant to cash collateral orders. The order authorizing employment of the accountant estimated the maximum compensation to the accountant (as required by local rule) to be \$40,000.

Among other things, the court found that the evidence presented by the debtor demonstrated that the proposed sales of the debtor's various real properties – due to the debtor's historical depreciation of and current tax basis in the real properties -- would generate tax liability for the bankruptcy estate of approximately \$2,500,000. See Exhibit J. The evidence also demonstrated that the remaining cash after the sale of substantially all of the debtor's real property (referred to as "Net equity to Debtor" on Exhibit G), after deduction of administrative expenses, payment of allowed secured claims including prepetition real property taxes and payment of estimated, allowed unsecured claims would total significantly less than that amount. Depending on whether certain anticipated cash receipts would be allowed and paid before any such sales and assuming that they would be, the debtor's available cash to pay the tax liability would total at most approximately \$2,032,688, leaving a shortfall of at least approximately \$467,312. See, Exhibits G and J; testimony of Richard Pelletier. If the anticipated cash receipts were not allowed for any reason (by the Debtor's insurance company or by the State of Connecticut's Client Security Fund) or were not paid before the proposed sales, the cash shortfall would grow to \$892,712.

The court notes that the receipt of certain net insurance proceeds totaling approximately \$425,400 was anticipated but the testimony reflects that the Debtor and the Debtor's counsel had not yet received documentation from the Debtor's public adjuster confirming the allowed amount and date of payment. Similarly, the evidence showed that the estate has a pending claim against the State of Connecticut Client Security Fund for \$321,409 resulting from post-petition embezzlement of the Debtor's funds by the debtor's former counsel. The Debtor's counsel represented that the

Debtor's expectation is that the claim will be allowed as early as July 27, 2017, when it might be scheduled to be considered by the administrative body overseeing the claim, although such scheduling has not yet occurred.

While the Debtor proposed a 1031 exchange, pursuant to 26 U.S.C. § 1031, the Debtor would incur a tax liability the properties' sale transaction occurring (*i.e.*, in July 2017) but recognition of the tax liability would be deferred pending a 180-day period during which the Debtor could seek to purchase real property of similar value (*i.e.*, the sales price plus approximately \$3,319,601 of fire insurance proceeds totaling approximately \$14,428,039, see Exhibit G) thereby completing the exchange. The Debtor conceded it had not included the costs and expenses related to the purchase transaction in its analysis of "Net equity to Debtor" set forth on Exhibit G, leading to the probability that at least some portion of the remaining cash would be needed for these types of costs and expenses.

The principal of the Debtor, Vera Mladen, testified that she wanted to and intended to contribute her personal financial resources to the Debtor's estate funds to make a 1031 exchange possible. Using the Net equity to Debtor of approximately \$2,032,688 plus funds from Ms. Mladen, the Debtor hoped to purchase approximately \$14,000,000 of 1031 exchange property. However, there was no credible evidence of Ms. Mladen's ability to provide additional funding of at least several hundred thousand dollars and at most millions of dollars. The Debtor admitted a mortgage broker letter into evidence stating the broker (who was not a lender and did not testify) was confident that Ms. Mladen would qualify for financing for a \$14,000,000 acquisition that contemplated an 80% loan to value ratio. This would mean that Ms. Mladen and the

Debtor would need to contribute approximately \$2,800,000 in equity to the transaction if the purchase price were to be \$14,000,000,<sup>2</sup> or approximately \$800,000 more than the Debtor projected to have after the sales of the real property.

The court notes that no evidence substantiating Ms. Mladen's financial ability to contribute to the Debtor's estate to effectuate the 1031 exchange transaction was presented. Ms. Mladen testified she had two bank accounts in her name with a few hundred dollars each and that she lived in a home titled in the name of her son. No other financial information tending to show that she had available financial resources to contribute to the Debtor to effectuate a 1031 exchange was presented.

Finally, the Debtor conceded that it had not contemplated a sale order providing for the payment of the tax that would be incurred and then due payable by the estate in the "worst case scenario," or if the 1031 exchange was not effectuated within the 180 day exchange period. The court understood the Debtor's legal argument on this point to be that the Debtor should not be required to provide an escrow (through a 1031 exchange agent or otherwise) as a condition to the court's approval of the 363 Sale Motion, as the Debtor hoped the tax consequences of the real property sales could be avoided through the 1031 exchange process.

Based on this record, the court finds it cannot conclude as a matter of law that the Debtor has established a good business reason to sell substantially all of its assets pursuant to 11 U.S.C. § 363. See, *In re: Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

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<sup>2</sup> The court assumes the 80% loan to value ratio stated in the letter. As Ms. Mladen's counsel noted during the hearing, the Debtor could purchase real property valued at less than \$14,000,000 (the approximate value of the proposed real property sales plus insurance proceeds) to complete a 1031 exchange. However, the Debtor would then be required to recognize additional income or gain in the difference between the approximately \$14,000,000 and the lower sale price.

Accordingly, it is hereby

ORDERED, that the 363 Sale Motion is denied.

Dated on June 6, 2017, at New Haven, Connecticut.

*Ann M. Nevins*  
United States Bankruptcy Judge  
District of Connecticut

A circular stamp or seal is positioned behind the text of the signature, containing a globe and some illegible text.