Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(the "Applicants")

LIMITED OBJECTION OF Q30 SPORTS, LLC, AND Q30 SPORTS, SCIENCE LLC TO THE PROPOSED BID PROCEDURES

November 21, 2016

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TO: SERVICE LIST

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(the "Applicants")

NOTICE OF FILING OF LIMITED OBJECTION OF Q30 SPORTS, LLC AND Q30 SPORTS SCIENCE, LLC TO THE PROPOSED BID PROCEDURES

Q30 Sports, LLC and Q30 Sports Science, LLC, hereby files the *Limited Objection of Q30 Sports, LLC and Q30 Sports Science, LLC, to the Proposed Bid Procedures*, attached as Schedule "A" hereto. The Limited Objection has also been filed with the United States Bankruptcy Court for the District of Delaware in the Applicants' cases under Chapter 11 of Title 11 of the United States Code.

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SCHEDULE
"A"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BPS US Holdings Inc., *et al.*,	Case No. 16-12373 (BLS)
Debtors.	Jointly Administered
	Re: Dkt. No. 16

LIMITED OBJECTION OF Q30 SPORTS, LLC AND Q30 SPORTS SCIENCE, LLC TO THE PROPOSED BID PROCEDURES

Q30 Sports, LLC (the "Q30") and Q30 Sports Science, LLC ("Q30 Parent"), by and through undersigned counsel, file this limited objection (the "Objection") to the *Debtors' Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors' Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Dkt. No. 16] (the "Sale Motion"), filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), solely with respect to the proposed Bid Procedures (as defined herein), and, in support of this Objection, state as follows:[1]

BACKGROUND

1. Prior to the Petition Date (as defined herein), PSG Innovation Corp. ("PSG"), an affiliated debtor and debtor-in-possession, Q30 and Q30 Parent entered into that certain Exclusive

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Motion.

License Agreement, dated October 15, 2015 (the "License Agreement"), through which Q30 granted to PSG, subject to various rights expressly retained by Q30 as licensor, an exclusive, perpetual worldwide license under Q30's right in and to certain Q30 patents to use, make, have made, sell, offer for sale, import, export, market, advertise, promote and otherwise to commercialize the underlying technology, as set forth in more detail therein.

2. On October 31, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), thereby initiating their respective Chapter 11 bankruptcy cases (the "Chapter 11 Cases").

3. The Debtors intend to utilize their Chapter 11 Cases to effect a quick, orderly sale of all or substantially all of their assets. To that end, the Debtors filed the Sale Motion on the Petition Date. The Sale Motion seeks, *inter alia,* entry of (I) an order (the "Bid Procedures Order") approving the Debtors' proposed bidding procedures (the "Bid Procedures") to govern the sale (the "Sale") of all or substantially all of the Debtors' assets (the "Assets"), and (II) an order (the "Sale Order") approving the Sale of the Assets to the bidder with the highest or otherwise best bid (the "Successful Bidder"), pursuant and subject to a stalking horse agreement (the "Stalking Horse Agreement") for the going-concern sale of the Assets of the Company to a group of investors led by Sagard Capital Partners, L.P. (the "Stalking Horse Bidder").

LIMITED OBJECTION

4. Presumably, the Debtors will seek to assume and assign the License Agreement in connection with the Sale. *See Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Dkt. No. 15] at ¶ 34.

5. Q30 reserves all rights relating to this proceeding, including, but not limited to, the right to object to the assumability and assignability of the License Agreement. *See* 11 U.S.C. § 365(c)(1). Notwithstanding, in order to assume and assign the License Agreement, the Debtors must provide, among other things, adequate assurance of future performance. *Id.* at § 365(b)(1)(C) and (f)(2). The phrase "adequate assurance of future performance" is not defined in the Bankruptcy Code. *In re Fleming Companies, Inc.*, 499 F.3d 300, 305 (3d Cir. 2007). Courts interpreting the requirement have adopted a pragmatic approach, focusing on the facts and circumstances of the particular case. *In re Sanshoe Worldwide*, 139 B.R. 585, 593 (S.D.N.Y. 1992). "[A]mong other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned." *In re Dura Auto. Sys., Inc.*, No., 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) *citing In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance of future performance is present when the prospective assignee of lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding); *see also In re GlycoGenesys Inc.*, 352 B.R. 568, 577 (S.D.N.Y. 2006) ("[I]t is appropriate to evaluate the financial condition of the assignee and the likelihood that the non-debtor party will receive the benefit of its bargain from the assignee.")

6. Pursuant to the Bid Procedures Order, the proposed bid submission deadline is January 4, 2017; the auction ("Auction") will take place on January 9, 2017; and the sale hearing (the "Sale Hearing") will be held on January 11, 2017. *See* Bid Pro. Order at ¶¶ 5, 10, 15. Meanwhile, objections to any proposed Cure Amount and to the assumption and assignment of the applicable executory contract(s) or unexpired lease(s), including any objection to the adequate assurance of future performance as it relates to the Stalking Horse Bidder, are due on January 4,

2017 (*i.e.* the "Contract Objection Deadline"). *Id.* at ¶¶ 33, 35. On the other hand, the deadline to object to the adequate assurance of future performance of a Qualified Bidder other than the Stalking Horse Bidder under the applicable executory contract(s) or unexpired lease(s) is January 13, 2017 (the "Adequate Assurance Objection Deadline"). *Id.* at ¶ 44.

7. Therefore, the Adequate Assurance Objection Deadline is two days ***after*** the Sale Hearing, as currently contemplated. It is not clear whether the Debtors intended this result. Indeed, the proposed cure notice (the "Cure Notice") provides that "any objections to the adequate assurance of future performance by any Successful Bidder other than the Stalking Horse Bidder under the applicable Subject Contract(s) must be filed... so that such objection is received on or before 12:00 p.m. (prevailing Eastern Time) the day before the Sale Hearing", *i.e.* January 10, 2016 at 12:00 p.m. (ET).

8. This inconsistency must be reconciled. Presumably, the Debtors intended that the deadline to submit adequate assurance objections as they relate to a Qualified Bidder other than the Stalking Horse Bidder to be that which is stated in the proposed Cure Notice - noon the day prior to the Sale Hearing. The Bid Procedures contemplate that the Auction will be held on January 9, 2017, and that the Sale Hearing will be held on January 11, 2017. At best, contract-counterparties will not know the identity of the Successful Bidder (and Back-Up Bidder) until late on January 9, and, at worst, until after the proposed noon deadline on January 10. (Certainly, there is no guarantee the Auction closes on January 9, and not out of the realm of possibilities that it continues into January 10.) This does not provide sufficient time for contract-counterparties to perform due diligence, let alone draft and file written objections on adequate assurance grounds.

9. At a minimum, the deadline to object to the adequate assurance of future performance of a Qualified Bidder other than the Stalking Horse Bidder under the applicable

executory contract(s) or unexpired lease(s) should be at the Sale Hearing, and no written submission should be required. In the alternative, the Sale Hearing could be pushed for a few days. That would allow contract-counterparties time to perform due diligence, as necessary, and submit written adequate assurance objections, as appropriate.

10. If the Debtors intended that the Adequate Assurance Objection Deadline to be January 13, 2016, two days after the Sale Hearing, then the mechanics of this process are not sufficiently detailed in the Debtors' papers. The Debtors should be required to clearly articulate how it envisions this process unfolding and that the rights of contract-counterparties would in no way be prejudiced by entry of the Sale Order or otherwise.

Dated: November 14, 2016

VENABLE LLP

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Proceeding commenced at Toronto

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