

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

In re:	) Chapter 11
	)
PPI HOLDINGS, INC., <i>et al</i> ,	) Case No. 08-13289 (KG)
	) (Jointly Administered)
Debtors.	)
_____	) <b>Re Dkt. Nos. 1666, 1672.</b>

**MEMORANDUM ORDER**

The Court has before it the Debtors’ Motion to Enforce Sale Order and Confirmation Injunction (the “Sale Order”) (D.I. 1666) and the Objection of Revstone Transportation, LLC to the Motion to Enforce Sale Order and Confirmation Injunction (the “Objection”) (D.I. 1672). Upon review of the pleadings and following a hearing on September 24, 2012, the Court ORDERS that the Objection is sustained and the Debtors’ motion is denied without prejudice.<sup>1</sup>

**JURISDICTION**

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(N). Venue is proper pursuant to 28 U.S.C. § 1409.

The trustee (the “Trustee”) of the PPI Liquidating Trust seeks the Court’s authority to further pursue the sale of the certain assets to a third party under the language of the Sale Order and APA over the Objection of Revstone Transportation, LLC. It is appropriate for this Court to interpret its own Sale Order and the associated documents. The Court retained exclusive jurisdiction to “resolve any controversy or claim arising out of or related to this Sale Order, Asset

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<sup>1</sup> The Court is deciding this matter only on the language of the Asset Purchase Agreement and Sale Order. The Court defers decision on the equitable claims of estoppel subject to an evidentiary hearing.

Purchase Agreement or any related agreements, including without limitation: (a) any actual or alleged breach or violation of this Sale Order, the Asset Purchase Agreement or any related agreements and (b) the enforcement of any injunctive provision or relief granted in this Sale Order or otherwise, as set forth in the Asset Purchase Agreement.” *Sale Order* ¶ 14.

Moreover, orders granting the sale of assets, like the Sale Order issued by the Court in this case, are core proceedings. *In re FormTech Indus., LLC*, 439 B.R. 352, 357 (Bankr. D. Del. 2010); 28 U.S.C. § 157(b)(2)(N) (identifying core proceedings as “orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate”). Enforcement and interpretation of orders issued in core proceedings are also considered core proceedings within the bankruptcy court's jurisdiction. *Id.* quoting *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 129 S.Ct. 2195, 2205, 174 L.Ed.2d 99 (2009) (holding that “the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders”); *In re Trans World Airlines, Inc.*, 278 B.R. 42, 49 n. 16 (Bankr. D. Del. 2002) (“Core proceedings under § 157(b)(2)(N) are those which arise from, concern, or have some impact on ‘orders approving the sale of property’”).

### **BACKGROUND**

On March 12, 2009, the Court entered the Sale Order, approving the sale of substantially all of the Debtors’ assets to Cerion, LLC (“Cerion”) pursuant to an Asset Purchase Agreement (the “APA”) dated February 20, 2009. Revstone Industries, LLC (“Revstone”) owns Cerion, which changed its name to Revstone Transportation, LLC (“RTG”) after closing on the APA. As part of the APA, RTG purchased Skill Tool & Die, LLC (“Skill”) and MPI International, Inc. (“MPI”) from the Debtors. Together, Skill and MPI are owed approximately \$3.7 million in trade debt (the “Trade Debt”) from Sturgis Iron and Metal Co., Inc. (“Sturgis”), a debtor in a case proceeding in the

Bankruptcy Court for the Western District of Michigan (Case No. 08-02966, the “Sturgis bankruptcy case”).

Prior to the APA, on July 22, 2008, both Skill and MPI filed proofs of claims with respect to the Trade Debt in the Sturgis bankruptcy case, designated as Claim Nos. 381-2 and 382-2 respectively (the “Sturgis Claims”). In June 2012, the Trustee of the PPI Liquidating Trust sold and assigned the Sturgis Claims to Argo Partners (“Argo”). RTG objected to the distribution of the Sturgis Claims to Argo in the Sturgis bankruptcy case on the ground that it had previously acquired the Trade Debt as part of its purchase of the Debtors’ assets. The trustee in the Sturgis bankruptcy case is withholding payment to Argo until the dispute over ownership of the Trade Debt is resolved.

For the reasons set forth below, the Court finds that the Trade Debt was an asset which RTG purchased under the APA, and therefore, the Sturgis Claims were not properly conveyed to Argo.

### **DISCUSSION**

The ownership of the Trade Debt turns on the classification of the Trade Debt under the APA. RTG contends the Trade Debt constitutes an “Account Receivable” under the APA. For support, RTG points to the plain language of the APA. The APA includes “All Accounts Receivable” as part of the “Acquired Assets” purchased by RTG. *APA § 2.1h*. “Accounts Receivable” is defined as “all trade accounts and notes receivable of the Business reflected on the books and records of the Sellers.” *APA § 1.1*.

RTG further asserts that the specific references to the Trade Debt as an “Account Receivable” in the schedules and documents associated with the APA demonstrate that it is included in the “Acquired Assets” purchased by RTG. In the February 5, 2009 *Accounts Receivable Report, Aged Receivables Analysis*, the Debtors specifically reference the Trade Debt as an accounts receivable; and in the *Working Capital Adjustment at Close*, prepared by the

Debtors' accountants at the close of the asset sale, the Debtors state that the sale includes the Trade Debt: "per PPI accounting – includes \$3.7 million for Sturgis."

The Debtors contend that the Trade Debt was transformed into a "Claim" when Skill and MPI filed the Sturgis Claims in the Sturgis bankruptcy case. "Claims" are excluded from the sale as "Excluded Assets," and are defined as "any claim, lawsuit, cause of action, demand, suit, inquiry made, hearing, investigation, notice of violation, litigation, proceeding, arbitration, or other dispute, whether civil, criminal, administrative or otherwise." *APA* § 2.2(b); *APA* § 1.1. While conceding that the Trade Debt was at one point an "Accounts Receivable," the Debtors argue by filing proofs of claim in the Sturgis bankruptcy case, the Skill and MPI Accounts Receivables were transformed into "Claims," and remain the property of the Trust as "Excluded Assets." *APA* § 2.2(b).

In interpreting the Sale Order and APA, the Court must accord to the language its ordinary and usual meaning. "When the language of [a contract] is clear and unequivocal, a party will be bound by its plain meaning because creating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had not assented." *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982). The Court must strictly construe clear and unambiguous language according to the intent of the parties. *Atwood Mobile Prod., LLC v. Dura Auto. Sys., Inc. (In re Dura Auto. Sys., Inc.)*, Bank. No. 06–11202 (KJC), Civ. No. 09–69–SLR, 2010 WL 180249, at \*3 (D. Del. Jan. 19, 2010); *In re Iac/Interactive Corp.*, 948 A.2d 471, 494-95 (Del. Ch. 2008) ("contract terms are not ambiguous merely because parties to the contract disagree; rather, the court stand[s] in the shoes of an objectively reasonable third-party observer, and ascertains whether the contract language is unmistakably clear") (internal quotations omitted).

The Debtors argue that the Trade Debt on its face is a “Claim” as defined in the Bankruptcy Code and by the APA. It argues that once Sturgis filed for bankruptcy, MPI and Skill filed proofs of claim, and those proofs of claim are “Claims” that remained the property of the Debtors’ estates and which Debtors were able to convey to Argo. The Court disagrees. Nowhere in the definition of “Claim” in the APA does it reference “proofs of claim.” Rather, on the plain language of the APA, the Court agrees with RTG that the Trade Debt is an “Accounts Receivable,” specifically referenced in the books and records as “AR receivables.”

It is clear in Section 2.1(h) that “Accounts Receivable” were included in the “Acquired Assets” as part of the APA. Further, it is plain on the face of the APA that as between the Debtors and RTG, the Trade Debt owed by Sturgis to Skill and MPI was considered an “Accounts Receivable.” Evidence of the parties’ intent to include the Trade Debt as “Accounts Receivable” is present on the various schedules, including the *February 5, 2009 Accounts Receivables Report, Aged Receivables Analysis* and the *Working Capital Adjustment at Close*, which identify the money owed by Sturgis to Skill and MPI as “AR receivables” and list the Trade Debt under a column labeled “Accounts Receivable.”<sup>2</sup>

Beyond the intent of the parties, the inclusion of the Trade Debt in various documents and schedules as “Accounts Receivable” allows an objective third party to conclude that the amounts owed by Sturgis were transferred to RTG in the APA. Rather, it would stretch the “plain meaning” on the face of these documents to conclude that the Trade Debt became a “Claim” when the Debtors filed the Sturgis Claims. The Court finds unconvincing the Debtors’ argument that RTG’s failure to file a notice of transfer of claims in the Sturgis bankruptcy case is

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<sup>2</sup> The Accounts Receivable reports, along with other books and records, were incorporated into the Sale Order and APA. The Working Capital Summary was prepared in connection with the APA by the accountants for the Debtors, Alvarez and Marsal.

dispositive; it is simply not relevant. The terms of the Sale Order and APA govern the sale of the Debtors' assets, and it is plainly evident that the Trade Debt was an "Accounts Receivable," thus an "Acquired Asset" sold to RTG under the APA.

The Debtors' request for the Court to enforce the Sale Order, APA and related documents; and to enjoin RTG's interference with the Argo transaction is therefore DENIED.

SO ORDERED.

Dated: October 2, 2012

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.

KEVIN GROSS, U.S.B.J.