

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

BOUCHARD TRANSPORTATION CO.,  
INC., *et al.*,<sup>1</sup>

Debtors.

## Chapter 11

Case No. 20-34682 (DRJ)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF MORTON S. BOUCHARD, III, LINDA BOUCHARD, AND THE MORTON S. BOUCHARD III 2017 FAMILY TRUST TO THE PROPOSED SALE OF THE DEBTORS' ASSETS [DKT. 907]**

TO THE HONORABLE JUDGE OF SAID COURT:

Creditors Morton S. Bouchard, III, Linda Bouchard, and the Morton S. Bouchard III 2017 Family Trust (collectively, the “Bouchard Parties”) hereby submit this limited objection and reservation of rights to the proposed sale and, to the extent necessary, the designation of a successful bidder (collectively, the “Sale”) of the above-captioned Debtors’ (the “Debtors”) assets [Dkt. 907]. In support of the Limited Objection and Reservation of Rights, the Bouchard Parties respectfully state as follows:

## BACKGROUND

1. Morton Bouchard is the fourth generation owner, sole shareholder and former CEO of the Debtors as well as a current creditor of the Debtors. Prior to the instant bankruptcy filings, Mr. Bouchard built what was at the time a state-of-the-art fleet of vessels and barges, the envy in the industry. In addition, unlike many owners who seek to pull monies out of their

1 Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/bouchard>. The location of the Debtors' service address is: 58 South Service Road, Suite 150, Melville, New York 11747.

business, Mr. Bouchard, together with his wife and trust, loaned and/or directly paid creditors in the amount of over \$40 million in the year or two prior to the filings in order to, among other things, ensure that the Debtors' vessels were maintained and operational for purposes of the Debtors' business, including to provide necessities to preserve the vessels. The Bouchard Parties filed proofs of claim based on those funds advanced prior to the petition date. *See* Proof of Claim Nos. 269 and 401.<sup>2</sup> Further, the Bouchard Parties assert maritime liens against certain vessels the Debtors propose to sell, which liens would attach to the proceeds of the Sale with priority over other secured creditors (collectively, the "Bouchard Claims").

2. Such extraordinary steps were taken by the Bouchard Parties given Mr. Bouchard's strong belief in the company and the value of the assets, which upon information and belief, the Debtors' professional team heralded at the time of the filing as being balance sheet solvent, with book value in excess of three quarters of a billion dollars, more than several times the debt.

3. On June 8, 2021, the Court entered the Order (I) Approving Bidding Procedures for the Sale of the Debtors' Assets, (II) Approving Bid Protections, (III) Scheduling Certain Dates with Respect Thereto, (IV) Approving the Form and Manner of Notice Thereof, and (V) Approving Contract Assumption and Assignment Procedures [Dkt. 956] (the "Bid Procedures Order"). The Bid Procedures Order provides, among other things, that (i) an auction would be held for the Sale of the Debtors' assets on July 19 and 20; (ii) any objection to the Sale is due July 21, 2021 (the "Sale Objection Deadline"); and (iii) a hearing on the Sale shall be held on

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<sup>2</sup> Both the Debtors and Unsecured Creditors' Committee filed objections to the Bouchard Parties' proofs of claim, which objections the Bouchard Parties contest. The Bouchard Parties reserve all rights to amend their claims, as necessary.

July 23, 2021 (the “Sale Hearing”). On July 21, 2021, the Debtors filed notice [Dkt. 1084] that the Sale Objection Deadline is extended to July 22, 2021.

4. The Bidding Procedures also contained a “fiduciary out,” which provides in relevant part that “notwithstanding anything to the contrary in these Bidding Procedures, through the date of the Auction (if held), nothing in these Bidding Procedures or the Bidding Procedures Order shall diminish the right of the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving any or all of the Debtors’ Assets (each an “Alternate Proposal”). . . . “ Bid Procedures Order, Ex. 1, § XVIII.

5. On July 18, 2021, the Debtors filed a last-minute Notice of Selection of Stalking Horse Bidder [Dkt. 1077] including a proposed Asset Purchase Agreement with Hartree Partners, L.P. as the proposed stalking horse purchaser for certain of the Debtors’ assets (the “Stalking Horse”). It is the Bouchard Parties’ understanding that the auction went forward and concluded on July 19, 2021, but that the Stalking Horse was not a successful bidder.

6. However, there has been very little transparency related to the Sale process and the potential, and now, successful bidders. By way of example only, the Bouchard Parties are aware of certain topline numbers published at the end the auction by the purported successful bidders but have seen no allocation of those purchase price amounts to the specified vessels, each of which may be subject to independent maritime claims and liens. The Bouchard Parties were not permitted to attend the auction and received only limited, informal information from the Debtors’ agent regarding the results of the auction, and even then, only after a specific requests from counsel for the Bouchard Parties. And since the auction, the Debtors have not provided any

notice or other information related to the specific terms of the proposed Sale to the successful bidders. Putting aside the due process concerns for a moment, such dearth of information about the proposed Sale makes it very difficult, if not impossible, to review and evaluate the adequacy of the Sale and the resultant impact of such Sale. This limited access to information makes it difficult for the Bouchard Parties to verify for themselves that the applicable standards to approve such sales have been satisfied or, much less, met.

7. At the same time, the Bouchard Parties have been advised by at least one creditor, 507 Capital, that they had been or are interested in proposing an alternative sale through a plan, discussed below, but were rebuffed, which upon information and belief, would result in substantial returns to general unsecured creditors.

8. Accordingly, given the lack of adequate notice and information related to the successful bidders and proposed Sale prior the Sale Objection Deadline, and possibility that an alternative transaction may yield superior recoveries to general unsecured creditors (which appear likely to be receiving little if any distributions under the current proposed Sale), through this Limited Objection and Reservation of Rights, the Bouchard Parties submit the following limited objections and reserve all rights, including, but not limited to, the right to raise these or any additional objections at the Sale Hearing.

#### **LIMITED OBJECTION AND RESERVATION OF RIGHTS**

9. The purpose of this Limited Objection and Reservation of Rights is two-fold: (i) to ensure there has been a proper and adequate process to maximize value for the estates and creditors, and (ii) to reserve all rights with respect to the Bouchard Claims and rights and confirm that those claims and rights will be treated properly upon final adjudication. With respect to the first point, as described above, the Bouchard Parties cannot properly evaluate the

Sale process or results of the Sale, nor has there been transparency regarding any alternative proposals, until they obtain more detail related to the same. Accordingly, the Bouchard Parties object and reserve all rights to raise any issue related to the Sale at the Sale Hearing when (if not earlier in response to requests), presumably, more information will be disclosed.

10. Further, as provided above, the Bidding Procedures provide a “fiduciary out” with respect to any alternative proposal. This further provides, consistent with the Bankruptcy Code, that the Debtors have the continuing right (and the Bouchard Parties submit, obligation) to consider and respond to any alternative proposals, and to provide disclosure and transparency regarding the same.

11. With respect to the second point, the Bouchard Parties’ primary concern is that any claims they may have to the proceeds of the Sale (as described above), and all rights related thereto, are properly preserved, subject to final adjudication of such claims. This is consistent with the Bid Procedures Order, which provides, among other things, that “[n]othing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies, or defenses that any party ... has or may have under applicable bankruptcy and non-bankruptcy law... Bid Procedures Order ¶ 17. By this Limited Objection and Reservation of Rights, as detailed below, the Bouchard Parties seek to confirm such reservation of all of their rights, remedies or defenses related to the Bouchard Claims and payment of those claims from the Sale proceeds, and to confirm that the Sale and any order approving the Sale, shall not be deemed a waiver of those rights.

12. For example, the Bid Procedures Order further states that the proceeds of the Sale shall be paid to the DIP Lender and Wells Fargo based on their respective collateral. Bid Procedures Order ¶ 16. Any Sale order should make clear that such payment is subject to other

valid claims to the Sale proceeds, with funds specifically reserved, or such other mechanism put in place, for the payment of any valid claims the Bouchard Parties have to such proceeds, upon final adjudication by the Court.

13. Relatedly, there has been no allocation that the Bouchard Parties are aware of regarding the value per vessel, making it impossible to determine what payments would need to be made to secured creditors of such vessel to clear title on any particular vessel sold. Such information should be provided in order to properly evaluate allocation of the Sale proceeds, among other things.

14. Moreover, as provided above, the Bouchard Parties understand that another creditor, 507 Capital, previously expressed interest in and may be prepared to present an alternative plan in these cases that would provide specific funds to pay creditors, among other things, based on a reorganization of the Debtors using certain assets that are currently subject to the proposed Sale. The Bouchard Parties are concerned that such alternative plan, if any, or any other alternative plan may be in the best interest of the estates and creditors, yet would be precluded by the Sale. *See, e.g., In re Telesphere Comm.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994) (“When an objection is made, the standard to be applied by the court in approving a disposition of assets ... is that the proposed sale should be in the best interest of the estate.”). Accordingly, the Bouchard Parties raise this additional limited objection and reserve all rights to raise the same or any related objection at the Sale Hearing, including, but not limited to, seeking additional time and disclosures to ensure that there is adequate time and information to complete any sale process.

15. As to this, the Bouchard Parties are concerned that the inability and/or unwillingness to recommence operations post-petition (which Mr. Bouchard believes could have

been readily accomplished) has lowered, if not harmed, the value of the Bouchard fleet as well as the entire Jones Act market values, while relatively staggering fees have been accrued on what amounts, if the Sale is permitted to proceed to the announced bidders, to a liquidation for the benefit of the secured lenders.<sup>3</sup> Given the foregoing, Mr. Bouchard submits that an alternative structure, if any, that includes getting the vessels operational (consistent with prior guidance by this Court) would enhance value by multiples and provide revenue that can be used to pay creditors. Accordingly, and given that little if any value will be retained for general unsecured creditors under the present Sale process, the Bouchard Parties submit that additional disclosures, and a period of time should be granted to confirm the existence of alternative proposals, if any, as well as any enhanced value to creditors and the estates.

16. The Bouchard Parties expressly reserve all rights with respect to the Sale, including the right to supplement or add to the legal and factual arguments raised in this Limited Objection and Reservation of Rights as more information is made available to the Bouchard Parties, and to further object to the Sale on any bases whatsoever at the Sale Hearing. For the avoidance of doubt, nothing herein, including any omission, shall be interpreted or construed as a waiver or limitation on any such rights or the claims asserted by the Bouchard Parties, and the Bouchard Parties reserve all rights with respect thereto.

[SIGNATURES ON NEXT PAGE]

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<sup>3</sup> Any argument that the vessels could not be made operational because of various audit requirements rings hollow, as, upon information and belief, such audits typically take only a single day and are not expensive to conduct. Further, upon information and belief, the TMSA audit (and related audits) is completed remotely by, amongst others, ECM, who previously completed the class audit which is essentially the same audit.

Dated: July 22, 2021

**MAYER BROWN LLP**

/s/ Charles S. Kelley

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**CERTIFICATE OF SERVICE**

I certify that on July 22, 2021, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which automatically sends notification of such filing to all attorneys of record.

/s/ James B. Danford, Jr.

James B. Danford, Jr.