

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

IN RE:

PROPEX INC.,
PROPEX HOLDINGS INC.,
PROPEX CONCRETE SYSTEMS
CORPORATION,
PROPEX FABRICS INTERNATIONAL
HOLDINGS I INC.,
PROPEX FABRICS INTERNATIONAL
HOLDINGS II INC.,

Debtors.

*
*
* Case No. 08-10249
* Case No. 08-10250
* Case No. 08-10252
* Case No. 08-10253
* Case No. 08-10254
*
* Chapter 11
*
* Jointly Administered Under
* Case No. 08-10249
*

Chattanooga, Tennessee

BE IT REMEMBERED, that the above-styled
cause came on to be heard on the 25th day of June, 2008,
before the Honorable John C. Cook, Judge of said Court, when
all parties announced ready to proceed, and the following
proceeding was had, to wit:)

* * *

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DEBTORS' INDEX OF EXHIBITS

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INTERNAL REVENUE SERVICE'S
INDEX OF EXHIBITS

(There were no exhibits tendered.)

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UNSECURED CREDITORS COMMITTEE
INDEX OF EXHIBITS

(There were no exhibits tendered.)

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THE COURT: Be seated please.

Clerk, call the case.

THE CLERK: This is the Chapter 11, Propex Inc., Propex Holdings Inc., and associated cases, several matters on the agenda this morning. Motion for approval of settlement agreement with American Fibers & Yarns Company. There is an expedited motion for entry of an order approving the sale of assets.

THE COURT: All right. Let's have an announcement of appearances, please.

MR. WEGE: Good morning, Your Honor. Mark Wege and Shelley Rucker for the Debtors.

THE COURT: All right.

MR. ROCHESTER: Good morning, Your Honor. Shaya Rochester, with Akin Gump Strauss Hauer & Feld, for the initial committee of unsecured creditors.

THE COURT: All right.

MS. SWAFFORD: Kim Swafford, for the office of the United States Trustee.

THE COURT: All right.

MR. CLINTON: Shayne Clinton, for BNP Paribas.

THE COURT: All right.

1 MR. ANDERSON: Kent Anderson, Assistant
2 U.S. Attorney, for the Internal Revenue Service.

3 THE COURT: Okay. All right. You may
4 proceed.

5 MR. WEGE: Your Honor, we have two matters
6 this morning. The first one is unopposed, that is the
7 motion for approval of the 9019 settlement with American
8 Fibers & Yarns.

9 Your Honor, the settlement is --
10 essentially, what the settlement provides is that the
11 Debtors would get paid the amount that they are due in March
12 and April of '08, which had not been paid yet at the time of
13 this settlement document. There would be more or less a
14 clear allocation under the common site services agreement so
15 that, that agreement would change to be consistent with the
16 terms of the settlement agreement, and then the lease
17 agreement, essentially, would be unchanged. There would be
18 a payment in full of all the obligations that would be owed
19 under the common site services agreement as amended to the
20 Debtor, and the lawsuit would be dismissed, and there would
21 be releases upon the parties, so, essentially, it's a
22 settlement that would provide full payment of all the monies
23 that the Debtor believes it's due.

24 THE COURT: All right. And I assume the
25 Committee was aware of the particulars of this litigation

1 and has no objection to it?

2 MR. ROCHESTER: That's correct, Your Honor,
3 there is no objection by the Committee.

4 THE COURT: All right. I will grant the
5 motion.

6 MR. ROCHESTER: Very good, Your Honor.

7 MR. WEGE: Your Honor, the second matter
8 that is set for hearing today is the motion for the sale of
9 the manufacturing operations in Alto, Georgia, which is also
10 known as the Yonah facility. And there is an objection to
11 one aspect I believe of the sale, which is the IRS
12 objection. There is no -- to my knowledge, there is no
13 objection to the substance of the sale, which is the amount
14 of money that is being paid, the transaction itself, the
15 nature of the transaction, or the settlement agreement -- I
16 mean the sale agreement, and so, to my knowledge, I think,
17 all parties have agreed to that aspect of it. I'm only
18 aware of the IRS objection, and as I understand it, their
19 objection is a desire to have -- set aside or some
20 recognition in the order that would recognize the proceeds
21 in that sale as it relates to a capital gain. I mean I'll
22 let them, obviously, speak for themselves. But, that
23 doesn't go to the substance, and I think they have no
24 objection to the substance of the sale.

25 Your Honor, one thing I also wanted to

1 cover with respect to the motion, we did file an amendment
2 to the asset purchase agreement, that made a minor change in
3 the assets that were assets being sold and then assets being
4 excluded as well as a modification to the list of executory
5 contracts that were being assumed and assigned. There were
6 two new parties that were included on that list of assumed
7 contracts, that was only filed Monday, and those two parties
8 are Purity Water and Docuteam. And so in order to deal with
9 that, that late inclusion of the parties and the contracts
10 to be assumed and assigned, what we did is, of course,
11 provide a notice to those parties, and we included in the
12 order, a proposed order that we uploaded, which is an
13 amended order, that those parties would have ten days after
14 today if they filed -- if they desired to object to the
15 assumption of assignments. So it gives them, those two
16 parties additional notice time, in case they have any
17 issues.

18 As to the magnitude of those particular
19 contracts, they are what I would consider relatively minor
20 contracts, in that they deal with water coolers and copiers,
21 so it's not a significant portion of the sale itself and it
22 will definitely go to a significant matter. But,
23 nonetheless, we wanted to protect their rights, and so the
24 order that we submitted was amended to give that additional
25 notice time.

1 THE COURT: All right. What about the
2 deletion of certain assets, the inclusion of others? You
3 characterize that as minor?

4 MR. WEGE: Very minor, Your Honor.

5 THE COURT: And can you tell me the
6 definition of minor, how you are using that? Because I
7 couldn't really tell what -- the significance of that.

8 MR. WEGE: Your Honor, basically, a
9 substitution of a couple of looms. And if you ask me to
10 tell you in detail what that means, I can't. But, they're a
11 minor portion of the equipment that's being sold. There
12 were two that were excluded and two that were included, so.

13 THE COURT: It would not impact the value
14 of the overall sale at all?

15 MR. WEGE: It does not. It does not. The
16 terms of the sale itself is unaffected, the 3.4 million
17 dollar consideration is completely unaffected, it's merely
18 clarifying the schedules, of identifying the correct looms.

19 THE COURT: I see.

20 MR. WEGE: So, Your Honor, that is the
21 nature of the amendment, the proposed order that we have
22 deals with that change, as well as the notice language to
23 the parties that are the counter-parties to the contracts,
24 as well as the language that the committee asked for,
25 providing notice to them of any amendments, of course, which

1 we have done by virtue of the filing of the amendment. So
2 that is the nature of the sale, the amendment, and will be
3 done with the proposed order.

4 Your Honor, we still, as I understand it,
5 have an unresolved objection with the IRS. And I have a
6 witness here that is prepared to provide testimony, but I
7 can do that by proffer, and I understand the IRS just don't
8 have any objection to proffer.

9 THE COURT: All right.

10 MR. ANDERSON: That's correct, Your Honor,
11 all we're talking about is proffering financial information,
12 and we have no counter-evidence as to that, and we are
13 comfortable with that, with his proffering at this point.

14 THE COURT: All right. And I assume your
15 proffer will include the necessary information as to satisfy
16 the burden, that this was a sale within the business
17 judgment of the Debtors, so you can also include that since
18 I make certain findings in my order related to that, and I
19 will let you proffer that as well.

20 MR. WEGE: Very good, Your Honor.

21 Your Honor, if I may approach.

22 I have two exhibits, which I've also
23 provided.

24 THE COURT: All right. We'll mark those as
25 collective Exhibit 1.

1 (Whereupon, the summary calculation of
2 consideration being provided by the sale;
3 Tax basis of the inventory; Tax basis
4 of the fixed assets; Form 1120 for 2006
5 Propex Tax Return and attached schedule
6 to the 2006 Return was marked as
7 Exhibit No. 1.)

8 MR. WEGE: Very good.

9 Your Honor, this would be the testimony of
10 Stan Spraker who is the Director of the Tax Compliance for
11 Propex. He is familiar with Exhibit 1. Exhibit 1 consists
12 of three sheets. The first is a summary calculation of,
13 first, a consideration being provided by the sale, which is
14 3.1 million dollars. And then, the second two sets of rows
15 deal with the tax basis of the inventory, which is being
16 sold under the sale, and then the tax basis of the fixed
17 assets, which are also being sold pursuant to the sale.

18 The resulting tax result for this sale
19 would be, approximately, a 10.8 million dollar tax loss from
20 as a result of the sale. And, in fact, all of the assets,
21 they're being -- they're being solely reflected in the
22 inventory, the fixed assets.

23 The inventory schedule is consistent with
24 the schedule that's attached to the asset and purchase
25 agreement, and the numbers that are contained on the summary

