

## INSIGHTS

## Limetree Court Denies Stay Pending Appeal of Order Approving 363 Sale

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By: [Jason G. Cohen](#), [Mark E. Dendinger](#), [Jonathan Lozano](#), and [Robert Grattan](#)

A recent order from the United States Bankruptcy Court for the Southern District of Texas (the “Court”) allowed a debtor to reopen a completed auction based on a significantly more attractive, but untimely, bid. The late bid was approximately three times the cash consideration of the previously declared winning bid, and also provided for the additional containment of potential environmental risks. The decision is being appealed to the United States District Court for the Southern District of Texas (the “District Court”).

On January 11, 2022, the Court denied a motion for stay pending appeal from previously successful bidder St. Croix Energy (“St. Croix”), which sought to stay the implementation of a new sale order following a reopened auction of substantially all of the assets of Limetree Bay Services, LLC and its affiliated debtors (collectively, the “Debtors”) in *In re Limetree Bay Services, LLC*, Case No. 21-32351 (DRJ) (Bankr. S.D. Tex. 2021). Following Judge Jones’ decision, new successful joint bidders West Indies Petroleum Limited (“WIPL”) and Port Hamilton Refining and Transportation, LLLP (“PHRT”) will be authorized to continue toward consummation of the sale at a purchase price of \$62 million in cash – a higher price than St. Croix’s previously successful bid that the Debtors valued at \$33 million, including \$20 million in cash.

The Debtors entered Chapter 11 on July 12, 2021, and filed an emergency motion to approve bidding procedures, which was granted on August 11, 2021 (as approved, the “Bidding Procedures”).<sup>1</sup> Pursuant to the Bidding Procedures, the Debtors marketed substantially all of their assets, including their refinery on the southern coast of the Island of St. Croix in the United States Virgin Islands, and solicited bids from, among others, WIPL and St. Croix, resulting in communicated interest from both entities. However, WIPL was unable to submit an executed asset purchase agreement (as required by the Bidding Procedures) due to intervening circumstances, thus leaving St. Croix as the stalking horse bidder. On November 18, 2021, the Debtors commenced their initial auction resulting in St. Croix being selected as the unchallenged and successful bidder, with Sabin Metal Corp. and Bay, Ltd. as back-up bidders.<sup>2</sup>

Prior to the sale hearing, WIPL contacted the Debtors and provided a topping bid of \$30 million in cash for the refinery and significant additional value in the form of the immediate acquisition of the land underlying the refinery and assumption of certain liabilities upon the close of the sale. In contrast, St. Croix’s bid contemplated such purchase and assumption as a mere possibility up to 330 days after closing. Due to the increased consideration, upon motion by the Debtors, the auction was reopened on December 17-18, 2021,<sup>3</sup> resulting in a winning joint bid

from WIPL and PHRT for \$62 million in cash and a backup bid from St. Croix for \$57 million in cash.<sup>4</sup> The sale was approved on December 21, 2021, and appeals were subsequently filed by St. Croix and Bay,<sup>5</sup> with the motion for stay pending appeal following on January 5, 2022.<sup>6</sup>

In support of its motion for stay pending appeal, St. Croix argued that a stay was necessary to prevent irreparable harm and that prior case law, including *Bigler*,<sup>7</sup> demonstrated that St. Croix had a high probability of success on the merits. Chief among St. Croix's arguments was that the Bidding Procedures had been unfairly altered following prior approval by the Court and, as a result, St. Croix lost the opportunity to acquire assets for which it had previously been declared a winning bidder. Further, St. Croix argued that the initial increase in value offered by WIPL was diminished by its inability to close on the previously contemplated timeline. In response, the Debtors argued that any delay in closing pending appeal would result in the Debtors running out of money by early February. Further, the Debtors argued that the refinery posed health and safety risks if consummation were delayed, potentially harming nearby residents and the U.S. Environmental Protection Agency.

Following a hearing on January 11, 2022, the Court denied St. Croix's motion for a stay pending appeal. At the hearing, Judge Jones found his earlier decision to reopen the auction was "entirely appropriate."<sup>8</sup> Judge Jones cited the sizeable increase in purchase price as proof that his decision was correct and further questioned St. Croix as to whether it thought that such an increase implicitly signaled that perhaps something was deficient in the initial auction. Lastly, Judge Jones noted that St. Croix made a strategic decision to serve as the back-up bidder in the reopened auction. He noted that St. Croix just as well could have provided the winning bid and still appealed the decision to reopen the auction as a way to seek the difference between the respective winning bids, but it deliberately chose not to.

While 363 sales in bankruptcy rarely proceed from start to finish without a fight, the *Limetree* sale process reaffirms the weight courts place on bringing value into a debtor's estate to the greatest extent possible. Absent any of the above mentioned factors (i.e., the Debtors' lack of cash, potential harm to third parties, and a vast increase in price), it is possible that the Court could have granted the stay and upheld its prior ruling. However, the Court's messaging is clear that, absent compelling circumstances, the Court will not stand in the way of added value that benefits creditors while also quelling potential hazards to the community. In light of this, bidders in the 363 process would do well to try to draft safeguards preventing debtors from reopening auctions and all parties should work to ensure qualified bids are submitted timely.

St. Croix and Bay Ltd. are appealing the Court's sale order to the District Court. On January 18, St. Croix moved for a stay pending appeal in the District Court.

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1. Dkt. 392.

2. Dkt. 829.

3. Dkt. 913.

4. Dkt. 948.

5. See *Berry Contracting LP v. Limetree Bay Services, LLC*, Case No. 22-00040 (LHR) (S.D. Tex. 2022) and *St. Croix Energy, LLLP v. Limetree Bay Services, LLC*, Case No. 22-00041 (LHR) (S.D. Tex. 2022)

6. Dkt. 1018.

7. See *In re Bigler*, 443 B.R. 101 (Bankr. S.D. Tex. 2010). *Bigler* was cited for the proposition that a court “abuses its discretion when, after a properly conducted auction has already been held, it reopens the bidding process and approves a late bid ‘merely because a slightly higher offer has been received after the bidding is closed.’” *Id.* at 108. However, the price difference in *Bigler* was only 2.4% higher than the previous winning bid, a notable difference in the facts at issue in Limetree’s case. *Id.*

8. Dkt. 1054.