Opinion Title: 11/14/2002 Published In re Medical Software Solutions, dba PerfectPractice.MD ; 02-32330, Judge Thurman, 286 B.R. 431.

Body: The issue before the Court was whether the Debtor's proposed sale of substantially all of its assets outside the ordinary course of business, and before a Chapter 11 Plan of Reorganization and Disclosure Statement had been proposed, should be approved by the Court. Complicating matters further, the proposed buyers were insiders as that term is defined within the Bankruptcy Code. The Court concluded that in order to approve a sale of substantially all the Debtor's assets outside the ordinary course of business, the following elements must be met. The Debtor must show (1) that a sound business reason exists for the sale; (2) there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor's relationship with the buyer; (3) that the sale price is fair and reasonable; and (4) that the proposed buyer is proceeding in good faith. See e.g. , In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); WBQ Partnership v. Virginia Dep't of Med. Assistance Serv. (In re WBQ Partnership) , 189 B.R. 97, 102 (Bankr. E.D. Va. 1995). The Court specifically found that because of the proposed purchaser's insider status that the purchaser has a heightened responsibility to show that the sale is proposed in good faith and for fair value. Relying upon the court-appointed examiner's reports in this case, the Court found no evidence of fraud or collusion or other actions indicative of bad faith and approved the sale free and clear of all liabilities including possible successor liability claims by the former president of the company.

File: 433.pdf [1]

Judge: Judge William T. Thurman [2]

Date: Thursday, November 14, 2002

Source URL: https://www.utb.uscourts.gov/opinions/opinion-433#comment-0

Links

[1] https://www.utb.uscourts.gov/sites/default/files/opinions/433.pdf
[2] https://www.utb.uscourts.gov/content/judge-william-t-thurman