

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

VERACITY CONSTRUCTION GROUP,
INC.,

Debtor.

CHAPTER 7

CASE NO. 20-11037-BAH

Hearing Date: April 21, 2021

Hearing Time: 9:00 a.m.

**CHAPTER 7 TRUSTEE'S MOTION FOR AUTHORITY TO SELL
TRENCHER BY WAY OF PUBLIC AUCTION FREE AND CLEAR OF
ALL LIENS, CLAIMS AND ENCUMBRANCES**

Olga L. Gordon, the duly appointed Chapter 7 Trustee (the "Trustee") of the estate of the above captioned debtor hereby requests authority pursuant to Section 363 of the Bankruptcy Code, Rules 2002(a)(2) and 6004 of the Federal Rules of Bankruptcy Procedure and LBR 6004-1 to sell, by way of public auction, certain asset by way of public auction (the "Trencher" and the "Auction"), which is property of the debtor's bankruptcy estate. The Sale will be free and clear of all liens, claims and encumbrances with all liens, claims and encumbrances attaching to the proceeds of the Sale to the extent permitted by law.

In support thereof, the Trustee states as follows:

1. On December 28, 2020, Veracity Construction Group, Inc. (the "Debtor") filed a voluntary petition pursuant to Chapter 7 of 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").
2. On January 28, 2021, the Trustee was appointed as the Chapter 7 Trustee of the Debtor's bankruptcy estate.
3. The Trencher is property of the bankruptcy estate and more specifically is identified as the following: 2018 Clean Fast Volvo Truck and Trencher (VIN xxx911096). The Trencher is listed in the attachment to Debtor's Schedules A/B.

4. The Trustee has not obtained an appraisal of the Trencher. The Debtor paid \$748,000 for the Trencher in 2019. The Trustee believes that through the notices and publications of the Auction as detailed below, the estate will obtain the fair market value for the Trencher.

5. The Auctioneer will arrange to have the auction advertised primarily on-line and through the Auctioneer's database of contacts who may be interested in purchasing the Trencher and will also contact other parties who the Trustee and the Auctioneer regard as potential bidders.

7. The sale will be "AS IS" and "WHERE IS" without any representations or warranties of any kind including WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Eastern Bank asserts a secured claim against the Trencher in the amount of \$557,593. The Trustee disputes the validity of Eastern Bank's secured claim, as evidenced by the Chapter 7 Trustee's Objection To Eastern Bank's Motion For Relief From The Automatic Stay [Doc. 159]. The Trustee believes that there are no valid secured claims against the Trencher.

9. Further, upon information and belief, Leigh and Jay Kearney may be asserting a secured claim in the Trencher based upon a pre petition pre-judgment attachment (obtained during the 90 day preference period) and an invalid post petition judgment in state court (Tennessee County of Davidson, Kearney v. Verax Network Solutions, LLC et al., case no. 21GC572).

9. If this Motion is approved by the Court, it is the Trustee's intention to sell the Trencher at a public auction to be held on-line to close on June 8, 2021 or a date thereafter.

11. The Trustee believes a public sale of the Trencher will bring the estate an amount equal to that which would be obtained by way of a private sale.

12. The Trustee states that, pursuant to LBR 7102(b)(2), an accompanying memorandum of law should not be required for the relief requested herein because the relevant law has been sufficiently set forth in this Motion.

WHEREFORE, Olga L. Gordon, the Trustee herein, requests that this honorable Court enter an Order:

- a) granting the Trustee the authority to sell the Trencher by way of a public auction free and clear of all liens, claims and encumbrances;
- b) providing that all valid liens, claims and encumbrances shall attach to the proceeds of the sale in the order provided by law;
- c) approving the form of the proposed Notice of Intended Public Sale which is filed concurrently herewith; and
- d) granting such other relief that is just and equitable.

Respectfully submitted,

OLGA L. GORDON, CHAPTER 7 TRUSTEE,
By her attorneys,

/s/ Olga L. Gordon

Olga L. Gordon, Esq., BNH06338

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Dated: March 22, 2021

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

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INC.,

Debtor.

CHAPTER 7

CASE NO. 20-11037-BAH

Hearing Date: April 21, 2021

Hearing Time: 9:00 a.m.

**CHAPTER 7 TRUSTEE'S NOTICE OF INTENDED
SALE OF TRENCHER BY PUBLIC AUCTION FREE AND CLEAR OF
ALL LIENS, CLAIMS AND ENCUMBRANCES**

1. Notice is hereby given, pursuant to 11 U.S.C. §363, Fed. R. Bankr. P. 2002(a)(2) and 6004 and LBR 2002-1 and 6004-1(b), that Olga L. Gordon, the Chapter 7 Trustee (the "Trustee") of the estate of Veracity Construction Group, Inc. (the "Debtor") intends to sell at public auction, free and clear of all liens, claims and encumbrances all of the Trustee's right, title and interest in the following asset: Clean Fast Volvo Truck and Trencher (VIN xxx91106) (the "Asset").

2. The Asset will be sold at a public auction to be held on-line to close on June 8, 2021 or at a date and time thereafter.¹

3. McLemore Auction Company, LLC will conduct the auction for the Trustee (the "Auctioneer"). (See www.mclamoreauction.com)

4. The Trustee believes that there are no valid secured claims against the Asset.

5. Eastern Bank asserts a secured claim totaling \$557,593; however, the Trustee disputes Eastern Bank's alleged secured claim. Upon information and belief, Leigh and Jay Kearney may be asserting a secured claim in the Asset; however, the Trustee disputes their secured claim.

¹ Interested parties should contact the Auctioneer to confirm the date and time of the Auction.

6. THE SALE IS “AS IS” AND “WHERE IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EXPRESSLY EXCLUDES ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. The Trustee reserves the right to amend or alter the terms of the Auction.

8. Unless a creditor or other party in interest files a written objection to said proposed Auction with the Court, the Auctioneer will proceed to conduct the aforesaid auction of the Asset as contemplated herein without further action of the Court.

9. Any and all objections to the Chapter 7 Trustee’s Motion for Authority to Sell Trencher By Way of Public Auction (the “Motion to Sell”) must be filed in writing with the Clerk of the Court, United States Bankruptcy Court for the District of New Hampshire, Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire 03301 on or before April 14, 2021 and copies thereof delivered to the Trustee at the address listed below.

10. Any objection shall state the Debtors’ name, case number and in addition, state what, if any, interest the party filing an objection has in the case and specifically state the basis of any such objection.

11. If no objection to the sale is timely filed, the Bankruptcy Court in its discretion may grant the Motion.

12. The Court will hold a hearing on the Motion To Sell on **April 21, 2021 at 9:00 a.m.** at the United States Bankruptcy Court for the District of New Hampshire, Warren B. Rudman United States Courthouse, Courtroom A, 55 Pleasant Street, Concord, New Hampshire 03301.

13. Any party filing an objection must be present at the hearing.

14. The Trustee reserves the right to reject any and all bids and to remove property from the Auction if she deems such action to be in the best interest of the bankruptcy estate.

Respectfully submitted,

OLGA L. GORDON, CHAPTER 7 TRUSTEE,

By her attorneys,

/s/ Olga L. Gordon

Olga L. Gordon, Esq., BNH06338

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Dated: March 22, 2021

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CHAPTER 7

CASE NO. 20-11037-BAH

Hearing Date: April 21, 2021

Hearing Time: 9:00 a.m.

**ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR AUTHORITY TO SELL
TRENCHER BY WAY OF PUBLIC AUCTION FREE AND CLEAR OF
ALL LIENS, CLAIMS AND ENCUMBRANCES**

Upon consideration of the Chapter 7 Trustee's Motion For Authority To Sell Trencher By Way of Public Auction Free And Clear Of All Liens, Claims And Encumbrances (the "Motion"), it is hereby

ORDERED, that the Trustee is authorized to sell the Trencher¹ by way of a public auction free and clear of all liens, claims and encumbrances; and it is hereby

ORDERED, all valid liens, claims and encumbrances shall attach to the proceeds of the sale in the order provided by law; and it is hereby

ORDERED, that the form of the Notice of Intended Sale of Trencher is approved; and it is hereby

ORDERED, that the Trustee and/or Auctioneer shall file a Report of Sale within 14 days of the closing on the sale.

Dated: _____

HONORABLE BRUCE A. HARWOOD
UNITED STATES BANKRUPTCY COURT

¹ As defined in the Motion.