

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	JOINTLY ADMINISTERED UNDER CASE NO: 08-46617:
Polaroid Corporation et al.	08-46617 (GFK)
Debtors.	
(includes:	
Polaroid Holding Company;	08-46621 (GFK)
Polaroid Consumer Electronics, LLC;	08-46620 (GFK)
Polaroid Capital, LLC;	08-46623 (GFK)
Polaroid Latin America I Corporation	08-46624 (GFK)
Polaroid Asia Pacific LLC;	08-46625 (GFK)
Polaroid International Holding LLC;	08-46626 (GFK)
Polaroid New Bedford Real Estate, LLC;	08-46627 (GFK)
Polaroid Norwood Real Estate, LLC	08-46628 (GFK)
Polaroid Waltham Real Estate, LLC)	08-46629 (GFK)
	Chapter 11 Cases Judge Gregory F. Kishel

OBJECTION OF RONALD R. PETERSON, AS CHAPTER 7 TRUSTEE FOR RWB SERVICES, LLC AND AS CHAPTER 7 TRUSTEE FOR LANCELOT INVESTORS FUND, LTD. TO DEBTORS' SALE OF ASSETS

TO: The Parties in Interest identified in Local Rule 9013-3.

Ronald R. Peterson (the “Lancelot Trustee”) as chapter 7 Trustee for RWB Services, LLC (“RWB”) and as chapter 7 Trustee for Lancelot Investors Fund, Ltd. (“Lancelot Offshore”), hereby files this Objection to the Debtors’ Sale of Assets (the “Objection”),¹ and states as follows:

I.
INTRODUCTION

1. In what was best described by one of the bidders as a “circus,” the Debtors thwarted the entire purpose of an auction — to sell assets at the highest and best price — and

¹ The Lancelot Trustee files this Objection contemporaneous with submitting a bid (the “Competing Bid”) to purchase substantially all of the assets of the above-captioned Debtors (the “Debtors”).

accepted a lower bid as the winning bid. The Auction (defined below) made a mockery out of the auction process and cast this entire bankruptcy proceeding in a bad light. The Auction was deficient for the following two independent reasons: (1) the Debtors chose a lower bid as the winning bid; and (2) the rules of the Auction were never defined, constantly changing and even included a secret agreement between one of the bidders and the Debtors. Therefore, the Lancelot Trustee objects to the sale and requests that all bidders submit their highest and best bids by April 8, 2009 at 5 P.M.

II. **BACKGROUND**

2. On December 18, 2008, each of the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors also filed motions for an order having the above-entitled cases jointly administered, which motion was granted by this Court on December 23, 2008.

3. The Debtors continue in possession of their respective properties and have continued to operate their businesses as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in the Debtors’ Chapter 11 cases. An Official Committee of Unsecured Creditors was appointed in these cases on January 8, 2009.

5. On October 20, 2008, RWB, Lancelot Offshore and 17 other related entities (collectively, the “Lancelot Debtors”) filed petitions for relief under chapter 7 of the title 11 of the United States Code. Thereafter, the United States Trustee for the Northern District of Illinois appointed Ronald R. Peterson as the trustee for RWB and Lancelot Offshore.

6. On January 28, 2009, the Debtors filed a motion (the “Bid Procedures Motion”), which sought the entry of an order approving the sale of substantially all of its assets to the Proposed Purchaser, or to another bidder or bidders submitting the Successful Bid or the Back-

Up Bid, free and clear of all liens and which seeks the entry of a Bidding Procedures Order approving *inter alia* (1) the No-Shop Requirements; (2) the Break-Up Fee, the Expense Reimbursement, the Allowed Termination Claim and the Buyer Protection Liens; and (3) the Bidding Procedures.

7. The Lancelot Trustee filed a limited objection to certain provisions of the proposed bidding procedures order for the reasons set forth therein.

8. On February 18, 2009, the Court entered an Order (1) Approving Auction and Bidding Procedures; (2) Approving Break-Up Fee, Expense Reimbursement and Other Buyer Protections; (3) Approving Notice; and (4) Granting Related Relief (the “Bid Procedures Order”). (All capitalized terms not specifically defined herein shall have the meanings ascribed in the Bid Procedures Order and the attached Bidding Procedures.)

9. On March 26, 2009, the Lancelot Trustee filed a Conditional Objection To The Debtors’ Sale of Assets. This objection is withdraw.

10. On March 30 and 31, 2009, pursuant to the Bid Procedures Order, an auction for the sale of the Debtors’ assets was conducted (the “Auction”). The bidders at the Auction were Patriarch, Hilco, Genii Capital, and Edison Pharmaceutical.

11. At the beginning of the Auction, the Debtors were not accepting equity as part of any bid. The contemplated equity was to be equity a newly formed company which would license the Polaroid IP Assets. The original bids were to consist of cash and excluded assets.

12. At the beginning of the second day of the Auction, over the objection of Patriarch, the Debtors decided to allow Hilco to bid with an equity component. The equity was valued for bidding purposes at \$650,000 per percentage point of equity.

13. Hilco and Patriarch traded bids, each upping their offered equity percentage. During this process, and without notice to Hilco, Partiararch and the Debtors entered into a secret

agreement whereby that the maximum equity that a bidder would be allowed to include in their bid would be 20 percent.

14. Hilco submitted a bid of \$61,212,000 which includes a 20.5 percent equity component. This bid was rejected by the Debtors without the support of the creditor's committee.

15. At the conclusion of the Auction, Patriarch was declared the winning bidder with a bid of \$59,125,000 which includes a 12 percent equity component.

III. **ARGUMENT**

A. The Winning Bid Was Not the Highest Bid.

16. Towards the end of the auction, the Debtors' place an arbitrary cap on the amount of equity the bidders could include as part of their bid. While the Lancelot Trustee certainly understands why the Debtors may have wanted to exclude equity from the bidding — so that the assets were liquidated to a certain cash amount — once the Debtors allowed equity to be part of the bidding, there is no rational for capping the allowed equity bid. This especially true in the instant case where neither party was decreasing the cash component of their bid and exchanging it for equity. This arbitrary and capricious equity cap resulted in the Debtors accepting a lower bid — the exact opposite result of what the auction process is supposed to achieve.

B. The Auction Was Conducted Arbitrarily.

17. As described above, the Auction had no set rules and was basically a free-for-all. As the Auction progressed, the Debtors and their financial consultants changed the game and allowed for equity to be bid. This is reasonable considering the potential for benefit to the creditors. In fact, the creditors supported adding equity in the bidding equation. Inexplicably, however, the Debtors decided to enter into a secret agreement with Patriarch which capped the equity component of any bid at 20 percent. If the Debtors agree that each percent of equity is

worth \$650,000, there should be no limit to the amount of equity that a bidder is allowed to bid. This secret and arbitrary cap is inconsistent with the Bid Procedures Order and the purpose of an asset auction in general.

18. The Trustee reserves all rights to raise new objections and supplement this Objection after the Auction is concluded.

IV. CONCLUSION

19. The Debtors' sale of its assets should maximize the amount received by the estates. The Debtors by engaging in a secret deal and choosing a lower bid have failed to do so.

