

Lafonda Sims

CAUSE NO. DC-18-17625

SUMMITBRIDGE NATIONAL	§	IN THE DISTRICT COURT
INVESTMENTS V LLC,	§	
Plaintiff,	§	
	§	
VS.	§	OF DALLAS COUNTY, TEXAS
	§	
ECS REFINING, INC.,	§	
Defendant.	§	191 <sup>st</sup> JUDICIAL DISTRICT

**RECEIVER’S REPORT OF SALE**

To the Honorable Court:

The undersigned Donald Towner files this Receiver’s Report of Sale.

**Introduction:**

By the Court’s November 21, 2018, Order Appointing Receiver (the “Appointment Order”), I, Donald Towner, was appointed receiver (“Receiver”) of the Texas Equipment (which is defined in the Appointment Order). Pursuant to the Appointment Order and with the consent of SummitBridge National Investments V LLC (“Plaintiff” of “SummitBridge”), the Receiver sold and liquidated the Texas Equipment. The Appointment Order requires the Receiver to file with the Court a report of sale within fourteen days after it concludes the sale of the Texas Equipment. Accordingly, the Receiver files this Report of Sale.

**Report of Sale:**

1. On November 21, 2018 I, Donald Towner, was appointed Receiver of the Texas Equipment of ECS Refining, Inc. (“ECS”).

2. On November 29, 2018, I received keys and gate opener from Tyler Taggart, son of Ken Taggart, landlord of premises (the “Premises”) where the Texas Equipment was located. On the same day, I met with Kyle Rosen of Rosen Systems, Inc. (“Rosen Systems”), auctioneer. Mr. Rosen was familiar with the Texas Equipment, having looked at the Texas Equipment prior to my appointment as Receiver. I started negotiation with Mr. Rosen about auctioning the Texas Equipment on January 17, 2019. The negotiation included a guaranteed minimum payment of \$465,000. The agreement with Rosen Systems was changed to increase the guaranteed minimum payment to \$495,000 and change the date of auction to January 24, 2019. During the next weeks, I reviewed the Texas Equipment inventory to verify the existence and location of the Texas Equipment. I also monitored the setup and organization of the Texas Equipment for the auction.

3. On December 3, 2018, I received an inquiry as to the possibility of a bulk sale of all the Texas Equipment at the Premises. Pete Davis expressed interest in purchasing the Texas Equipment through Peach Tree Investments or a related company (collectively, “Peach Tree”), and stated he would contact the landlord about leasing the Premises, as that would give him the time to remove the Texas Equipment after purchase. He also stated he would be interested in acquiring the Premises and not move the Texas Equipment. I was concerned about having enough time to remove the Texas Equipment, as the Receiver was liable for paying rent at the rate of approximately \$1,100 a day for the time the Receiver was in possession of the Premises. I met with representatives of Peach Tree on December 7, 2018. I showed them around the Texas Equipment and helped verify that all the Texas Equipment on the list was present at the Premises.

4. After discussions with the Peach Tree representatives, I felt that there was a genuine interest in the Texas Equipment and started negotiating with Kyle Rosen to represent the

Receiver as agent for a bulk sale. With SummitBridge's consent, I agreed to pay Rosen Systems 10% of the sales price and up to \$50,000 of expenses. The auction expenses were due to the fact that if the sale to Peach Tree fell through, the auction would need to continue on January 24, 2019 as scheduled. I did this to cover all contingencies.

5. As the Receiver, I was in discussions with the Bankruptcy Trustee for ECS ("Trustee") and helped her with confirmation of the existence of the Texas Equipment, and access to the building to remove the hard drives from the computers and file servers at Premises. I also negotiated transferring the rolling stock in Mesquite Texas, which were on my list of the Texas Equipment to sell as the Receiver. I am still trying to acquire titles to 2 box trucks from the Trustee, so that I can transfer the titles. I was contacted by DLL which claimed liens on certain Komatsu forklifts owned by ECS. None of the forklifts included in the Texas Equipment were covered by DLL's lien.

6. The bulk sale of Texas Equipment to Peach Tree was to be finalized on or before December 31, 2018. However, Peach Tree was not able to secure a lease of the Premises, and the initial planned sale to Peach Tree was cancelled. On January 7, 2019, Pete Davis of Peach Tree contacted me, and wanted to go forward with the purchase of the Texas Equipment. Mr. Davis claimed he had problems with the landlord in acquiring a lease or purchase of the Premises, which he needed before he could purchase the Texas Equipment. Peach Tree apparently was able to secure a lease of the Premises, so Mr. Davis said he could close the deal by the end of the week. I renegotiated an increase in the purchase price to \$660,000, with the increase to cover additional rent the Receiver would need to pay for the Premises (that is, for the Receiver being in possession of the Premises beyond the prior planned closing date of December 1, 2018). The sale

of the Texas Equipment closed on January 10, 2019, with the Receiver receiving a wire transfer of the funds.

7. I spent 218 hours safeguarding, inventorying and selling the Texas Equipment. The fees and expenses were \$16,350 and \$4,730.85 respectively, for a total of \$21,080.85.

8. The amount due the landlord, per the Appointment Order, is \$46,542.34, determined as follows: With the Base Rent of \$32,471.40 pro-rated on a 30-day month, daily rent would be \$1,082.38. I obtained access to the Premises on November 28, 2018, and relinquished my access on January 10, 2019. November rent would be for 3 days at \$1,082.38 or \$3,247.14, December rent would be \$32,471.40, and January rent would be for 10 days or a total of \$10,823.80. The grand total due of the rent due landlord is  $\$3,247.14 + \$32,471.40 + \$10,823.80 = \$46,542.34$ .

9. I have agreed to hold \$5,000 of funds paid by Peach Tree until replacement titles to the 2 box trucks can be obtained.

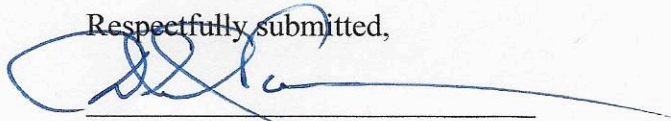
10. Following is an accounting of the funds that received and disbursed by the Receiver:

Receiver funded checking account	\$100.00
Funds paid to Receiver (sale proceeds)	\$660,000.00
Funds wired to Landlord	-\$46,542.34
Funds wired to Rosen Systems	-\$66,000.00
Receiver expenses and fees	-\$21,080.85
Funds wired to SummitBridge	<u>-\$476,476.81</u>
BALANCE	\$50,000.00

The \$50,000 balance is being held pending determination of Rosen Systems' actual expenses, delivery to Peach Tree titles to 2 box trucks, and a refund of \$100 to the Receiver for the original bank account funding.

**Dated:** January 21, 2019

Respectfully submitted,



**Donald Towner, Receiver**

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