

ENTERED

August 10, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

BOLLINGER AMELIA REPAIR, LLC

Plaintiff,

VS.

BOUCHARD TRANSPORTATION CO.,
INC., *et al*,

Defendants,

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Civil Action No.: 2-19-cv-00370

AGREED ORDER FOR INTERLOCUTORY SALE

This Court having considered Plaintiff-In-Intervention’s Novum Energy Trading Inc. (“Novum”) Motion for Interlocutory Sale of U.S. flag tug *M/V Barbara E. Bouchard*, IMO 9053141 [Doc. 65], and Bollinger Amelia Repair, LLC’s (“Bollinger”) Motion for Interlocutory Sale of Barge *B No. 240* [Doc. 58] (collectively the “Motions for Interlocutory Sale”) is of the opinion that there has been an unreasonable delay in securing the release of *M/V Barbara E. Bouchard* and Barge *B No. 240*. Accordingly, the Motions for Interlocutory Sale are meritorious and granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the United States Marshal for the Southern District of Texas (the “Marshal”) sell *M/V Barbara E. Bouchard* and Barge *B No. 240*, AS IS, WHERE IS, with no warranties, at a public auction, to the highest bidder, free and clear of all liens, preexisting claims, and encumbrances on *M/V Barbara E. Bouchard* and Barge *B No. 240*. This sale shall be held at a location designated by the Marshal within the United States Courthouse, 1133 N. Shoreline

Blvd., Corpus Christi, Texas 78401, ninety (90) days from the date this Agreed Order for Interlocutory Sale is signed.¹

2. That Novum, Bollinger, Tugz Company LLC (“Tugz”), and Steelstran Industries, Inc. (“Steelstran”)² are responsible for the advertisement of a notice of sale pursuant to Local Rule E.1. of this court in the *Corpus Christi Caller Times*, which is designated as a paper of general publication in this territory for publication of the notice of sale of *M/V Barbara E. Bouchard* and *B No. 240*, for four (4) consecutive days between three (3) and thirty-one (31) days before the sale date. Prior to publishing, the notice of sale is to be reviewed by the Marshal for comments, and an affidavit of publication prior to the sale will be provided to the Marshal. That if other arresting parties join this Motion, advertisement cost will be shared by all the arresting parties. This cost shall be finally paid as a *custodia legis* expense.

3. That Novum, Bollinger, Tugz, and Steelstran be reimbursed from the sale proceeds all amounts paid to Martin Energy Services, LLC (“Substitute Custodian”) for custodial expenses to be paid from the proceeds of sale as a *custodia legis* expense and any other qualified *custodia legis* expense determined by the Court.

4. That Novum, Bollinger, Tugz, and Steelstran appoint Compass Maritime (“Compass”) for the purpose of marketing *M/V Barbara E. Bouchard* and Barge *B No. 240*. Compass shall be entitled to a commission equal to two and half percent (2 ½%) of the confirmed sale price to be paid from the proceeds of the sale as *custodia legis* expense. That Compass Maritime shall work closely with the Marshal on taking online bids, shall the same be necessary, as a result of COVID-19, at the discretion of Compass.

5. That the sale shall be held virtually, through an online platform, the details of which Compass will arrange. Compass shall further work to arrange preregistration of bidders,

¹ See Order Adopting Memorandum and Recommendation dated July 30, 2020 [Doc. 85].

² Tugz joined Novum’s Motion for Sale, while Steelstran has a claim against *M/V Barbara E. Bouchard*. [Doc. 81]

auction arrangements, and sale rules. Compass shall accept sealed bids in writing before the sale, which may be emailed to auctions@compassmar.com. Real Time, online internet bids, shall also be accepted from registered bidders on the date of sale.

6. That the Substitute Custodian of *M/V Barbara E. Bouchard* and Barge *B No. 240*, at the request of an interested person, shall grant permission to such person or his representative to visit, board, inspect, examine, and survey *M/V Barbara E. Bouchard* and Barge *B No. 240* during daylight hours of any day between the date hereof and the date of the sale, provided that the same shall be done at the sole expense and risk of any such person or his representative and upon the reasonable terms set by the Substitute Custodian.

7. That the minimum acceptable bid is \$4,750,000.00. That the successful and highest bidder for *M/V Barbara E. Bouchard* and Barge *B No. 240* at the sale shall, on the date of the sale, deposit with the Marshal at least ten percent (10%) of the amount bid for *M/V Barbara E. Bouchard* and Barge *B No. 240*, said deposit to be by cashier's check, certified check from a bank located within the United States of America, or in the form of funds held in a trust account maintained by an attorney in good standing and admitted to the bar of this Court, who shall certify funds so held in trust. That the balance of the purchase price shall be paid in full within seven (7) days of the sale, and that the balance shall be paid by cashier's check or certified check from a bank located within the United States of America. If an objection is filed within the seven (7) days, the highest bidder may defer payment of the balance until the sale is confirmed. If the highest bidder does not pay the bid on time: (1) the deposit shall be forfeited to the action, applied to costs, with the balance paid to the Court registry; and (2) the Court may accept the second bid or order a new sale.

8. The Marshal shall bring the proceeds of the sale, minus any Marshal service fees and expenses associated with the sale, into the Court and deposit the same with the Clerk thereof

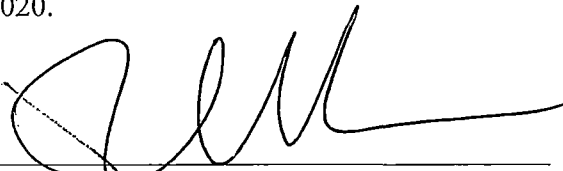
pending the further disposition of this action. The proceeds of the sale shall be deposited by the Clerk of Court forthwith in treasury bills or other government obligations carrying a high interest rate and maintained in such obligations until otherwise directed by this Court.

9. Objections to the sale must be in writing and filed with the Marshal and the Court, with copies delivered in person or electronically on the day of filing to all counsel of record, within seven (7) days of the sale date. Objections shall be accompanied by a cost deposit of seven (7) days of estimated expenses of custody. If sustained, the deposits by the bidder and objector will be refunded immediately. If overruled, the balance, if any, of the objector's deposit that remains after deduction of the expenses of custody from the day of the objection until the day of the confirmation will be paid to the objector.

10. After this Court has confirmed a sale pursuant to this Order, the Marshal shall deliver a bill of sale to the confirmed purchaser and the *M/V Barbara E. Bouchard* and Barge *B No. 240* shall be conveyed by the Marshal AS IS, WHERE IS, with no warranties, free and clear of all liens and encumbrances of whatever nature whatsoever.

11. That this Court shall retain jurisdiction of the above cause for such further proceedings as may be appropriate.

SIGNED on this 10th day of August 2020.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE