

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
DEAN GRAYSON, as representative of	:
the estate of Uri Landesman; JOSEPH	:
MANN;	:
JOSEPH SANFILIPPO; and JEFFREY	:
SHULSE,	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**ORDER APPROVING THE SALE OF THE ASSETS OF
LC ENERGY HOLDINGS LLC AND LC ENERGY OPERATIONS LLC FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

Upon the (1) motion (Docket No. 422) of Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, (collectively, the “*Receivership Entities*”), for entry of an order (I) (a) authorizing the Receiver to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Holdings, LC Energy Operations LLC and/ or their assets (collectively, “*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b)

authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “**Bidding Procedures**”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “**Sale Motion**”) and the accompanying Receiver’s Memorandum of Law in Support of the Sale Motion and the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Sale Motion, (2) the Receiver’s Reply Brief in Further Support of the Sale Motion (Docket No. 436), (3) the Declaration of Trey Rogers in Support of the Sale Motion (Docket No. 441), (4) the *Order (A) Authorizing the Receiver to Sell the Receivership’s Rights in and to LC Energy Operations LLC Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Procedures for the Filing of Claims Against LC Energy and/ or its Assets and the Resolution thereof and (C) Granting Certain Related Relief* (the “**Procedures Order**”) (Docket No. 444), (5) the Notice of Successful Bidder For LC Energy Holdings LLC, LC Energy Operations LLC and their Respective Assets (Docket No. 487) and (6) the affidavit of the Receiver in further support of the Sale (the “**Cyganowski Affidavit**”) (Docket No. 487); and it appearing that the substantive relief requested in the Sale Motion is in the best interests of the Receiver, the Receivership Entities and their stakeholders; and this Court having jurisdiction to consider the relief requested in the Sale Motion pursuant to, *inter alia*, the October 16, 2017 *Second Amended Order Appointing Receiver*; and notice of the Sale Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:¹

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Sale Motion, the Cyganowski Affidavit or the APA, as applicable.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Compliance with Bidding Procedures. As established by the Cyganowski Affidavit in support of the Sale, LC Energy, through the Receiver, sufficiently and actively marketed its assets and conducted the sale process in compliance with the Procedures Order and afforded interested purchasers a full and fair opportunity to make higher and better offers consistent with the Procedures Order. In accordance with the Procedures Order, the Receiver determined that ERC Mining Indiana Corp. (“**Purchaser**”) is the Successful Bidder (as defined in the Procedures Order). The Receiver’s determination that the Successful Bidder submitted the highest or otherwise best offer for the LC Energy Assets constitutes a valid and sound exercise of the Receiver’s business judgment.

B. Notice. As evidenced by the pleadings filed in support of the Sale Motion, (i) proper, timely, adequate and sufficient notice of the Sale Motion was provided. Publication solely in Greene and Sullivan Counties, Indiana was sufficient and proper, and (ii) no other or further notice of the Sale Motion is or shall be required.

C. Opportunity to Object. A fair and reasonable opportunity to object and to be heard with respect to the Sale was given to all interested persons and entities, including those entities listed on the LC Energy Service List. The only response to the proposed Sale was filed by Western Pocahontas Properties Limited Partnership (“**WPP**”). In its response, WPP does not oppose the Sale, but rather asserts certain claims against LC Energy (the “**WPP Claims**”).

D. Sale in Best Interest. Under the circumstances, the sale of the LC Energy assets to Purchaser and Purchaser’s assumption of LC Energy’s liabilities (the “**Sale Transaction**”) is in the best interests of Seller, the Receivership Entities and their estate (the “**Receivership Estate**”). Entry into the APA and the consummation of the transactions contemplated therein constitutes the

Receiver's exercise of sound business judgment, and such acts are in the best interests of Seller, the Receivership Entities and the Receivership Estate. The Court finds that the Receiver has articulated good and sufficient business reasons justifying the Sale Transaction.

E. Arms-Length Sale. The APA was negotiated and accepted by Seller and Purchaser without collusion, in good faith, and from arm's length bargaining positions.

F. Free and Clear. Seller may sell the LC Energy assets free and clear of all Encumbrances.

G. Prompt Consummation. The sale of LC Energy's assets must be approved and consummated promptly in order to preserve the value of the LC Energy assets. Therefore, time is of the essence in consummating the Sale Transaction, and Seller and Purchaser intend to close the Sale Transaction as soon as reasonably practicable (the "**Closing Date**"). The Receiver has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction.

H. Consideration Fair and Reasonable. The consideration provided by Purchaser for the LC Energy assets and the assumption of all liabilities (i) is fair and reasonable and (ii) is the highest or otherwise best offer for LC Energy.

I. Legal Valid Transfer. The transfer of LC Energy's assets to Purchaser will be a legal, valid, and effective transfer of the assets and will vest Purchaser with all right, title and interest of Seller to LC Energy's assets free and clear of all Encumbrances as set forth in the APA.

J. Legal and Factual Basis. The findings of fact in this Order shall be construed as conclusions of law, and the conclusions of law in this Order shall be construed as findings of fact, to the fullest extent of the law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The substantive relief requested in the Sale Motion is GRANTED as provided herein.

2. All objections to the relief provided for herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

3. WPP's right to assert the WPP Claims are hereby reserved and the Receiver's right to oppose the WPP Claims on all grounds, including, but not limited to, timeliness are hereby reserved. WPP shall file a proof of claim within thirty (30) days of entry of this Order with Platinum's claims agent in accordance with previously approved procedures for filing proofs of claim, which claim shall be adjudicated in accordance with any claims adjudication process used in this case.

4. The Sale Transaction is hereby approved and the Receiver is authorized to close under the APA.

5. The transfer of LC Energy's assets to Purchaser shall be, and hereby is, free and clear of all Encumbrances.

6. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of assets set forth in the APA (the "*LC Energy Assets*") transferring good and marketable title in such LC Energy Assets to Purchaser. All federal, state, and local governmental agencies or departments are hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction.

7. All entities that are presently, or on the Closing Date may be, in possession of

some or all of the LC Energy Assets are hereby directed to surrender possession of the LC Energy Assets to Purchaser on the Closing Date.

8. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of LC Energy and/ or the Receiver to transfer the LC Energy Assets to Purchaser in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

9. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Quest and Purchaser, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Purchaser Releasors**”) fully release and discharge Credit Funding LLC, Seller, the Receiver and the Receivership Entities and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Receiver Releasees**”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Receiver Releasees, the Purchaser Releasors ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Purchaser Releasors acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Purchaser Releasors expressly

waive and relinquish any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

10. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Credit Funding LLC, Seller, the Receiver and the Receivership Entities, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Receiver Releasers**”) hereby fully release and discharge Purchaser and Quest, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “**Purchaser Releasees**”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Purchaser Releasees, the Receiver Releasers ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Receiver Releasers acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Receiver Releasers expressly waive and relinquish any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

11. Effective upon Closing, the claims filed against LC Energy that were to be adjudicated in accordance with the Procedures Order, are moot in light of the lack of proceeds from the sale of LC Energy, and as such, are dismissed.

12. The consideration provided by Purchaser for the LC Energy Assets shall be deemed to constitute reasonably equivalent value and fair consideration under the laws of the United States, any state, territory, possession, or the District of Columbia.

13. The Receiver shall cooperate with Purchaser and Purchaser shall cooperate with the Receiver, in each case to ensure that the Sale Transaction is consummated and the Receiver is hereby authorized to make such modifications or supplements to any bill of sale or other document executed in connection with the APA to facilitate its consummation as contemplated by the APA.

14. The terms and provisions of the Procedures Orders and this Order shall be binding in all respects upon and shall inure to the benefit of the Receiver and the Receivership Estate, and Purchaser, and their respective successors and assigns, and any affected third parties.

15. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Receivership Estate.

16. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

17. Other than any contracts, agreements and/ or leases (collectively, “*Agreements*”) by and between any contract counterparty and LC Energy assigned to the Purchaser under the

APA, all Agreements by and between any contract counterparty and LC Energy are hereby deemed terminated and of no further force or effect. Any property leased to LC Energy under such Agreements is hereby deemed to revert to its lawful owner without the need for any further documentation.

18. The provisions of this Order are nonseverable and mutually dependent.

19. This Order shall be effective immediately upon its entry and the Receiver is authorized to close the sale immediately upon entry of this Order.

20. The Receiver is authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

21. This Court shall retain jurisdiction to enforce and implement the terms and provisions of this Order, the APA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects.

12

Dated: September ~~11~~^{XX}, 2019
Brooklyn, New York

U.S.D.J.