

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re	:	Chapter 15
ARCTIC GLACIER INTERNATIONAL INC.,	:	Case No. 12-10605 (KG)
<i>et al.</i> , <sup>1</sup>	:	(Jointly Administered)
Debtors in a Foreign Proceeding.	:	Re: Docket No. 182

**ORDER (I) RECOGNIZING AND ENFORCING THE  
CCAA HUNTINGTON SALE ORDER, (II) AUTHORIZING  
AND APPROVING THE SALE OF HUNTINGTON PROPERTY  
FREE AND CLEAR, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion") of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor and authorized foreign representative (the "Monitor") for the above-captioned debtors (collectively, the "Debtors") in the proceeding (the "Canadian Proceeding") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and pending before the Court of Queen's Bench Winnipeg Centre (the "Canadian Court"), for entry of an order, pursuant to sections 105, 363, 1501, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"),

<sup>1</sup> The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, follow in parentheses: (i) Arctic Glacier California Inc. (7645); (ii) Arctic Glacier Grayling Inc. (0976); (iii) Arctic Glacier Inc. (4125); (iv) Arctic Glacier Income Fund (4736); (v) Arctic Glacier International Inc. (9353); (vi) Arctic Glacier Lansing Inc. (1769); (vii) Arctic Glacier Michigan Inc. (0975); (viii) Arctic Glacier Minnesota Inc. (2310); (ix) Arctic Glacier Nebraska Inc. (7790); (x) Arctic Glacier New York Inc. (2468); (xi) Arctic Glacier Newburgh Inc. (7431); (xii) Arctic Glacier Oregon, Inc. (4484); (xiii) Arctic Glacier Party Time Inc. (0977); (xiv) Arctic Glacier Pennsylvania Inc. (9475); (xv) Arctic Glacier Rochester Inc. (6989); (xvi) Arctic Glacier Services Inc. (6657); (xvii) Arctic Glacier Texas Inc. (3251); (xviii) Arctic Glacier Vernon Inc. (3211); (xix) Arctic Glacier Wisconsin Inc. (5835); (xx) Diamond Ice Cube Company Inc. (7146); (xxi) Diamond Newport Corporation (4811); (xxii) Glacier Ice Company, Inc. (4320); (xxiii) Ice Perfection Systems Inc. (7093); (xxiv) ICEsurance Inc. (0849); (xxv) Jack Frost Ice Service, Inc. (7210); (xxvi) Knowlton Enterprises Inc. (8701); (xxvii) Mountain Water Ice Company (2777); (xxviii) R&K Trucking, Inc. (6931); (xxix) Winkler Lucas Ice and Fuel Company (0049); (xxx) Wonderland Ice, Inc. (8662). The Debtors' executive headquarters is located at 625 Henry Avenue, Winnipeg, Manitoba, R3A 0V1, Canada.

and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware: (a) recognizing and enforcing that certain *Order* (the “CCAA Huntington Sale Order”)<sup>2</sup> entered by the Canadian Court on October 22, 2012, in the Canadian Proceeding, pursuant to which the Canadian Court authorized and approved the sale (the “Sale”) of the right, title, and interest of Arctic Glacier New York Inc. (“AGNY”), one of the Debtors, in and to the Huntington Property (defined below) to Peter J. Pastorelli, Sr., as assigned to 50 Ice House LLC (the “Purchaser”), pursuant to that certain *Purchase and Sale Agreement*, as amended, (the “Purchase Agreement”),<sup>3</sup> by and between AGNY and the Purchaser, dated July 6, 2012; (b) authorizing and approving, pursuant to section 363 of the Bankruptcy Code, the sale of AGNY’s right, title, and, interest in and to the property located at 50 Stewart Avenue, Huntington, New York, together with the buildings and personal property specified in the Purchase Agreement (the “Huntington Property”) to the Purchaser, free, clear, and unencumbered as set forth in Recital D of the Purchase Agreement; and (c) granting certain related relief; and this Court having previously entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 70] (the “Recognition Order”); and upon the *Motion Brief of the Monitor*, filed in the Canadian Proceeding on October 16, 2012 (the “Monitor’s Canadian Motion”); and upon the *Seventh Report of the Monitor*, dated October 16, 2012, (the “Monitor’s Seventh Report”) [Docket No. 181]; and the Canadian Court having entered the CCAA Huntington Sale Order; and this Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at a hearing before this Court (the “Sale Hearing”); and upon the record of the Sale Hearing and these

<sup>2</sup>

A copy of the CCAA Huntington Sale Order is attached to the Motion as Exhibit A.

<sup>3</sup>

A copy of the Huntington Purchase Agreement, together with any and all amendments thereto, is attached to the Motion as Exhibit B.

Chapter 15 Cases,<sup>4</sup> and after due deliberation thereon, and good cause appearing therefor, it is hereby;

**FOUND AND DETERMINED THAT:**

A. The Canadian Court has duly entered the CCAA Huntington Sale Order: (i) approving and authorizing AGNY's execution of the Purchase Agreement and the execution of the First and Second Amendments to the Purchase Agreement by the Monitor on behalf of AGNY; (ii) approving and authorizing the consummation of the sale of the Huntington Property; and (iii) requesting aid and recognition from this Court to give effect to the CCAA Huntington Sale Order.

B. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1410.

C. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105, 363, 1501, 1520, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

D. Due and adequate notice of the Motion, the proposed Sale, the hearing, and the subject matter thereof has been provided to all parties-in-interest herein, and no other or

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Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Motion.

further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

E. The relief requested in the Motion is in the best interests of AGNY and the other Debtors, their estates, creditors, and other parties-in-interest. The Debtors and the Monitor have demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion.

F. The Sale was negotiated and proposed in good faith, from arm's length bargaining positions, and without collusion. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protection thereof. The Debtors, the Monitor, and the Purchaser have not engaged in any conduct that would cause or permit the Sale to the Purchaser to be avoided under section 363(n) of the Bankruptcy Code.

G. The consideration provided by the Purchaser under the terms of the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer received by AGNY for the Huntington Property, (iii) will provide a greater recovery for the Debtors' creditors and other stakeholders than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

H. AGNY is authorized to sell the Huntington Property to the Purchaser free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, with such liens, claims, interests, and encumbrances transferring and attaching to the proceeds of the Sale with the same validity and priority as such interests had in the Huntington Property immediately prior to the consummation of the Sale, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of

liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of liens, claims, interests, and encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their interests, if any, attach to the proceeds of the Sale of the Huntington Property.

I. Time is of the essence in consummating the Sale. To maximize the value of the Huntington Property, it is essential that the Sale occur promptly and within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rule 6004.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted as set forth herein.
2. The CCAA Huntington Sale Order approving the Sale of the Huntington Property to the Purchaser is recognized in full and given full force and effect in the United States.
3. All objections to the Motion or relief provided herein that have not been withdrawn, waived or settled, are hereby overruled and denied on the merits.
4. Pursuant to sections 105, 363, 1501, 1520, and 1521 of the Bankruptcy Code, the Purchase Agreement is approved, and the entering into and execution of the Purchase Agreement by AGNY is hereby ratified, authorized, and approved.
5. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code and in accordance with the terms of the Purchase Agreement, AGNY is hereby authorized to sell the Huntington Property.

6. Pursuant to sections 105, 363, and 1521 of the Bankruptcy Code, AGNY and the other Debtors, the Purchaser, and the Monitor are authorized, but not directed, to take any and all actions necessary or appropriate to (a) consummate the Sale of the Huntington Property in accordance with the Purchase Agreement, the CCAA Huntington Sale Order, and/or this Order, and (b) perform, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale of the Huntington Property.

7. Pursuant to sections 105(a), 363(b), and 1521(a)(7) of the Bankruptcy Code, the sale of the Huntington Property to the Purchaser, upon the closing under the Purchase Agreement, is authorized and approved in all respects.

8. The sale of the Huntington Property to the Purchaser, as provided in the Purchase Agreement, is "AS IS-WHERE IS," without any representations or warranties of any kind from AGNY, any of the other Debtors, or the Monitor, other than as expressly provided in the Purchase Agreement.

9. The Huntington Property shall be sold free and clear of all liens, mortgages, or other rights or claims of right, encumbrances, security interests, claims, charges, interests, or other legal or equitable encumbrances and any other matter affecting the Huntington Property (collectively, "Liens and Interests"), and, upon delivery of the Monitor's Certificate (as defined in the CCAA Huntington Sale Order) confirming the close of the Sale of the Huntington Property, any Liens and Interests in the Huntington Property, or the proceeds thereof, shall attach to the proceeds of the Sale with the same validity, priority, and effect as they had against the Huntington Property immediately prior to the Sale.

10. The provisions of this order authorizing the sale and assignment of the Huntington Property free and clear of Liens and Interests shall be self-executing, and neither AGNY nor the Purchaser shall be required to procure or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this order. Notwithstanding the foregoing, however, each of AGNY's creditors are authorized and directed to execute such documents and take all other actions as may be necessary to clear and release Liens and Interests on the Huntington Property. If any person or entity that has filed financing statements or other documents or agreements evidencing Liens and Interests on the Huntington Property has not delivered to AGNY prior to the closing of the Purchase Agreement, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such liens, claims, and encumbrances, the Purchaser is hereby authorized and directed to execute and file such termination statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Huntington Property to be sold or assigned. This order shall be binding upon and govern the acts of all persons or entities, including without limitation, all filing agents, recording agencies, registrars of deeds, secretaries of state, and all other persons and entities who may be required by operation of law to accept, file, register, or otherwise record or release any documents or instruments.

11. Pursuant to section 363 and 1521(a)(7) of the Bankruptcy Code, the Monitor on behalf of AGNY and the other Debtors and the Purchaser, as well as each of their respective officers, employees, and agents, shall be, and hereby are, authorized to take any and all actions and/or execute any and all documents as may be necessary or desirable to consummate the transactions contemplated by the Motion. Any actions taken by AGNY and the

other Debtors, the Monitor on behalf of AGNY and the other Debtors, and the Purchaser necessary or desirable to consummate such transactions prior to the entry of this order are hereby ratified.

12. The Purchaser is not a successor to the Debtors or to their bankruptcy estates by reason of any theory of law or equity and the Purchaser shall not assume, nor be deemed to have assumed, any liability of the Debtors or their bankruptcy estates except as expressly provided in this order, the Bankruptcy Code, or the Purchase Agreement.

13. This Order and the Purchase Agreement shall inure to the benefit of and be binding upon the Debtors, the Purchaser, and the Monitor, all creditors of the Debtors, and any trustee, examiner, or receiver appointed in these cases or under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions shall likewise be binding on any trustee, examiner, or receiver and shall not be subject to rejection or avoidance by the Purchaser, the Debtors, their creditors, any trustee, examiner, or receiver, or any other party in interest.

14. Subject to the terms of the Purchase Agreement and the CCAA Huntington Sale Order, provisions of the Purchase Agreement may be waived, modified, amended, or supplemented by agreement among the Monitor, on behalf of AGNY, and the Purchaser, without further action or Order of this Court.

15. The failure to include any particular provision of the CCAA Huntington Sale Order, the Purchase Agreement, or any related agreements in this order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the CCAA Huntington Sale Order, the Purchase Agreement, and any related agreements, with such



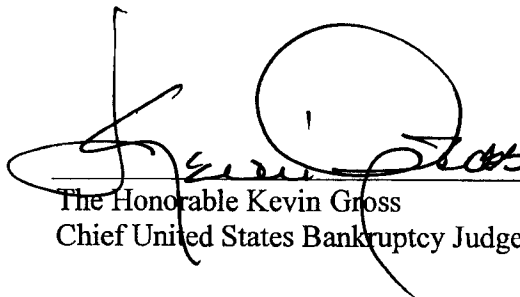
amendments thereto as may be made by the parties in accordance with the CCAA Huntington Sale Order and the Purchase Agreement, be approved and authorized in their entirety.

16. The Purchaser, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to all of the protection of section 363(m) of the Bankruptcy Code, and the reversal or modification on appeal of this Order shall not affect the validity of the Sale as provided by the CCAA Huntington Sale Order, the Purchase Agreement, or this Order, unless the effectiveness of this Order is duly stayed pending appeal.

17. The stay provided for in Bankruptcy Rule 6004(h) is hereby waived and this Order shall be effective immediately upon its entry.

18. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the Sale or this Order.

Dated: November 13, 2012  
Wilmington, Delaware



The Honorable Kevin Gross  
Chief United States Bankruptcy Judge