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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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9 In re) Case No. 05-20490-A-11
10 SOLVESON CRANE CO., INC.,) Docket Control No. DDM-4
11) Date: May 9, 2005
12 Debtor.) Time: 9:00 a.m.
13)

14 *On May 9, 2005 at 9:00 a.m. the court considered the motion*
15 *of General Electric Commercial Distribution Finance Corporation*
16 *seeking conversion of this case from one under chapter 11 to one*
17 *under chapter 7 of the Bankruptcy Code. The text of the final*
18 *ruling appended to the minutes of the hearing follows. This*
19 *final ruling constitutes a "reasoned explanation" for the court's*
20 *decision and accordingly is posted to the court's Internet site,*
21 *www.caeb.uscourts.gov, in a text-searchable format as required by*
22 *the E-Government Act of 2002. The official record of this ruling*
23 *remains the minutes of the hearing.*

24 **FINAL RULING**

25 The movant, General Electric Commercial Distribution Finance
26 Corporation, requests an order converting the debtor's chapter 11
27 case to one under chapter 7. The CIT Group/Equipment, Inc. joins
28 in this request. The movant argues that cause exists to grant
the motion because the debtor has failed to comply with the
requirements of the Bankruptcy Code by engaging in the following
conduct: 1) using the cash collateral of the movant without its
approval or court order; 2) failing to file all post-petition
operating reports; 3) commingling family loans with the movant's

1 cash collateral; and 4) and taking unauthorized post-petition
2 loans from a family member (the mother of the principal of the
3 debtor).

4 On or about October 24, 2002, the debtor entered into an
5 agreement for wholesale financing with the movant's predecessor,
6 Deutsche Financial Services ("DFS"). Pursuant to the agreement,
7 DFS was to extend credit to the debtor from time to time to allow
8 the debtor to purchase, among other things, inventory and cranes.
9 The agreement granted to DFS a blanket security interest in all
10 of the debtor's assets to secure payment of the debtor's then and
11 future debts to DFS under the agreement. On October 29, 2002,
12 DFS filed its UCC-1 Financing Statement, thereby perfecting its
13 security interest in the debtor's assets pursuant to the
14 agreement.

15 On or about January 7, 2003, the debtor executed an
16 equipment financing approval form whereby a loan advance was made
17 of approximately \$2.7 million to enable the debtor to purchase 20
18 cranes and one carry-deck. Pursuant to the financial approval
19 form, the debtor was to make monthly payments for 58 months
20 commencing in February 2003 and ending in November 2007. Such
21 payment amounts were calculated at the prime rate of interest on
22 the total amount advanced.

23 As of December 26, 2004, the debtor was in default on its
24 payments due the movant under the agreement. As of that date,
25 the total amount past due was \$134,931.82, including interest of
26 \$13,988.08. This represented the debtor's past due payments for
27 October, November, and December. The debtor has subsequently
28 defaulted on the January and February payments. As of March 16,

1 2005, the total principal outstanding is \$1,653,090.38, not
2 including interest. The movant believes that the liquidation
3 value of its cranes is approximately \$1.6 million, excluding
4 liquidation costs.

5 The debtor filed a petition for relief under chapter 11 on
6 January 14, 2005. On February 3, the movant advised the debtor
7 of its security interest in the debtor's inventory and equipment
8 pursuant to the agreement and that it did not consent to the
9 debtor's use of the movant's cash collateral pursuant to 11
10 U.S.C. §§ 363(c)(2), (c)(4), & (d). The debtor subsequently
11 agreed to an audit of its accounts, books, and records. The
12 movant observed the following from the audit: 1) the debtor has
13 made approximately \$700,000 in post-petition disbursements from
14 its operating bank account; 2) the debtor has received
15 approximately \$100,000 in pre-petition and \$500,000 in post-
16 petition loans from Virginia Solveson, the mother of the debtor's
17 principal, Tom Solveson; 3) the debtor has failed to sequester
18 approximately \$109,000 in rental and lease payments from
19 approximately January 4 to March 8, 2005; 4) the debtor has
20 issued multiple checks on January 28 and February 9, 2005
21 totaling \$107,000 for its workers compensation insurance; 5)
22 post-petition, the debtor has issued multiple checks to the CIT
23 Group, a lessor, making payments of approximately \$32,000, who is
24 not shown on the debtor's schedules as a secured creditor or
25 lessor; and 6) post-petition, the debtor has made transfers of
26 funds in the amount of \$88,590 from its operating account to
27 another account held in the name of "ETC, Inc." (which is owned
28 or controlled by Maria Solveson, one of the debtor's principals).

1 On March 4, 2005, the movant discovered that Tom and Maria
2 Solveson filed a chapter 13 petition on February 18, 2005. The
3 movant, who did not receive notice of the chapter 13 filing,
4 advised the Solvesons' counsel that their chapter 13 plan was
5 flawed in that it is funded by money taken from this debtor.

6 On March 23 and 24, 2005, the movant conducted a field audit
7 and determined that the debtor rented 10 of the movant's 18
8 cranes. The other eight cranes are inactive and located at the
9 debtor's facilities.

10 Since the movant filed its motion to convert, the debtor has
11 filed its monthly operating reports for January, February, and
12 March. Those reports corroborate much of the foregoing including
13 the unauthorized post-petition loans and the fact that the debtor
14 is not operating profitably even without paying the movant.

15 11 U.S.C. § 1112(b) provides that upon request of a party in
16 interest, and after notice and a hearing, the court may convert a
17 chapter 11 case to one under chapter 7 for cause. The court
18 finds and concludes that cause exists to convert the case given
19 the debtor's unauthorized use of cash collateral in violation of
20 section 363(c)(2), the unauthorized post-petition borrowing of
21 funds from Mr. Solveson's mother, and given the commingling of
22 the movant's cash collateral in contravention of its fiduciary
23 duties. Although it has filed its monthly operating reports, the
24 debtor still has not sought authorization from the court to use
25 the movant's cash collateral. Further, there is no evidence
26 before the court to persuade it that, absent the unauthorized
27 post-petition lending by an alleged insider, the debtor can
28 continue profitably its business operations. Therefore, the

1 court will enter an order converting the case to one under
2 chapter 7.

3 Accordingly, the motion will be granted.
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