



SO ORDERED.

SIGNED December 17, 2010.

A handwritten signature in black ink, appearing to read "Robert Summerhays", is written over a horizontal line.

**ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

T&M AVIATION, INC.,

DEBTOR-IN-POSSESSION

CASE NO. 10-51520

CHAPTER 11

JUDGE ROBERT SUMMERHAYS

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER
AUTHORIZING SALE OF HELICOPTER, FREE AND CLEAR OF LIENS,
ENCUMBRANCES, AND INTERESTS, AND FOR RELATED RELIEF**

CONSIDERING the Motion for Order Authorizing Sale of Helicopter, Free and Clear of Liens, Encumbrances, and Interests Pursuant to Section 363, and for Related Relief (the "*Helicopter Sale Motion*") (Doc. #67) filed by the debtor-in-possession, T&M Aviation, Inc. ("*T&M Aviation*"), the Court issues these Finding of Facts and Conclusions of Law in Support of the Order Authorizing Sale of Helicopter, Free and Clear of Liens, Encumbrances, and

Interests Pursuant to Section 363, and for Related Relief (“*Findings and Conclusions*”), as follows:

1. This Court has jurisdiction and authority to hear and determine the Helicopter Sale Motion pursuant to 28 U.S.C. §§ 1334 and 157.

2. The Helicopter Sale Motion constitutes are “core” proceeding under 28 U.S.C. § 157(b)(2)(A), (N), and (O).

3. Venue is proper in this Court under 28 U.S.C. § 1409.

4. The statutory predicate for the relief sought in the Helicopter Sale Motion is 11 U.S.C. § 363 and FED. R. BANKR. PROC. 2002 and 6004.

5. Notice of the Helicopter Sale Motion was proper and parties-in-interest have received appropriate opportunity to present objections and/or responses to the Court.

6. T&M Aviation has determined to sell that certain Bell OH-58A Helicopter, N38FA, Serial #70-15448 (the “*Helicopter*”) to B&S Air, Inc. of Eufaula, AL (“*B&S Air*”) for \$50,000 cash (the “*Helicopter Sale*”).

7. The Court approves the Helicopter Sale Motion as being appropriate and in the best interests of the creditors and the Estate, hereby adopting the assertions by T&M Aviation made within the Helicopter Sale Motion as its findings with respect to the sale prices attributable to the Helicopter, and the propriety of T&M Aviation’s business judgment in agreeing to the sale as follows:

- a. Located in Abbeville, LA, T&M Aviation specializes in serving customers throughout the United States with precision aerial application and related aviation services with a modern fleet of helicopters.

- b. In addition to aerial application, T&M Aviation's expanded services include aerial photography services, as well as specialized GPS and GIS capabilities, training and support.
- c. T&M Aviation acquired in the Helicopter in 2005.
- d. Over the course of several years, T&M Aviation repaired the Helicopter and thereafter used it in its ordinary business operations.
- e. On August 26, 2010, T&M Aviation leased the Helicopter to B&S Air. However, on September 18, 2010, a malfunction occurred upon take-off and the Helicopter was damaged.
- f. While the Helicopter is not a "total loss," it is not in an operational state and cannot be flown at the present time.
- g. On October 20, 2010, B&S Air contacted T&M Aviation and proposed to purchase the Helicopter from T&M Aviation.
- h. Through arm's length negotiations between the president of T&M Aviation, Ron Wolf ("***Wolf***"), and Shaun Harris ("***Harris***") of B&S Air, the parties reached an agreement on the sale of the Helicopter.
- i. B&S Air agreed to purchase and T&M Aviation agreed to sell the Helicopter for \$50,000 cash.
- j. In addition, the parties agreed that T&M Aviation would repair the Helicopter and provide future maintenance of the Helicopter.
- k. Thus, in addition to the sale price of \$50,000 cash, T&M Aviation also secured a future stream of income.

- l. On Bankruptcy Schedule B, T&M Aviation valued the Helicopter at \$50,000.
- m. This valuation is based on the “salvage value” of the Helicopter, *i.e.*, the cost that could be recovered from the sale of used equipment when removed or scrapped from the Helicopter.
- n. No party-in-interest, including the Internal Revenue Service and the Office of the United States Trustee, filed an objection to the Helicopter Sale Motion.

8. Although 11 U.S.C. § 363 does not set a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets, the Fifth Circuit Court of Appeals, in construing this provision, has required that it be based upon the sound business judgment of the debtor. *In re Continental Airlines, Inc.*, 780 F. 2d 1223 (5th Cir. 1986); *In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983).

9. When a trustee proposes to sell its business assets pursuant to 11 U.S.C. § 363(b), the Court can consider several factors in determining whether to approve the Helicopter Sale, including: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether a transaction has been proposed and negotiated in good faith; (iv) the proportionate value of the asset to the estate as a whole; (v) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; and (vi) whether the asset is increasing or decreasing in value. *See, Continental Airlines*, 780 F.2d at 1226. *See also, Comm. of Equity Sec. Holders v. Lionel Corp. (In re: Lionel Corp.)*, 722 F.2d 1063, 1071 (2^d Cir. 1983).

10. The Court finds and concludes that the Helicopter Sale should be approved as an exercise of the sound business judgment of T&M Aviation.

11. T&M Aviation shall be and is hereby authorized to sell to B&S Air the Helicopter in accordance with and subject to the Sale Order submitted by T&M Aviation that will be issued by the Court.

12. The sale of the Helicopter, upon closing, (i) shall be a legal, valid and effective transfer of the Helicopter, and (ii) shall vest B&S Air with all right, title, and interest of the Estate in and to the Helicopter free and clear of all (a) mortgages, security interests, privileges, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, easements, restrictions or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing collectively referred to herein as “*Liens*”) and all (b) debts arising in any way in connection with any acts of the T&M Aviation, claims (as that term is defined in the Bankruptcy Code), obligations, demands, guaranties, options, rights, contractual commitments, executory contracts, unexpired leases, employment agreements, restrictions, rights of lesion beyond moiety, co-owner, community property or other spousal rights, tort claims, product liability claims, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing collectively referred to as “*Claims*” herein).

13. The Helicopter shall be transferred free and clear of all Liens and Claims of any kind or nature, except as otherwise expressly provided by the terms of the Sale Order.

14. Aside from the tax lien of the Internal Revenue Service (the “*Tax Lien*”), T&M Aviation has not discovered any Liens or Claims that would encumber the Helicopter, but in the event there are such Liens or Claims such will attach to the proceeds of the Helicopter Sale.

15. The Court further finds that all transactions and instruments contemplated under the terms of the Helicopter Sale shall be specifically enforceable against and binding upon, and not subject to rejection or avoidance by the Estate, T&M Aviation, creditors of the Estate, and/or any other parties-in-interest, and any successors of the Estate, including any subsequent trustee appointed in any subsequent or converted case of T&M Aviation under Chapter 7 of Title 11 of the United States Code.

16. The Court further finds (i) that the Sale Order shall be immediately effective and executory upon entry on the docket of the record of this case, and that the fourteen (14) day stay provided by FED. R. BANKR. PROC. 6004(h) shall be abrogated and waived by the Sale Order, so as to allow Trustee and B&S Air to proceed immediately to effectuate the closing and transfers contemplated by and within the Sale Motion and the Sale Order, (ii) that unless the Sale Order shall be stayed by means of an order issued by a court with authority to stay the effectiveness of the Sale Order, the closing of the Sale shall be concluded within the deadline established by the parties, and (iii) that nothing in the Sale Order shall affect any of rights of B&S Air or the Estate except as specifically set forth therein.

17. T&M Aviation and B&S Air are found to be in good faith, having negotiated the terms of the Helicopter Sale at arm’s length, and are thereby entitled to the protections afforded by 11 U.S.C. § 363(m).

18. T&M Aviation is authorized, pursuant to 11 U.S.C. §§ 363(b), 363(f), 363(m), and 362, (i) to execute and deliver, to perform under, and to consummate and implement the

terms of the Helicopter Sale, pursuant to the terms of the Helicopter Sale Motion, together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement the Helicopter Sale, (ii) to take all further actions as may reasonably be requested by B&S Air for the purpose of assigning, transferring, granting, conveying and conferring the Helicopter to B&S Air as may be necessary or appropriate to the performance of the obligations contemplated by the Helicopter Sale, and (iii) to execute any and all documents on behalf of the Estate or affiliated third parties to effectuate the terms and conditions of the Helicopter Sale.

19. The Court has expressly authorized the submission of these Findings and Conclusions by counsel for the T&M Aviation, has independently reviewed these Findings and Conclusions and has determined that they should be issued to supplement any oral findings made by the Court at hearing upon the Helicopter Sale Motion.

20. The Court finds and concludes that it should retain jurisdiction to hear and determine all matters arising from or related to the Helicopter Sale, any documents executed and delivered in connection with the Helicopter Sale and the Sale Order.

21. The Court finds and concludes that T&M Aviation, the Estate, T&M Aviation, and affiliates of T&M Aviation, will be deemed to be released by B&S Air, and B&S Air will be deemed released by T&M Aviation and the Estate, upon entry of the Sale Order from and against any and all claims, duties, obligations, entitlements or other burdens of whatever type or description, at any time through the date of the Sale Order arising out of the ownership, operation or management of the Helicopter, except that all parties, shall retain the right to enforce the terms of the Sale Order.

22. The Court finds and concludes that by virtue of the Helicopter Sale authorized hereby B&S Air will not be successors to T&M Aviation upon any theory of law or equity, and

B&S Air shall have no liability for any obligation, Claim or Lien of or against the Estate, T&M Aviation or any affiliate of T&M Aviation as a result of any application of theories of successor liability

23. The Helicopter Sale shall be “AS IS,” without any warranty of any kind or nature even as to title and/or return of all or any part of the purchase price.

24. The Court finds and concludes that it is appropriate and in the best interests of the Estate that T&M Aviation be authorized to hold the proceeds of the Helicopter Sale in trust until such time as the Internal Revenue Service files a proof of claim in this bankruptcy case.

25. The Court finds and concludes that it is appropriate and in the best interests of the Estate that T&M Aviation be authorized to apply, in a manner to be determined by T&M Aviation in its sole discretion, the proceeds of the Helicopter Sale to the priority tax debt underlying the IRS Tax Lien after the Internal Revenue Service files a proof of claim.

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Findings and conclusions prepared
and submitted by:

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