Cherry v. Mauck, 2026 NCBC Order 79.

STATE OF NORTH CAROLINA LENOIR COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24CVS000635-530
JULIUS P. "JAY" CHERRY, JR. and ANN B. CHERRY, Plaintiffs, v. ARMISTEAD B. MAUCK, Defendant, v. AJAL INVESTMENTS, LLC and C-GAS, LLC, Nominal Defendants.	**ORDER ON MOTION TO ALLOW SALE OF PROPERTY AND APPROVE STALKING HORSE BIDDER**

1. The Receiver for C-Gas, LLC has moved for an order allowing a sale of certain assets, approving a stalking horse bidder, and approving a proposed sale process and auctioneer compensation. (Mot., ECF No. 100.) Plaintiffs Julius "Jay" Cherry, Jr., and Ann Cherry support the motion, and Defendant Armistead B. Mauck opposes it. For the following reasons, the Court **GRANTS** the motion as modified.

2. **Background.** This case concerns a pair of family businesses—C-Gas and AJAL Investments, LLC—in the fuel and propane industry. In an earlier order, the Court concluded as a matter of law that C-Gas is dissolved under the terms of its operating agreement and granted Mauck's motion for summary judgment on that point. *See Cherry v. Mauck*, 2025 NCBC LEXIS 168, at *25 (N.C. Super. Ct. Dec. 8, 2025). At the parties' request, the Court then placed C-Gas into receivership for the

purpose of liquidating its assets and winding up its affairs. (*See* Order Appointing Receiver, ECF No. 68.)[1]

3. C-Gas is perhaps better described as a holding company than as an operating company. It owns quite a few vehicles, a couple of customer lists, and thousands of propane tanks and other propane-related equipment. But it does not use these assets for its own operations, instead leasing them to Cherry Oil Company, Inc.[2] under a long-term master lease agreement. Cherry Oil, in turn, puts the assets to use in its own business dealings. One consequence of the lease arrangement is that most of the propane tanks are located on the properties of Cherry Oil's customers. And because C-Gas leases all that it owns to Cherry Oil, all or nearly all of C-Gas's revenue comes from Cherry Oil's rent payments. (*See, e.g.*, Mot. at ¶¶ 2, 9; 3d Mauck Aff. ¶¶ 10, 19, 20, ECF No. 110.)

4. With the Court's leave, the Receiver retained Country Boys Auction & Realty, Inc. to auction C-Gas's assets. Together with Country Boys, the Receiver has concluded that a stalking horse auction process is the best way to maximize the value of the assets. In short, Jay Cherry has made an offer to buy C-Gas's tanks, vehicles, and customer lists for a little over $1.8 million, and the Receiver proposes to market that offer as a stalking horse bid. The proposed auction process would require any

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[1] AJAL is also in receivership but not for the purpose of liquidation. The Cherrys have stated that they intend to buy Mauck's interest in AJAL for fair value as allowed by N.C.G.S. § 57D-6-03(d).

[2] For many years, the Cherrys and the Maucks jointly owned a third family business called Cherry Oil Company, Inc. In 2021, the Maucks sued "over control, profit-sharing, and the future" of Cherry Oil. *Mauck v. Cherry Oil Co.*, 388 N.C. 325, 328 (2025). That litigation has ended, and the Cherrys now own Cherry Oil outright, having exercised a contractual buyout of the Maucks' shares. (3d Mauck Aff., Ex. B at 6; 3d Mauck Aff. ¶ 9.)

competing bidder to exceed the stalking horse bid by fifteen percent and agree to waive due diligence, acquire the assets in place (that is, to relieve C-Gas of the burden of retrieving them from Cherry Oil or its customers), and take all assets free and clear of the lease with Cherry Oil. According to the Receiver, these terms are fair and in the best interest of the receivership estate, and he asks the Court to approve them and allow the auction process to move forward.

5. Following the motion, Mauck timely filed an objection. According to Mauck, the income stream from the master lease is C-Gas's most valuable asset, and it would be in C-Gas's best interest to market the leasing rights alongside the physical assets to produce the best return at auction. The Receiver's proposal, in Mauck's view, would extinguish the lease for no value. In addition, Mauck contends that the proposed auction terms would deter other bidders, thus ensuring that Jay Cherry is the only bidder and allowing him to buy C-Gas's assets at a discount.

6. After a hearing on 6 August 2026, the Court invited supplemental briefing from all interested parties. In his supplemental brief, the Receiver stated that it would be possible to market the master lease through a second broker. He also discussed the potential gains and uncertainties associated with that process, including a communication received from Cherry Oil stating that it would seek bankruptcy protection and reject the lease if any third party acquired the leasing rights. In addition, the Receiver agreed to modify his original proposal to respond to Mauck's concerns by including a sixty-day period for due diligence and reducing the initial overbid amount.

7. The Cherrys filed a brief endorsing the Receiver's original proposal as well as the Receiver's suggested modifications to that proposal, including the sixty-day period for due diligence and the revised initial overbid amount. They oppose, however, the alternative suggestion to market the master lease, arguing that it would sacrifice the existing stalking horse bid, would be unlikely to yield a larger return, and would extend what has already been a lengthy wind-up process.

8. Mauck filed a supplemental brief maintaining his objection to Jay Cherry's stalking horse bid and expressing his opposition to the Receiver's modified due-diligence protocols and bidding procedures. Mauck also gives two cheers for the Receiver's alternative suggestion to market the master lease, noting his confusion about some of the proposed terms and his skepticism about Cherry Oil's bankruptcy threat.

9. Initial and supplemental briefing are complete, and the motion is ripe for decision.

10. **Discussion.** Receivers generally have broad authority to use or dispose of receivership property in the ordinary course of business. *See* N.C.G.S. § 1-507.28(b)(6). But a sale of receivership property "other than in the ordinary course of business" requires court approval following notice and a hearing. *Id.* § 1-507.46(b).

11. Section 1-507.46 is silent as to the standard that the presiding court must apply when deciding whether to approve a proposed sale of receivership property, and there does not appear to be any North Carolina appellate law on the subject. The

Court therefore looks to federal bankruptcy law for persuasive guidance. *See Nerko, LLC v. Blue Bridge Benefits LLC*, 2022 NCBC LEXIS 141, at *5 (N.C. Super. Ct. Nov. 28, 2022) ("In creating the Receivership Act, North Carolina took its cues from the Bankruptcy Code, and accordingly, the Bankruptcy Code's framework in this area is instructive.").

12. Bankruptcy law, much like North Carolina's receivership law, allows a bankruptcy trustee to sell estate property other than in the ordinary course of business after notice and an opportunity for a hearing. *See* 11 U.S.C. § 363(b)(1). In deciding whether to approve a sale, the bankruptcy court applies "a business judgment test," assessing only "whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." 3 Collier on Bankruptcy ¶ 363.02[4] (16th ed. 2004). "If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction." *In re MF Global Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012); *see also In re Chamberlain*, 545 B.R. 827, 844 (Bankr. D. Del. 2016) ("Where the trustee articulates a reasonable basis for the business decision, courts will generally not entertain objections.").

13. After careful review, the Court concludes that the Receiver's judgment is reasonable and that a sound business justification supports the proposed stalking horse auction.

14. To start, the Receiver has determined that Jay Cherry's roughly $1.8 million offer for C-Gas's tanks, vehicles, and customer lists is acceptable. Nothing in the evidence suggests that this is an unreasonable determination. Moreover, it appears to be undisputed that this amount was the result of arm's-length negotiations in which Jay Cherry substantially increased his offer.

15. Next, the Receiver proposes to conduct a stalking horse auction. With Jay Cherry's offer in hand, the Receiver intends to market the assets and open the bidding to others in the industry. The primary benefit is that Jay Cherry's bid sets the price floor, ensuring a minimum return while allowing the Receiver and the auctioneer to test the market for higher offers. The proposed auction carries at least two benefits for the receivership estate that are unusual for stalking horse auctions: Jay Cherry (the stalking horse bidder) will not receive a break-up fee if a third party outbids him, and Country Boys (the auctioneer) will take only half its commission if no one other than Jay Cherry bids. This is a reasonable proposal, and the Receiver developed it in consultation with an experienced advisor.

16. Alternatives to this proposal are not clearly superior; if anything, they are clearly inferior in some respects. Neither a private sale nor a traditional auction has the benefit of a price floor, for example. Indeed, no interested party has suggested that a private sale or traditional auction would generate anything close to Jay Cherry's existing offer.

17. Most of the briefing concerns C-Gas's master lease with Cherry Oil and whether the Receiver should pursue an alternative plan to auction the leasing rights,

not just the tanks, vehicles, and customer lists. This is Mauck's primary objection to the Receiver's motion. It is *possible* that marketing the master lease through a second broker would yield a greater return for C-Gas, and the Receiver estimates that the upside could be as much as $400,000 above Jay Cherry's offer in the best-case scenario. But the Receiver also stresses that this estimate comes with immense uncertainty. C-Gas would have to give up Jay Cherry's offer with no guarantee that it would receive any offer at all for its leasing rights. Yet having Jay Cherry's offer in hand while testing the market for the leasing rights is essential, according to a market assessment obtained by the Receiver, (*see* ECF No. 119 Ex. A). Moreover, the same market assessment cites Cherry Oil's credit risk as a risk factor that might deter bidders or drive down the value of the leasing rights. That risk is heightened by Cherry Oil's threat that it would enter bankruptcy and dishonor the lease if a third party buys the leasing rights.[3] Finally, the alternative proposal to market the master lease would involve additional fees—a break-up fee, increased broker fees, and likely higher receivership fees due to the longer time horizon—that could consume much or all of any additional return.

18. Reasonable minds could weigh these risks and rewards differently. All that the Receiver must do is to exercise his sound business judgment in making his

[3] Given the acrimony between these family members, it is no surprise that Mauck questions whether this threat is legitimate. But the risk of default is a factor that any bidder would consider. And in this circumstance, the lease agreement is not an arm's-length agreement between independent companies. It is an agreement between two closely related family businesses that arguably contains above-market rates for the leased assets. That context—and Cherry Oil's bankruptcy threat—are all relevant considerations for the Receiver in weighing liquidation options and predicting bidder behavior.

recommendation. The Receiver has done so and concluded that the certainty of accepting Jay Cherry's offer as a stalking horse bid outweighs the uncertainties of attempting to market C-Gas's leasing rights. That is reasonable, and the Court sees no reason to second guess the Receiver's determination.

19. Mauck's other objections are not persuasive. He contends that the proposed bidding procedures are onerous and will deter bidders. Even if this concern had some merit initially, the Receiver's modifications have removed much of the sting. These modifications include a significantly reduced initial overbid amount and a due-diligence period of sixty days. In addition, the Receiver has provided a detailed marketing plan that appears well-designed to reach interested observers. Mauck also objects to the auctioneer's compensation, which is odd and misguided because awarding higher compensation for a higher return means that the auctioneer's interests are aligned with the members' (including Mauck's).

20. All things considered, the due-diligence protocols and bidding procedures reflect the nature of C-Gas's assets and the circumstances that the company finds itself in as it goes through liquidation and winds up its affairs. Again, the Receiver has made a reasonable determination, in consultation with an experienced auctioneer, that these terms and procedures create the conditions for competitive bidding. The Court will not upset that determination.

21. **Conclusion.** For all these reasons, the Court **GRANTS** the Receiver's motion as modified and **ORDERS** as follows:

a. The Receiver may sell C-Gas's assets, as defined in the motion, free and clear of all liens, claims, encumbrances, rights, and interests;

b. Jay Cherry is **APPROVED** as stalking horse bidder;

c. The Receiver's proposed terms of sale and bidding procedures are **APPROVED** as modified to include an initial overbid amount of $1,900,000, incremental bid amounts of $100,000, and a due-diligence period of sixty days;

d. The Receiver shall establish an appropriate bidding deadline and auction date so that the auction will take place no later than 19 January 2027 and closing will occur no later than 19 February 2027;

e. Mauck's objection is **OVERRULED**.

SO ORDERED, this the 15th day of October, 2026.

/s/ Adam M. Conrad
Adam M. Conrad
Chief Business Court Judge