

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

Chapter 11

SUFFOLK READY MIX, LLC,

Case No. 09-75473-reg

Debtor.

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**STIPULATION AND ORDER UNDER 11 U.S.C. SECTIONS 105 (a) and 502
BETWEEN SECURED CREDITOR AND DEBTOR IN POSSESSION**

WHEREAS, Suffolk Ready Mix (the “Debtor”), the debtor and debtor in possession herein, filed a voluntary chapter 11 petition with the United States Bankruptcy Court for the Eastern District of New York on July 24, 2009 (the “Filing Date”), and an order for relief was entered; and

WHEREAS, the Debtor is currently operating and managing its affairs as a Debtor-in-Possession pursuant to 11 U.S.C. Sections 1107(a) and 1108; and

WHEREAS, there has been a duly authorized Official Committee of Unsecured Creditors constituted in this case under section 1102 of the Bankruptcy Code; and

WHEREAS, Key Equipment Finance, Inc. (“Key”) holds a lien (“Key’s Lien”) against the Debtor’s 2007 Heil Dry Bulk Trailer (the “Heil Trailer”); and

WHEREAS, on or about September 15, 2009, Key filed a proof of claim (No. 25) in this case asserting a claim in the sum of \$55,606.16, which was comprised of a secured claim in the sum of \$45,000.00 and an unsecured claim in the sum of \$10,606.16 (“Key’s Claim”); and

WHEREAS, the Debtor filed an objection to Key’s Claim (the “Objection”),

seeking to reduce the secured portion of Key's Claim to \$25,000.00 based upon an appraisal of the Heil Trailer obtained by the Debtor, and increase the unsecured portion of Key's Claim to \$30,606.16; and

WHEREAS, Key filed opposition to the Debtor's Objection, asserting a value of the Heil Trailer in the sum of \$37,500.00 and thereby asserting that the secured portion of Key's Claim should only be reduced to \$37,500.00 and the unsecured portion increased to \$18,106.16; and

WHEREAS, the Debtor and Key entered into negotiations to resolve the amount of Key's Claim; and

WHEREAS, after arms length negotiations and the exchange of information, the Debtor and Key have agreed to resolve the issues upon the terms set forth herein.

NOW, THEREFORE, SUBJECT ONLY TO COURT APPROVAL, IT IS HEREBY STIPULATED AND AGREED by and between the Debtor and Key, as follows:

1. Pursuant to 11 U.S.C. §§105(a) and 502, Key's Claim shall be and hereby is amended as follows: (a) the secured portion of Key's Claim shall be reduced to \$31,000.00; and (b) the unsecured portion of Key's Claim shall be \$24,606.16.

2. Key agrees to vote in favor of the Debtor's proposed plan of reorganization, as well as any amended plan that may be proposed by the Debtor, in each of the two classes in which it is entitled to vote, the first being the Class 3 (consisting of the secured portion of Key's Claim), and the second being Class 5 (the General Unsecured Class, of which the unsecured portion of Key's Claim is a part). In the event that Key fails to return a ballot respecting the Debtor's proposed plan(s), their acceptance of the Debtor's proposed plan(s), in

each class in which Key is entitled to vote, shall be evidenced by this Stipulation.

3. This agreement shall be binding upon the respective parties, their heirs, assigns, executors, administrators and successors in interest, and any Chapter 7 or 11 Trustee that may be appointed herein.

4. This stipulation may be executed in counterparts.

5. The Bankruptcy Court shall retain jurisdiction over all of the terms and conditions of this Stipulation.

6. This Stipulation cannot be amended, modified or superseded except upon written consent of the parties hereto.

7. The language of this Stipulation shall be construed as a whole according to its fair meaning and none of the parties shall be deemed draftsmen in the event of a dispute.

8. The counsel for the parties herein, by signing this stipulation, represent to each other that they have the full authority of their clients to enter into and to be bound by the terms of this stipulation.

9. The parties shall be authorized to take any and all reasonably appropriate measures to effectuate the terms of this stipulation and Order, as necessary or appropriate.

Dated: Melville, New York
April 16, 2010

LAW OFFICES OF MICHAEL G. Mc AULIFFE
Counsel to the Debtor

By: /s/ Michael Mc Auliffe
Michael G. Mc Auliffe, Esq.
48 South Service Road
Suite 102
Melville, NY 11747
(631) 465-0044

Dated: Albany, New York
April 16, 2010

LEMERY GREISLER, LLC
Counsel to Key Equipment Finance, Inc.

By: /s/ Paul A. Levine
Paul A. Levine, Esq.
50 Beaver Street
Albany, NY 12207
(518) 433-8800

IT IS HEREBY SO ORDERED
THIS _ DAY OF _____, 2010

Hon. Robert E. Grossman,
United States Bankruptcy Judge