

Coastal Marine Management, LLC)
d/b/a Boston Harbor Shipyard and)
Marina,)
)
Plaintiff,) Civil Action No.
) 16-11616-NMG
v.)
)
M/V Sea Hunter (O.N. 598425),)
her engines, tackle, apparel,)
appurtenances, etc., in rem,)
)
Defendant.)

This case involves the public auction sale of a sea vessel, the M/V Sea Hunter (O.N. 598425). On August 8, 2016, Coastal Marine Management, LLC ("plaintiff" or "Coastal Marine") filed an in rem action against the M/V SEA HUNTER (O.N. 598425) ("the Sea Hunter"). The complaint alleges that plaintiff has not received payment for the necessary services it provided to the Sea Hunter and that plaintiff has the right to enforce its lien against the vessel. After this Court allowed plaintiff's motion for the issuance of a warrant in rem against the vessel and entered a default judgment in favor of plaintiff, it authorized an interlocutory sale of the vessel.

The Sea Hunter was appraised at \$2,000,000 but at the public auction on October 4, 2017 brought only two bids. One, for \$30,000 and the winning bid of \$50,000, from Linden Holdings, Inc. The Court held a confirmation hearing on October 10, 2017, to determine whether the sale of the vessel should be confirmed. Although the various intervenors and debt holders were notified of the hearing, and some appeared at the public auction, only counsel for plaintiff Costal Marine Management attended the hearing. The Court took the matter under advisement.

On Tuesday, October 17, 2017, plaintiff filed an emergency motion to set aside the auction sale, consider upset bidding and reopen the bidding. The motion was consented to by all parties represented in this action after an "upset bid" for the vessel in the amount of \$100,000 was received from Custom Marine, Inc., of Dobbs Ferry, New York. The upset bidder submitted a bank check in the amount of \$100,000 to plaintiff's counsel, who then delivered the check to the United States Marshal who had been appointed to supervise the sale. Because of the upset bid, the represented parties now request that the court set aside the public auction sale for \$50,000 and re-open bidding for the vessel.

The Court will allow that motion, in part, and deny it, in part.

The policy of ensuring public confidence in sales under the supervision of the court favors confirmation of a sale made to the highest bidder at a fairly conducted public auction. Munro Drydock, Inc. v. M/V Heron, 585 F.2d 13, 15 (1st Cir. 1978). Nonetheless, an interested party may "raise a claim prior to a confirmation that [a] sale should be disapproved" because the sale price is "grossly inadequate". Id. "Gross inadequacy" exists when, apart from situations involving fraud or unfairness, there is a substantial disparity between the highest bid and the appraised fair market value, and "there is a reasonable degree of probability that a substantially better price will be obtained by a resale." Gowen, Inc. v. F/V Quality One, 2000 WL 893402 (D. Me. June 14, 2000), *aff'd*, 244 F.3d 64 (1st Cir. 2001).

In the present case, there is a substantial disparity between the \$50,000 bid at auction and the \$2,000,000 appraisal of the vessel. Furthermore, a substantially higher price is now apparently available. The "upset bidder", Custom Marine, Inc., has deposited \$100,000 in certified funds with the United States Marshal. Accordingly, the Court finds that the \$50,000 public auction price is grossly inadequate and declines to confirm the sale at public auction.

In an effort to be fair to all interested parties and to provide a procedure that will elicit the highest price for the

vessel, plaintiff's motion to set aside the auction sale, consider upset bid and reopen bidding (Docket No. 82) is **ALLOWED**, in part, and **DENIED**, in part, and the following procedure is hereby adopted:

- Counsel for plaintiff is to advertise the reopened sale of the M/V Sea Hunter in *Boats and Harbors* and *gcaptain.com* and submit the proposed advertisements to those publishers no later than close of business, Thursday, October 26, 2017.
- Counsel for plaintiff shall give notice of the sale, and of this order, to (i) the owner of the M/V Sea Hunter and to all lien and mortgage claimants of record (ii) the potential bidders who provided contact information at the October 4, 2017, auction and (iii) Linden Holdings, Inc.
- Bidding will be re-opened until the close of business Friday, November 3, 2017, during which time bidders other than the upset bidder, Custom Marine, Inc., may submit sealed bids in increments of not less than \$10,000 above the current upset bid of \$100,000.
- Sealed bids shall be delivered or sent to:

United States Marshals Service

via email at:
John.Wickham@usdoj.gov; OR

via mail at:
United States Marshals Service

District of Massachusetts
Attn: John D. Wickham, Supervisory Deputy U.S. Marshal
John J. Moakley US Courthouse
1 Courthouse Way, Suite #1-500
Boston, MA 02210

- All bids must be received by the close of business on Friday, November 3, 2017.
- If no such bids are received within the prescribed time, the sale to Custom Marine, Inc. will be confirmed on Monday, November 6, 2017 for \$100,000.
- If sealed bids are received within the prescribed time, a hearing before the Court will be convened on Tuesday, November 7, at 11:00 a.m. in Courtroom #4, Moakley Courthouse, at which time the sealed bids will be opened and verified.
- Parties submitting sealed bids at the hearing held on Tuesday, November 7, 2017, shall be prepared to present at that hearing a certified check for ten percent (10%) of their bid price payable to "United States Marshal for the District of Massachusetts".
- Thereafter, the upset bidder, Custom Marine, Inc., will be afforded the opportunity to trump the highest competing bid by an increment of not less than \$10,000 in which event, upon prompt receipt of the full amount of the purchase price, the sale to Custom Marine, Inc., will be confirmed.

- In default of any bid in excess of the highest sealed bid and provided the entire purchase price in certified funds is received within two business days after the hearing, the sale to the highest bidder will be confirmed.
- If the entire purchase price is not received within the prescribed time, the vessel will be sold to the next highest bidder, provided that bidder delivers the requisite funds within two business days thereafter.
- The vessel will be sold free and clear of all liens and encumbrances in its current "as is, where is" condition, without any representation and warranty, express or implied, as to its merchantability or fitness, except as to title.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated October 25, 2017