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Shutterfly's \$24M Stalking Horse Bid For Kodak Unit OK'd

By **Lisa Uhlman**

Law360, New York (March 20, 2012, 3:05 PM ET) -- A New York bankruptcy judge on Tuesday approved Shutterfly's \$23.8 million stalking horse bid agreement for Eastman Kodak Co.'s Kodak Gallery online photo services business after remaining objections to the bid and the proposed bidding procedures were resolved.

At a hearing Tuesday, U.S. Bankruptcy Judge Allan L. Gropper approved the bid, which was announced March 1. Kodak is seeking to shed assets before the hotly anticipated sale of its blockbuster patent collection.

Now that the bidding procedures are approved, Kodak is set for an April 30 sale hearing, with an April 20 bid deadline.

According to Rick Mikels, a Mintz Levin Cohn ferris Glovsky & Popeo PC attorney familiar with the Kodak case, the proposed sale is an attempt by the debtor to unload assets that aren't helpful to its estate.

"So turning assets you don't need into cash is always a good thing for a bankrupt company," Mikels told Law360 on Tuesday.

Under the proposed deal, online personal publishing service Shutterfly would get Gallery customer accounts and images in the U.S. and Canada. Should the company be outbid at an April 26 auction, it would get a \$250,000 breakup fee, which was originally pegged at \$600,000.

It's the first bid in the New York bankruptcy court-supervised Section 363 auction process, which the company is using to try to maximize the value of its assets. Based on Shutterfly's ground-floor bid, the company will seek better or higher bids from other suitors.

According to Pradeep Jotwani, Kodak's president of consumer business and chief marketing officer, should the Shutterfly deal go through, the companies would work closely together to make the transition process go as smoothly as possible and safeguard customers' photographs.

The debtor said it would give customers who don't want to join Shutterfly a chance to opt out of the transition and retrieve their images through free downloads or by buying DVDs from Kodak Gallery.

The planned sale comes as Kodak is trying to focus its consumer business on retail and destination photo solutions and home printing products, which Jotwani said have attractive

and growing sales.

According to Kodak, the company hopes to complete the sale process this spring.

The one-time photography giant is in the process of trimming its business after the failure to sell some of its digital patents, coupled with intense competition from new technologies, forced it to file for Chapter 11 on Jan. 19.

On Feb. 27, Kodak asked U.S. Bankruptcy Judge Allan L. Gropper to let it terminate medical benefits for Medicare-eligible individuals who have retired from the company since Oct. 1, 1991, saying it would save \$13.7 million for the 2012 fiscal year.

As part of its restructuring efforts, Kodak said it has to reduce the more than \$1.2 billion in liabilities on its books for retiree medical and survivor benefits. It provides retiree medical, dental, life insurance and survivor income benefits to about 56,000 retired employees and long-term disability recipients, survivors and dependents. The parties are still negotiating that issue.

Kodak's also looking to sell off a trove of about 1,100 digital imaging patents — roughly 10 percent of its portfolio — that has been valued at up to \$2.6 billion.

The company is working with a \$950 million debtor-in-possession facility that Judge Gropper approved a day after Samsung Electronics Co. Ltd. and a host of technology companies raised concerns that the deal could impair their intellectual property licensing rights or defenses.

The DIP agreement had prompted IBM Corp., Samsung and others to seek clarification that Kodak and the debtor-in-possession lenders were not attempting to impair the electronics companies' defenses to litigation or ability to assert any of their intellectual property claims.

Before filing for bankruptcy, Kodak fired off a spate of patent suits claiming Samsung, Fujifilm Corp., Apple Inc. and HTC Corp. infringed its digital imaging technology, with the battles yet to be played out.

Kodak is represented in the Chapter 11 case by Andrew G. Dietderich and others from Sullivan & Cromwell LLP.

The case is In re: Eastman Kodak Co., case number 1:12-bk-10202, in the U.S. Bankruptcy Court for the Southern District of New York.

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