

1

2

440

33.50

United States Bankruptcy Court

For the NORTHERN District of ALABAMA

I, Waverlyn E. Foust Clerk of Bankruptcy Court
in and for said District, do hereby certify that the attached copy of Findings of Fact and
Conclusions of Law re Application seeking Approval of Sale of Substantially
all the Debtor's Assets other than in the Ordinary Course of Business
Pursuant to 11 U.S.C. 363(b)(1) dated August 22, 1986

in the case of HEMOCRAFTERS WAREHOUSE, INC.

debtor, No. 85-7985 has been compared with the original thereof and that it is a complete and
correct copy of such original as it appears of record and on file in my office.

In testimony whereof I have hereunto set my hand at Birmingham

in said District, this 5th day of September, 19 86

Waverlyn E. Foust

Clerk of Bankruptcy Court

L. Armstrong
Deputy Clerk

BOOK 089 PAGE 400

[Seal of the U.S. Bankruptcy Court]

Date of issuance: September 5, 1986

Jack

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

HEMOCRAFTERS WAREHOUSE, INC.,

Debtor.

BK NO: 85-7985

Chapter 11 Proceedings

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE
APPLICATION SEEKING APPROVAL OF SALE OF SUBSTANTIALLY
ALL THE DEBTOR'S ASSETS OTHER THAN IN THE ORDINARY COURSE
OF BUSINESS PURSUANT TO 11 U.S.C. 363(b)(1)

BOOK 089 PAGE 401
The Application of Homecrafters Warehouse, Inc., debtor and debtor-in-possession ("Debtor"), with the joinder and approval of the Official Committee of Unsecured Creditors ("Committee"), dated July 31, 1986, (the "Application") seeking approval of: (i) the Agreement of Sale and Tax Plan of Reorganization ("Agreement") entered into by and between the Debtor and Wickes-Homecrafters, Inc. ("WHI"); (ii) the actions of the Debtor, its officers and directors, in executing the Agreement; and (iii) the sale of substantially all the Debtor's assets other than in the ordinary course of business pursuant to 11 U.S.C. 363(b)(1) to WHI, in accordance with the terms of the Agreement, duly and regularly came on for hearing before the undersigned United States Bankruptcy Judge on August 22, 1986. The Debtor appeared by its counsel, Gordon, Silberman, Wiggins and Childs, P.A. by Wilbur Silberman; the Official Creditors Committee appeared by its counsel, Berkowitz, Lefkovits, Isom &

Kushner by John P. Whittington; and the Court having considered the Debtor's Application and the evidence submitted in support thereof and the objections thereto filed by _____

and after due deliberation and consideration the Court now finds its Findings of Fact as follows:

FINDINGS OF FACT

1.

On December 6, 1985, the Debtor filed with this Court a voluntary petition (the "Case") for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in order to reorganize itself and propose a Plan of Reorganization under the protection of said statute. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing the operation and management of its business as debtor-in-possession.

2.

The Committee is a committee of creditors with unsecured claims, which was appointed in this case pursuant to 11 U.S.C. § 1103. No trustee has been appointed in the Case.

3.

The United States Securities and Exchange Commission (the "SEC") was notified of the hearing on this Application and received a copy of the Application, but did not appear or

object to the relief requested in the Application.

4.

This Court has jurisdiction over this matter by virtue of the provisions of 11 U.S.C. § 363 and 28 U.S.C. § 1334.

5.

WHI is a Delaware corporation which was formed for the purpose of acquiring the assets of the Debtor on the terms and conditions as set out in the Agreement. WHI is a wholly-owned subsidiary of the Wickes Companies, Inc. ("Wickes"), a publicly held Delaware corporation with its principal place of business located in Santa Monica, California.

6.

The Debtor is engaged in the ownership and operation of a chain of home improvement centers selling a wide range of building materials and home improvement products to do-it-yourself consumers and professional builders. The Debtor currently operates 28 such combination retail-wholesale warehouse stores with locations in Alabama, Florida, Georgia, Mississippi, Tennessee and Kentucky and employs over 700 people.

7.

The Debtor initially acquired 36 such combination retail-wholesale warehouse stores from the Union Camp Corporation on February 1, 1984 at a cost of \$32,472,000.00. The acquisition was financed primarily with the proceeds of a

public securities offering in the amount of approximately \$26,834,000.00; the remaining balance was financed by MHC Holding and Land Corporation ("MHC"), a subsidiary of the Union Camp Corporation. Since February 1, 1984, the Debtor has sold or closed eight of the stores, leaving 28 of the stores currently in operation.

8.

For the fiscal year ending January 31, 1986, the Debtor reported losses in the amount of \$23,609,105.00. In the prior year ending January 31, 1985, the Debtor reported losses in the amount of \$4,765,283.00. In addition, the Debtor has prepared and filed with the United States Trustee in-house monthly financial statements which reflect net operating losses for the period of February through June, 1986 as follows:

February 1986	- \$481,000.00
March 1986	- \$384,000.00
April 1986	- \$225,000.00
May 1986	- \$646,000.00
June 1986	- \$778,000.00

9.

At the time of this hearing the Debtor continues to suffer dramatic operating losses, and both the Debtor and the Committee project that such dramatic operating losses will continue if the business remains in operation without substantial injection of capital. The Debtor's only cash and operating income are derived from a post-petition financing agreement entered into by and between the Debtor and AmSouth

Bank, N.A. ("AmSouth"), which was approved by the Bankruptcy Court on February 13, 1986 (the "Loan Agreement"). The Loan Agreement provides that the Debtor may borrow up to \$17.4 million from AmSouth. The available credit under the Loan Agreement is restricted, however, to the lesser of \$17.4 million or the sum of (i) 80% of accounts receivable less than 90 days past due, (ii) 40% of inventories at cost, and (iii) \$3.25 million secured by the second mortgage. For the last several months of its operation, the Debtor has been unable to obtain any sums in excess of \$15.0 million on the credit line, because of the application of this formula. The Debtor has no other source of working capital. Because it does not have sufficient cash to acquire much-needed inventory and does not have any significant trade credit with its suppliers, it has been unable to take advantage of seasonal upturns in its business.

10.

The Debtor presently has insufficient cash and credit terms with its suppliers to enable it to buy adequate inventories to remain in operation as a viable concern on a long-term basis. Consequently, it would be unable successfully to repay any significant dividends to its creditors and stockholders from continued operations.

11.

The continuing losses, the inability to obtain a

significant amount of trade credit from suppliers, and the lack of cash to acquire much-needed inventory brought the Debtor and the Committee together in the search for a purchaser of the Debtor's assets. This search culminated in the negotiations by the Debtor and the Committee with WHI. The Debtor, the Committee and WHI have entered into the Agreement for the purchase of substantially all the Debtor's assets other than in the ordinary course of business.

12.

Although WHI, the Debtor and the Committee considered a sale of the Debtor's assets to WHI through a confirmed Plan of Reorganization, because of the time constraints involved in such a process, it was not possible to do so. The reason therefor is that a significant incentive and factor in WHI's desire to purchase the Debtor's assets, is the Debtor's anticipated going business value which WHI believes it will be able to regenerate and realize in the future. Critical to accomplishment of that goal, from WHI's perspective, is the prompt consummation of the purchase with an absolute minimum of delay. The continued erosion of the Debtor's inventories, the negative morale of the Debtor's personnel caused by the uncertainty of their future job security, and continual loss of business being experienced by the Debtor all combine to make the attractiveness of a purchase of the Debtor's assets by WHI diminish daily. Thus, a condition to the purchase of the

BOOK 089 PAGE 406

Debtor's assets by WHI pursuant to the Agreement is that the purchase must be concluded by the date set for the hearing on the Debtor's Application herein in conformance with the requirements of 11 U.S.C. § 363(b)(1). Therefore, if the Court failed to approve the contemplated sale pursuant to the Application now before the Court, WHI would not be willing to complete the purchase of the Debtor's assets pursuant to the Agreement.

13.

Unless the sale to WHI can be concluded as aforesaid, a Chapter 7 liquidation of the Debtor is its only alternative. Because of the foregoing facts, the Debtor is confronted with a real and existing emergency which requires that it conclude the sale of its assets in accordance with the terms of the Agreement pursuant to the provisions of 11 U.S.C. § 363(b)(1) or face a significant diminution in its estate as the alternative.

14.

The Agreement was entered into by the parties in good faith, and it is fair and equitable to the Debtor, the Debtor's unsecured creditors and the Debtor's equity holders. The consideration to be paid by WHI for the Debtor's assets to be purchased under the Agreement, represents a fair value for such assets.

15.

The Plan to be filed by the Debtor and the Committee will be based entirely upon the distribution to creditors and equity security holders of the proceeds of the sale of the Debtor's assets to WHI pursuant to its Agreement and therefore, approval of the Debtor's Application and the sale of its assets pursuant to the Agreement is a condition precedent to the confirmation of the Plan.

16.

The Agreement of Sale and Tax Plan of Reorganization (the "Agreement") pursuant to which WHI will acquire substantially all of Debtor's assets and the ongoing business of Debtor's chain of retail/builder home improvement centers free and clear of any and all claims, liens, interests, encumbrances, and liabilities, except as otherwise provided or assumed in the Agreement is before the Court for its approval as the Debtor's Application herein. A copy of the Agreement has been on file with this Court and has been available for inspection by all creditors and interested parties. The essential terms of the Agreement provide that WHI shall, on closing, assume and agree to pay and discharge as and when due the IDB debt, the MHC debt, the AmSouth debt, that certain Master Lease Agreement dated November 13, 1984, of Textron Financial Corporation (as successor to Avco Financial Services Leasing Company), but only to the extent assumed by Debtor in this bankruptcy proceeding

BOOK 089 PAGE 408

by that certain Order entered by the Bankruptcy Court on April 25, 1986, that certain Master Lease Agreement dated June 7, 1984, of Manufacturers Hanover Leasing Corporation, but only to the extent assumed by Debtor in this bankruptcy proceeding by that certain Order filed in the Bankruptcy Court on May 15, 1986, certain other liabilities of the Debtor and the administrative and priority claims as finally determined and allowed by Final Orders of this Court. In addition, WHI will deliver to Debtor for distribution to Debtor's general unsecured creditors and stockholders, Wickes' stock having an aggregate value not to exceed \$7,300,000.00. The Agreement contains provisions regarding adjustments to the purchase price, determination of maximum liability being assumed, valuation of the Wickes' stock and numerous other important provisions. The performance of WHI with respect to its obligations and performance under the Agreement will be guaranteed by Wickes who has adequate financial sources to insure performance by WHI of WHI's obligations under the Agreement. The sale contemplated by the Agreement is in furtherance of the intention of the parties to the Agreement that the transactions therein contemplated shall constitute a tax reorganization under § 368(a)(1)(C) and § 368(a)(1)(G) of the Internal Revenue Code and has been proposed pursuant to Bankruptcy Code § 363(b)(1) which governs the use, sale, or lease, other than in the ordinary course of business, of

BOOK 089 PAGE 409

property of the bankruptcy estate.

17.

The total maximum consideration to be paid by WHI for the Debtor's assets is approximately \$32.0 million, broken down into the following components:

- (a) WHI will assume and pay as and when due the Debtor's secured creditors, MHC and AmSouth the principal amount of such debts not to exceed \$17.7 million, plus accrued interest not to exceed one month;
- (b) WHI will pay \$7.0 million cash as and when due for the administrative and priority claims incurred in the Case as well as certain assumed liabilities, including capitalized leases which have been assumed by the Debtor and the debt to the IDB;
- (c) WHI will deliver \$6.0 million in common stock of the Wickes Companies, Inc. to Debtor; and
- (d) If the Plan of Reorganization which it is contemplated the Debtor and the Committee will file is confirmed, WHI will deliver an additional \$1,300,000.00 in common stock of the Wickes Companies, Inc. to the Debtor.

BOOK 089 PAGE 410

18.

The stockholders of the Debtor were given notice and an opportunity for a hearing pursuant to this Court's Order and Notice of Hearing dated July 31, 1986. This notice and opportunity for a hearing satisfies the voting rights of such stockholders, if any, with respect to a sale of substantially all of the Debtor's assets, other than in the ordinary course of business, under any applicable state law.

19.

Service of the Order and Notice dated July 31, 1986, as supplemented August 5, 1986, upon all scheduled creditors, creditors filing claims, the United States Trustee, the SEC, and all stockholders of the Debtor is good and sufficient notice and is in full compliance with the requirements of Bankruptcy Rules 2002 and 6004, and 11 U.S.C. § 363.

20.

It is clear and without doubt that the amount of money that the Debtor will realize from the consummation of the sale of its assets to WHI pursuant to the terms of the Agreement will exceed by very substantial amounts, the amount of money that the Debtor would realize from a liquidation of its assets. Consummation of the sale is essential to the Debtor's ability to propose and confirm its Plan in that it will provide the Debtor with the funds required to finance its Plan. Important and sound business reasons exist justifying the sale of substantially all of the Debtor's assets to WHI, pursuant to the Agreement other than in the ordinary course of business under 11 U.S.C. § 363(b)(1). Approval of the sale is clearly and unquestionably in the best interests of the Debtor, all of its creditors, its shareholders and its estate.

21.

If any of the foregoing Findings of Fact shall constitute Conclusions of Law, they shall be deemed Conclusions of Law.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes its Conclusions of Law as follows:

1. The sale of substantially all of the Debtor's assets other than in the ordinary course of business to WHI, pursuant to the terms of the Agreement, comply with all of the requirements of 11 U.S.C. § 363(b)(1). There is good cause and sound business reasons for the sale and it is in the best interests of all of the Debtor's creditors, stockholders and its estate that the sale be, and is hereby approved, upon all of the terms and conditions set forth in the Agreement.

2. The actions of the Debtor, its officers and directors, in executing the Agreement and proposing the sale of Debtor's assets through this Application were and are authorized under Bankruptcy Law and applicable state law and are hereby authorized and approved.

3. If any of the foregoing Conclusions of Law shall constitute Findings of Fact, they shall be deemed Findings of Fact.

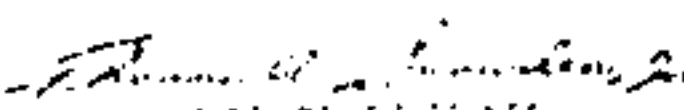
Dated this the 22 day of August, 1986


STEPHEN B. COLEMAN
United States Bankruptcy Court

STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT WAS FILED

2791C

1986 SEP -8 AM 9:55


CLERK OF COURTS

RECORDING FEES

Recording Fee	\$ <u>33.50</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>34.50</u>