

Form JDG11 (10/09)

**United States Bankruptcy Court  
Western District of Michigan**  
One Division Ave., N.  
Room 200  
Grand Rapids, MI 49503

**IN RE:** Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):

**Sam's Joint, Inc.**  
PO Box 140  
Caledonia, MI 49316  
Tax ID: 38-3148625

Debtor

**Case Number 13-08566-jwb**

**Chapter 11**

**Honorable James W. Boyd**

**NOTICE TO PARTIES IN INTEREST OF HEARING**

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, One Division Ave., N., 3rd Floor, Courtroom B, Grand Rapids, MI 49503 on **March 4, 2015** at **01:30 PM** to consider and act upon the following matter:

**Debtors' Motion for Sale of Rib and Barbeque Sauce Recipe with Related Intellectual Property Pursuant to Courtroom Auction (DN 174)**

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the Clerk of the United States Bankruptcy Court, One Division Ave., N., Grand Rapids, Michigan 49503, and should be received by the Clerk at least 7 (seven) days before the above hearing date. A copy of your responses should also be mailed upon the opposing party and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion and may enter an order granting relief requested.

DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT

**Dated:** February 9, 2015

/S/\_\_\_\_\_  
J. Koerth  
Deputy Clerk

A copy of this notice returned to Cody H. Knight, Esq. on February 9, 2015 for service upon the mailing matrix.

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site ([www.miwb.uscourts.gov](http://www.miwb.uscourts.gov)) provided the person has a PACER login and password, or by visiting the clerk's office of the United States Bankruptcy Court located at One Division Ave., N., 2nd Floor, Grand Rapids MI 49503. Information about a PACER login and password may be obtained by either calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.psc.uscourts.gov>

<sup>1</sup> Aliases for Debtor Sam's Joint, Inc. : dba Sam's Joint, dba Sam's, dba Max & Co., fdba Max's, fdba Spyke's

**UNITED STATES BANKRUPTCY COURT  
IN THE WESTERN DISTRICT OF MICHIGAN**

IN THE MATTER OF:

SAM'S JOINT, INC.,

Case No.: 13-08566

Chapter 11 - Filed: 11/4/2013

Debtor.

\_\_\_\_\_/ /

**DEBTORS' MOTION FOR SALE OF RIB AND BARBEQUE SAUCE RECIPE  
WITH RELATED INTELLECTUAL PROPERTY  
PURSUANT TO COURTROOM AUCTION**

NOW COMES Sam's Joint, Inc. ("Debtor"), by and through its attorneys, Rayman & Knight, and for its Motion for Sale of Rib and Barbeque Sauce Recipe with Related Intellectual Property Pursuant to Courtroom Auction ("Motion"), states as follows:

**GENERAL ALLEGATIONS**

1. On November 4, 2013 ("Petition Date") the Debtor filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code ("Code").
2. Since the Petition Date, the Debtor has operated its business as Debtor-in-Possession, pursuant to §§ 1107 and 1108 of the Code.
3. No official committee of creditors holding unsecured claims has been appointed and no Trustee or Examiner has been appointed.
4. The Debtor files this Motion pursuant 11 U.S.C. § 363(b) and (f).

**RELIEF REQUESTED**

5. The Debtor has sold (separate from its restaurants) its prepared baby back ribs with sauce through various retail outlets, including various Spartan Stores and Meijers ("Sam's Ribs Business").

6. The Debtor has received an offer to purchase the Sam's Rib Business, including any recipes for the ribs, the barbeque sauce and any and all related intellectual property including trade names from Gimme a Break, LLC ("Buyer") for the sum of \$7,500.00.

7. Your Debtors seek approval of the sale pursuant to 11 U.S.C. § 363(b), which provides in relevant part that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

8. This Court has discretion to determine whether a sale of assets should be approved. *See, In re Embrace Systems Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995).

9. In determining whether a sale of assets outside the ordinary course of business should be approved pursuant to 11 U.S.C. § 363(b), a debtor has the burden of establishing that a valid business purpose exists. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *see also, In re Stephens Industry, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986).

10. Sam's Rib Business has been declining and as the Debtor is liquidating it must be liquidated.

11. Once a debtor has articulated a valid business purpose, however, a presumption arises that the debtor's decision to sell the assets was made on an informed basis, in good faith and in the honest belief the action was in the best interest of the estate. *See, In re Integrated Resources, Inc.*, 147 B.R. 650, at 656 (S.D.N.Y. 1992); *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. 111. 1995) (the business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company).

12. Courts within the Sixth Circuit have held that transactions may be approved under 11 U.S.C. § 363 when they are supported by sound business judgment. *See, e.g., Stephens*

*Industries, Inc. v. McClung*, 789 F.2d 386, 389-390 (6th Cir. 1986) ("a court can authorize a sale of a debtors' assets when a sound business purpose dictates such action"); *see also*, *In re Embrace Sys. Corp.*, 178 B.R. at 124; *In re North American Royalties, Inc.*, 276 B.R. 860, 866 (Bankr. E.D. Tenn. 2002); *In re Quality Stores Inc.*, 272 B.R. 643, 647 (Bankr. W.D.Mich. 2002) ("noting the 'wide business discretion' given to debtors selling assets under § 363").

13. The sale is in the best interest of the estate and a valid business purpose exists.

14. The Debtor's secured creditors consist of The Huntington National Bank ("Huntington"), Chemical Bank ("Chemical"), the Michigan Department of Treasury ("Michigan Treasury"), the Michigan Unemployment Agency ("Unemployment Agency"), and the Internal Revenue Service ("IRS").

15. Your Debtor submits that the sale of Sam's Rib Business should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f) for the reasons described herein.

16. The Debtor believe they will obtain the affirmative consent of secured creditors, and further, to the extent secured creditors do not object to the sale, each should be deemed to have consented to the sale. *See, FutureSource LLC v. Reuters Ltd.*, C.A.7 (Ill.) 2002, 312 F.3d 281, certiorari denied 123 S.Ct. 1769, 538 U.S. 962, 155 L.Ed.2d 513; *see also*, *Veltman v. Whetzal*, 93 F.3d 517, 520 (8th Cir.1996); *contra*, *see In re Roberts*, 249 B.R. 152, 154-57 (Bankr.W.D.Mich.2000). As such, the Debtor may sell Sam's Rib Business, pursuant to 11 U.S.C. § 363(f)(2).

17. Sam's Rib Business may be sold free and clear of the claims of secured creditors, pursuant to 11 U.S.C. § 363(f)(3). Pursuant to 11 U.S.C. § 506(a), the value of secured creditors' liens is limited to the value of its collateral. As the value of the collateral is determined by the sale, the Debtor may sell the property, pursuant to 11 U.S.C. § 363(f)(3). (*See*

generally, *In re Becker Indus., Inc.*, 63 B.R. 474 (Bankr. S.D.N.Y. 1986) and *In re Terrance Gardens park P'ship*, 96 B.R. 707 (Bankr. W.D. Tex. 1989).

18. Each of the secured creditors are compelled to accept a money satisfaction of their lien rights, such as this Chapter 11 proceeding. As such, the Debtor may sell Sam's Rib Business, pursuant to 11 U.S.C. § 363(f)(5).

19. Sam's Rib Business may be sold free and clear of the claims of secured creditors pursuant to 11 U.S.C. § 363(f)(2)(3)(4)&(5).

20. The sale of Sam's Rib Business, shall be sold and assigned "**As is, Where is**", without representation or warranty, expressed or implied, of any kind or nature, or description, including, without limitation, any warranty of marketability, usability or fitness for any purpose. The Trustee shall not be required to inspect, test or report on the condition of any asset, or the existence of any defects of any kind.

21. Any party interested in purchasing Sam's Rib Business **must appear at the hearing scheduled for this Motion** and be prepared to bid in increments of \$500.00 with an opening bid of \$8,000.00 and provide sufficient evidence of ability to close. The Trustee reserves the right to accept the best offer, which may not be the highest and the Trustee will seek authority to seek a back-up bidder.

### **CONCLUSION**

22. The sale is expected to close within thirty (30) days from the entry of an order approving the Sale.

23. The sale of Sam's Rib Business is in the best interest of the estate, the Debtor has a valid business reason to sell the property and this Motion should be approved.

24. As the Buyer desires to close as soon as possible, the Debtor submits that it is appropriate to waive the provisions of Federal Rules of Bankruptcy Rule 6004(h).

**WHEREFORE**, your Debtor prays:

A. That this Court enter an Order authorizing the sale, pursuant to 11 U.S.C. § 363(b), consistent with this Motion.

B. That the Court enter an Order determining that the sale of Sam's Rib Business is free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds.

C. That the Debtor be authorized to execute Bills of Sale and other documents consistent with the Motion and execute other such documents as are or may become necessary to effectuate the sale and transfer the Sam's Rib Business including any and all intellectual property related to the same.

D. That this Court waive the provisions of Federal Rules of Bankruptcy Rule 6004(h).

E. That this Court order such other relief as it finds just and equitable.

**RAYMAN & KNIGHT**  
Attorneys for Debtor

Dated: February 6, 2015

By: \_\_\_\_\_/s/\_\_\_\_\_  
Cody H. Knight (P64811)

**BUSINESS ADDRESS:**  
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Telephone: (269) 345-5156

**APPROVED:**

\_\_\_\_\_/s/\_\_\_\_\_  
David T. Bowen  
Attorney for Buyer