

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

| | |
|--|--|
| <p>IN RE: Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):</p> <p>Graham Land Development Enterprise, LLC 7105 Oak Highlands Drive Kalamazoo, MI 49009 Tax ID: 74-3124256</p> <p style="text-align: right;">Debtor</p> | <p>Case Number 14-00928-swd</p> <p>Chapter 11</p> <p>Honorable Scott W. Dales</p> |
|--|--|

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

DEBTOR'S MOTION FOR SALE OF REAL PROPERTY LOCATED AT 311 N. GRAND STREET IN SCHOOLCRAFT, MICHIGAN, PURSUANT TO COURTROOM AUCTION

Please take notice that the above-referenced motion has been filed with the Bankruptcy Court. **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.)

If you want the court to consider your view on this matter, attend the hearing scheduled for February 11, 2015 at 10:00 AM at the United States Bankruptcy Court, Federal Building, U.S. Courthouse, Room 114, 410 W. Michigan Avenue, Kalamazoo, MI 49007.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least five business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney.

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



DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

Dated: January 7, 2015

/S/ _____
Kathy Trapp
Deputy Clerk

Notice returned to Cody Knight, Esq. for appropriate service: (1/7/15-kmt)

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 new hearing date. 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.miw.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 Avenue North, 2nd Floor, Grand Rapids, Michigan 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>.

¹ *Aliases for Debtor Graham Land Development Enterprise, LLC : dba Graham Land*

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

IN THE MATTER OF:

GRAHAM LAND DEVELOPMENT ENTERPRISES, LLC

Case No.: 14-00928

Chapter 11 – Filed: 02/19/14

Debtor.

//

**DEBTOR'S MOTION FOR SALE OF REAL PROPERTY LOCATED AT
311 N. GRAND STREET IN SCHOOLCRAFT, MICHIGAN,
PURSUANT TO COURTROOM AUCTION**

NOW COMES Graham Land Development Enterprises, LLC, Debtor (“Debtor”), by and through its attorneys, Rayman & Knight, and for its Motion for Sale of Real Property Located at 311 N. Grand Street in Schoolcraft, Michigan, Pursuant to Courtroom Auction (“Motion”), states as follows:

GENERAL ALLEGATIONS

1. On February 19, 2014 (“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 businesses as Debtor-in-Possession, pursuant to §§ 1107 and 1108 of the Code.
3. No official committee of creditors holding unsecured claims has been appointed. No Trustee or Examiner has been appointed.
4. The Debtor files this Motion pursuant 11 U.S.C. § 363(b) and (f).

OVERVIEW

5. The Debtor is a real estate holding company which filed for Chapter 11 relief along with two operating entities. One of the entities, Shar Gal, Inc. (“Gallagher’s Paw Paw”), has closed. Its real estate will be the subject of a separate motion for sale. The other entity is

Four Grahams, Inc. (“Gallagher’s Kalamazoo”). It remains open and hopes to reorganize through the filing of its combined Chapter 11 Plan along with the Debtor.

6. The Debtor also owns the property which is the subject of this Motion wherein a Red-Crown Pharmacy once operated, and is commonly referred to as 311 N. Grand Street in Schoolcraft, Michigan (“Property”).

7. This Debtor’s only secured creditor (other than *ad valorem* taxes) is Mercantile Bank of Michigan (“Mercantile”).

8. Mercantile has agreed to purchase the Property pursuant to 11 U.S.C. § 363(b), (f) and (k) as further set forth in this Motion.

RELIEF REQUESTED

9. The Debtor has received an offer from Mercantile to purchase the Property for the purchase price of \$77,800.00 (as a credit bid, pursuant to 11 U.S.C. § 363(k)) plus pay all unpaid *ad valorem* taxes.

10. The *ad valorem* taxes are estimated to be \$5,000.00.

11. The sale shall be subject to competitive bidding.

12. The sale shall be on an “AS IS” basis with no representations or warranties from the Debtor of any kind or nature.

13. The sale of the Property shall be sold free and clear of all liens, encumbrances, and/or claims therein in accordance with 11 U.S.C. §363(f), with said liens, encumbrances, and/or claims attaching to the sale proceeds in the same order of validity, rank, and priority as now exists.

14. Any party interested in purchasing the Property **must appear at the hearing scheduled for this Motion** and be prepared to bid in increments of \$1,000.00 with the opening bid at \$80,000.00 plus *ad valorem* taxes, plus payment of any real estate broker used. The

prospective bidder must provide sufficient evidence of ability to close. The Debtor reserves the right to accept the best offer, which may not be the highest and the Debtor will seek authority to seek a back-up bidder.

15. The Property may be sold free and clear of liens because *ad valorem* taxing authorities which have liens for unpaid real estate taxes shall be paid in full at closing and as such the sale may be free and clear of their liens pursuant to 11 U.S.C. § 363(f)(3). In addition the only other secured creditor, Mercantile, consents to the sale and as such the property may be sold free and clear pursuant to 11 U.S.C. § 363(f)(2). If there are any additional creditors claiming a lien, those creditors do not have valid recorded liens and as such their lies would be subject to bona-fide dispute, and as such, the Property may be sold free and clear of liens, pursuant to 11 U.S.C. § 363(f)(4). The Property may be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(2), (3) & (4).

16. Your Debtor seeks approval of the sale of the Property 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.”

17. 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).

18. 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).

19. The Debtor is a real estate holding company. The Property is no longer occupied by an operating entity and must be sold. The Debtor has a valid business purpose for selling the Property.

20. Once a debtor has articulated a valid business purpose, 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).

21. 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").

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

23. The Sale should be approved.

24. Your Debtor submits that the sale of the Property should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f) for the reasons previously described herein.

CONCLUSION

25. The sale of the Property 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.

26. As Mercantile 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 the Property 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 a Deed and Bills of Sale consistent with the Motion and execute other such documents as are or may become necessary to effectuate the sale.

D. Authorize the Debtor to pay all *ad valorem* taxes and other closing costs.

E. Authorize the Debtor to accept a back-up bidder.

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

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

RAYMAN & KNIGHT
Attorneys for Debtor

Dated: January 5, 2015

By: _____/s/_____
Cody H. Knight (P64811)

BUSINESS ADDRESS:
141 E. Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156