

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

York Enterprises, LLC

Debtor.

Case No.: 14-00628

Chapter 11 – Filed: 2/06/2014

Converted – Chapter 7: 11/13/2014

**ORDER APPROVING MOTION FOR AN EXPEDITED HEARING REGARDING  
TRUSTEE'S MOTION FOR SALE OF PROPERTY COMPRISING OF YORK'S LANDING  
BAR AND GRILL FREE AND CLEAR OF LIENS PURSUANT TO  
11 U.S.C. § 363 WITH COURTROOM AUCTION**

**PRESENT: HONORABLE JOHN T. GREGG**  
United States Bankruptcy Judge

**THIS MATTER** having come to be heard upon the Motion for an Expedited Hearing Regarding Trustee's Motion for Sale of Property Comprising of York's Landing Bar and Grill, Free and Clear of Liens Pursuant to 11 U.S.C. § 363, With Courtroom Auction ("Motion to Shorten Notice"); and the Court being otherwise fully advised in the premises;

**IT IS THEREFORE ORDERED:**

1. That the Motion to Shorten Notice is granted.
2. That notice of the Motion for Sale of Property Comprising of York's Landing Bar and Grill Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction is hereby shortened to permit a hearing on **April 15, 2015 at 10:00 a.m. at the United States Bankruptcy Court, 1 Division Avenue, North, Courtroom C, Grand Rapids, Michigan;**
3. That service of this Order and the Motion for Sale of Property Comprising of York's Landing Bar and Grill Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction shall be served upon all creditors and parties in interest by close of business on March 27, 2015; and
4. Any objections to the relief requested in the Motion for Sale of Property Comprising of York's Landing Bar and Grill Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction must be filed with this Court and served upon requisite parties by no later than April 13, 2015.

This Document Prepared By:  
**RAYMAN & KNIGHT**  
141 E. Michigan Avenue, Suite 301  
Kalamazoo, MI 49007  
Telephone: (269) 345-5156

**END OF ORDER**

**Signed: March 26, 2015**



*John T. Gregg*  
John T. Gregg  
United States Bankruptcy Judge

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FOR THE WESTERN DISTRICT OF MICHIGAN**

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**TRUSTEE’S MOTION FOR SALE OF PROPERTY COMPRISING OF  
YORK’S LANDING BAR AND GRILL FREE AND CLEAR OF LIENS  
PURSUANT TO 11 U.S.C. § 363 WITH COURTROOM AUCTION**

NOW COMES Stephen L. Langeland, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Sale of Property Comprising of York’s Landing Bar and Grill Free and Clear of Liens Pursuant to 11 U.S.C. § 363 With Courtroom Auction (“Motion”), says as follows:

**JURISDICTION**

1. That jurisdiction over this case and proceeding exist in this Court under 28 U.S.C. §1334(a) and (b) and by reference from the District Court in accordance with 28 U.S.C. §157(a). Determination of this Motion is a core proceeding, as defined in 28 U.S.C. §157(b), arising under the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*, “Bankruptcy Code”). Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §1409(a).

**BACKGROUND**

2. That on February 6, 2014 (“Petition Date”) York Enterprises, LLC (“Debtor”) filed a Chapter 11 Bankruptcy which was converted to a Chapter 7 proceeding on November 13, 2014.

3. That the Trustee is the Trustee with respect to the above-captioned matter.

4. The Trustee has received an offer from Ballock Enterprises, LLC (“Purchaser”) to

purchase the property comprising of York's Landing Bar and Grill ("York's Landing") including condominium units 23 and 25 and all personal property of York's Landing (excluding inventory) for the sum of \$432,000.00 which includes \$10,000.00 for its liquor license and all related permits regarding the same ("Liquor License"). The condominium units, the personal property and the Liquor License shall be referred to as the "Property".

5. The offer to purchase is set forth in the attached Commercial-Industrial Real Estate Buy & Sell Agreement and Liquor License Purchase Agreement, collectively attached as Exhibit "A".

6. The Purchaser is not an insider and the purchase price was reached by negotiations between the parties after a lengthy marketing period.

7. The total sale price is \$432,000.00 and will be subject to competitive bidding.

#### **LIEN HOLDERS**

8. The sale of the Property shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f).

9. This Motion seeks to have the sale free and clear of the liens of the following secured creditors, which claims are known to have a lien in the property subject to sale: Van Buren County, City of South Haven, Comerica Bank and Old Harbor Village Condo Association ("Lien Holders") for the reasons described herein.

10. The sale is also subject to a realtor's commission of 5% to be shared between the realtor for the Purchaser and the estate.

#### **AUCTION PROCESS**

11. **That the sale of the Property shall be sold "As Is, Where Is", with the Trustee making no representations, warranties, statements or promises with respect to the**

same, including, but not limited to, description, fitness for purpose, merchantability, quantity, the conditions or the quality of any matter or thing whatsoever, with any and all conditions and warranties expressed or implied by law being deemed not to apply to the sale of the Property. The Purchaser or any successful bidder shall take the Property with all of its faults.

12. An auction of the Property will be held at the hearing scheduled for this Motion.

Any party desiring to place a bid must be present at the hearing and be prepared to bid.

13. The Trustee will take bids for the Property, beginning with an opening bid of \$440,000.00 with subsequent bids being in increments of at least \$1,000.00.

14. **All parties desiring to purchase must provide evidence of ability to close.**

15. The Trustee may seek authority to accept a back-up bidder, as well.

16. The Trustee shall review all bids received and, on the basis of such factors as the Trustee may determine in his sole discretion, after consultation (if appropriate) with secured lenders and other parties in interests without limitation, the Lien Holder's approval of a bid, the financial and contractual terms of each bid and factors concerning the speed, certainty of consummation of the transactions contemplated by each bid, identify the highest and otherwise best offer for the Property.

17. Lien Holders shall have the right to credit bid at auction, pursuant to 11 U.S.C. § 363(k), a maximum amount equal to the value of its debt. The Lien Holders must pay all expenses of sale, including the realtor fees, closing costs and the payment of all superior liens including all *ad valorem* taxes owed as of the date of closing.

**SALE FREE AND CLEAR OF LIENS**

18. The sale of the Property shall be deemed free and clear of liens pursuant to 11

U.S.C. §363(f). The sale may be free and clear of the liens of the Lien Holders, which claim or are known to have a lien in the Property for the reasons described herein.

19. The Trustee will seek the affirmative consent of Comerica Bank and Old Harbor Village Condo Association to the sale of the Debtor's assets. The Trustee expects he may obtain the affirmative consent of the Lien Holders and, further, to the extent Lien Holders do not object to the sale, each has been 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).

20. The Property may be sold free and clear of the claims of Lien Holders, pursuant to 11 U.S.C. § 363(f)(3). Pursuant to 11 U.S.C. § 506(a), the value of the Lien Holders' liens is limited to the value of its collateral. As the value of the collateral will be determined by the sale, and as each creditor had the right to credit bid, pursuant to credit bid, the Trustee 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).

21. Each of the Lien Holders could be compelled to accept a money satisfaction of their lien rights, such as this Chapter 11 proceeding. As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(5).

22. The Property may be sold free and clear of the claims of Van Buren County and the City of South Haven 11 U.S.C. § 363(f)(3), as each will be paid in full from the sale for any *ad valorem* taxes owed. In addition, due to a previously filed Motion for Sale of Three Condo Units and Personal Property, Free and Clear of Liens Pursuant to 11 U.S.C. § 363, With

Courtroom Auction (“Prior Sale Motion”), upon closing of both sales, Comerica Bank and Old Harbor Village Condo Association will also be paid in full.

23. The Property may be sold free and clear of the claims of the Lien Holders, pursuant to 11 U.S.C. § 363(f)(2)(3)&(5).

24. To the extent a party other than the Lien Holders claims a lien in the Property, such claim would be in *bona fide* dispute and, as such, the Trustee may sell the Property, free and clear of said liens pursuant to 11 U.S.C. § 363(f)(4).

25. The sale should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f), with the Purchaser taking the estate’s interest in the Property being sold free and clear of any liens and encumbrances with such liens and encumbrances attaching to the sale proceeds in the same rank, validity and priority as existed as of the date of the Petition.

**TRANSFER OF LIQUOR LICENSE**

26. The transfer of the Debtor’s Liquor License will be subject to the approval of the Michigan Liquor Control Commission (“MLCC”).

27. The sale of the Property to the Purchaser is contingent upon the successful transfer of the Liquor License, the issuance of Conditional Liquor License or a Management Agreement between the estate and the Purchaser to allow the Purchaser to operate until final approval of the transfer of the Liquor License.

28. In order to aid in the successful transfer of the Liquor License and to help obtain a Conditional Liquor License, the estate has engaged Wayne Deering (“Mr. Deering”) to act as a consultant.

29. The Trustee will seek the appointment of Mr. Deering, which will seek his employment and his compensation for a flat fee of \$2,500.00.

30. Mr. Deering and the Purchaser have already commenced work on obtaining the approval of the MLCC.

**CONCLUSION**

31. The closing is expected to happen as soon as possible so that Purchaser will have sufficient time to prepare for the summer season and to begin work immediately to obtain approval of the MLCC. As such, the Trustee submits that it is appropriate to waive the provisions of Federal Rules of Bankruptcy Rule 6004(h).

32. The sale of the Property pursuant to this Motion is in the best interests of the estate and its creditors. It is believed that upon the closing of this sale and the sale contemplated by the Prior Sale Motion, all secured claims will have been satisfied.

**WHEREFORE**, your Trustee prays:

A. That this Court enter an Order authorizing the sale of the Property on the terms and conditions set forth herein.

B. That the Court enter an Order authorizing the sale of the Property free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds.

C. That the Trustee be authorized to execute a Trustee's Deed, Trustee's Bill of Sale and such other documents as may be necessary to transfer title to the Purchaser in conformance with the terms herein.

D. That the Trustee be authorized to pay the realtors' commissions and to pay such other appropriate and necessary expenses of sale including all applicable real estate taxes without further Order of this Court.

E. Authorize the Trustee to reserve \$2,500.00 to pay Mr. Deering or to pay the same should his fees be approved prior to closing.

- F. Authorize the Trustee to accept a back-up bidder.
- G. That this Court order such other relief as it finds just and equitable.

**RAYMAN & KNIGHT**  
Attorneys for Trustee

Dated: March 26, 2015

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

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