

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

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M and M Buddies, LLC

Debtor./

CASE NO.: DK13-05835

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HMB Investments, LLC

Debtor./

CASE NO.: DK13-05865

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

**TRUSTEE'S MOTION FOR SALE OF REAL AND PERSONAL PROPERTY  
PURSUANT TO 11 U.S.C. 363(b) & (k) FREE AND CLEAR OF LIENS PURSUANT  
TO 11 U.S.C. 363(f) WITH A 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 views on this matter, attend the hearing scheduled for November 18, 2016 at 10:00 a.m. at the United States Bankruptcy Court, U.S. Courthouse and Federal Building, 410 West Michigan, Room 114, Kalamazoo, Michigan.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least seven 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 or objection and may enter an order granting that relief.

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Notice returned to Cody H. Knight, Esq. for service of notice and motion upon the matrix.  
Court to serve Buyer's List. (October 24, 2016-kt)

October 24, 2016

DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT



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/s/  
BY: Kathleen Trapp, Deputy Clerk

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.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 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.pcs.uscourts.gov>.

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

IN THE MATTER OF:

M AND M BUDDIES, LLC,

Debtor.

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Case No.: 13-05835

Chapter 11 – Filed: 07/19/2013

Converted: Chapter 7 – 03/31/2016

IN THE MATTER OF:

HMB INVESTMENTS, LLC,

Debtor.

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Case No.: 13-05865

Chapter 11 – Filed: 07/22/2013

Converted: Chapter 7 – 03/31/2016

**MOTION FOR SALE OF REAL AND PERSONAL PROPERTY PURSUANT TO 11  
U.S.C. 363(b) & (k) FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. 363(f)  
WITH A COURTROOM AUCTION**

NOW COMES Thomas C. Richardson, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Sale of Real and Personal Property Pursuant to 11 U.S.C. §363(b) & (k) Free and Clear of Liens Pursuant to 11 U.S.C. § 363(f) with Courtroom Auction (“Motion”), hereby 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”).

2. Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §1409(a).

**BACKGROUND**

3. On July 19, 2013 (“Petition Date”) M and M Buddies (“M&M”) filed for relief

under Chapter 11 of the Bankruptcy Code, as did HMB Investments, LLC (“HMB”) on July 22, 2013.

4. M&M and HMB (“Debtors”) converted their Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code on March 31, 2016.

5. The Trustee is the duly appointed and acting Chapter 7 Trustee in these proceedings.

6. Prior to the bankruptcy, the Debtors operated a gas station and convenience store located at 10660 E. Chicago Road in Jerome, Michigan (“Real Estate”), which was owned by HMB, and the personal property used to operate it was owned by M&M (“Property”).

7. The Debtors’ three primary secured creditors are purported to be Corrigan Oil<sup>1</sup> (“Corrigan”), MS II LLC<sup>2</sup> (“MS II”) and Comerica Bank<sup>3</sup> (“Comerica”) (collectively, “Secured Creditors”). An entity known as 10660 E. Chicago Road, LLC has purchased the debt and liens of MS II and it has consented to the sale of the property that is subject to this Motion.

8. The Trustee has received an offer from 10660 E. Chicago Road, LLC and Corrigan (“Buyer”) to purchase the Real Estate for the sum of \$300,000.00 and the Property for the sum of \$50,000.00, for a total of \$350,000.00. Both of these amounts will be paid to the estate through 11 U.S.C. § 363(k). In addition to the credit bid, the Buyer will pay all superior liens in the Real Estate and Property, including *ad valorem* taxes and typical closing costs (including transfer tax). Further, the Buyer will gift to the estate all funds on hand which is approximately \$33,400.00, which shall be shared equally by the bankruptcy estates of M&M and HMB (“Carve Out”). It has further agreed to value its bid as having a cash value of \$300,000.00.

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<sup>1</sup> Pursuant to Claim No. 7-1 in the M&M Buddies bankruptcy case, it is owed the sum of \$51,696.31.

<sup>2</sup> Pursuant to Claim No. 11-1 in the M&M Buddies bankruptcy case, it is owed the sum of \$377,769.53.

<sup>3</sup> Pursuant to Claim No. 2, Comerica Bank is owed the sum of \$959,852.61.

9. M&M was also the owner of a certain Michigan Liquor Control Commission (“MLCC”) packaged liquor license (“License”), which was terminated. The Trustee believe that the estate may be able to have the license reinstated and if it is able to do so within 60 days from the entry of an order approving this Motion, the Buyer has agreed to pay the sum of \$10,000.00 for the License. The License may have value as it had a lower liquor inventory requirement than other licenses of its type. The Trustee will file a separate motion, if necessary, regarding the reinstatement of the License but seeks approval to sell the License in this Motion. The Buyer has agreed to pay the Estate the sum of \$2,500.00 for this purpose.

10. **The Buyer shares a connection with the Debtors** as they were the Debtors’ prepetition creditor.

#### **RELIEF REQUESTED**

11. This Motion seeks to sell the Real Estate and Property to the Buyer pursuant to 11 U.S.C. § 363(b) & (k) and to have such sale free and clear of liens, pursuant to 11 U.S.C. § 363 (f). It also seeks the approval to sell the License, subject to MLCC approval for the sum of \$10,000.00

12. The Trustee requests that this Court grant this Motion and enter an Order which:

- a. Approves a sale of the Real Estate and Property, pursuant to §363(b)&(k) of the Bankruptcy Code;
- b. Approves the conditional sale of the Licenses pursuant to §363(b);
- b. Waives the 14 day stay contained in Fed. R. Bankr. P. 6004;
- c. Provides that all liens, claims or encumbrances in the Real Estate, Property, and License, be sold free and clear of liens pursuant to 11 U.S.C. 363(f);
- d. Approves the Trustee’s “Carve Out” agreement as defined further herein; and

e. Authorizes the Trustee to accept a back-up bidder.

13. Due to time constraints, and the fact that the Real Estate is vacant and the Property are subject to risk, the Trustee would request that this Court waive the provisions of Federal Rules of Bankruptcy Rule 6004(h). The Secured Creditor has allowed the estate to use the funds on hand to maintain insurance but the Trustee desires to end this expense as soon as possible.

### **ARGUMENT AND AUTHORITY**

14. The Trustee seeks approval of the sale of the Real Estate, Property and License, 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.”

15. The sale of the Real Estate, Property and License is to a party related to the Debtors. However, the Trustee submits that it is in the best interests of the estate.

16. The Debtors have closed and their assets must be liquidated.

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), the Trustee 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. Once a valid business purpose has been articulated, however, a presumption arises that the trustee’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).

20. The Trustee has received a fair offer for the property subject to this Motion, and will expose the same to competitive bidding through this Motion.

21. The sale has the consent of the three chief Secured Creditors.

22. The sale of the property subject to this Motion should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f)(2) as the Secured Creditors have consented to the sale.

23. To the extent there are other creditors which may claim a lien in the property subject to this Motion, the Trustee may sell the same free and clear of their liens for the following reasons:

- a. To the extent any purported 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). As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(2);
- b. Pursuant to 11 U.S.C. § 506(a), the value of a creditor's lien is limited to the value of its collateral. As the value of the collateral will be determined by the sale, the Trustee may sell the Real Estate and 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);
- c. As any other lien holder's claim is not of public record, their lien would be subject to *bona fide* dispute. As such, the Property may be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(4); and
- e. Creditors with liens in the Real Estate and Property could be compelled to accept a money satisfaction of their lien rights, such as Chapter 11 Proceeding or state court receivership. As such, the Trustee may sell the Property, pursuant to 11 U.S.C. § 363(f)(5).

24. The sale of the property subject to this Motion to the Buyer should be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(2)(3)(4) & (5).

### **AUCTION PROCESS**

25. That the sale of the Real Estate, Property and License 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.

26. The Buyer or any successful bidder shall take the Real Estate, Property and License with all of its faults. The Real Estate and Property were operated as a gas station and the Trustee makes no representations as to the environmental condition of either.

27. An auction of the property subject to this Motion 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.

28. The Trustee will take bids for the Real Estate and Property as one lot beginning with an opening bid of \$305,000.00, which is \$5,000.00 higher than the cash value described in paragraph 8 with subsequent bids being in increments of at least \$1,000.00 with respect to the Real Estate and Property. In addition, any prospective bidder shall be responsible for the same costs and expenses described in paragraph 8. Specifically, any successful purchaser shall pay all superior liens in the Real Estate and Property. The Trustee will take bids for the License beginning with an opening bid of \$11,000.00 which is \$1,000.00 higher than the Buyer’s opening bid, with subsequent bids being in increments of at least \$100.00. The overage of any bid higher than the cash value

described in paragraph 8 will be shared equally between the estate and the Buyer with the estate's share being attributed to its Carve-Out..

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

30. The Trustee may seek authority to accept a back-up bidder.

31. 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 Creditors and other parties in interests without limitation, 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 Real Estate and Property.

### **CONCLUSION**

32. The Trustee submits that the sale of the Real Estate and Property to the Buyer, and the conditional sale of the License, subject to the terms of this Motion, including, but not limited to, the "Carve Out", is in the best interests of the estate and its creditors.

**WHEREFORE**, your Trustee prays:

A. That this Court enter an Order authorizing the sale of the Real Estate and Property to the Buyer (or its assignee) on the terms and conditions set forth herein, pursuant to 11 U.S.C. § 363(b) & (k);

B. That this Court enter an Order authorizing the sale of the Licenses to the Buyer (or its assignee), subject to MLCC approval, for the sum of \$10,000.00 pursuant to 11 U.S.C. § 363(b);

C. That the Court enter an Order authorizing the sale of the Real Estate and Property and the conditional sale of the License be free and clear of liens pursuant to 11 U.S.C. §363(f);

D. That the Trustee be authorized to execute a Trustee's Bill of Sale and Trustee's

