

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

N.A. BUDDIES, LLC,

Debtor.

Case No. 13-05834-swd
Chapter 7
Honorable Scott W. Dales

In re:

NORTH ADAMS INVESTMENTS, LLC,

Debtor.

Case No. 13-05864
Chapter 7
Honorable Scott W. Dales

**TRUSTEE'S MOTION FOR SALE OF CERTAIN REAL PROPERTY AND
PERSONAL PROPERTY PURSUANT TO 11 U.S.C. § 363 FREE AND
CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363(f) AND
WAIVER OF 14-DAY STAY PERIOD OF FEDERAL
RULES OF BANKRUPTCY PROCEDURE 6004(h)**

NOW COMES Thomas R. Tibble ("Trustee") by and through his attorneys, Purkey & Associates, PLC, and in support of his motion for expedited hearing states as follows:

1. N.A. Buddies, LLC ("Buddies") filed for relief under chapter 11 of the Bankruptcy Code on July 19, 2013.
2. North Adams Investments, LLC (the "LLC") filed for relief under chapter 11 of the Bankruptcy Code on July 22, 2013 ("Filing Date").
3. Buddies and the LLC are related entities with common ownership. The LLC owns the real property and Buddies was the operating entity. On August 27, 2013, the court entered an Order granting the Debtors' motions for joint administration of Buddies and the LLC, with all pleadings filed in the Buddies matter.

4. On March 18, 2016, both cases were converted to chapter 7 and Thomas R. Tibble was appointed the Chapter 7 Trustee in both chapter 7 proceedings.

5. This court has jurisdiction over this matter 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). This is a core proceeding as defined by 28 U.S. C. §157(b) and venue is proper pursuant to 28 U.S.C. §1409(a).

6. Buddies operated a gas station and convenience store and its assets consisted of various machinery, equipment, fixtures, office equipment and inventory (the “Personal Property”). The LLC owned the real property located at 4749 Knowles Road, North Adams, Michigan (the “Real Property”). The legal description of the property is attached as Exhibit A.

7. The Real Property and Personal Property were pledged as collateral to Comerica Bank to secure an Installment Note dated October 24, 2006 in the original principal amount of \$740,000.00 executed by the LLC and guaranteed by Buddies. Upon information and belief, as of September 1, 2016, there was an outstanding balance due on the Installment Note of \$649,426.04.

8. Upon information and belief, the Personal Property owned by Buddies is also subject to lien interests asserted by the Corrigan Oil Company, No II, Inc., S. Abraham & Sons, Inc., the Internal Revenue Service and the State of Michigan, Department of Treasury.

9. The Trustee believes that it is possible that the Real Property is also subject to liens filed by the Internal Revenue Service and the State of Michigan, Department of Treasury.

10. Upon information and belief, the liens of the S. Abraham & Sons, Inc., the Internal Revenue Service and the State of Michigan, Department of Treasury are likely unsecured as it appears that the value of the assets to be sold is less than the debt owed to Comerica Bank.

11. In September of 2016, the debt of Buddies and the LLC to Comerica Bank was sold to North Adams Express Stop, LLC.

12. North Adams Express Stop, LLC is related to Corrigan Oil Company, No II, Inc., a secured creditor in these proceeding, as they are controlled by common shareholders and/or members.

13. The Trustee has received an offer from North Adams Express Stop, LLC to purchase the Personal Property owned by Buddies and the Real Property owned by the LLC. The terms of the offer are as follows:

a. North Adams Express Stop, LLC will credit bid its debt of \$649,426.04 pursuant to 11 U.S. C. §363(k).

b. North Adams Express Stop, LLC will carve-out from its credit bid and pay to the Estate of North Adams Investments, LLC the sum of \$19,000.00 for the Real Property and pay to the Estate of N A Buddies, LLC the sum of \$1,000.00 for the Personal Property, for a total of \$20,000.00.

c. North Adams Express Stop, LLC will be responsible for and satisfy all senior liens on the Real Property and the Personal Property, including taxes due, including but not limited to all property taxes, transfer taxes, and normal and usual closing costs. Any liens junior to North Adams Express Stop LLC's lien will attach to the proceeds of sale.

d. North Adams Express Stop, LLC shall reimburse the Estates for all expenses incurred by the Trustee in maintaining the Real Property and Personal Property. As of September 28, 2016, the Estates have incurred \$2,454.21 for insurance, utilities and maintenance, plus any final bills that become due.

e. Further, North Adams Express Stop, LLC waives any claim to and gifts to the Estate all funds on hand or acquired by the Trustee on or after the conversion to chapter 7 which as of September 28, 2016 were \$43,891.78.

14. The Trustee believes that the sale of the Real Estate and the Personal Property are in the best interest of the respective Estates.

15. The Trustee believes that the offer received is a fair offer for the sale of the Real Property and Personal Property and that the auction sale will expose the assets to competitive bidding.

16. The Trustee seeks the Court's approval to sell the Real Property owned by the LLC and the Personal Property owned by Buddies pursuant to 11 U.S.C. § 363(b) and (k) to North Adams Express Stop, LLC, or to an entity designed by North Adams Express Stop, LLC and to have such sale free and clear of any junior liens, with that lien interest to attach to the sale proceeds in the same rank and priority pursuant to 11 U.S.C. §363(f). Liens senior to the lien held by North Adams Express Stop, LLC shall be the responsibility of North Adams Express Stop, LLC.

17. Time is of the essence as the Real Property is vacant and uninsured and subject to risk.

18. The sale has the consent of Corrigan Oil Company, No II, Inc.

19. The sale of the Real Property and Personal Property is subject to higher and better offers at an auction sale to be conducted in the Bankruptcy Court at a hearing date to be scheduled by the Court. Any party interested in bidding must appear at the hearing on this motion and be prepared to bid. Any bidder should also be prepared to provide to the Trustee evidence of the financial ability to close the transaction.

20. The sale of the Real Property and Personal Property shall be sold **“AS IS AND WHERE IS”**, with the Trustee making no representations, warranties, statements or promises with respect to same, including, but not limited to, description, fitness for purpose, merchantability.

21. The successful bidder takes the Real Property and the Personal Property with all of its faults, including any environmental condition that may exist.

22. The Real Property and Personal Property shall be sold as a single lot. The Trustee will accept bid beginning with an opening bid of \$654,426.04, which is \$5,000.00 higher than the case value described herein, with subsequent bids being accepted in increments of no less than \$1,000.00. Additionally, any bidder must be prepared and shall be responsible for all costs and expenses described herein, including but not limited to payment of all superior liens in the Real Property and Personal Property.

23. The Trustee may seek authority to accept a backup bidder.

24. As time is of the essence, the Trustee seeks a waiver of the 14-day stay provisions of Bankruptcy Rule 6004(h).

25. Any person objecting to the validity or legality, and/or having any objection of any kind to the sale described herein, shall file a written objection to the sale prior to the sale hearing and serve copies on the Trustee, the attorney for the Office of the United States

Trustee and any other party described below, at the addresses listed in this Motion and, in accordance with Federal Rule of Bankruptcy Procedure 6004(b).

26. The Trustee reserves the right to withdraw this Motion at any time prior to the completion of the hearing thereon.

WHEREFORE, the Trustee respectfully requests entry of an order:

A. Authorizing the sale of the Real Property and Personal Property on the terms and conditions set forth herein pursuant to 11 U.S.C. §363 (b) and (k);

B. Authorize the sale of the Real Property and Personal Property to be free and clear of liens pursuant to 11 U.S.C. § 363(f) with any liens attaching to the proceeds of sale in the same rank, validity and priority that existed as of the Filing Date;

C. Authorize the Trustee to execute any and all documents reasonably necessary to convey the Estate's interest in the Real Property and the Personal Property, including but not limited to a deed and bill of sale;

D. Approve the "Carve Out" agreement on behalf of the Estates as described herein;

E. Authorize the Trustee to accept a backup bidder;

F. Waive the provisions of Federal Rules of Bankruptcy Procedure 6004(h);

G. Such other relief as may be just and proper.

PURKEY & ASSOCIATES, PLC
Attorneys for Trustee Thomas Tibble

Dated: September 29, 2016

By: /s/ Lori L. Purkey
Lori L. Purkey (P39111)
5050 Cascade Road, SE, Suite A
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EXHIBIT A

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Legal Description

Property situated in the Village of North Adams, County of Hillsdale, State of Michigan, described as follows:

The West line of the Northeast Quarter was assumed North-South.

A parcel of land being part of that and described in Liber 587, Page 153 of Hillsdale County Records situated in the West Half of the Northeast Quarter (W ½ of NE ¼) of Section 10, Township 6 South, Range 2 West, Adams Township, Hillsdale County, Michigan described as follows:

Commencing at the North Quarter corner of said Section 10; thence South along the North-South Quarter line of said Section 10 and the centerline of Knowles Road 1055.5 feet to the Point of Beginning of this description; thence East 200.0 feet; thence South 200.0 feet; thence West 200.0 feet to the centerline of Knowles Road and said Quarter line, thence North along said road centerline and Quarter Line 200.0 feet to the Point of Beginning; and containing 0.92 acres more or less

Subject to the rights of the public in and to that portion known as Knowles Road. Also subject to any easements and restrictions of record.

Property commonly known as 4749 Knowles Road, North Adams, MI 49262

Tax ID # 30-08-045-001-298.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

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N.A. BUDDIES, LLC,

Debtor.

Case No. 13-05834-swd

Chapter 7

Honorable Scott W. Dales

In re:

NORTH ADAMS INVESTMENTS, LLC,

Debtor.

Case No. 13-05864

Chapter 7

Honorable Scott W. Dales

**ORDER GRANTING TRUSTEE'S EX-PARTE APPLICATION FOR
EXPEDITED HEARING ON MOTION FOR APPROVAL TO SELL THE
ESTATES INTEREST IN CERTAIN PROPERTY
FREE AND CLEAR OF LIENS**

PRESENT: Honorable Scott W. Dales, U.S. Bankruptcy Court

This matter having come before the Court upon Trustee Thomas R. Tibble's Ex Parte Motion for Expedited Hearing [the "Motion"], and the Court finding that cause exists to grant the Motion;

IT IS HEREBY ORDERED that the Trustee's Ex Parte Motion for Expedited Hearing is granted.

IT IS FURTHER ORDERED that the hearing to consider the Trustee's Motion Sale of Certain Real Property and Personal Property Pursuant to 11 U.S.C. § 363 Free and Clear of Liens Pursuant to 11 U.S.C. §363(f) and Waiver of 14-Day Stay Period of Federal Rules of Bankruptcy Procedure 6004(h) shall be set for October 19, 2016 at 10:00am in the U.S. Bankruptcy Court for

the Western District of Michigan, 410 West Michigan Avenue, Room 114, Kalamazoo,
Michigan 49007.

Drafted by and return for service to:
Lori L. Purkey
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END OF ORDER

IT IS SO ORDERED.

Dated September 29, 2016



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge