

Form JTG15 (07/15)

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

IN RE: Debtors (names used by the debtors in the last 8 years, including married, maiden, trade, and address):

Rodney B. Pittman
2624 Brookhaven Dr.
Portage, MI 49024-5636
SSN: xxx-xx-3541
Patricia A. Pittman
2624 Brookhaven Dr.
Portage, MI 49024-5636
SSN: xxx-xx-8293

Debtors

Case Number 13-02626-jtg

Chapter 7

Honorable John T. Gregg

NOTICE TO PARTIES IN INTEREST OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, Federal Building, U.S. Courthouse, Room 114, 410 W. Michigan Avenue, Kalamazoo, MI 49007 on **February 25, 2016** at **10:00 AM** to consider and act upon the following matter:

Trustee's Motion For Sale Of 829 Clinton Avenue, Kalamazoo, MI Under § 363(f)

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 2, 2016

/s/ _____
Kim Davis
Deputy Clerk

A copy of this notice returned to Thomas C. Richardson, Esq. on February 2, 2016 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) 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>

¹ Aliases for Debtor Rodney B. Pittman : dba Toppsgroup

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION

* * * * *

IN RE:

RODNEY B. PITTMAN and
PATRICIA A. PITTMAN,

Debtors.

Case No: GK 13-02626
(Chapter 13 filed 3/29/13 and converted
to Chapter 7 on 6/15/15)

HON. JOHN T. GREGG
Bankruptcy Judge

**MOTION FOR SALE OF 829 CLINTON AVENUE,
KALAMAZOO, MI UNDER §363(f)**

Thomas C. Richardson, Trustee, through counsel, moves for sale of 829 Clinton Avenue, Kalamazoo, MI under Bankruptcy Code §363(f) as follows:

1. He is the duly appointed and acting Trustee in this Chapter 13 filed March 29, 2013 and converted to Chapter 7 on June 15, 2015.

2. Included in the assets is real estate located at 829 Clinton Avenue, Kalamazoo, Michigan, (“829 Clinton”) and legally described as:

City of Kalamazoo, County of Kalamazoo, and State of Michigan, and particularly described as follows: 22456 Revised Plat of Hays Park, Lot 441.
Tax Parcel #: 39000623360441

3. The Trustee has received an offer of \$18,000.00 from Joseph M. Ferrara (“Purchaser”). Purchaser is not an insider.

4. The following terms would apply to the sale:

- (a) A copy of the Ferrara offer shall be available at the Bankruptcy Court Clerk's Office, One Division Avenue, NW, Room 200, Grand Rapids, MI, for review by interested parties during business hours.
- (b) Bidding will commence at \$18,500.00 with subsequent bids in increments of not less than \$200.00.
- (c) The sale will be on a cash basis with the successful bidder being required to deposit \$500.00 with the Trustee (in cash or by cashier's check or other certified funds) at the conclusion of the bidding and to provide to the Trustee, prior to the sale in Court, proof satisfactory to the Trustee of his/her/its financial ability to close the transaction. The deposit of the successful bidder shall be retained by the Trustee and shall not be refundable in the event the successful bidder fails to close the purchase. No contingent bids shall be received. The total balance of the bid price shall be paid at closing.

- (d) The Estate's interest in 829 Clinton 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 in 829 Clinton. Any and all liens, claims and encumbrances shall be discharged when a copy of a subsequent Order Confirming Sale entered by this Court is recorded along with the Trustee's Deed in the Register of Deeds Office.
- (e) 829 Clinton will be sold on an "as is, where is" basis, without representation or warranty, express or implied, of any kind, nature or description, including, without limitation, any warranty by description or marketability, merchantability, habitability, or usability, or of fitness for any purpose. The Trustee shall not be required to inspect or test or report on the condition of 829 Clinton or the existence of any possible defects in 829 Clinton.
- (f) Purchaser shall be responsible for all 2016 real estate taxes. Seller shall pay 2015 and prior year taxes.
- (g) The sale of the Estate's interest shall be consummated by the delivery to the Purchaser of a Trustee's Deed without warranty of title. Trustee shall furnish title insurance. Possession shall be given to the Purchaser at closing which will be by February 26, 2016 or such other date as the parties may agree.
- (h) Arrangements for inspection of 829 Clinton can be made by contacting Thomas C. Richardson, PO Box 51067, Kalamazoo, MI 49005 (269) 349-7415 or Patrick O'Brien, O'Brien Real Estate, Inc., 527 S. Westnedge Avenue, Kalamazoo, MI 49007 (269) 381-6470.
- (i) Any person objecting to the validity, propriety or legality, and/or having any objection of any kind to the sale as described herein, shall file a written objection to the sale on or before five (5) business days before the date set for the hearing on this Motion and simultaneously serve a copy thereof on the attorney for the Trustee at the addresses listed on this Motion, in accordance with Bankruptcy Rule 6004(b).

5. 829 Clinton is subject to the mortgage of Talmer Bank which covered 4 separate properties (6682 Lovers Lane, 829 Clinton, 829 Clinton and 1113 Lane Blvd) and was recorded February 14, 2008 in Document 2008-004412. The Lovers Lane and Lane Blvd. properties were sold and the sales closed last month. Talmer Bank indicates that the current amount due is \$35,852.66. Trustee has asked for further information to see how that number was determined. Talmer Bank has agreed to a carve-out of 10% of the gross sale price to the bankruptcy estate in accordance with the Order Approving Stipulation Regarding Sale of Rentals dated October 2, 2015.

6. 829 Clinton is subject to the following IRS liens:

<u>LIEN AMOUNT</u>	<u>FILED AGAINST</u>	<u>DOCUMENT #</u>
\$65,477.16	Rodney B. Pittman	2008-037929
\$65,477.16	Patricia A. Pittman	2008-037930
\$15,452.15	Rodney B. Pittman	2009-040079
\$15,452.15	Patricia A. Pittman	2011-013322

7. The IRS would receive nothing on the sale since the Talmer Bank mortgage is prior.

8. Trustee has contacted the IRS about the sale. The IRS consents to the sale. 11 U.S.C. §363(f)(2). In the event of foreclosure of the mortgage, the IRS would receive nothing. 11 U.S.C. §363(f)(5).

9. The offer which the Trustee has received is subject to a commission of six percent (6%) with a minimum fee upon sale of \$2,000.00 to be paid to Patrick O'Brien, O'Brien Real Estate, Inc., conditioned upon the consummation of the sale.

10. Real estate taxes due are approximately \$6,725.59. Real estate transfer taxes on \$18,000.00 would be \$154.80.

11. The Trustee believes that the sale of 829 Clinton Lane pursuant to the terms herein is in the best interests of the estate and its creditors.

WHEREFORE, Thomas C. Richardson, Trustee, prays:

A. That this Court authorize the sale of 829 Clinton upon the terms and conditions set forth herein for \$18,000.00, or to any other purchaser for any additional sums as may be bid in open Court.

B. That the Court determine that the Purchaser is a good-faith purchaser for purposes of 11 U.S.C. §363(m).

C. That the Trustee be authorized to execute a Trustee's Deed or such other conveyance document in conformance with the within terms.

D. That the Trustee be authorized, without further Order of this Court, to pay the realtor's commissions, any outstanding taxes on 829 Clinton, the carve-out to the Bankruptcy Estate, any other costs and expenses needed in

order for closing to take place, including customary closing costs and real estate transfer tax and the balance to Talmer Bank.

E. That the Stay of Order under Bankruptcy Rule 6004(h) be waived so that closing may take place immediately since Purchaser and Talmer Bank are anxious to close.

F. For all other relief that this Court finds just and equitable.

LEWIS, REED & ALLEN, P.C.

Dated: 1/29/16

By: /s/

Thomas C. Richardson (P31750)

Attorney for Trustee

P. O. Box 51067

Kalamazoo, MI 49005-1067

(269) 388-7600 Phone

(269) 553-1439 Fax

thomasrichardson2@earthlink.net