

Form JDG11 (03/15)

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

IN RE: Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):

Sam's Joint, Inc.
PO Box 140
Caledonia, MI 49316
Tax ID: 38-3148625

Debtor

Case Number 13-08566-jwb

Chapter 11

Honorable James W. Boyd

NOTICE TO PARTIES IN INTEREST OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, One Division Ave., N., 3rd Floor, Courtroom B, Grand Rapids, MI 49503 on **July 8, 2015** at **01:30 PM** to consider and act upon the following matter:

Debtor's Motion for Sale of Real and Personal Property (DN 212)

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: June 12, 2015

/S/ _____
J. Koerth
Deputy Clerk

A copy of this notice returned to Cody H. Knight, Esq. on June 12, 2015 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 Sam's Joint, Inc. : dba Sam's Joint, dba Sam's, dba Max & Co., fdba Max's, fdba Spyke's

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

IN THE MATTER OF:

Sam's Joint, Inc., *et al*,

Case No.: 13-08566

Chapter 11 - Filed: 11/4/2013

Debtors.

_____ //

**MOTION FOR SALE OF REAL AND PERSONAL PROPERTY
FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363**

NOW COME SB Realty, Inc., Debtor ("Debtor"), by and through its attorneys, Rayman & Knight, and for its Motion for Sale of Real and Personal Property Free and Clear of Liens Pursuant to 11 U.S.C. §363 ("Motion"), says as follows:

BACKGROUND

1. That this Motion pertains to the above-captioned Chapter 11 proceeding which was filed on November 4, 2013. These proceedings have been consolidated, for purposes of administration under the name and style of Sam's Joint, Inc., *et al*., Case No.: 13-08566.

2. That your Debtor acts as Trustee in this cause.

3. That this is a liquidating case. The Debtor and Sam's Joint, Inc. have filed a Joint Plan of Liquidation ("Plan"), which Plan contemplates the sale of the remaining assets of the Debtor. These assets consist, primarily, of real estate parcels listed below and owned by the Debtor:

- Norton Shores Real Property;
- Plainwell Real Property;
- Lakeview Real Property;
- Edmore Party Store Real Property;

- Rockford Condos¹;
- Coopersville Real Property²; and
- Athens Real Property (“Real Properties”)

4. That your Debtor contemplated that the Real Properties that are the subject of this Motion would be sold via auction, free and clear of liens, consistent with their Plan. Certain parties have raised objection to the Plan, indicating that sales, pursuant to 11 U.S.C. §363(f) can only be filed by a "Trustee" and, therefore, must occur prior to confirmation. That your Debtor wishes to sell the Real Properties by virtue of an auction(s) to be conducted by Lastbidrealestate.com of Byron Center, Michigan ("Lastbid"). Lastbid will be compensated at a Buyers' Premium of 10% plus its out-of-pocket expenses.

5. That the sales shall be on a cash basis, with the successful bidder being required to make such deposit(s) as is required by Lastbid. Bidding shall be in increments decided by Lastbid.

6. That the Real Properties shall be sold **“As is, Where is”**, without representation or warranty, expressed or implied, of any kind or nature, or description, including, without limitation, any warranty of marketability, usability or fitness for any purpose. The Debtor shall not be required to inspect, test or report on the condition of the Real Properties, the operability of any system(s) contained therein or the existence of any defects of any kind, including, environmental defects, as to the Real Properties.

7. That, as stated, the Real Properties shall be sold free and clear of liens, encumbrances and/or claims therein. Upon information, there are the following liens on the Real

¹ There is currently an interested purchaser; if the Debtor is able to negotiate a sales agreement, these properties will not be auctioned.

² This property has some environmental concerns and may not be able to be sold by the Debtor and may have to be abandoned.

Properties: Chemical Bank (“Chemical”), The Huntington National Bank (“Huntington”), Twohey Maggini, PLC (“Twohey Maggini”), and *ad valorem* taxes (“Secured Creditors”).

8. That liens shall attach to proceeds in the same rank, validity and priority as existed prior to the petition with such liens, encumbrances and mortgages attaching to proceeds, although, upon information, the Debtor does not believe there any liens. The sale shall be free and clear of liens, pursuant to 11 U.S.C. § 363 (f).

ARGUMENT AND AUTHORITY

9. The Debtor seeks approval of the sale of the Real Properties, 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.”

10. 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).

11. 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 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).

12. 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).

13. The Debtor is closed, the Real Properties have been marketed for many months unsuccessfully and the assets must be sold. The Debtor submits that a sale of the Real Properties via auction is in the best interest of the estate.

14. The Secured Creditors are the only parties which may claim a lien in the Real Properties.

15. The sale of the Real Properties should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f) as set forth below:

- a. The Real Properties are expected to sell for a sufficient price to pay the *ad valorem* taxes, Chemical and Twohey Maggini, in full. As such, the Debtor may sell the Real Properties free and clear of such interests pursuant to 11 U.S.C. § 363(f)(1);
- b. The Trustee has obtained the consent of Chemical, Huntington and Twohey Maggini. 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 Debtor may sell the Real Properties, pursuant to 11 U.S.C. § 363(f)(2);
- c. 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 Debtor may sell the Real Properties, 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);
- d. As any other lien holder's claim is not of public record, their lien would be subject to *bona fide* dispute. As such, the Real Properties 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 Properties could be compelled to accept a money satisfaction of their lien rights, such as Chapter 11 Proceeding. As such, the Debtor may sell the Real Properties, pursuant to 11 U.S.C. § 363(f)(5).

16. The sale of the Real Properties should be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(1)(2)(3)(4) & (5).

17. That the Debtor further proposes that, in the event that the successful purchaser fails to close, that the Debtor be authorized to complete the sale to a “back-up” bidder, if any there is.

18. That the Debtor believes that the sale of the Real Properties, pursuant to the terms herein, is in the best interest of the estate and its creditors as the estate will receive the net proceeds of sale.

19. Due to the time constraints, and the need to begin advertizing, your Debtor would request that the 14 day stay contained in Fed. R. Bankr. P. 6004 be waived.

20. That the Debtor believes that proposed sale will be of benefit to the estate. It is consistent with the Debtor's proposed Plan and the only alternative at this point. The Debtor's properties are now vacant. Operations have closed. It is a proper exercise of the business judgment of the Debtor to liquidate these properties before winterization is required.

WHEREFORE, your Debtor prays:

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

B. That the Court enter an Order authorizing the sale of the Real Properties free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds; these liens shall include but not be limited to the liens of the Secured Creditors.

C. That the Trustee be authorized to execute a Trustee's Deed and/or Trustee's Bill of Sale in conformance with the terms herein.

D. That the Trustee be authorized to pay the Auctioneer pursuant to this Motion 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 accept a back-up bidder.

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

RAYMAN & KNIGHT
Attorneys for Debtor

Dated: June 11, 2015

By: _____/s/_____
Steven L. Rayman (P30882)

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