

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 **April 27, 2016** at **01:30 PM** to consider and act upon the following matter:

**Debtor's Motion for Sale of Real Property at Courtroom Auction**

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:** March 23, 2016

/S/ \_\_\_\_\_  
Kim Davis  
Deputy Clerk

A copy of this notice returned to Cody H. Knight, Esq. on March 23, 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](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 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>

<sup>1</sup> 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  
IN 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

Debtor.

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**DEBTORS' MOTION FOR SALE OF REAL PROPERTY AT COURTROOM AUCTION**

NOW COME SB Realty, Inc. ("Debtor"), by and through its attorneys, Rayman & Knight, and for its Motion for Sale of Real Property at Courtroom Auction ("Motion"), states as follows:

**GENERAL ALLEGATIONS**

1. On November 4, 2013 ("Petition Date") the Debtor filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code ("Code").
2. Since the Petition Date, the Debtor has operated its respective business as Debtor-in-Possession, pursuant to §§ 1107 and 1108 of the Code.
3. No official committee of creditors holding unsecured claims has been appointed in the Debtor's case. No Trustee or Examiner has been appointed in the case.
4. The Debtor files this Motion pursuant 11 U.S.C. § 363(b) and (f) and has also filed a certain Motion to Shorten Notice with respect to this Motion, as the Debtor believes that this Motion should be approved as soon as is reasonably practical for the benefit of its creditors.
5. The Debtor owns a residential home commonly known as 7450 Orlee Street in Alaska, Michigan ("Property").
6. The Debtor has received an offer to purchase the Property for the sum of \$17,500.00 ("Purchase Price") from Timothy David Ickes ("Buyer"). (*See*, Real Estate Purchase Agreement attached as Exhibit "A").

7. The Debtor believes that the sale price of \$17,500.00 is a fair price for the Property and sought the opinion of its appointed auctioneer which agreed that the price was reasonable.

8. The Debtor seeks approval of the sale the Property as set forth in the Purchase Agreement to the Buyer, 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.”

9. 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).

10. In determining whether a sale of assets outside the ordinary course of business should be approved pursuant to 11 U.S.C. § 363(b), a 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).

11. Once a debtor has articulated a valid business purpose, however, a presumption arises that the debtor'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).

12. Courts within the Sixth Circuit have held that transactions may be approved under 11 U.S.C. § 363 when they are supported by sound business judgment. *See, e.g., Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389-390 (6th Cir. 1986) (“a court can authorize a sale of a debtors' assets when a sound business purpose dictates such action”); *see also, In re*

*EmbraceThe Sys. Corp.*, 178 B.R. at 124; *In re North American Royalties, Inc.*, 276 B.R. 860, 866 (Bankr. E.D. Tenn. 2002); *In re Quality Stores Inc.*, 272 B.R. 643, 647 (Bankr. W.D.Mich. 2002) (“noting the ‘wide business discretion’ given to debtors selling assets under § 363”).

13. The sale of the Property is in the best interests of the estate and a valid business purpose exists.

14. The Debtor is operating under a Plan of Liquidation, confirmed on September 10, 2015, which contemplated the sale of all property of the Debtor. The Property was not listed in the Plan to be sold, and the Debtor now seeks specific authority.

15. The sale should be approved as the sale of Property is required under the Debtor’s Confirmed Plan. The Buyer is willing to close quickly and the Property has no liens (other than real estate taxes) and the Debtor must liquidate its Property.

16. Your Debtor submits that the sale should be deemed free and clear of liens pursuant to 11 U.S.C. §363(f) for the reasons described herein.

17. The only known lien holders with respect to the Property is that of *ad valorem* taxes which will be paid in full and as such the property may be sold free and clear of liens pursuant to 11 U.S.C. § 363(f)(3). To the extent there are any other creditors claiming a lien the property, their liens are not properly recorded and as such would be in *bona fide* dispute, and the property may be sold free and clear of liens pursuant to 11 U.S.C. § 363(f) (4).

#### **AUCTION PROCSS**

18. That the sale of the Property shall be “**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 Buyer shall take the Property with all of its faults.**

19. The Buyer is not an insider and the Purchase Price was reached by negotiations between the Purchaser and the Trustee<sup>1</sup>.

20. The Trustee seeks authority from the Court to sell the Property pursuant to §363(b)(1) of the Bankruptcy Code for \$20,000.00.

21. The sale shall be on an "AS IS" basis with no representations or warranties from the Trustee of any kind or nature, except as contained in the Agreement.

22. Any party interested in purchasing the Property **must appear at the hearing scheduled for this Motion** and be prepared to bid in increments of \$1,000.00 with the opening bid at \$19,000.00 and provide sufficient evidence of ability to close. Any party purchasing the Property must be willing to sign an agreement, which is consistent with the attached. The Trustee reserves the right to accept the best offer, which may not be the highest and the Trustee will seek authority to seek a back-up bidder.

23. Closing of the sales shall take place as soon as is practicable after the auction which shall be held no later than 30 days after such sale.

24. Any prospective purchaser may purchase title insurance but it will be at their own additional expense.

### **CONCLUSION**

25. The sale of the Property is in the best interests of the estate, the Debtor has a valid business reason to sell the property and this Motion should be approved.

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<sup>1</sup> There were, at one time, other parties interested in purchasing this Property for a similar amount or less and they have been provided notice of this sale.

26. As the Purchaser desires to close as soon as possible, the Debtor submits that it is appropriate to waive the provisions of Federal Rules of Bankruptcy Rule 6004(h).

**WHEREFORE**, your Debtor prays:

- A. That this Court enter an Order authorizing the sale, pursuant to 11 U.S.C. § 363(b), consistent with this Motion;
  - B. That the Court enter an Order determining that the sale of the Property is free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds;
  - C. That the Debtor be authorized to execute a Deed and other such documents as are or may become necessary to effectuate the sale;
  - D. Authorize the Debtor to pay all *ad valorem* taxes and other closing costs;
  - E. That this Court waive the provisions of Federal Rules of Bankruptcy Rule 6004(h);
- and
- F. That this Court order such other relief as it finds just and equitable.

**RAYMAN & KNIGHT**  
Attorneys for Debtor

Dated: March 21, 2016

By:   
Cody H. Knight (P64811)

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