

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

James L. and Joy E. Spoor

Debtors.

Case No.: 08-06061

Chapter 13 – Filed: 7/10/2008

Converted – Chapter 11: 11/25/2008

Converted – Chapter 7: 1/09/2015

_____/ /
**ORDER GRANTING *EX PARTE* MOTION TO SHORTEN NOTICE REGARDING MOTION
FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY
AT COURTROOM AUCTION FREE AND CLEAR OF LIENS
PURSUANT TO 11 U.S.C. § 363**

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

THIS MATTER having come to be heard upon the Trustee's *Ex Parte* Motion to Shorten Notice Regarding Motion for Authority to Sell Real and Personal Property at Courtroom Auction Free and Clear of Liens Pursuant to 11 U.S.C. § 363 ("Motion to Shorten Notice"); and the Court being otherwise fully advised in the premises;

IT IS THEREFORE ORDERED:

1. That the Motion to Shorten Notice (DN 394) is granted.
2. That the time and notice for the Motion for Authority to Sell Real and Personal Property at Courtroom Auction Free and Clear of Liens Pursuant to 11 U.S.C. § 363 (DN 393) **SHALL BE AND IS** shortened so that the hearing can be heard on November 17, 2015 at 10:00 a.m. at the Federal Building, U.S. Courthouse, Room 111, 410 West Michigan Avenue, Kalamazoo, Michigan 49007
3. That this Order and the Motion for Authority to Sell Real and Personal Property at Courtroom Auction Free and Clear of Liens Pursuant to 11 U.S.C. § 363 shall be served by counsel for the Trustee on all creditors, parties in interest and all person(s) whose names appear on the Debtors' Matrix by close of business on October 30, 2015.

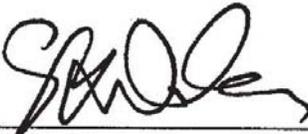
This Document Drafted By:
RAYMAN & KNIGHT
141 East Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156

END OF ORDER

IT IS SO ORDERED.

Dated October 29, 2015





Scott W. Dales
United States Bankruptcy Judge

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

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Chapter 13 – Filed: 7/10/2008

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**MOTION FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY AT
COURTROOM AUCTION FREE AND CLEAR OF LIENS
PURSUANT TO 11 U.S.C. § 363**

NOW COMES Steven L. Langeland, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Authority to Sell Real and Personal Property at Courtroom Auction Free and Clear of Liens Pursuant to 11 U.S.C. § 363 (“Motion”), 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”). Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §1409(a).

2. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2) (A), (N) & (O).

3. The authority upon which this Motion is based are §§105, 363, and 365 of Title 11 of the Bankruptcy Code, Fed. R. Bankr. P. 6004 and L.B.R. 6004.

BACKGROUND

4. On July 10, 2008 (“Petition Date”) the Debtors filed for relief under Chapter 13 of

the Bankruptcy Code which case was converted to proceedings under Chapter 11 on November 25, 2008 and was converted to Chapter 7 on January 9, 2015.

5. The Trustee is the duly appointed and acting Chapter 7 Trustee in this proceeding.

6. Prior to conversion to Chapter 7, the Debtors proposed a Plan to liquidate much of their real property.

7. The Debtors' bankruptcy estate consists of approximately 29 separate parcels of real estate ("Real Estate"), which the Debtors have scheduled as having a value of \$1,493,098.00.

8. The Trustee believed that the Real Estate had significant value which may be sufficient to satisfy the claims of the bankruptcy estate. In fact, the Trustee recently sold a significant portion of the Real Estate. A summary of the sales are attached as Exhibit "A" which indicates a total sale price, including the buyer's premium, of \$1,078,220.00.

9. Pursuant to an agreement with the Debtors, the Trustee did not sell property located in Athens, Michigan and commonly known as 309 South Capital Avenue¹, 310 South Capital Avenue, and 320 South Capital Avenue².

10. The Debtors' business, Spencer Family Funeral Home ("Funeral Home"), operates out of property commonly known as 310 South Capital Avenue, Athens, Michigan ("Funeral Parlor").

11. The Trustee has accepted an offer to sell the Funeral Home and the Funeral Parlor to GRBA-PSP Investments, LLC ("Purchaser") for the sum of \$75,000.00.

12. The Debtors' personal property, subject to this Motion, consists of personal property utilized in the operation of the Funeral Home but excludes any account receivables

¹ The Trustee has decided to sell this home by public auction and will file a motion regarding the same.

² The chief secured creditor for this property has obtained relief from the automatic stay. The Trustee does not believe he will be in a position to sell this property.

through the date of closing ("Personal Property"). The Trustee shall be responsible for expenses incurred during the operation of the Funeral Home during these Chapter 7 proceedings³.

13. The Debtors have consented to this sale and have waived all exemptions that they may claim pursuant to 11 U.S.C. § 522(d)(1), (3), and (5) ("Exemptions"). Further, the Debtors have agreed that the value of their Exemptions is \$50,000.00. Because of the waiver of their Exemptions, any subsequent bidder other than the Purchaser must place a bid in the amount of at least \$127,500.00 for the Funeral Home, Funeral Parlor, and Personal Property (collectively, "Property"). If there is any successful bidder, other than the Purchaser, the Debtors shall be entitled to \$50,000.00 to satisfy their Exemptions and they shall receive \$50,000.00 at closing to satisfy their Exemptions.

RELIEF REQUESTED

14. The Trustee requests that this Court enter an Order which:
- a. Approves a sale, pursuant to §363(b)&(f) of the Bankruptcy Code, of the Debtors' Real Estate and Personal Property (as defined in this Motion);
 - b. Eliminates the 14 day stay contained in Fed. R. Bankr. P. 6004;
 - c. Provides that all liens, claims or encumbrances in the Property to be sold, including all security interests, shall attach to sale proceeds in the same rank and priority; and
 - d. Schedule a subsequent hearing to confirm bids to the extent necessary or to otherwise resolve any issues which may arise during the auction process.

15. Your Trustee believes that the sale of the Debtors' Property, pursuant to the terms herein, is in the best interests of the estate and its creditors.

³ The terms of the sale are more fully set forth in the attached Term Sheet, attached as Exhibit "B".

16. Due to the time constraints, and the fact that this sale was previously disclosed to creditors in the Trustee's most recent motion regarding the operation of the Funeral Home, your Trustee would request that the 14 day stay contained in Fed. R. Bankr. P. 6004 be waived.

LIEN HOLDERS

17. The sale of the Property shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f). The sale may be free and clear of the liens of the following secured creditors, which claim or are known to have a lien in the Property subject to sale: Michael D. Dyer, Internal Revenue Service, State of Michigan Dept. of Treasury, MMV Spoor Mortgage Holders, LLC, KMMV Spoor Mortgage Investors, LLC, Calhoun County Treasures ("Lien Holders") for the reasons described herein.

18. The Trustee expects he may obtain the affirmative consent of other Lien Holders and, further, to the extent 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 Debtors' Property, pursuant to 11 U.S.C. § 363(f)(2).

19. The Property may be sold free and clear of the claims of Lien Holders, pursuant to 11 U.S.C. § 363(f)(3). Pursuant to 11 U.S.C. § 506(a), the value of the Lien Holders' liens is limited to the value of its collateral. As the value of the collateral will be determined by the sale, and as each creditor had the right to credit bid, pursuant to credit bid, the Trustee may sell the Debtors' 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).

20. Each of the Lien Holders is compelled to accept a money satisfaction of their lien rights, such as a Chapter 11 proceeding. As such, the Trustee may sell the Debtors' Property, pursuant to 11 U.S.C. § 363(f)(5).

21. The Property may be sold free and clear of the claims of the Lien Holders pursuant to 11 U.S.C. § 363(f)(3), as each will be paid in full from the sale of this and other property.

22. The Property may be sold free and clear of the claims of the Lien Holders, pursuant to 11 U.S.C. § 363(f)(2)(3)&(5).

23. The sale shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f), with the Purchaser taking the estate's interest in the Property being sold free and clear of any liens and encumbrances with such liens and encumbrances attaching to the sale proceeds in the same rank, validity and priority as existed as of the date of the Petition.

AUCTION PROCSS

24. That the sale of the Property 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.

25. The Purchaser or any successful bidder shall take the Property with all of its faults.

26. An auction of the Property 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.

27. The Trustee will take bids for the Property, beginning with an opening bid of \$127,500.00 for each, with subsequent bids in increments of no less than \$1,000.00.

28. All parties desiring to purchase, must provide evidence of ability to close.

29. The Trustee may seek authority to accept a back-up bidder, as well.

30. 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 lenders and other parties in interests without limitation, the Lien Holder's approval of a bid, 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 Property.

31. Through the sale of other property, it is believed that the Debtors' secured creditors, including the Lien Holders, will be paid in full and that other than *ad valorem* taxes, the Property is free and clear of liens.

CONCLUSION

32. The Trustee believes this sale is in the best interests of the estate and should be approved.

WHEREFORE, your Trustee prays:

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

B. That the Court enter an Order authorizing the sale of the Real Estate and Personal Property free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds;

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 appropriate and necessary expenses of sale including all applicable real estate taxes without further order of this Court.

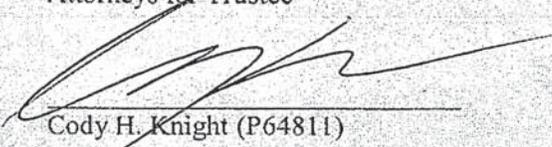
F. That the Trustee be authorized to accept a back-up bidder.

G. That the Court enter an Order waiving the 14 day stay contained in Fed. R. Bankr. P. 6004.

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

RAYMAN & KNIGHT
Attorneys for Trustee

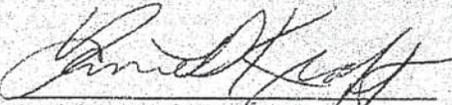
Dated: October 29, 2015

By: 

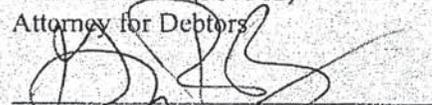
Cody H. Knight (P64811)

BUSINESS ADDRESS:
141 E. Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156

APPROVED:



Daniel L. Kraft (P37382)
Attorney for Debtors



Gregory R. Basore (P39448)
Attorney for Purchaser

Tract	Amount	Winning Bidder
8/10/2015		
1	\$27,500.00	birddog2386
2	\$93,500.00	birddog2386
3	\$93,500.00	birddog2386
4	\$374,000.00	birddog2386
5	\$62,700.00	tallglass
6	\$1,100.00	lswift3
7	\$67,100.00	tallglass
8	\$9,900.00	tallglass
9	\$7,810.00	nyeita
10	\$83,600.00	tallglass
Total	\$820,710.00	
8/11/2015		
11	\$71,500.00	tallglass
12	\$12,650.00	waylon77
13	\$7,260.00	chico225judy1955
14	\$46,200.00	birddog2386
15	\$5,610.00	toolman49036
16	\$24,200.00	toolman49036
Total	\$167,420.00	
8/12/2015		
17	\$51,700.00	Penny 59
18	\$2,200.00	Dburghdoff
19	\$4,840.00	jmd1974
20	\$2,200.00	edrigel
21	\$5,500.00	rmmcintosh1117
22	\$23,650.00	tallglass
Total	\$90,090.00	
Grand Total	\$1,078,220.00	

EXHIBIT
A

TERM SHEET FOR SALE OF FUNERAL HOME

The below is Stephen L. Langeland, Trustee ("Trustee"), proposed Term Sheet for the sale of Spencer Family Funeral Home ("Funeral Home") out of property commonly known as 310 South Capital Avenue, Athens, Michigan ("Funeral Parlor") and certain personal property utilized in the operation of the Funeral Home further described herein ("Personal Property") (collectively, "Funeral Home Property") to the party represented by Gregory R. Basore ("Buyer").

1. **Sales Price:** The Trustee would accept a sale price of \$75,000.00, which will be subject to Bankruptcy Court approval. The Trustee would file a Motion for Sale of the Funeral Home Property, which would be subject to competitive bidding.

2. **No Warranty:** The sale of the Funeral Home Property, including improvements and fixtures hereto or located thereon, shall be made on an "AS IS, WHERE IS" basis without representation or warranty, expressed or implied, of any kind, nature or description, or of merchantability, habitability, use, ability or if fitness for any purpose. The Trustee shall not be required to inspect or test or report on the condition of the Funeral Home Property, or the operability of the Funeral Home Property, or the existence of any possible defects in the Funeral Home Property.

3. **Title:** Title to the property will be transferred by the Trustee's execution of a Trustee's Deed and Trustee's Bill of Sale, which shall be without warranty.

4. **Free and Clear of Liens:** The sale of the Funeral Home Property shall be free and clear of the lien, claims, encumbrances, and/or interest of any creditor and/or interest attaching to the sale proceeds and the Order approving the sale shall operate as a discharge of same. Since all liens and encumbrances will be discharged, the Trustee shall have no obligation to furnish an

abstract of title. All taxes which are a lien on the described property shall be paid as directed by the Bankruptcy Court.

5. **Operations until Closing:** The Trustee will seek authority to operate the Funeral Home and shall do so on an expedited basis.

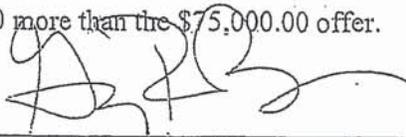
6. **Title Insurance:** The Buyer may purchase its own title insurance policy.

7. **Personal Property:** The Personal Property shall consist of all the personal property used in operation of the Funeral Home but exclude any account receivables through the date of closing. The Trustee shall be responsible for expenses incurred during the operation of the Funeral Home during these Chapter 7 proceedings. The Buyer shall have the right to review and approve the list of Personal Property.

8. **Inspection:** The Buyer shall have the right to inspect the Funeral Parlor, and Personal Property and shall do so within seven (7) days from the entry of the Bankruptcy Court order approving the sale. This inspection shall also include the Buyer's review and approval of the condition of title to the Funeral Home Property and satisfactory review of a survey of any real property is so desired by the Buyer and its expense.

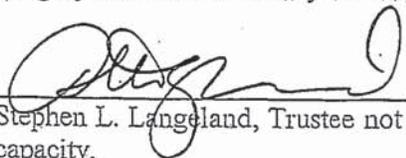
9. **Exemption Waiver:** The Debtors' attorney has indicated that they will waive their exemptions in this matter. The Debtors' exemptions have a value of approximately \$50,000.00. The sale of the Funeral Home Property will be subject to competitive bidding but the next subsequent bid must be for \$52,500.00 more than the \$75,000.00 offer.

Dated: Sept. 9, 2015



Gregory R. Basore Attorney for Buyer

Dated: 9-10-2015



Stephen L. Langeland, Trustee not in his individual capacity.