

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):

James L. Spoor

1503 E. Centre Ave, Apt. 117
Centre Meadows Apartments
Portage, MI 49002
SSN: xxx-xx-5744

Joy E. Spencer-Spoor

1503 E. Centre Ave, Apt. 117
Centre Meadows Apartments
Portage, MI 49002
SSN: xxx-xx-3603

Debtors

Case Number 08-06061-swd

Chapter 7

Honorable Scott W. Dales

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

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

Please take notice that the above-referenced motion has been filed with the Bankruptcy Court. **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.)

If you want the court to consider your view on this matter, attend the hearing scheduled for October 19, 2016 at 10:00 AM at the United States Bankruptcy Court, Federal Building, U.S. Courthouse, Room 114, 410 W. Michigan Avenue, Kalamazoo, MI 49007.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least five business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.



DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

Dated: September 23, 2016

/S/ _____
Kathy Trapp
Deputy Clerk

Notice returned to Cody H. Knight, Esq. for appropriate service: (9/23/16-kmt)

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 new hearing date. 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 Avenue North, 2nd Floor, Grand Rapids, Michigan 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 James L. Spoor : dba Spencer Funeral Home*

² *Aliases for Joint Debtor Joy E. Spencer-Spoor : dba Spencer Funeral Home*

**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

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

NOW COMES Stephen L. Langeland, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Authority to Sell 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 proceedings 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, which the Debtors have scheduled as having a value of \$1,493,098.00.
8. The Trustee sold a significant portion of the real estate for an amount in excess of \$1,100,000.00.
9. The chief remaining physical assets consists of items of personal property stored in various storage facilities ("Property") as summarized below:
 - A. 3 Units located at U-Store Self Storage-Minges Creek, 8 Minges Creek Place, Battle Creek, MI 49015;
 - B. 11 Units located at Attic Storage, 15611 Helmer Rd. S., Battle Creek, MI 49037;
 - C. 8 Units located at Hamerstone Farms Storage, 3156 M-66, Athens, MI 49011;
 - D. Multiple Units located at Struble's Mini Storage, 4675 Capital Ave SW, Battle Creek, MI 49015; and
 - E. Multiple Units located at Seekman Richard, 11089 Sonoma Rd., Battle Creek, MI 49015 ("Units").

RELIEF REQUESTED

10. This Motion will seek to sell the Property to Dan Yoder ("Purchaser") who has made an offer of \$4,200.00 and will pay any unpaid storage fees with respect to the Units.
11. That the Trustee had an auctioneer review the Units and it was determined the expense of removing the items would likely exceed the expected value of the Property.

12. 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 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;
 - d. Approve the Trustee's agreement with respect to the Debtor's exemptions as set forth herein; and

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

14. Due to the time constraints, and the expense of storage, your Trustee would request that the 14 day stay contained in Fed. R. Bankr. P. 6004 be waived.

LIEN HOLDERS

15. 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 claimed or are known to have claimed a lien in the property of the Debtors: Michael D. Dyer, Internal Revenue Service, State of Michigan Dept. of Treasury, Catherine Thompson, MMV Spoor Mortgage Holders, LLC, KMMV Spoor Mortgage Investors, LLC, Bank One, Deutsche Bank, and Banker's Trust/Ocwen Mortgage along with the Branch, Calhoun and St. Joseph County Treasurers ("Lien Holders").

16. The Trustee believes all of the Lien Holders' secured claims have been satisfied and describes the same in an abundance of caution.

17. The Trustee expects the Lien Holders will 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 Property, pursuant to 11 U.S.C. § 363(f)(2).

18. 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).

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

20. The Trustee believes he has satisfied all of the Lien Holders through previous sales. As such, any remaining claims would be in *bona fide* dispute and the Property may be sold free and clear, pursuant to 11 U.S.C. 363(f)(4).

21. 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)(4)&(5).

22. 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 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.

23. That the proposed sale pursuant to this Motion is in the best interests of the estate and its creditors.

AUCTION PROCSS

24. **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 Purchaser shall take the Property with all of its faults.**

25. 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.

26. The Trustee will take bids for Property as one lot beginning with an opening bid of \$4,500.00 with subsequent bids being in increments of at least \$100.00. In addition, any successful bidder must satisfy any unpaid storage fees with respect to the Units.

27. **All parties desiring to purchase must provide evidence of ability to close.**

28. The Trustee may seek authority to accept a back-up bidder.

29. The sale shall be on a cash basis, with the full purchase price being payable by the purchaser, within 7 days from the entry of an Order approving this motion.

30. The Trustee also seeks the authority to accept such back-up bidder(s) as he deems appropriate.

DEBTOR’S EXEMPTIONS

31. The Debtors have claimed an exemption in the Property. The Debtors have agreed to waive their exemption and to allow the \$4,200.00 sale proceeds to be used to pay pre-paid

