

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

MARK S. UNRUE

CASE NO.: GK15-00271
CH. 7

Debtor(s)/

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

TRUSTEE'S MOTION TO SELL REAL PROPERTY
PURSUANT TO 11 U.S.C. §363(f)

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 views on this matter, attend the hearing scheduled for October 29, 2015 at 10:00 a.m. at the United States Bankruptcy Court, U.S. Courthouse and Federal Building, 410 West Michigan, Room 114, Kalamazoo, Michigan.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least seven 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 or objection and may enter an order granting that relief.

Returned to Thomas C. Richardson, Esq. for service upon the matrix. Court to serve Buyer's List.
(October 8, 2015-kt)

October 8, 2015

DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

/s/

BY: Kathleen Trapp, Deputy Clerk



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.pcs.uscourts.gov>.

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

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IN RE:

Case No: GK 15-00271

MARK S. UNRUE,

(Chapter 7 filed 1/22/15 and converted to Chapter 13
on 5/28/15 and re-converted to Chapter 7 on 7/22/15)

Debtor.

HON. JOHN T. GREGG
Bankruptcy Judge

TRUSTEE'S MOTION TO SELL REAL PROPERTY
PURSUANT TO 11 U.S.C. §363(f)

Thomas C. Richardson, Trustee, through counsel, moves for sale of real property under Bankruptcy Code §363(f) as follows:

1. He is the duly appointed and acting Trustee in this Chapter 7 proceeding filed January 22, 2015, converted to Chapter 13 on May 28, 2015 and converted back to Chapter 7 on July 22, 2015.

2. Included in the property in this estate is the Debtor's condominium located at 3500 Woodbridge Lane, Portage, Michigan, in the City of Portage, Kalamazoo County, Michigan, (the "Real Estate") described as follows:

Unit No. 104, The Lakes of Woodbridge, a Condominium according to the Master Deed recorded in Liber 1159, Pages 258 through 313, inclusive and amendments thereto, Kalamazoo County Records, and designated as Kalamazoo County Condominium Subdivision Plan No. 37, together with rights in General Common Elements and Limited Common Elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.
Property ID #39-10-00018-604-0

3. Debtor has agreed to sale and to splitting the net proceeds after payment of the amount to redeem from the foreclosure sale, realtor's commissions, real estate taxes, transfer tax, other closing costs and Trustee's attorney fees for obtaining approval of the sale; one-half to the Bankruptcy Estate and one-half to the Debtor in full satisfaction of his exemptions.

4. The Real Estate was subject to the mortgagee of MERS as nominee for Amerifirst Financial Corporation which went to foreclosure sale on May 28, 2015 and was sold for \$100,000.00 to Everclare, LLC plus interest at a per diem rate of \$10.90 from the date of sale to the date of redemption and possible fees such as real estate taxes advanced since the Sheriff's sale.

5. Debtor's amended Schedule D shows a second mortgage to Wells Fargo listed as securing a debt of \$23,464.00. Trustee believes that there is no second mortgage which has not been discharged. This is confirmed by the

Devon Title Agency title search dated September 30, 2015 (copy filed herewith). If Wells Fargo or anyone else claims to have a perfected second lien on the Real Estate currently in effect, that would be in bona fide dispute. §363(f)(4)

6. The Real Estate is also subject to a lien in the original amount of \$1,406.00 to the Lakes of Woodbridge Condominium Association.

7. Debtor apparently signed a Quit-Claim Deed on July 21, 2015 (copy attached) purporting to convey the Real Estate to Everclare, LLC. Trustee believes this Deed is void as in violation of the automatic stay under §362(a) and because Debtor did not have the right to convey the Real Estate. Any interest claimed to be conveyed by the Quit-Claim Deed would be in bona fide dispute. §363(f)(4).

8. The Trustee has received an offer to purchase the said Real Estate from Darlene Davis Living Trust for \$140,000.00. The offeror is not an insider.

9. The Trustee proposes that the Real Estate be offered for sale in open Bankruptcy Court on the following terms:

- (a) A copy of the Davis 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 \$142,000.00 with subsequent bids in increments of not less than \$1,000.
- (c) The sale will be on a cash basis with the successful bidder being required to deposit \$2,000.00 with the Trustee (in cash or by cashier's check or other certified funds) at the conclusion of the bidding. 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 for any reason other than those stated in the offer or failure of the Court to approve the sale. No contingent bids shall be received.
- (d) In the event the high bidder fails to close the sale, Trustee may proceed with sale to the next highest bidder who is ready, willing and able to close for the amount bid subject to the other terms of this Motion.
- (e) The Estate's interest in the Real Estate 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 the Real Estate. 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.
- (f) The Real Estate 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 the Real Estate or the existence of any possible defects in the Real Estate.

- (g) All taxes which are a lien on the described property shall be paid as directed by the Bankruptcy Court. Any tax which becomes a lien on the property after the date of the Order Confirming Sale shall be paid by the Purchasers. There shall be pro-ration of the 2015 real estate taxes.
- (h) 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 to the Purchaser, and any such expense shall be borne by the Seller. Possession shall be given to the Purchaser at closing which will be by November 20, 2015 or such other date as the parties may agree.
- (i) The expenses of custody, protection, and insurance of the Real Estate, as well as expenses of sale, including administrative and all legal expenses of these proceedings relating to the protection and sale of said Real Estate, shall be charged against the sale proceeds with priority over all claims.
- (j) Arrangements for inspection of the Real Estate to be sold 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.
- (k) 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).
- (l) The Trustee reserves the right to recommend rejection of this offer to the Court if it later proves insufficient to yield a reasonable net recovery to the estate.

10. The offer which the Trustee has received is subject to a commission of six percent (6%) to be paid to Patrick O'Brien, O'Brien Real Estate, Inc., conditioned upon the consummation of the sale.

11. Real estate taxes due are approximately \$2,679.85. Real estate transfer taxes on \$140,000.00 would be \$1,204.00.

12. The Trustee believes that the sale of the Real Estate 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 said Real Estate upon the terms and conditions set forth herein for \$140,000.00, 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 redemption amount from the Sheriff's Sale, the realtor's commissions, any outstanding taxes on the subject Real Estate and any other costs and expenses needed in order for closing to take place, including real estate transfer tax and to pay Debtor his share per paragraph 3 of this Motion.

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

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

LEWIS, REED & ALLEN, P.C.

Dated: 10/8/15

By: /s/
Thomas C. Richardson (P31750)
Attorneys for Trustee
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