

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):

Joshua M. McKibbin
9375 Steamburg Road
Hillsdale, MI 49242
SSN: xxx-xx-0769
Emily J. McKibbin
9375 Steamburg Road
Hillsdale, MI 49242
SSN: xxx-xx-2336

Debtors

Case Number 15-04094-swd

Chapter 12

Honorable Scott W. Dales

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

DEBTORS' MOTION FOR SALE OF REAL PROPERTY 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 September 25, 2018 at 09:30 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: August 24, 2018

/S/ _____
Kathy Trapp
Deputy Clerk

Notice returned to Steven L. Rayman, Esq. for appropriate service: (8/24/18-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 Joshua M. McKibbin : aka McKibbin Farms*

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

IN THE MATTER OF:

JOSHUA M. McKIBBIN AND
EMILY J. McKIBBIN,

Case No.: 15-04094
Chapter 12 - Filed: 07/20/2015

Debtors.

_____/ /

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

NOW COME Joshua M. and Emily J. McKibbin, Debtors (“Debtors”), by and through their attorneys, Rayman & Knight, and for their Motion for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. §363 (“Motion”), say as follows:

1. This Motion pertains to the above-captioned Chapter 12 proceeding which was filed on July 20, 2015. The Debtors’ Third Amended Plan was confirmed by virtue of this Court’s Order Confirming Debtors’ Third Amended Chapter 12 Plan on June 16, 2016.

2. The Debtors have fallen in arrears with respect to their payments under the Plan. Upon consideration of their present circumstances and business plan, and in conjunction with discussions with the Trustee, the Debtors (and the Trustee) have concluded that it is appropriate that certain of their real property be sold for the benefit of creditors. Such sale will (i) ease the Debtors’ cash flow requirements; and (ii) pay down creditors consistent with the Plan.

3. Among the assets of this estate, there exists certain real property consisting of 40 acres, more or less, located at 0 Steamburg Road, Hillsdale, Michigan, Township of Cambria (“Real Property”). The Debtors’ interest in the Real Property is that with a lease with option from Joshua McKibbin’s grandmother, Marilyn McKibbin. The Debtors have the requisite authority to sell the Real Property.

4. Your Debtors have received an offer from Shane A. Spahr and Jenny P. Spahr (“Purchasers”) to purchase the Real Property for the amount of \$125,000.00, subject to

competitive bidding that shall take place at the time and location scheduled by the Court for the sale in this matter.

5. The sale is subject to the terms and conditions of a certain Authorized Buy & Sell Agreement dated August 17, 2018 (“Purchase Agreement”), a copy of which is attached as Exhibit “A” and fully incorporated by this reference. The sale shall be on a cash basis, subject to a financing contingency (the Purchasers have been pre-qualified). This Motion contemplates bidding at a Courtroom auction. The successful bidder shall be required to make a \$2,500.00 deposit, plus such amount as the Purchasers have paid out of pocket for due diligence prior to the hearing on this Motion (limited to \$2,000.00), in the form of good funds made payable to the “Estate of Joshua and Emily McKibbin” c/o of their attorneys, Rayman & Knight, 141 E. Michigan Avenue, Suite 301, Kalamazoo, MI 49007. Bidding in open Court shall be increments of \$1,000.00 or more. Any other potential purchaser shall be required to purchase the Real Property subject to the terms and conditions of the Purchase Agreement.

6. The Real Property 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, except as set forth in the Purchase Agreement. Neither the Debtors nor the Trustee shall not be required to inspect, test or report on the condition of the Real Property, the operability of any system(s) contained therein or the existence of any defects of any kind, including, environmental defects.

7. The Real Property shall be sold free and clear of liens, encumbrances and/or claims therein with liens attaching to proceeds in the same rank, validity and priority as existed as of the confirmation of the Debtors’ Plan. Upon information, there are the following liens on the Real Property:

- a. *Ad valorem* taxes in the amount of less than \$1,000.00;

- b. A first mortgage in favor of GreenStone Farm Credit Services, FLCA, in the amount of approximately \$62,167.21; and
- c. A second mortgage payable to CNH Industrial Capital America LLC in the amount of \$150,000.00, minus payments received by it since confirmation of the Debtors' Plan.

8. The proposed sale shall be free and clear of liens, pursuant to 11 U.S.C. §363(f).

Bidding shall be allowed as set forth below:

- a. The sale of the Real Property shall be "**AS IS, WHERE IS**" with no warranties, expressed or implied as previously stated;
- b. The sale shall be subject to competitive bidding at a Court auction to take place at the time and location scheduled for the hearing on this Motion;
- c. That any other bidder(s) shall be required to express their interest writing to the Trustee c/o Rayman & Knight, 141 East Michigan Avenue, Suite 301, Kalamazoo, MI 49007 two (2) days prior to the date scheduled for the Court auction and provide such deposit as delineated in ¶5;
- d. The sale shall be on a cash basis, with cash being payable at closing consistent with the Purchase Agreement;
- e. The sale shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f) with the successful bidder taking free and clear of any encumbrances with such liens and encumbrances attaching to sale proceeds in the same rank, validity and priority as existed as of the date of the confirmation of the Debtors' Plan; and
- f. The closing on any sale shall be by September 30, 2018.

9. The Debtors further propose that in the event the successful purchaser fails to close, that the Trustee be authorized to complete the sale to a "back-up" bidder, if any there is.

10. The Debtors and the Trustee believe that the sale of the Real Property, pursuant to the terms herein, is in the best interests of the estate and its creditors as the estate will receive the proceeds of sale which shall be distributed by the Trustee to creditors in accordance with their priority and consistent with the Plan.

11. Both the Debtors and the Trustee believe that the proposed sale will be of benefit to the estate as (i) upon information, the highest and best use for the Real Property is as hunting or recreational land, not farm land; (ii) the sale shall ease the Debtors' cash flow requirements, it being anticipated that, after cost of sale, including, but not limited to, realtor commissions and Trustee fees, GreenStone Farm Credit Services will be paid in full and the Debtors' obligation to CNH will be dramatically decreased. The Debtors further anticipate the sale of additional property in order to satisfy the terms of their Plan.

WHEREFORE, your Debtors pray and your Trustee concurs that:

A. This Court enter an Order approving the sale of the Real Property by public auction as delineated in this Motion;

B. The Debtors and/or Trustee be authorized to execute such conveyance documents as are reasonably required to effectuate the sale;

C. The Trustee be authorized to distribute proceeds for (i) cost of sale; (ii) payoff of GreenStone Farm Credit Services, FLCA; (iii) Trustee commission; and (iv) balance to CNH Industrial Capital America LLC; and

B. This Court Order such other relief that it finds just and equitable.

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: August 22 2018

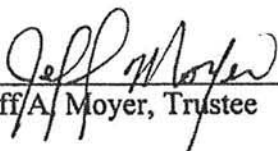
By:



Steven L. Rayman (P30882)

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

APPROVED:


Jeff A. Moyer, Trustee