

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

In the matter of:

D.S. Property Management, L.L.C

Debtors

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Case No.: 19-30445  
Chapter 11 Bankruptcy  
Judge Joel D. Applebaum

**MOTION TO APPROVE PRIVATE SALE OF PROPERTY**

Debtor in Possession D.S. Property Management, L.L.C. (the “Debtor”) pursuant to 11 U.S.C. §365(b) and (f), respectfully requests entry of an order authorizing the sale of a certain real property and related assets free and clear of all liens, claim and encumbrances in support of this request the Debtor states:

1. The Debtor is a Michigan limited liability company that filed a voluntary petition for relief under the chapter 11 of the bankruptcy code on February 27, 2019, (the “Petition Date”). Pursuant to §§1107 and 1108 of the Code, the Debtor is a debtor in possession and possesses all of the powers, functions, and duties of a Trustee.
2. The Debtor’s principal asset is a former car dealership located at 1640 N. Lapeer Road, Lapeer, MI 48446.
3. The Debtor in Possession leases the property to K.L.V. Collision, L.L.C., Family Motors of Lapeer, and Your Complete Auto Repair.
4. As of the Petition date, the Property was encumbered by a mortgage in favor of Lakestone Bank in an asserted amount of \$800,000. *See* Proof of Claim No. 3. Filed on June 30, 2019 (\$800,000 +\$27,172.50 for property taxes).
5. Additionally, Michigan Unemployment asserts a unsecured interest in the property in approximate amount of \$10,000.00. *See* Proof of Claim No.1 filed on June 7, 2019.
6. On June 26, 2019, an Order to settle the U.S. Trustee Motion to Dismiss was entered with the Court. It was order that the Debtor shall file a Motion for Court Approval of a Sale of the Debtor’s real Property on or before August 1, 2019.
7. The Debtor has received an offer from a Buyer to purchase the Assets (defined

herein) in a **private sale** pursuant to the terms of a purchase agreement (the "PA") a copy of which is attached as an EXHIBIT "B". the principal terms of the PA include:<sup>1</sup>

- The cash purchase price for the Assets (the term "Assets" includes the property with all buildings, and improvements for \$805,000.00)
  - The offer is contingent on Bankruptcy court, as well as Lakestone Bank approval and release of personal Gratuity of Deborah Stockman and the Mortgage on het home.
  - The purchase agreement is also contingent upon a successful agreement to lease back a portion of the property to Deborah Stockman and or Your Complete Auto Repair, L.L.C.
  - The Buyer will make a \$5,000.000 Ernest money deposit.
8. The difference in value between the Buyer's bid of \$805,000 and the Banks claim is approximately \$22,000.00.
9. Through the reasonable exercise of its business judgment, the Debtor has determined that it is in the best interest of the estate to accept the Buyer's offer instead of conducting a public auction, this sale does not involve a realtor commission.
10. The Debtor has two other potential Buyers and believes they would be qualified backup Buyers if this sale does not go through.
11. The Debtor has no direct or indirect interest in, or control over, the Buyer. The parties negotiated the PA in good faith and at arm's length. Specifically, the PA was negotiated over several weeks. The Buyer is not in any way connected to the Debtor.
12. Through this Motion, the Debtor respectfully requests that the Court (a) ~~Approve~~ the PA; (b) authorize and approve the sale of the property to the Buyer, pursuant to the terms of the PA, and free and clear of all liens, claims and encumbrances (the "Sale") and (c) schedule a final hearing to approve the Sale contemplated herein.

#### RELIEF REQUEST

- A. The Court Should Approve the Sale Under 11 U.S.C. § 363(b).
13. Section 363(b) of the Bankruptcy Code permits the use, sale or lease, "other than

in the ordinary course of business," of property of the estate. 11 U.S.C. § 363(b). In evaluating proposed sales of property under § 363(b), courts employ the business judgment rule, which "is a policy of judicial restraint born of the recognition that directors are, in most cases, more qualified to make business decisions than are judges." *In re Friedman's, Inc.*, 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005) (quotation omitted). "Courts should approve an exercise of a debtor's business judgment unless it is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, whim or caprice." *Friedman's*, 336 B.R. at 895 (quotation omitted); see *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *In re Lionel Corp.*, 722 F.2d 1063 (2nd. Cir. 1983).

14. Courts interpreting § 363(b) have approved non-ordinary course sales of substantially all of a debtor's assets. *In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2nd. Cir. 1983); *In re Parkstone Med. Info. Sys.*, 2001 Bankr. LEXIS 1356 (Bankr. S.D. Fla. 2001); *In re Baldwin United Corp.*, 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). As *Lionel* states:

Resolving the apparent conflict between Chapter 11 and section 363(b) does not require an all or nothing approach. Every sale under 363(b) does not automatically short-circuit or side step Chapter 11; nor are the two statutory provisions to be read as mutually exclusive. Instead, if a bankruptcy judge is to administer a business reorganization successfully under the Code, then... some plan for the operation of both 363(b) must be allowed for. ...The rule we adopt requires that a judge determining a section 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.

722 F.2d at 1070-71.

15. The Debtor respectfully submits that all of the factors demonstrating its sound business judgment are met, and that the Sale should be approved. The Sale appears to be the best manner in which to maximize value for the estate.

16. Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (a) the sale price is fair and reasonable; (b) the

debtor in possession has provided interested parties with adequate and reasonable notice; and (c) the purchaser is proceeding in good faith. *See In re Abbotts Dairies of Pennsylvania*, 788 F.2d 143, 147 (3d Cir. 1986) (noting that the phrase "good faith" encompasses one who purchases in good faith and for value); *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992). All of the factors are or will be satisfied in this matter.

**1. The Purchase Price is Fair and Reasonable.**

17. First, the purchase price \$805,000.00 is fair and reasonable. The Debtor estimates the value of the property to be in excess of \$800,000.00.

**2. Adequate and Reasonable Notice.**

18. The Debtor shall provide by e-mail; facsimile and/or U.S. Mail written notice of this motion. (a) those persons who contacted the Debtor or any of its representatives regarding the sale of the property; (b) the U.S. Trustee; (c) State of Michigan; (d) Parties of executory contracts and leases with the Debtor; (e) all other parties who have filed a notice of appearance; and (f) all other creditors.

19. The Debtor submits that such notice constitutes good and sufficient notice of the Sale and related matters and that no further notice need be given

**3. The Buyer is a Good Faith Purchaser.**

20. The ultimate buyer is a good faith purchaser, as the Sale was negotiated at arms' length. As such, the Debtor requests that the Court find that the Buyer, constitutes a good faith purchaser of the Assets pursuant to 11 U.S.C. § 363(m) such that the reversal or modification on appeal of the sale of the Assets shall not affect the validity of the Sale, whether or not the purchaser of the Assets knew of the pendency of the appeal.

**B. The Court Should Approve the Sale Free and Clear of All Liens, Claims and Encumbrances Under 11 U.S.C. § 363(f).**

21. Section 363(f) of the Bankruptcy Code permits the trustee (or debtor in possession) to sell property of the estate free and clear of any third-party interests in

such property if certain conditions are satisfied, including the consent of the affected parties. *See* 11 U.S.C. § 363(f)(1)–(5).

22. Any claimants who are properly secured in the Assets shall, by operation of law, have their liens attach to the proceeds of the sale of the Assets in the order of their priority, with the validity, force and effect that they had as of the Petition Date, if any, against the Assets, subject to the rights, claims, defenses and objections of the Debtor and all interested parties with respect to such liens, so that the purchaser of the Assets shall take the Assets free of all the liens.

**C. Waiver of Stay Period Pursuant to Fed. R. Bankr.P. 6004(h).**

23. To the extent necessary, the Debtor requests that the Court waive the 14 day stay period pursuant to Fed. R. Bankr. P. 6004(h).

WHEREFORE, the Debtor respectfully request the entry of an order (a) approving the PA; (b) authorizing and approving the sale of the property to the Buyer pursuant to the terms of the PA, free and clear of all liens, claims and encumbrances (the “sale”); (c) (II) approving the Form and Manner of Notice of Sale, (III) (d) scheduling a final hearing to approve the sale contemplated in this Motion;

RESPECTFULLY SUBMITTED

Dated: July 30, 2019

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