

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

IN RE:	)	
	)	
H.N.HINCKLEY & SONS, INC.,	)	CHAPTER 7
	)	
DEBTOR.	)	CASE NO. 18-10398-FJB
	)	

**MOTION BY DONALD R. LASSMAN, CHAPTER 7 TRUSTEE, FOR
AUTHORITY TO SELL OFFICE FURNISHINGS, MACHINERY, EQUIPMENT,
INVENTORY, FIXTURES AND MOTOR VEHICLES BY PUBLIC AUCTION SALE,
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

Donald R. Lassman, the duly appointed chapter 7 trustee (the “**Trustee**”) in the bankruptcy case of H. N. Hinckley & Sons, Inc. (the “**Debtor**”), hereby requests this Court’s authority, pursuant to 11 U.S.C. § 363, Fed. R. Bankr. P. 6004 and MLBR 6004-1, to sell, assign and transfer by public auction (the “**Auction**”) all of the right, title and interest in and to office furnishings, machinery, equipment, inventory, fixtures (i.e. shelving and display racks) and motor vehicles (the “**Property**”) owned by the Debtor’s bankruptcy estate (the “**Estate**”). The Auction sale will take place at the Debtor’s place of business on Martha’s Vineyard, 61 Beach Road, Vineyard Haven, Ma. The Auction will be conducted by the Trustee’s proposed auctioneer, Paul E. Saperstein Co., Inc. (the “**Auctioneer**”) on **Tuesday October 22, 2019 at 11:00 a.m.** The sale of the Property shall be free and clear of all liens, claims, interests and encumbrances with any such interest in the Property, when established, attaching to the proceeds realized from the sale of the Property, respectively and subject, if necessary, to a determination by this Court as

to the priority, validity, and amount of such interest. In further support of this Motion, the Trustee represents as follows:

Background

1. On February 2, 2018, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

2. On August 28, 2019 the Chapter 11 proceeding was converted to Chapter 7 and on August 28, 2019, Donald R. Lassman was appointed interim Chapter 7 Trustee and continues to serve in that capacity.

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. sections 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. sections 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. section 157(b) and the statutory predicate for the relief sought herein is section 363 of the Bankruptcy Code.

3. Upon the conversion of the case from Chapter 11 to Chapter 7, The Debtor owned a retail hardware store and the inventory and store fixtures at the time of case conversion are typical of what one would expect to find in a retail hardware store. The Debtor also owned motor vehicles in connection with the operation of its business and a list of those motor vehicles is attached to this Motion as **Exhibit A**.

Relief Requested

4. Pursuant to 11 U.S.C. § 363, a trustee is authorized to sell property of the estate after notice and a hearing. Section 363 also provides that the trustee may sell property of the estate free and clear of any interest in such property of an entity other than the estate if (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest, (b) such entity consents, (c) such interest is a lien and the price at which

such property is to be sold is greater than the aggregate value of all liens on such property, (d) such interest is in bona fide dispute, or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

5. Based on the Debtor's Schedules of Assets and Liabilities at the time the case was filed, the Debtor had three secured creditors with an interest in the Property – Internal Revenue Service, Massachusetts Department of Revenue, and Martha's Vineyard Savings Bank¹. According to the Disclosure Statement filed by the Debtor, the lien of Martha's Vineyard Savings Bank has been paid in full, leaving the two taxing authorities as the sole holders of claims secured by the Property.

6. The secured claims of the Massachusetts Department of Revenue include substantial sums for penalties² that were assessed prior in time to the assessment dates of the tax liens held by the Internal Revenue Service. Bankruptcy Code Section 724(a) permits the Trustee to avoid secured claims for penalties and preserve the liens so avoided for the benefit of the bankruptcy estate. Bankruptcy Code Section 724(b)(2) provides for the subordination of secured tax lien claims to holders of claims identified in various sections of Section 507 of the Bankruptcy Code. The Trustee submits that the tax liens held by the Internal Revenue Service and the Massachusetts Department of Revenue are subject to bona fide dispute, the price at which the Property will be sold by the Trustee exceeds the aggregate value of all liens on the Property, and/or the taxing

¹ The Trustee has also reviewed the Claims Register for this case and notes that three creditors (See claims Nos. 6, 7 and 26), in addition to those referenced in paragraph 5 above, filed secured claims. However, as indicated in the Debtor's Disclosure Statement (See Document 237 at page 14-15 on the Court Docket for this case) the collateral securing these three claims has been sold such that the claims are now wholly unsecured.

² The Proof of Claim filed by the Massachusetts Department of Revenue (Claim No. 1-2) contains penalty claims totaling \$214,984.68.

authorities can be compelled to accept a money satisfaction of their claims. Therefore, the Trustee submits that the proposed public auction sale meets the requirements of Bankruptcy Code Section 363(f).

7. The Property is not exempt under any state or federal law.

The Trustee seeks to sell the Property free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. § 363(b) and (f). To the extent valid liens, claims, interests or encumbrances exist, those claims shall attach to the sale proceeds in the same order and priority as the claims presently encumber the Property and subject, if necessary, to later determination by this Court of the validity, extent and perfection of such claims. Any monies that may be due and owing regarding any such liens will not be the responsibility of the successful purchaser. The Property shall be sold “as is” and “where is,” and without any representations or warranties and specifically without any transferee liability.

8. The Trustee and the Auctioneer have personally inspected the Property.

The Auctioneer has advised the Trustee that a public auction of the Property will generate the greatest return to the Estate. Therefore, the Trustee seeks to sell the Estate’s interest in the Property, subject to all conditions contained in the accompanying proposed Notice of Sale, by public auction sale.

9. Any and all creditors and/or parties-in-interest having notice of the sale who fail to timely object to the sale of the Property by the Trustee in accordance with the terms of the Notice of Sale shall be deemed to have consented to the sale of the Property, as set forth herein and in the Notice of Sale, free and clear of any interests, liens, claims or encumbrances.

10. Any successful bidder who fails to complete any transaction by paying the accepted bid on the Property by bank check or certified check at the end of the Auction and in accordance with such payment terms as may be announced at the Auction shall be liable for the difference between the successful bid and the lower amount for which the sale may then be completed.

11. The Trustee proposes to serve the Notice of Sale on all creditors, potential purchasers and parties-in-interest. Copies of this Motion and its exhibits are available upon request to the Trustee or his counsel. In addition, the Auctioneer will advertise the Auction.

12. All reasonable and necessary costs and expenses associated with the auction will be deducted from the auction proceeds prior to the payment of any established liens, claims, interests or encumbrances. All other terms of the sale will be announced at the auction.

13. The Trustee will also pay the fees and expenses of the Auctioneer after application is made to and allowed by the Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order (a) authorizing the Trustee to sell the Property by public auction sale free and clear of all liens, claims, interests and encumbrances with all such interests in the Property, if any, attaching to the proceeds of the sale subject to later determination by this Court, and (b) granting such other and further relief as this Court deems just and proper.

DONALD R. LASSMAN
CHAPTER 7 TRUSTEE

by his attorney,

DONALD R. LASSMAN

Dated: September 9, 2019

/s/ Donald R. Lassman

Donald R. Lassman (BBO #545959)

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2019, I served a true and correct copy of the foregoing document on the persons below in the manner specified:

Via the Court's CM/ECF System:

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EXHIBIT A

VEHICLES ON MARTHAS VINEYARD

2000 INTERNATIONAL MODEL 20S BOOM TRUCK

VIN#1HTGLAHTXYH223575

2001 FORD FLAT BED DUMP TRUCK VIN#1FDAF56F81EA77484

2006 FORD LOWCAB BOX TRUCK VIN#3FRML55Z36V151303

2000 FORD FLAT BED DUMP TRUCK VIN#1FDAF56F8YED37439

1995 CHEVY KODIAK FLAT BED DUMP TRUCK VIN#1GBJ7H1PXSJ112168

1992 GREAT DANE BOX TRAILER VIN#1GRAA9629NBO98123

VEHICLES LOCATED AT 227 SOUTH MEADOW ROAD PLYMOUTH, MA

2008 MACK TRACTOR VIN#1MIAE07Y63N014865

1996 GREAT DANE BOX TRAILER VIN#1GRAA9624TB042314

CURTAIN SIDED TRAILER VIN#1VY7524882A84205

VEHICLE LOCATED AT 2 ASHLEY DRIVE, EAST FALMOUTH

1999 FORD FLAT BED DUMP TRUCK VIN#1FDAF57F3XEA86276

FORKLIFTS ON MARTHAS VINEYARD

CATERPILLAR LP FORKLIFT MODEL #GP45K

YALE LP FORKLIFT MODEL GLP080LJNGBR089

CLARK LP FORKLIFT SER#GPX230E00893671B

TOYOTA LP FORKLIFT MODEL 7FGU45