

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
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In re:

JOHN ALBERT WELLER, JR.,

Case No. 17-21883-LMI

Chapter 7

Debtor.

FINAL ORDER GRANTING TRUSTEE'S EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING SALE OF PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363 (II) ESTABLISHING BIDDING PROCEDURES AND AUCTION SALE PROCESS; (III) APPROVING STALKING HORSE PURCHASER; (IV) SCHEDULING AUCTION AND SALE HEARING; AND (V) GRANTING RELATED RELIEF

THIS CAUSE having come before the Court for a final hearing on July 25, 2018 at 2:30 PM (the "Final Hearing"), upon the Chapter 7 Trustee, Marcia T. Dunn's ("Trustee") *Expedited Motion for Entry of An Order (I) Authorizing the Sale of Property Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. §363; (II) Establishing Bidding Procedures and Auction Sale Process; (III) Approving Stalking Horse Purchaser; (IV) Scheduling Auction and Sale Hearing; and (V) Granting Related Relief* (the "Sale Motion") [D.E. 60] and the *Order Granting*

Trustee's Expedited Motion for Entry of An Order (I) Authorizing the Sale of Property Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. §363; (II) Establishing Bidding Procedures and Auction Sale Process; (III) Approving Stalking Horse Purchaser; (IV) Scheduling Auction and Sale Hearing; and (V) Granting Related Relief (the "Order Approving Auction Sale") [D.E. 80].¹

The Court, having considered the record in this case, obtained proffers and representations on the record from counsel, and noting that all objections filed to the Auction Sale and relief requested therein have been fully resolved; and having been advised that the Chapter 7 Trustee conducted the Auction Sale as scheduled and pursuant to the sale and bidding procedures set forth in the Order Approving Auction Sale; and having found that sufficient and adequate notice of the Auction Sale and Final Hearing was provided under the circumstances to all parties entitled to such notice [D.E. 80], and that no further notice in connection with the Sale Motion and Auction Sale shall be required; and having noted no objections to the *Motion to Approve Stipulation to Compromise Controversy with Steven E. Ruff*, approved by the Court at ECF No. 91 (the "Order Approving Ruff Settlement"); and having noted that the legal and factual bases set forth in the Sale Motion and presented at the Final Hearing establish just cause for granting the relief requested therein; having noted that the Trustee has demonstrated a sound business justification for the relief requested in the Sale Motion and that the relief requested therein is in the best interests of the Estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, and for the reasons stated on the record, the Court hereby **FINDS AND DETERMINES THAT:**

¹ All capitalized terms used herein shall have the meaning set forth in the Sale Motion [D.E. 60].

A. The Court has jurisdiction over the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Sale Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

C. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. The Court finds that the Auction Sale and this Final Hearing are consistent with the due process requirements of Section 363 of the Bankruptcy Code and Fed.R.Bankr.P. 2002(a)(2), in that proper, timely, adequate and sufficient notice of the Sale Motion, Auction Sale and Final Hearing have been provided in accordance with 11 U.S.C. §§ 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006 and the local rules of this Court. The form and manner of the notice of the Auction Sale and Final Hearing was adequate and sufficient under the circumstances, and no other or further notice of the Auction Sale or the Final Hearing or of the entry of this Final Sale Order is necessary.

E. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities. Notice of the Sale Motion, Auction Sale and the Final Hearing was duly and properly served on all required persons and entities pursuant to the filed Certificates of Service [D.E. 64, 80, 81].

F. Based upon the proffers of the Trustee and counsel during the Final Hearing, the

Auction Sale was conducted in accordance with the Sale and Bidding Procedures and other terms and conditions set forth in the Order Approving Auction Sale.

G. As articulated on the record, there are good and sufficient reasons for the Court to grant the relief requested in the Sale Motion and approve the Auction Sale.

H. The Trustee has demonstrated a sufficient basis to sell the Real Property under 11 U.S.C. § 363, and such actions are appropriate and reasonable exercises of the Trustee's business judgment and are in the best interests of the Debtor, the Estate and its creditors.

I. The transfer of the Real Property as contemplated by the Contract is a valid, legal and effective transfer of the Real Property notwithstanding any requirement for approval or consent by any person.

J. The purchase price as submitted by the Stalking Horse Bidder, MARK G. WEHMEYER (the "Buyer"), to acquire the Real Property is fair, is in the best interest of the Debtor's Estate and constitutes full and adequate consideration and reasonably equivalent value for the Real Property.

K. The legal description of the Real Property is:

The North 75 feet of the South 125 feet of the East Half of Tract 1, Revised Plat of 2nd Amended Plat of High Pines, according to the Plat thereof, recorded in Plat Book 31 at Page 57, of the Public Records of Miami-Dade County, Florida.

Formerly Known as:

Lot 20 and the South Half of Lot 21, Block 1, according to the 2nd Amended Plat of High Pines, as recorded in Plat Book 10 at Page 18, of the Public Records of Miami-Dade County, Florida.

Property Address: 7260 SW 52nd Avenue, Miami, FL 33143

Folio No.: 30-4131-019-0050

L. The Court finds and determines that the Trustee received the winning qualified bid in connection with the Auction Sale from the Buyer in the gross amount of **\$649,000.00** for the

purchase of the Real Property, which in the sole discretion and sound business judgment of the Trustee, was the highest and otherwise best Qualified Bid submitted during the Auction Sale. As such, the Buyer is the Successful Bidder of the Auction Sale.

M. Pursuant to the Order Approving Ruff Settlement with secured creditor, STEVEN E. RUFF (“Ruff”), Ruff has agreed to the Trustee’s sale of the Real Property pursuant to the Contract. Specifically, Ruff has agreed to a sale of Real Property and a partial release of his two (2) mortgage liens on the Real Property, recorded on March 5, 2004, in Official Record Book 22118, Page 2640 and on July 26, 2004, in Official Record Book 22538, Page 3361 in the Public Records of Miami-Dade County, in the original principal amounts of \$260,000.00 and \$100,000.00, respectively (collectively, the “Mortgage Liens”), in exchange for a distribution equal to eighty percent (80%) of the net sale proceeds.

N. In addition, Ruff has also agreed to (i) payment of brokerage commissions from the sale proceeds under the listing agreement approved by the Court through the Broker Order [D.E. 52] from the gross sale proceeds; (ii) payment of documentary stamp taxes and other seller charges pursuant to the Contract from the gross sale proceeds; (iii) payment of \$19,375.00 to the Trustee from the gross sale; (iv) payment of certain valid liens and judgments, as more particularly described below, from the gross sale proceeds; and (v) a carve-out from his collateral in the amount of twenty percent (20%) of the net sale proceeds, for the benefit of the Estate (the “Carve-Out”).

O. The Buyer is not an insider, as that term is defined in 11 U.S.C. § 101(31) and the decisions thereunder. The Buyer is a purchaser in good faith, as that term is used in the Bankruptcy Code and the decisions appurtenant thereto, and is entitled to the 11 U.S.C. § 363(m) with respect to the Real Property. The Buyer is deemed a “good faith purchaser” entitled to the full benefits and protections afforded by 11 U.S.C. § 363(m) with respect to the sale of the Real Property.

P. The conditions of 11 U.S.C. § 363(f) have been satisfied in full and, upon entry of this Final Sale Order, the Trustee may sell the Real Property as of the closing date free and clear of all liens, claims and encumbrances to the fullest extent permitted by law and except as otherwise provided in the Sale Motion.

Q. The Trustee has full power and authority to sell the Real Property to the Buyer pursuant to 11 U.S.C. § 363(b) for the agreed upon Purchase Price and to execute a Trustee's Quitclaim Deed in connection therewith.

R. No further consents or approvals are required by the Trustee to consummate the sale of the Real Property to the Buyer.

S. Time is of the essence in consummating the sale of the Real Property to the Buyer. This Final Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6004(h), and to any extent necessary under Bankruptcy Rule 9014, this Court finds that there is no reason for delay in the implementation of this Final Sale Order; and expressly directs that this Final Sale Order shall take effect immediately.

Accordingly, it is **HEREBY ORDERED, ADJUDGED and DECREED THAT:**

1. The Sale Motion is **GRANTED**, on a final basis, and the Order Approving Auction Sale, and Trustee's sale of the Real Property to Buyer, "as is where is", free and clear of all liens, claims and encumbrances, as more fully set forth in the Sale Motion, is ratified and **APPROVED** in all respects pursuant to this Order (the "Final Sale Order"), which constitutes a final order within the meaning of 28 U.S.C. § 158(a).

2. The statutory predicates for the Sale Motion are 11 U.S.C. §§ 105 and 363, and Bankruptcy Rules 2002 and 6004.

3. The Contract and the transaction contemplated thereby is approved, and the Trustee is hereby authorized and empowered and directed to enter into, and to perform her obligations under, the Contract in accordance therewith or any amendment entered into in accordance with this Final Sale Order and to execute and perform such agreements or documents and take such other actions as are necessary or desirable to effectuate the terms of the Contract.

4. Pursuant to the Order Approving Ruff Settlement [D.E. 91], after payment of all valid, existing liens, claims, encumbrances, commissions, fees, and costs, where payment is required, associated with the disposition of the Real Property, the Trustee and Ruff shall divide the net proceeds from the sale of the Real Property as follows: eighty (80%) of the net sale proceeds shall be distributed to Ruff and twenty percent (20%) of the net sale proceeds shall be distributed to the Trustee. In addition to these disbursements, the total sum of \$19,375 from the gross sale proceeds shall be distributed to the Trustee pursuant to terms set forth in the Order Approving Ruff Settlement.

5. Pursuant to an agreement between the Trustee and Miami-Dade County, Florida, as approved by the Court at **ECF No. X**, the total sum of \$5,000.00 shall be disbursed from the gross sale proceeds of the Real Property to Miami-Dade County, Florida, in full and final satisfaction of its liens on the Real Property, as recorded in Official Records Book 30123, Page 1723; Book 30200, Page 3366; Book 30805, Pages 3474-75; and Book 30902, Page 3246 of the Public Records of Miami-Dade County, Florida (collectively, the "County Liens").

6. Pursuant to an agreement between the Trustee and the City of Coral Gables, the total sum of \$10,000.00 shall be disbursed from the gross sale proceeds of the Real Property to the City of Coral Gables in full and final satisfaction of its lien recorded in Official Records Book

30531, Page 3124, of the Public Records of Miami-Dade County, Florida (the “Coral Gables Lien”).

7. Pursuant to the Final Judgment entered in favor of Dorothy Lusinski (“Lusinski”), recorded on December 27, 2016, at Official Record Book 30360, Page 3553 in the public records of Miami-Dade County, Florida, the total principal amount of \$575.20 (the “Judgment”), plus applicable interest through the date of closing of the Real Property, shall be disbursed to Lusinski from the gross sale proceeds in full and final satisfaction of her Judgment.

8. At closing, the Trustee is authorized to immediately pay from the gross sale proceeds the closing costs identified in the Contract and proposed HUD-1, including title charges, documentary stamp taxes and surtax on deed, if any, and proration for property taxes and utilities. The Trustee is further authorized to pay at or promptly after closing and without further order of the Court (i) the amounts due to Ruff, as set forth above; (ii) the real estate brokers’ commissions earned pursuant to the listing agreement, in the total amount of \$38,940.00; (iii) \$2,814.00 to Miami-Dade County for documentary stamps; (iv) \$5,000.00 to Miami-Dade County in satisfaction of the County Liens; (v) \$10,000 to the City of Coral Gables in satisfaction of the Coral Gables Lien; (vi) the amounts due to Lusinski under her Judgment plus applicable interest; and (vii) all other costs set forth in the proposed HUD-1. The Carve-Out shall not be deemed sale proceeds to which any lien can attach.

9. Upon receipt of eighty percent (80%) of the net sale proceeds, Ruff shall immediately release and be deemed to have released his Mortgage Liens on the Real Property, including any secured claim against this Estate.

10. Upon payment of the sums set forth herein at Closing (as defined herein), Miami-Dade County, City of Coral Gables and Lusinski shall immediately release and be deemed to have

released their respective liens and judgments, as described above.

11. Except as provided herein, the Trustee shall be, and hereby is, authorized, empowered and directed, pursuant to 11 U.S.C. §§ 105 and 363(b), to sell the Real Property to the Buyer upon delivery of the consideration in accordance with the Contract. Pursuant to 11 U.S.C. §§ 363(f)(2) and (5), the sale of the Real Property shall be free and clear of any and all liens, claims, encumbrances, lis pendens, rights of possession, contracts, covenants, options or other rights to acquire any interest in the assets, interests and other liabilities, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, including without limitation, any right of setoff, recoupment, netting or deduction (collectively, the "Liens and Encumbrances").

12. All other Liens and Encumbrances not otherwise described herein are all deemed void as a lien, claim, encumbrance or secured interest in or against the Real Property, and shall immediately release and be deemed to have released its mortgages, liens, claims and encumbrances on the Real Property.

13. This Final Sale Order shall be binding upon and govern the acts of all persons or entities, including without limitation, all filing agents, recording agencies, secretaries of state and all other persons and entities who may be required by operation of law to accept, file, register or otherwise record or release any documents or instruments.

14. Subject to the delivery of the consideration in accordance with the Contract and completing all other deliveries required under the Contract, the sale of the Real Property by the

Trustee to the Buyer shall constitute a legal, valid and effective transfer of the Real Property notwithstanding any requirement for approval or consent by any person and shall vest the Buyer with all right, title and interest in and to the Real Property free and clear of all Liens and Encumbrances pursuant to 11 U.S.C. § 363(f) and (h).

15. The Buyer is a good faith purchaser of the Real Property, and is hereby granted and entitled to all of the protections provided to such a good faith purchaser under 11 U.S.C. § 363(m), and shall be entitled to such protection even before this Final Sale Order becomes final and non-appealable. Pursuant to 11 U.S.C. § 363(m), if any or all of the provisions of this Final Sale Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of the sale or any sale, transfer or assignment under the Contract or obligation or right granted pursuant to the terms of this Final Sale Order (unless stayed pending appeal prior to the closing of the Real Property), and notwithstanding any reversal, modification or vacatur, any sale, transfer or assignment shall be governed in all respects by the original provisions of this Final Sale Order or the Contract, as the case may be. Further, the Auction Sale as approved by this Final Sale Order is not subject to avoidance pursuant to Section 363(n) or Chapter 5 of the Bankruptcy Code.

16. This Final Sale Order and the Contract shall be binding upon, and shall inure to the benefit of, the Debtor, the Trustee and the Buyer, and their respective successors and assigns, including without limitation, any successor Chapter 7 or Chapter 11 trustee.

17. Pursuant to 11 U.S.C. §§ 105 and 363, any and all creditors of the Debtor shall be forever barred, estopped and enjoined from taking any action of any kind against the Buyer or the Real Property on account of any claim against the Debtor or the Real Property.

18. All persons and entities are prohibited and enjoined from taking any action to

adversely affect or interfere with the ability of the Trustee to transfer the Real Property to Buyer in accordance with the Sale Motion, Order Approving Auction Sale, and this Final Sale Order.

19. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing as of the Auction Sale. The Buyer will be acting in good faith in consummating the sale of the Real Property at any time following entry of this Final Sale Order, and cause has been shown as to why this Final Sale Order should not be subject to the stay provided by Bankruptcy Rules 6004(h).

20. The Trustee and Buyer are authorized to close and consummate the purchase and sale of the Real Property in accordance with the Order Approving Auction Sale, this Final Sale Order, and Contract executed between Buyer and Trustee, and as approved by the Court. Closing of the Real Property shall take place through the Trustee's designated Closing Agent within twenty (20) days after this Final Sale Order is entered by the Bankruptcy Court, or at such later date mutually agreeable in writing between the Trustee and Buyer (the "Closing").

21. The provisions of this Final Sale Order are non-severable and mutually dependent.

22. To the extent any provisions of this Final Sale Order conflicts with the terms and conditions of the Contract, this Final Sale Order shall govern and control.

23. All objections, responses, and requests for continuance concerning the Sale Motion, Auction Sale and Final Sale Hearing are overruled and denied.

24. A certified copy of this Final Sale Order may be filed with the appropriate clerk and/or recorded with the county recorder to cancel the liens, claims and other encumbrances of record.

25. This Court shall retain jurisdiction to enforce the provisions of this Final Sale Order and the Contract and to resolve any dispute concerning this Final Sale Order, the Contract, or the

rights and duties of the parties hereunder or thereunder or any issues relating to the Contract and this Final Sale Order, including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Real Property and all issues and disputes arising in connection with the relief authorized herein.

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Submitted by:

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Attorney Michael P. Dunn is directed to serve a conformed copy of this Order upon all parties of record and to file a certificate of service with the Court.