

Dated: August 25, 2022
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Aras Business Group, LLC
Debtor

Case No. 22-21415
Chapter 7

OPINION AND ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SALE OF ESTATE'S INTEREST IN CERTAIN REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO 11 U.S.C. § 363(b) AND FED. R. BANKR. P. 6004, AND WAIVING FED. R. BANKR. P. 6004 STAY

The matter before the Court is the Trustee's Motion to Approve the Sale of the Estate's Interest in Certain Real Property Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. § 363(b) and (f) and FED. R. BANKR. P. 6004 (the "Motion"). The proposed sale seeks to sell the estate's interest in certain real property located in Prosper, Texas consisting of a 29,000 square foot house situated on six (6) acres of real property with the physical address of 1400

Copper Point Road, Prosper, Texas (the “Property”) to Preston Investment Group LLC (the “Purchaser”) for the sum of \$3,975,000 (the “Purchase Price”).

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 9014 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence (including all declarations submitted in this case), and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby authorizes the Debtor to accept the offer to purchase the Property in the offered amount of \$3,975,000 and proceed with the scheduled sale on or before August 31, 2022.

FACTUAL BACKGROUND

The underlying bankruptcy case has a relatively short history. On April 11, 2022, the Debtor filed the instant case as a voluntary case under subchapter V of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The case was quickly converted from a case under subchapter V of Chapter 11 to a case under Chapter 7 of the Bankruptcy Code in late May, 2022 [DE 34]. The Debtor’s interest in the Property is property of the estate by virtue of 11 U.S.C. § 541(a).

The Court authorized the Chapter 7 Trustee to employ Pamela Schaffer, a licensed real estate broker (“Schaffer”) [DE 118] to actively pursue the sale of the Debtor’s interest in the

Property. After marketing the property, the Trustee received multiple offers on the property and ultimately conducted an auction resulting in a highest and best bid from Preston Investment Group LLC to purchase the Debtor's interest in the Property for the sum of \$3,975,000 cash. The executed purchase contract along with addendums (the "Contract") are attached to the Trustee's Notice of Increased Purchase Price and Declaration of Buyer in Support of Motion to Approve Sale of Estate's Interest in Real Property [DE 169] as Exhibit 1.

The Court set August 22, 2022 as the deadline for objections to the relief sought and no objections were filed.

LAW AND ANALYSIS

Motion to Sell Property

A trustee has the power to sell property of the estate. 11 U.S.C. § 363(b). All sales not in the ordinary course of business may be by private sale or by public auction. FED. R. BANKR. P. 6004(f).

The Sixth Circuit follows the sound business purpose test in considering a sale of a debtor's assets outside the ordinary course of business. Factors commonly considered include (1) whether adequate and reasonable notice of the sale was provided to interested parties; (2) whether the sale has been proposed in good faith; and (3) whether the purchase price is fair and reasonable.

In re Woodberry, 629 B.R. 239, 246–50 (Bankr. E.D. Mich. 2021), citing *In re Barnhill's Buffet, Inc.*, No. 07-08948, 2008 WL 4527829 (Bankr. M.D. Tenn. Feb. 28, 2008), and *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 388 (6th Cir. 1986). "No one factor is determinative." *In re Woodberry* at 246, citing *Stephens Indus.*, 789 F.2d at 389, and *Comm. of Equity Sec. Holders v. The Lionel Corp. (In re The Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (court should consider all salient factors pertaining to the sale).

The Motion to sell the Property has been adequately and reasonably noticed. The Trustee has not only provided adequate and reasonable notice, but he has addressed the Court's concern that substantially all creditors are persons with limited English proficiency. The services of a Spanish-speaking interpreter were used to translate both the Motion along with the Order shortening time for this hearing. Both the English version and the Spanish version of the Motion and Order were mailed to all known claimants on or about August 12, 2022 [DE 156]. The Trustee has provided adequate and reasonable notice of the sale to interested parties and no party has filed an objection to said Motion. The Court also notes that additional safeguards were provided to interested parties in that parties could participate via Microsoft Teams in today's hearing, and the Trustee used the services of an interpreter during these proceedings to insure additional notice and access to justice to all interested parties.

Next, the Court finds that the sale has been proposed in good faith under 11 U.S.C. § 363(m). The Purchaser is not affiliated with the Debtor or otherwise related to any officers or members of the Debtor. *See* Declaration of Preston Investment Group LLC. [DE 169-2] The transaction proposed herein is the product of good faith, arm's length negotiations.

Lastly, the Court finds that the purchase price is fair and reasonable under the circumstances, and the transaction is supported by the sound business judgment of the Trustee. The Trustee submitted, in his opinion, that the offer for the purchase of the estate's interest in the Property represents a fair and reasonable price for the assets being purchased. Furthermore, in Schaffer's declaration, she stated that she showed the Property to approximately 25 potential purchasers. *See* Declaration of Schaffer. [DE 150-2] She further stated she received four (4) other written offers to purchase the Property ranging from \$1,700,000 to \$3,250,000 with various contingencies, and ultimately conducted an auction. *Id.* The bid submitted by Purchaser is the

highest and best offer for the Property given the dollar amount offered, it being an “as is” purchase and the lack of material contingencies, including the lack of an appraisal or financing contingency and the product of a lively informal auction between the highest bidders on August 22, 2022.

The Court heard testimony that the offer will result in fair and adequate value to the estate compared to the Schedule A’s value and the January 2022 appraisal reviewed by the Trustee, given the current condition of the property, lack of utility service and the frequent vandalism of the property. It also avoids maintenance expenses that would be borne by the estate. Instead, these considerable costs for a 29,000 square foot home will now be borne entirely by the Purchaser. Moreover, no interested person has objected to the proposed sale. It is “the paramount interest of the creditors and a proper deference to their reasonable views,” *Bard v. Sichertman (In re Bard)*, 49 Fed. Appx. 528, 530 (6th Cir. 2002), that also guide the Court in determining that the offer is fair and reasonable.

CONCLUSION

For the reasons stated herein, the Court hereby grants the Trustee’s Motion to Approve the Sale of the Estate’s Interest in the Real Property Free and Clear of Liens, Claims and Interests Pursuant to 11 U.S.C. § 363(b) and (f) and FED. R. BANKR. P. 6004. The sale is proposed in good faith under 11 U.S.C. § 363(m) and the expedited sale of the property to Purchaser is in the best interest of the estate given the foregoing circumstances. The Court waives the applicability of the 14-day stay provided in FED. R. BANKR. P. 6004(h). Finally, the Court approves (1) the payment of the combined real estate commission of 5% to Ms. Schaffer and Buyer’s real estate agent, (2) the payment of normal and customary closing costs and prorations, (3) the payment of the 2021 real estate and ad valorem taxes relating to the Property and (4) the escrow of funds for the prorated 2022 real estate and ad valorem taxes relating to the Property and, pending the payment of

the 2022 real estate and ad valorem taxes, the taxing authorities shall retain their liens upon the Property until such time as the same are satisfied.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

James E. Bailey, III, Esq.
6075 Poplar Ave, Ste 500
Memphis, TN 38119

Curtis D. Johnson, Jr., Esq.
1407 Union Ave, Suite 1002
Memphis, TN 38104

Aras Business Group, LLC
5100 Poplar Ave, Ste 2755
Memphis, TN 38137

U.S. Trustee
Office of the U.S. Trustee
One Memphis Place
200 Jefferson Ave, Ste 400
Memphis, TN 38103

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