

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:)	
)	
4522 KATELLA AVENUE LLC,)	Case No: 15-12107
)	Chapter 11
Debtor.)	
_____)	

MOTION AND NOTICE OF SALE OF REAL ESTATE AND FIXTURES,
ADMINISTRATIVE CLAIMS, PAYMENT OF BROKER'S COMMISSION, U.S.
TRUSTEE FEES, TAXES AND CLOSING COSTS
CLOSING DATE: January 3, 2017
DEADLINE TO OBJECT: November 16, 2016
HEARING ON OBJECTIONS: December 8, 2016 @ 10:30a.m.

COMES NOW The Debtor-in-possession, 4522 Katella Avenue, LLC, ("Debtor" or "Katella") and moves the Court, pursuant to § 363(b) and §363(f) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure for an Order authorizing (a) the sale of certain real property and fixtures to V. J. Realty, LLC ("Buyer") free and clear of liens and other interests, (b) the transfer of the liens to the sale proceeds (c) payment of broker's commission and (d) payment of proceeds to ColFin MF5 Funding LLC ("ColFin" or "Lender").

In support of the Motion, the Debtor shows the Court the following:

1. On September 25, 2015, the Debtor, 4522 Katella Ave., LLC filed its' Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 151, 157 and 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. At the time of Bankruptcy the Debtor owned three apartment complexes including:

Parkside Apartments, located at 928 North Carter, Wichita, Kansas 67203 and legally described as: EVEN LOTS 48 TO 64 INC. CARTER AVE. RIVERSIDE ADD. (“Carter”), and

Longfellow Apartments, located at 1212 South Longfellow, Wichita, Kansas 67207 and legally described as: LOTS 4-5 EXC E 163.22 FT BRANSON 2ND. ADD. (“Longfellow”), hereinafter referred to as “Properties.”

4. The Debtor is continuing in possession of the Properties and operating and managing its’ business as a Debtor-in-Possession under 11 U.S.C. § 1107 and 1108. No Trustee or Examiner has been appointed in this case.

5. On October 20, 2016 the Debtor entered into a Purchase and Sale Agreement to sell the Properties to V. J. Realty, LLC.

6. The material and pertinent portions of the Purchase and Sale Agreement and Amendments are as follows:

The purchase price is Two Million Two Hundred Ninety-five Thousand Dollars (\$2,295,000). The Buyer has deposited Twenty-five Thousand Dollars (\$25,000) in an escrow account with Kansas Secured Title. The Buyer’s Due Diligence was set at forty-five (45) days from the date the contract was entered or until December 5, 2016. The Closing Date is scheduled for January 3, 2017. A copy of the sale agreement and all amendments are attached as **Exhibit A** to the original copy of this Motion on file with the Clerk of the Bankruptcy Court. The Sale is for the real estate including all buildings and fixtures.

7. At closing the Seller shall pay closing costs as follows: agent fees, title commitment fee, title company fees, and all other costs associated with the sale of the Properties, except fees that are charged by Buyer’s lender, if any. Taxes, utilities, rents, insurance, United States Trustee fees, Administrative Claims, and other recurring income and expenses of the

operation of the property will be prorated as of the date of closing. Escrow fees shall be divided equally between the Buyer and Seller. The Seller shall provide extended ALTA coverage. Each party will bear its' own legal fees, except those included in allowed administrative claims. The following estimated expenses will be paid at closing¹:

2015 Real Estate Taxes \$55,613.76
Estimated 2016 Real Estate Taxes \$43,613.00
Administrative Claim of Arst & Arst, P.A. \$72,354.47 plus an additional est. \$3,500
U.S. Trustee's Fees \$10,400
InSite Real Estate, Transaction Broker Fee \$70,000

8. The Sale will be free and clear of all liens, encumbrances or other interests and such liens, encumbrances, or other interests shall attach to the proceeds of the Sale with the same nature, extent, validity, and priority as they were pre-petition pursuant to the Cash Collateral Order.

9. Lender holds mortgages on the Properties. Lender's liens will attach to the sale proceeds of the Properties. Lender will be allowed to Credit Bid its lien for the amount of Two Million One Hundred Thousand Dollars (2,100,000.00)

10. The Buyer will purchase the Properties on an "As Is" "Where Is" basis. The sale is conditioned upon the Debtor delivering to the Buyer a good and merchantable title to the real estate.

11. Fifteen (15) days prior to closing, the closing agent will distribute a Closing Statement to the Debtor and the Lender. In the event there is a dispute about the closing costs, any party may object to the disputed cost and unless resolved through agreement, the dispute will be brought before the Bankruptcy Court for an expedited hearing pre-closing.

12. At Closing, after deducting the Closing costs, as stated above, Lender will be

1. Costs and expenses may be adjusted at or before closing.

paid, Two Million One Hundred Thousand Dollars (\$2,100,000.00) from the sale proceeds.

13. The sale is subject to approval of the Bankruptcy Court. In the event the Court does not approve the Sale, the Sale and Purchase Agreement entered into between the parties dated October 20, 2016, and any Amendments thereto shall be deemed null and void. If the closing does not occur within the time above mentioned or an extension, mutually agreed to by the Debtor and Lender in writing, or by order of the Court, the Sale and Purchase Agreement shall be determined null and void.

14. The Debtor believes that the sale is in the best interest of the Debtor's estate and its' creditors and will provide a fair and reasonable consideration to the Debtor's estate, is the product of arms-length negotiations and has been agreed to in good faith by the parties.

15. Objections to the sale shall be made in writing to the Clerk of the United States Bankruptcy Court, 401 N. Market, Wichita, KS, 67202, with a copy to the Debtor's attorneys Arst & Arst, P.A., 555 N. Woodlawn, Ste. 115, Wichita, KS, 67208, on or before **November 16, 2016**. If no objections are timely filed, the Court may enter an Order approving the sale without further notice to creditors or interested parties. In the event an objection is timely filed, a hearing upon this Motion for Sale will be conducted in the United States Bankruptcy Court, 401 N. Market, Wichita, KS 67202, on **December 8, 2016 at 10:30 a.m.**

WHEREFORE and by reason of the foregoing, the Debtor prays the Court to enter an Order allowing it to sell the above described property free and clear of all liens under the terms and conditions described hereinabove and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

s/David G. Arst

David G. Arst, #05443

Arst & Arst, P.A.

555 N. Woodlawn, Ste. 115

Wichita, KS 67208

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Attorneys for Debtor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically on the 26th day of October, 2016, with the United States Bankruptcy Court for the District of Kansas, and shall be served on parties in interest via e-mail by the Court pursuant to CM/ECF, as set out on the Notice of Electronic Filing, as issued by the Court and shall be served to all persons listed on the Matrix attached to the original Motion filed with the Bankruptcy Court by United States Mail, first class, postage prepaid, as required by the Federal Rules of Bankruptcy Procedures and the Local Rules of the United States Bankruptcy Court for the District of Kansas.

s/David G. Arst

David G. Arst, #05443

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT (the Agreement) is made and entered into between 4522 KATELLA AVE, LLC (Seller, whether one or more) and VJ REALTY, LLC and/or assigns (Buyer, whether one or more). Seller and Buyer agree as follows:

1. **Property.** The Seller agrees to sell and convey to Buyer by a good and sufficient warranty deed, subject to easements, rights of ways and restrictions, the following described real property (The Property):

928 N CARTER AVE WICHITA

Legal Description:

EVEN LOTS 48 TO 64 INC. CARTER AVE, RIVERSIDE ADD.

1212-1226 S LONGFELLOW ST WICHITA

Legal Description:

LOTS 4-5 EXC E 163.22 FT BRANSON 2ND. ADD.

See Exhibit "A" attached hereto and made a part hereof. *MV*

10/20/2016

2. **Purchase Price.** Buyer agrees to purchase, and to pay to Seller, as consideration for the conveyance of the Property, the sum of Two Million Two Hundred and ^{ninety-five} ~~Twenty~~ Thousand and No/100 Dollars (~~\$2,228,000.00~~) in ^{\$2,295,000} the following manner: Twenty Five Thousand (\$25,000.00) in the form of earnest money, which shall be applied to the purchase price at closing, if such closing occurs, with the balance to be paid in cash or immediately available funds at closing. *MV*
3. **Title Evidence.** Seller agrees to share equally with Buyer the closing agent costs and the cost of a title insurance company's commitment and policy to insure the Property, showing a merchantable title vested in Seller, subject to easements, rights of ways and restrictions of record that are acceptable to Buyer. The title evidence, including exception documents, shall be sent to Buyer for examination by Buyer. Buyer shall have ten (10) days after the receipt of the title evidence and exception document to examine and notify Seller in writing of any objections by Buyer to the title evidence. Those items listed on the title commitment or in the title evidence as to which Buyer does not object in writing to Seller within ten (10) days after the receipt of the title evidence, or as to which Buyer waive its objection, shall be permitted exceptions. If Seller fails to satisfy all such title objection requirements (and Seller shall use reasonable efforts to do so) within a reasonable time after receipt of Buyer's title objection requirements, Buyer may, at Buyer's election, either: (a) cancel this agreement and receive a return of Buyer's earnest money and, in that event, this Agreement will be canceled and the parties will have no further obligations to each other; or (b) accept such title as Seller can deliver.

10/20/2016

4. **Delivery.** A duly executed copy of the Agreement shall be delivered to the parties.
5. **Earnest Money and Default.** Buyer shall deposit, within five (5) business days of the full execution of this Agreement, with Kansas Secured Title the sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00), earnest money, as a guarantee that the terms and conditions of this Agreement shall be fulfilled by Buyer, said deposit to be applied on the purchase price at closing upon acceptance of title by Buyer and delivery of deed by Seller. If Buyer fails to fulfill its obligations under this Agreement, Buyer shall be in default and if such default continues for more than three (3) business days following the date written notice specifying such default is delivered by Seller to Buyer, Seller shall be entitled either: a) to cancel this Agreement and the earnest money deposit shall then become the property of Seller, not as a penalty, but as liquidated damages and Buyer and Seller shall have no further obligations to each other under this Agreement except as specifically stated otherwise in this Agreement; or, alternatively, b) to pursue such other remedies against Buyer available to Seller at law or in equity, including but not limited to specific performance.

However, if Seller is unable to furnish merchantable title, the earnest money deposited shall be returned to Buyer, and this Agreement shall be null and void and no further force and effect, or Buyer may elect to waive the title objections and close.

If Seller fails to comply with this Agreement, Seller shall be in default and if such default continues for more than three (3) business days following the date written notice specifying such default is delivered by Buyer to Seller, Buyer shall be entitled either (a) to receive the return of earnest money deposit, which return shall operate to terminate this Agreement and Buyer and Seller shall have no further obligations to each other under this Agreement except as specifically stated otherwise in this Agreement; or, alternatively, b) to pursue such other remedies against Seller available to Buyer at law or in equity, including but not limited to specific performance.

The three business days' notices described in this Section 5 shall be shortened to the day of closing if the scheduled closing date is less than three business days from the cure date in the notice. Notwithstanding any of the other terms of this Agreement providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this Agreement or a court order.

6. **Proration.** All rentals, taxes installments for special assessments, insurance (If policies acceptable to Buyer), and interest, if any, shall be adjusted and

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prorated through the date of closing. Taxes shall be prorated for the calendar year on the basis of taxes levied. If taxes have not been levied, then they will be prorated based upon taxes for the previous year, adjusted for the most recent mil levy, if known.

7. **Closing Date.** Time is of the essence of this Agreement, and closing for this transaction shall be consummated within thirty (30) days after the contingencies in paragraphs 10, 11 and 13 have been waived or removed. Should this date, or the time for performance or doing an act, a deadline or date hereunder fall on a Saturday, Sunday or legal holiday, such time, deadline or date shall be automatically extended to the next successive business day. Closing date is subject to Bankruptcy Court approval.
8. **Possession.** Possession to be given to Buyer at closing. Seller further agrees to convey the Property with all the improvements located thereon deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.
9. **Special Assessments.** In compliance with Kansas law, Seller hereby discloses to Buyer that the Property is subject to special assessments for the purposes stated below or is located in an improvement district that may occasion the imposition of special assessments on the Property for such purposes, as follows:

A) **Purpose:** COUNTY SOLID WASTE SOLID WASTE USER FEE, \$500.00 per year (approx), annual amount that varies each year.
10. **Inspection.** This contract is subject to Buyer obtaining, at Buyer's sole cost, an inspection of the roof, structure, HVAC systems, electrical, plumbing and a mechanical inspection within forty-five (45) days of acceptance of this contract by the Seller. Buyer shall give Seller advance notice prior to commencing such inspections. If Buyer is not satisfied, in Buyer's sole judgment with any of the above inspections, then the buyer, at his option, may declare this contract null & void and will notify Seller as such in writing, and Buyer's earnest money shall be returned in full. Buyer indemnifies and holds harmless the Seller from and against all damages, costs, liabilities or expenses suffered or incurred as a result of Buyer's inspections.
11. **Existing Leases.** This contract is contingent upon Buyer's review and approval of the existing leases on the subject property. Seller shall provide Buyer with a copy of said leases within 10 days of acceptance of this contract. Buyer shall have the forty five (45) day inspection period in which to approve said leases. In the event Buyer, in Buyer's sole opinion, does not approve the existing leases, this contract shall be rendered null and void and Buyer's earnest money shall be returned in full. In the event Buyer does approve all leases, said leases shall be assigned to Buyer at closing.

12. **Security Deposits.** All security deposits, if any, shall be transferred to Buyer at closing.
13. **Acceptance or Rejection.** Seller shall have three (3) days from the date this offer is executed by Buyer in which to accept or reject said offer. In the event said offer is not accepted, in writing, within said time frame, this offer shall be deemed null and void and Buyer's earnest money shall be returned in full.
14. **Effective Date.** The Effective Date of this Agreement will be the last date in which this Agreement is accepted and fully executed by Buyer and Seller.
15. **Authority to Bind.** Each individual who executes this Agreement on behalf of a party represents that he or she is duly authorized to execute this Agreement on behalf of that party and is operating within the scope of his or her authority.
16. **Good Faith.** Each party to this Agreement shall use good faith and reasonably commercial efforts to accomplish the actions provided for in this Agreement in due time and to cooperate with all other parties in doing so.
17. **Agreement to Terms.** Buyer and Seller acknowledge that they have read the entire Agreement and that by signing below agree to all terms contained herein.
18. **Binding Effect.** This Agreement shall be binding upon Buyer, Seller, and their respective heirs, successors, and assigns.
19. **Agency Disclosure.** Pursuant to the Kansas Real Estate Brokers' and Salesperson' License Act, the Buyer and Seller have been notified of the following Jake Ramstack with InSite Real Estate Group and Tyson Bean with Berkshire Hathaway are acting as Transaction Brokers. Buyer agrees to pay a real estate commission of Seventy Thousand (\$70,000.00) of the sales price from the proceeds of sale at closing. This commission shall be split equally 50/50 by InSite Real Estate Group and Berkshire Hathaway Buyer and Seller represent and warrant that there are no claims for broker, finder or leasing fees and/or commission, in connection with the execution of this Contract, except as listed above. Each of the parties agrees to indemnify the other against all liabilities, costs, etc., arising out from any such claim (including, reasonable attorney's fees and all court costs).
20. **Electronic Signatures and Fax Signature.** Hand signatures transmitted by fax or electronic mail (such as PDF) are permitted as binding signatures to this Agreement. Signatures may be signed in counterpart, on separate pages, and then assembled as the complete Agreement of the parties.

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21. The Seller is a Debtor in a Chapter 11 Bankruptcy proceeding titled and captioned: In the United States Bankruptcy Court For the District of Kansas; In Re: 4522 Katella Avenue, LLC; Case No. 15-12107. This Agreement and all of the terms herein are subject to the approval of the Bankruptcy Court.

BUYER:

VJ Realty, LLC and/or assigns

By

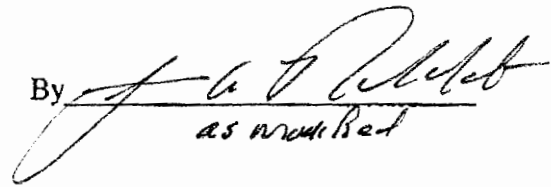


10/20/2016

SELLER:

4522 KATELLA AVE, LLC

By


as member