

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE:

BLANKENSHIP FARMS, LP,

Case No. 16-10840-JLC

Debtor.

Chapter 11

**MOTION OF CHAPTER 11 TRUSTEE FOR ORDER AUTHORIZING SALE OF
PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES, AND REQUEST FOR EXPEDITED SETTING**

Mariana Williams, Chapter 11 Trustee (the "Trustee"), files this motion (the "Sale Motion") for entry of an Order pursuant to 11 U.S.C. § 363(b)(f), Fed. R. Bankr. P. 2002(a)(2)(c)(1), and Fed. R. Bankr. P. 6004(c), seeking authority to sell certain real and personal property of the estate, other than in the ordinary course of business, free and clear of liens, claims and encumbrances, via public auction (the "Public Sale"). Pursuant to TNWB LBR 9003-1, the Trustee seeks an expedited setting for the hearing on the Sale Motion. In support of the Sale Motion, the Trustee states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A) and (M). Venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

II. PROCEDURAL BACKGROUND

2. On April 27, 2016 (the "Petition Date"), Blankenship Farms, LP ("Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Petition").

3. Pursuant to Order entered by this Court authorizing the appointment of a Chapter 11 Trustee, Marianna Williams was appointed as Trustee in this case on March 9, 2017.
4. Since her appointment, the Trustee has proceeded to investigate the business, assets, and operations of the Debtor.
5. The Debtor's previous business operations consisted primarily of a row crop and cattle farming operation. However, since the filing of the Petition, due to lack of funding, loss of equipment and other assets pursuant to Orders of this Court, there is no current farming operation.

III. RELIEF REQUESTED

6. In the filing of this Motion, the Trustee seeks an Order of the Court authorizing her to sell certain real and personal property of the Estate (the "Assets"), other than in the ordinary course of business, free and clear of liens, claims and encumbrances via Public Sale.
7. Included in the Assets to be sold via Public Sale are those tracts of real property (the "Real Property") as more particularly described in Exhibit A attached hereto and incorporated herein.
8. The Trustee also proposes to sell certain personal property consisting of equipment and motor vehicles (the "Personal Property") as more particularly described on Exhibit B attached hereto and incorporated herein.
9. As is reflected on Exhibit A, Farm Credit Mid-America, FLCA ("Farm Credit") is the holder of asserted liens on much of the Real Property and Personal Property of the Debtor.
10. Pursuant to Order entered by the Court on April 20, 2017, the Court partially granted Farm Credit's motion to lift the automatic stay imposed under Section 362 of the

Bankruptcy Code (the "Automatic Stay") as to Personal Property subject to its lien and continued the matter regarding lifting of the automatic stay as to Real Property on which Farm Credit asserts a lien to be heard in connection with the Sale Motion [Dk No. 220].

11. The Johnson Farm listed on Exhibit A is currently subject to a pending motion filed in this case on February 3, 2017 [Dk No. 164], by secured creditors Karen Gullledge, Mack Evans Johnson, Nathan Daryl Johnson and Joe Lee Johnson, seeking termination of the Automatic Stay as to the Johnson Farm.
12. In order to fulfill her fiduciary obligation to creditors, the Trustee proposes that the Public Sale of Real Property and Personal Property owned by the Debtor be sold at auction to the highest bidder.
13. Two tracts of the Real Property, consisting of the Belton Farm and Keymon Farm are owned as tenants-in-common between the Debtor, owing 1/2 interest, and Jeremy Percy and wife, Holly Percy owing 1/2 undivided interest. Jeremy Percy and Holly Percy have consented to the sale of their 1/2 undivided interests in the Belton Farm and the Keymon Farm.
14. The Trustee proposes that Marvin E. Alexander of Alexander Auction & Real Estate Sales (the "Auction Company") conduct the public auction with the assistance of Alan Evans of Evans Real Estate. The Trustee has filed a Motion to Appoint the Auction Company simultaneously with this Motion.

IV. AUCTION AND BID PROCEDURES

15. To ensure that the Debtor's Bankruptcy Estate (the "Estate") realizes maximum value from the sale of the Real Property and Personal Property, the Trustee asserts that the Public Sale must be in the form of a public auction.

16. The relief requested by this Motion is appropriate and within the Court's authority to approve transactions under 11 U.S.C. § 363(b). Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that the Trustee "after notice and a hearing may use, sell, or lease, other than in the ordinary course of business property of the Estate." Section 363 of the Bankruptcy Code does not set forth a standard for the determining when it is appropriate for a Court to authorize the disposition of a debtor's assets prior to confirmation of a plan. However, Bankruptcy Courts have required that the decision to sell assets outside the ordinary course of business be based upon sound business judgment¹.
17. The Trustee's showing of a sound business purpose need not be unduly exhaustive but rather, a Trustee is "simply required to justify the proposed disposition for sound business reasons²." Whether or not there are sufficient business reasons to justify transaction depends upon the facts and circumstances of each case³.
18. The Trustee submits an ample business justification exists to sell the Real Property and Personal Property by means of Public Sale in order to maximize the value of the Debtor's Estate. The Trustee has concluded in consultation with Debtor's creditors that the proposed Public Sale presents the best opportunity to realize value for Debtor's creditors.
19. In this instance, the Public Sale is supported by ample business justification and is reasonable and appropriate under the circumstances of this case. The proposed auction is

¹ See *Stephens Indus., Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1983) ("We . . . conclude that a bankruptcy court can authorize a sale of all a Chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action."); *Myers v. Martin (In re Martin)*, 91 F. 3d 389, 395, (3d Cir. 1996); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F. 2d 1063, 1071 (2d Cir. 1983); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999).

² *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984)

³ *Lionel*, 722 F. 2d at 1071; see also *Montgomery Ward*, 242 B.R. at 155.

designed to foster an open, competitive and fair sale process, while maximizing the value the Trustee hopes to obtain for the Real Property and Personal Property.

V. NOTICE OF THE PUBLIC SALE

20. The Auction Company will be responsible for advertising the Public Sale through its normal marketing process, by publication and electronic means throughout Middle and West Tennessee and the Mid-South.

VI. THE AUCTION

21. The auction shall be conducted at the date and time advertised for the Public Sale. All bidding for the Real Property and Personal Property will be concluded at the Public Sale.
22. All bidders at the Public Sale shall be deemed to have consented to the jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in connection with any disputes related to the Public Sale, the sale of the Real Property and Personal Property and the construction and enforcement of any bids submitted during the auction process.

VII. SALE FREE AND CLEAR OF LIENS

23. The Trustee further submits that it is appropriate to sell the Real Property and Personal Property free and clear of liens under 11 U.S.C. § 363(f), with any such liens attaching to the proceeds of the sale to the extent applicable.
24. Under Bankruptcy Code Section 363(f), the Trustee may sell all and any part of the property free and clear of any and all liens, claims or interest in such property (collectively the "Encumbrances") if (i) applicable non-bankruptcy law permits sale of the assets free and clear of such Encumbrances, (ii) such person or entity has consented to the sale and transfer, license, and assignment as applicable, free and clear of its Encumbrances, with such Encumbrances to attach to the net proceeds of such sale and

transfer, license and assignment, as applicable, respectively, (iii) such Encumbrances is a lien in the price which the property to be sold is greater than the aggregate value of all liens on the property, (iv) such Encumbrance is in bona fide dispute or (v) such person or entity could be compelled in a legal or equitable proceeding to accept a money satisfaction for such Encumbrances⁴.

25. To the extent that any lien holder does not consent to a Section 363 Sale, such lien holder can be required to accept the amount to which it is entitled under Section 1129(b) of the Bankruptcy Code and, therefore, the Trustee will be able to comply with 11 U.S.C. § 363(f)(5). Accordingly, this Court could approve the sale of assets free and clear of all interests, liens, claims and encumbrances.

VIII. COSTS AND EXPENSE OF SALE

26. The Auction Company proposes to charge a buyer's premium of 10% (the "Buyer's Premium") on each parcel of Real Property and item of Personal Property sold at the Public Sale as compensation for its services along with reimbursement of expenses as agreed with the Trustee and approved by the Court.
27. Upon completion of the Public Sale, the Trustee proposes to pay the costs of the sale and expenses of the Auction Company in accordance with an order to be entered by the Court.
28. In addition, the Trustee proposes to distribute the net proceeds of sale⁵ from the Assets to creditors that have an undisputed secured interest in the Real Property or Personal Property, in order of priority, as of the date of closing. Any co-owner will be paid the co-

⁴ See 11 U.S.C. § 363(f); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) is written in the disjunctive; therefore, a court may approve a sale "free and clear" provided at least one of the subsections is met).

⁵ After consideration of the Trustee's commission and costs.

owner's interest in the property at closing or as soon as practicable thereafter, pursuant to 11 U.S.C. § 363(j) to the extent there are net proceeds after satisfaction of any secured lien on the Real Property sold.

IX. SELECTION OF WINNING BIDDERS

29. Bidders at the Public Sale shall consent to the determination by the Trustee of the winning bid by such bidder (the "Winning Bidder") in accordance with the strike of the auctioneer's hammer indicating the highest bid for the parcel of Real Property or item of Personal Property sold.
30. To the extent another bidder objects to the Trustee's selection of the Winning Bidder, then that bidder may submit a bid under protest at the auction and shall have standing to object to the Trustee's selection of the Winning Bidder. The Trustee shall notify the Court of the objection to the Trustee's selection of the Winning Bidder and the Court shall hold a hearing on the objection.
31. With regard to the parcels of Real Property sold, the Winning Bidder shall be required to submit to the Trustee on the day of sale a deposit consisting of 10% of the winning bid. If for any reason the Winning Bidder fails to consummate the sale of the parcel of Real Property, the offer of the second highest or best bid (subject to the same reservations) will be automatically deemed as submitted the highest and best bid and the Trustee is authorized to effect the sale of the parcel of Real Property to such offer without further Order from the Bankruptcy Court. If such failure to consummate the purchase of a parcel of Real Property is the fault of the Winning Bidder, the Winning Bidder's deposit shall be forfeited to the Trustee, and the Trustee specifically reserves the right to seek all available damages from the defaulting bidder.

32. The Trustee further seeks authorization of the Court and reserves the right to (i) impose, at or before the Public Sale, additional terms and conditions on the sale of a parcel of Real Property or Personal Property; (ii) extend the deadline from those set forth herein; (iii) adjourn the auction at the auction; (iv) withdraw any parcel of Real Property or item of Personal Property from sale at any time before or during the auction, and to make subsequent attempts to market the same; and (v) reject all bids, if, in the Trustee's reasonable judgment no bid is for a fair and adequate price.

X. EXPEDITED SETTING FOR HEARING OF THE SALE MOTION

33. The Auction Company has indicated that the timing of the sale of the Real Property is critical to maximize its value. In addition, it appears that the insurance on some of the items of Personal Property may have lapsed. As such it is necessary to expedite the hearing on the Sale Motion in order to proceed with the Public Sale at the earliest possible date convenient to the Court.

XI. CONCLUSION

34. As stated above, the Trustee proposes to sell the Real Property and Personal Property and submits that an orderly auction of such assets is the best way to maximize the value of the assets for the benefit of creditors and all parties-in-interest. Accordingly, the Trustee requests that hearing be held expeditiously for the Court to enter an Order authorizing and scheduling the Public Sale (the "Sale Procedures Order").
35. Such relief is wanted because the Trustee asserts and will demonstrate that the Public Sale is in the best interest of the Estate and its creditors and because the decision to sell the Real Property and Personal Property was reached in the exercise of the Trustee's

sound business judgment, after careful deliberation of the consequences and possible alternatives.

WHEREFORE, the Trustee respectfully requests that this Court:

- A. Schedule an expedited hearing to approve the Public Sale and procedures and authorize the Public Sale;
- B. Schedule the Public Sale for a date that is not more than thirty (30) days following the entry of the Order authorizing and approving the Public Sale and bid procedures;
- C. Order that the liens and interests asserted against the Real Property and Personal Property attached to the proceeds received by the Trustee from the sale to the extent and to the same priority currently held against the Real Property and/or Personal Property; and
- D. Grant such other, further and different relief as may be proper under the circumstances to effectuate the sale of the Real Property and Personal Property and distribution of the proceeds derived from the Public Sale to the persons or entities entitled thereto.

Respectively submitted,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

/s/ E. Franklin Childress, Jr.
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*Counsel to Marianna Williams, Chapter 11
Trustee*

CERTIFICATE OF SERVICE

I, E. Franklin Childress, Jr., hereby certify on this 11th day of May, 2017, service of a true and exact copy of the foregoing by electronic means and/or the United States Postal Service, first class, postage prepaid, to the following persons in accordance with Guideline 18(D) of the Amended Guidelines for Electronic Filing:

Debtor, Debtor's Attorney, U.S. Trustee, and

Bradley Sigler, Attorney
218 West Main Street
Jackson, TN 38301

John R. Cheadle, Jr., Esq.
2404 Crestmoor Road
Nashville, TN 37215

Farm Credit Mid-America, FLCA
P. O. Box 319
Humboldt, TN 38343

Stephen L. Hughes
P. O. Box 320
Milan, TN 38358

/s/ E. Franklin Childress, Jr.
E. Franklin Childress, Jr.

EXHIBIT A

<u>Property:</u>	<u>Asserted Lienholders¹:</u>
Duke Farm Midway Cir. Henderson County, TN Parcel No. 068 00105 000068 108 Acres	Farm Credit Mid-America, FLCA ("Farm Credit") Tennessee Farmers' Cooperative ("Co-op")
Reeves Farm Les Reeves Road Henderson County, TN Parcel No. 085 01300 000085 54 Acres	Farm Credit Co-op
Gabbard Farm 1760 Darden Christian Chapel Henderson County, TN Parcel No. 085 01400 000085 169 Acres	Gabbard Farm Credit Co-op
Willard Park Farm Frizzell Road Henderson County, TN Parcel No. 085 02516 000085 168 Acres	Willard Park Co-op
Willard Park Farm Frizzell Road Henderson County, TN Parcel No. 085 02517 000085 182 Acres	Willard Park Co-op

¹ Information taken from debtor's schedules; information provided by debtor or proof of claim filed.

<p>Wilkins Farm Mt Ararat Road Henderson County, TN Parcel No. 086 00300 000086 171 Acres</p>	<p>Farm Credit Co-op</p>
<p>Derryberry Farm Darden Chesterfield Road Henderson County, TN Parcel No.088 08503 000088 56.8 Acres</p>	<p>Farm Credit Co-op</p>
<p>Arthur Dickson Farm New Canal Road. Henderson County, TN Parcel No. 105 01000 000105 41.9 Acres</p>	<p>Farm Credit Co-op</p>
<p>Belton Farm Belton Robinson Road Henderson County, TN Parcel No.104 00400 000104 85.5 Acres (Land owned by Debtor and 1/2 undivided interest of Jeremy Percy and wife, Holly Percy as Tenants in Common)</p>	<p>Farm Credit</p>
<p>Keymon Farm Darden Christian Road Henderson County, TN Parcel No. 068 02202 000068 43.6 Acres (Land owned by Debtor and 1/2 undivided interest of Jeremy Percy and wife, Holly Percy as Tenants in Common)</p>	<p>Farm Credit</p>
<p>139 Phillip Wallace Cv. Decatur County, TN Parcel No. 039 02201 000039 135 Acres</p>	<p>Co-Op</p>

Keeton Farm 478 Davis Mill Road Decatur County, TN Parcel No. 048 05200 000048 102 Acres	Farm Credit
1194 Mircacle Road Decatur County, TN Parcel No. 065AC 04700 000065 A 1 acre	Co-op
1210 Mircacle Road Decatur County, TN Parcel no .065AC 04800 000065 A 1 Acre	Co-op
Johnson Farm 1155 T J Evans Road Parcel No. 021 00100 000021 135 Acres	Joe Lee Johnson Mack Evans Johnson Nathan Daryl Johnson Karen Gullede

EXHIBIT B

MACHINERY, EQUIPMENT, AND VEHICLES

Type	Make/Brand, Model, Size, etc.	Year	Hours	Qty
Tractor	Case Magnum 290	2014	1738	1
Tractor	Case Maxxum 125 w/loader L755		3750	1
Tractor	Case Magnum 275	2010	3127	1
Tractor	Case Maxxum 115 w/ L750 loader		4415	1
Tractor	Case 7250 (MFWD)		7500	1
Tractor	Case 7110 (2wd)			1
Combine	Case 8230	2012	1469	1
Combine	Case 8230	2014	1000	1
Bean Head	Case 2162 (35ft)	2012		1
Bean Head	MacDon FD75S (35ft)	2014		1
Planter	Case 1245			2
Tillage Equipment	Case 330 Turbo Till (42')			1
Grain Cart	Unverferth 9250			1
Grain Cart	Unverferth 9250			1
Planter	Kinze 3500 8-row			1
Tillage Equipment	Landoll 875-21			1
Other	Caterpillar 215D LC Trackhoe		6712	1
Tillage Equipment	Case 496 (20') disc			1
Tillage Equipment	Case Chisel Plow			1
Drill	JD 1590 (10')			1

Type	Make/Brand, Model, Size, etc.	Year	Hours	Qty
Mower	Bush Hog 12720 (20')			1
Other	Bush Hog 176-10 (6-way blade)			1
Other	18 Wheeler Flatbed Spray Wagon & Tanks			1
Other	KBH ST350 Seed Tender			1
Other	Hand & Air Tools, Heavy Duty Jack, Steam Cleaner, Homack Toolbox, Hydraulic Press, Millermatic 252, Lincoln 250GXT, Air Compressor, Cold Saw, Battery Charger, Tire Dolly, Work Table, Electrical Chords, Weedeaters, Chainsaws, Grinders, Vice, Etc.			1
Mower	Kuhn GMD800-GII HD			1
Rake	Kuhn SR110			1
Other	(4) WSI 50K bushel Grain Bins			200000
Other	Lucknow 2270 Tub Grinder			1
Other	Hay Rings			30
Other	Creep Feeders			10
Other	Creep Feeder			1
Other	Cattle Panels (# is general assumption based on items viewed on date of inspection)			100
Other	Hutchinson 82' Auger (12")			2
Other	Mayrath 62' Auger (8")			2
4-Wheelers	Honda Foreman 500			1
4-Wheelers	Polais Ranger 800EFI Crew		682	1
Other	Big Tex 20GN (20ft w/dove tail) Gooseneck Trailer			1
Other	Soilmax Gold Digger Tile Plow			1
Other	W-W Cattle Trailer (16')			1
Other	Par-Kan Co. Speed Weigh Seed Tender			1

Type	Make/Brand, Model, Size, etc.	Year	Hours	Qty
Other	Soilmax Tile Cart Stringer			1
Corn Head	Case 2208 (30")	2005		1
Corn Head	Case 2208 (30")	2004		1
Other	Unverferth HT30 Header Trailer			2
Other	Unverferth AWS42 Header Trailer			1
Other	Unverferth HT36 Header Trailer			1
Mower	Kubota ZD21			1
4-Wheelers	Polaris Ranger 700			1
Truck	Peterbilt 379	1994		
Truck	Mack AB3	1995		
Truck	International	2007		
Trailer	TRLS 1T9	2006		