

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

IN RE:

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BYUNG MOOK CHO,

*

Case No. 17-22057 - MMH

Debtor.

*

(Chapter 11)

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MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE

Byung Mook Cho, Debtor, by Michael S. Myers and Scarlett, Croll & Myers, P.A., his attorneys, pursuant to 11 U.S.C.A. § 363(b), files this Motion for Authority to Sell Property of the Estate Free and Clear of Liens, Claims and Interests, and to Distribute the Proceeds, and says:

1. On September 8, 2017, the Debtor filed its Petition for Chapter 11 of the Bankruptcy Code and this Court assumed jurisdiction. The Debtor is a Debtor-in-Possession.
2. Among the assets the Debtor listed in its bankruptcy petition is personal property described as a 100% ownership interest in Fulton Discount Liquors, Inc. (“FDL”).
3. FDL is a liquor store located at 551 N. Fulton Ave., Baltimore MD 21223. The Debtor listed its value at \$15,000.00 consisting of \$5,000.00 in inventory and \$10,000 in non-tangible assets. FDL was not independently appraised by a licensed appraiser nor was it appraised by a professional business evaluator.
4. There are no liens or encumbrances on FDL. FDL has no debts. All proceeds of the sale of the assets shall be distributed directly to Mr. Cho.
5. FDL suffered substantial losses as a result of the Baltimore Riots of 2015 and has not recovered. FDL had a loss of \$231,418.00 for FY2015 and a profit of only \$18.00 for FY 2016.

6. If the Debtor is unable to sell the business immediately, he will close the business because it is unprofitable to operate.

7. The Debtor has obtained an offer to purchase FDL through a business asset purchase agreement for \$15,000.00. The purchaser is Jin Su Peang. This is an arms-length transaction, and the Debtor has no relationship with the purchaser. Attached hereto as Exhibit 1 is the Business Asset Purchase Agreement for FDL dated August 23, 2017.

8. The Debtor has accepted a \$1,000.00 deposit and an additional \$5,000.00 payment toward the purchase price. The remaining balance of \$9,000.00 is to be paid upon transfer of the liquor license.

9. The sale of FDL is commercially reasonable and represents the fair market value of the property.

10. It is in the best interest of the Estate that the Court authorize the Sale of the Property according to the terms set forth herein, and the sale is a critical component for the Debtor to obtain Plan confirmation.

11. Pursuant to Local Bankruptcy Rule 9013-2, the Debtor states that it will not file a memorandum of law with this motion.

WHEREFORE, the Debtor respectfully requests that the Court approve the sale of the assets of Fulton Discount Liquors, Inc. pursuant to the terms of the Business Asset Purchase Agreement attached hereto.

Respectfully submitted,

/s/ Michael S. Myers

Michael S. Myers #28450
SCARLETT, CROLL & MYERS, P.A.
201 N. Charles St., Ste. 600
Baltimore, MD 21201
(410) 468-3100
Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2017, a copy of Debtor's Motion to Allow Sale was sent electronically, by ECF Guidelines, pursuant to Local Bankruptcy Rule 9013-4, Federal Bankruptcy Rules 5005(a)(2) and 7005, to:

Hugh M. (UST) Bernstein hugh.m.bernstein@usdoj.gov
Michael Stephen Myers mmyers@scarlettcroll.com,
krynarzewski@scarlettcroll.com;receptionist@scarlettcroll.com;
r64434@notify.bestcase.com
US Trustee - Baltimore USTPRegion04.BA.ECF@USDOJ.GOV
Christopher S. Young cyoung@btlg.us,
sphillips@btlg.us;hconnolly@btlg.us;edonohue@btlg.us;
hyeung@btlg.us;klohmeier@btlg.us

And to the 20 largest unsecured creditors identified in the attached mailing matrix.

/s/ Michael s. Myers

Michael S. Myers
Federal Bar No. 28450

BUSINESS ASSET PURCHASE AGREEMENT

THIS BUSINESS ASSET PURCHASE AGREEMENT (hereinafter, referred to as the "Agreement") is made and entered into this day of 23 August, 2017, by and between Fulton Discount Liquors INC, a Maryland corporation and its stockholders (hereinafter, collectively referred to as the "Seller") and Jin Su Peang as New owner of this selling business name of "Fulton Discount Liquors INC", (hereinafter referred to as the "Purchaser").

1. Sale of Business. The Seller agrees to sell and convey to the Purchaser and the Purchaser agrees to purchase from the Seller, free from all liabilities and encumbrances, the following described property: the liquor store business and assets owned and operated by the Seller at the premises known as "Fulton Liquor" located at 551 N Fulton Street Baltimore, MD 21223 (hereinafter, collectively referred to as the "Premises"), including, furniture, fixtures, trade name, equipment, telephone systems, phone numbers, the Seller's right, title and interest as lessee under the lease for the Premises (hereinafter, referred to as the "Lease"), the Seller's rights under or to all contracts, licenses and permits, including, but not limited to the liquor license (the "License"), franchise rights, if any, and all other property located at the Premises which is owned and used by the Seller in such business, except cash on hands and in bank accounts, prepaid deposits with landlord and utilities (all of the foregoing being hereinafter referred to collectively as the "Business"). The assets of the Business include, without limitation, all of the property.

2. Purchase Price and Allocation. As total consideration for the purchase and sale of the Business, the Purchaser shall pay to the Seller the sum of Ten Thousand Dollars (\$10,000.00), plus stock. Such total consideration is to be referred to in this Agreement as the "Purchase Price." Inventory is not included in the Purchase Price, and shall be counted by both parties. Inventory shall include only salable and merchantable items and exclude opened grocery items. The Purchase Price shall be determined and allocated by respective parties' accountants for tax purposes outside of closing as follows:

Fixtures/Equipment:

Leasehold/Improvement:

Goodwill/Name:

Non-Competition:

Total \$ 10,000.00

3. Payment of Purchase Price. The Purchase Price shall be paid by the Purchaser to the Seller in the following manner:

(a) One Thousand Dollars (\$1,000.00) shall be paid by the Purchaser as a contract deposit by check upon execution of this Agreement, to be held by the Seller's Attorney's Escrow account with no interest to accrue.

(b) Said deposit shall be part of the cash down payment of the Purchase Price. If this transaction is not consummated without the fault of the Purchaser, said deposit shall be immediately refunded to the Purchaser.

(c) Any and all account balances, taxes, equipment lease obligations, UCC and/or judgment liens, and encumbrances shall be paid off from Seller's proceeds, if any remaining at the time of closing.

(d) At Closing, operating expenses of the Business, including, but not limited to, rent, taxes, payroll, water and any payments under any service contracts that the Purchaser elects to retain, shall be prorated and shall be treated as adjustments to the Purchase Price set forth in this Section 3. CAM charges, Real-estate taxes and any other lease related fees based on the lease dates prior to the closing shall be paid by the Seller.

4. Closing.

(a) The Closing shall take place at the office of Two Parties Agreed Place, Maryland within 7 days from satisfaction of all of the Contingencies hereunder, but by within 90 days after ratification of this Agreement. If Closing has not occurred within such period, this Agreement shall become null and void at the option of either party, unless the parties mutually agree to an extension of the date of Closing. If either party exercises such option, the contract deposit shall be immediately returned to the Purchaser.

(b) The Seller shall, at Closing, execute a Bill of Sale, conveying to the Purchase good, merchantable, unencumbered and unqualified title and right to the sole and undisputed possession of all assets sold hereunder. The Seller shall also, at Closing, deliver to the Purchaser all other documents, including, but not limited to, certifications, warranties, affidavits, assignments, licenses and agreements that may be required for the proper and effective transfer by the Seller to the Purchase of all assets of the Business, free and clear of all encumbrances, which instruments shall contain the usual warranties and affidavits of title. The Seller shall pay all payroll taxes, sales taxes, personal property taxes and other taxes and public charges, fees, debts, obligations and other charges, including, but not limited to, telephone and gas and electric, attributable to the conduct of the Business, accrued to the date

- (f) There is no pending suit, judgment, lien, action, proceeding, claim, arbitration, or any investigation by any person or entity, including, but not limited to, any Government or Government Agency against any of the Assets of the Business.
- (g) The Seller has not established or participated in any pension or retirement plan or program for the benefit of any present or former employees of the Business. The Seller has no written or oral employment agreement with any employee, which is not terminable at will without penalty.
- (h) The Seller warrants that there are no salaries or wages in arrears.
- (i) All of Seller's fixtures, equipment, HVAC, plumbing, and electrical system are and shall be in normal working and operating condition at the time of Closing.
- (j) The Seller agrees that for a period of 2 week(s) following the Closing at no cost to Purchaser to train the Purchaser to operate the Business.
- (k) The parties hereby agree and covenants that in the event that repairs or work of any kind are required as a result of governmental and quasi-governmental inspections in connection with the Purchaser's obtaining necessary licenses and/or permits to operate the Business, including the use of occupancy permit, the Seller shall bear the cost of such repair.

6. Affirmative Covenants.

- (a) The Seller will conduct the Business up to the date of the Closing hereunder in the normal and regular manner and will not enter into any contract except as may be required in the regular course of the Business.
- (b) The Seller represents that all of the items of property to be sold hereunder are located at the Premises. The Seller will not remove any of such property from the Premises without the written consent of the Purchaser, except as may be required in the ordinary course of trade or business.

7. Risk of Loss.

a. The Seller assumes all risk of loss due to fire or other casualty up to the time of Closing. In the event any such loss occurs prior to the date of Closing, or in the event the Business is closed or interrupted by reason of any event not in the ordinary course of business, the Purchaser shall have the right to terminate this Agreement on written notice to the Seller and upon such termination, there shall be no further liability on the part of the Seller or the Purchaser hereunder, except that the Contract Deposit shall be returned to the Purchaser.

b. Seller shall maintain at all times until the time of closing and at their own expense insurance upon the property against such hazards in such amounts and with such insurers as acceptable to the landlord with such policies containing a loss payable according to the provisions of the lease.

8. Contingencies: Conditions to Closing. The Purchaser's obligation to consummate the transactions contemplated herein is contingent upon the following:

(a) That all representations and warranties made by the Seller in this Agreement are complete and accurate at and as of the Closing.

(b) That Purchaser ask that seller to keep open the business till liquor license transfer approved from the Baltimore city liquor board.

(c) That the Purchaser obtains all licenses, including but not limited to approval of the liquor license, Occupancy Permit, and any other business licenses and permits necessary to operate the Business. Upon execution of this Agreement, Seller hereby agrees to provide copies of ALL permits and licenses and affirmatively cooperate to provide information pertaining to such permits and licenses.

(d) If the parties hereto determine that any of the foregoing conditions cannot be satisfied on or before the Closing, then the Agreement shall be null and void, the Contract Deposit money shall be returned to the Purchaser without a further notice to either the business broker or the Seller, and neither party shall thereafter have any obligations to the other.

9. Bulk Sales. The Seller agrees to comply with the provisions of the Bulk Transfer laws by executing an affidavit containing a schedule of all creditors, including their names, addresses and the amount of debt owed to each such creditor.

10. Governing Law. The parties hereto desire and intend that the laws of the State of Maryland shall govern all questions of construction and enforcement of this Agreement and hereby waive trial by parties hereto and their respective heirs, personal representatives, successors and assigns. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and Year First above written.

Seller: Fulton Discount Liquors INC.

Buyer: Jin Su Peang.

 8-23-17

of Closing, and shall file with the applicable federal, state and local government agency all reports, tax returns, and any other documents required up to and including the date of Closing.

(c) All closing documents, including but not limited to Covenant Not To Compete and Mutual Indemnity and Closing Statements, shall be executed by all stockholders of the corporation. Upon execution of this Agreement, the Seller shall provide all names of the stockholders of the Company.

5. Representations by Seller. The Seller makes the following representations and warranties to the Purchaser as of the date hereof and as of the date of Closing:

- (a) The Seller is the sole, absolute and unconditional owner of and has good and marketable title to the Business and all of the assets of the Business, free of all debts, liens, security interests, and encumbrances.
- (b) The Seller is a corporation, established and validly existing under the laws of the State of Maryland. Stockholders are the sole and exclusive record and beneficial owners of all of the outstanding assets of the corporation. Stockholders have the absolute and unconditional right, power and authority to cause Seller to sell, assign, transfer and deliver the Assets to the Purchaser in accordance with the terms of this Agreement to consummate the transactions contemplated hereby. Seller shall provide a Resolution of Stockholders at the time of closing. All stockholders of the Corporation shall join in the following agreements at the Closing: Stockholders' Resolution, Indemnification, Bulk Sales Affidavit and Covenant Not to Compete.
- (c) To its best knowledge, the Seller has complied with all laws, rules, and regulations relating to and in connection with the Business. Seller hereby covenants and agrees to indemnify and hold harmless Purchaser from any and all future fines, liabilities or expenses that may arise from any noncompliance with this subsection before the Closing.
- (d) The lease is in full force and effect with no faults existing hereunder or conditions existing with the passage of time or giving of notice would constitute such a default.
- (e) To Seller's best knowledge, neither the execution nor delivery of this Agreement nor its performance are restricted by or violate contractual or other obligations of the Seller.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

IN RE:

*

BYUNG MOOK CHO,

*

Case No. 17-22057 - MMH

Debtor.

*

(Chapter 11)

* * * * *

NOTICE OF MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE

Please Take Notice that the Debtor-in-Possession for the above-referenced bankruptcy estate has filed a Motion for Authority to Sell Property of the Estate with the United States Bankruptcy Court for the District of Maryland. The Trustee believes that the proposed sale of the Property is in the best interests of the Estate and its creditors.

The Debtor-in-Possession proposes to sell the Property upon the following terms and conditions:

- Type of Sale: Private Sale
- Property to be Sold: All assets of Fulton Discount Liquors
- Purchase Price: \$10,000.00 for intangible assets, plus \$5,000.00 for inventory. Total of \$15,000.00.
- Costs of Sale: None.
- Buyer: Jin Su Peang
- Connections: None. This is an Arms-length sale.
- Sale Date: August 23, 2017. The parties are trying to complete the transfer.
- Scheduled value: \$15,000.00
- Appraised value: None

Notice is further given that objections to the Motion, if any, must be filed by **October 5, 2017** with the Clerk of the United States Bankruptcy Court, 101 West Lombard Street, 8th Floor, Baltimore, MD 21201, and served upon the Debtor. If an objection is filed, it must contain a

complete specification of legal grounds upon which it is based. If no objections are filed within the above described period, the Court may, in its discretion, enter an order approving the Motion without a hearing. The Court may conduct a hearing or determine the matter without a hearing, in its discretion, regardless of whether any objections are filed. Following the Court's approval of the Motion, if the Motion is granted, the Debtor-in-Possession will consummate the transactions approved thereby without further notice or order of the Court. All persons or entities receiving this Notice will be bound by the terms and conditions of the Order approving the Motion. If an objection is filed, a hearing will be held on **October 19, 2017 at 11:00 AM** in Courtroom 9-C of the United States Bankruptcy Court for the District of Maryland, Baltimore Division, at 101 West Lombard Street, Baltimore, Maryland 21201. Copies of the Motion may be reviewed during regular hours at the office of the Clerk of the Bankruptcy Court, 8th floor, United States Courthouse, 101 West Lombard Street, Baltimore, Maryland, 21201, and may also be procured upon written request to the undersigned attorney.

September 14, 2017

/s/ Michael S. Myers
Michael S. Myers
Scarlett, Croll & Myers, P.A.
201 North Charles Street, Ste 600
Baltimore, Maryland 21201

Attorneys for Debtor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of September, 2017, copies of the foregoing Notice of Motion to for Authority to Sell Property of the Estate were sent electronically, by ECF Guidelines, pursuant to Local Bankruptcy Rule 9013-4, Federal Bankruptcy Rules 5005(a)(2) and 7005, to:

Hugh M. (UST) Bernstein hugh.m.bernstein@usdoj.gov
Michael Stephen Myers mmyers@scarlettcroll.com,
krynarzewski@scarlettcroll.com;receptionist@scarlettcroll.com;
r64434@notify.bestcase.com
US Trustee - Baltimore USTPRegion04.BA.ECF@USDOJ.GOV
Christopher S. Young cyoung@btlg.us,
sphillips@btlg.us;hconnolly@btlg.us;edonohue@btlg.us;
hyeung@btlg.us;klohmeyer@btlg.us

And to the 20 largest unsecured creditors identified in the attached mailing matrix.

/s/ Michael s. Myers
Michael S. Myers
Federal Bar No. 28450