

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: § CASE NO.: 16-10643
§
CHRISTOPHER MARTIN RIDGEWAY §
§
Debtor § CHAPTER 11
§
§ SECTION "B"

**MOTION AND MEMORANDUM IN SUPPORT PURSUANT TO §§ 105 AND 363 AND
FED. R. BANKR. P. 6004 TO APPROVE SALE OF THE 24 FT YELLOWFIN FREE AND
CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES**

NOW INTO COURT, through undersigned counsel, comes Christopher Martin Ridgeway, (“Mr. Ridgeway” and/or “Debtor”) in this Chapter 11 Bankruptcy, who files this Motion to Approve Sale of the 24 ft Yellowfin, with respect represents:

1.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 USC §1334(a) and (b) and the Standing Order of Reference of this District.

2.

CORE PROCEEDING

This is a core proceeding pursuant to 28 USC §157(b)(2)(A),(N) and (O).

3.

PROCEDURE

Procedurally, this matter is governed by 11 U.S.C. §363 and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure.

4.

Christopher Martin Ridgeway filed his voluntary petition for relief herein under Chapter 11 of the United States Bankruptcy Code on or about March 23 2016. The Debtor remains in possession and continues to operate pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5.

The Debtor filed his Notice regarding Fifth Amended Schedules on August 10, 2016, listing the 2012 24 ft. Yellowfin in Schedule B. The Debtor's value of the portion that he owns in the Schedules is \$42,500.00 and the value of the entire property is \$85,000.00.

6.

The Debtor currently has a mortgage with US Bank in the approximate amount of \$68,557.26. See Claim No. 17 as Exhibit "A".

7.

The Debtor has a Bill of Sale of Watercraft for the 2012 Yellowfin Yacht, Identification No. YFY24203F212, Vessel Registration No. FL3416PJ in the amount of \$87,500.00 from Bart Knellinger. See Bill of Sale as Exhibit "B".

8.

In reviewing Yellowfin's website, a similar boat is listed in the classified section of yellowfin.com showing a value of \$88,500.00. A copy of that classified advertisement is attached hereto as Exhibit "C".

9.

The Debtor has reviewed the offer, and has determined that the offer to purchase the 2012 Yellowfin is fair and equitable.

10.

The Debtor seeks approval from the Court for the sale of the 2012 Yellowfin described in paragraph 9 subject to the lien in favor of US Bank to be paid in full from proceeds of the sale of said watercraft.

LEGAL AUTHORITY

11.

Section 363(b) (1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although § 363 of the Bankruptcy Code does not set forth a

standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, a sale of a debtor's assets should be authorized when there is an articulated business justification for doing so. *See Licensing by Paolo v. Sinatra (In re Gucci)*, 126 F. 3d 380, 387 (2nd Cir. 1997); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994); *Committee of Equity Sec. Holders v. Lionel Corp (In re Lionel Corp.)*, 722 F. 2d 1063, 1070 (2nd Cir. 1983).

12.

Whether a transaction has a sufficient articulated business justification depends on the facts of the case. *See In re Continental Airlines, Inc.*, 780 F. 2d 1223, 1226 (5th Cir. 1986). A bankruptcy court should consider “all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders alike.” *Continental*, 780 F.2d at 1226; *Lionel*, 722 F. 2d at 1071. Relevant factors may include: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on the future plan of reorganization; the amount of the proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.” *See Continental*, 780 F. 2d at 1226; *Lionel*, 722 F. 2d at 1071.

13.

When applying the “business judgment” standard courts show deference to a debtor’s business decisions. *See, e.g. In re Tom’s Foods Inc.*, 2005 WL 3022022, *2 (Bankr. M.D. Ga. 2005) (“courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence”); *Atkins v. Hibernia Corp.*, 182 F.3d 320, 324 (5th Cir. 1999); *GBL Holding Co., v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Group, Ltd.)*, No. Civ. A. 3:04-CV-2411-M, 2009 WL 440379, *2 (N.D. Tex. Feb. 23, 2009) (“great judicial deference is given to [the debtor in possession’s] exercise of business judgment.

14.

The Debtor has determined that approval of the Sale is the best way to maximize the value of the Debtor's estate for the benefit of all constituencies. The Debtor has proposed in the Plan filed to utilize the proceeds from the sale of this property for payment for claims of other creditors.

15.

Based on the foregoing, the Debtor has determined in his sound business judgment that the sale of the property on the terms and conditions set forth herein are fair and reasonable and in the best interest of the Debtor's estate, his creditors, and all parties in interest.

16.

Under § 363(f) of the Bankruptcy Code, a trustee may sell property free and clear of any lien, claim or interest in such property if, among other things:

- (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which the property is sold is\ greater than all liens on such property;
- (iv) such interest is in bona fide dispute; or
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

17.

Because §363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of a any one of its five requirements is sufficient to permit the sale to be free and clear of all liens, claims, encumbrances, and interests (each, an "Interest", and collectively, the "Interests"). Here a "free and clear" sale is warranted because, one or more of the standards set forth in §§ 363(f)(1)-(5) of the Bankruptcy Code will be satisfied.

18.

Section of 363(m) of the Bankruptcy Code provides that:

“The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

19.

The terms and conditions of the sale were negotiated by the Debtor and Mr. Bart Knellinger at arm's length and in good faith. Mr.Knellinger is not related to or has an interest in the Debtor or otherwise affiliated with the Debtor. Moreover, Mr.Knellinger is not an “inside” of the Debtor within the meaning of § 101(31) of the Bankruptcy Code, and is not controlled by, or acting on behalf of, any insider of the Seller. *See, e.g. In re After Six, Inc.*, 154 B.R. 876, 883 (Bankr. E.D. Pa. 1993). Accordingly, the Debtor requests that the Court determine that Mr. Knellinger to be acting in good faith and entitled to the protections of a good faith purchaserunder §363(m) of the Bankruptcy Code.

20.

The Debtor further suggests that the sale of the 2012 Yellowfin is in the interest of the Estate as the watercraft is not being used for Estate business and retaining the watercraft would require the Estate to incur additional expenses for maintenance and insurance on same.

WHEREFORE, Christopher Martin Ridgeway, prays that:

1. After such notice and hearing as the Court may deem appropriate, that an Order be entered authorizing the Debtor to sell the 2012 Yellowfin Yacht, Identification No. YFY24203F212, Vessel Registration No. FL3416PJ subject to the lien of US Bank

- to be paid in full from the proceeds of the sale of said watercraft and all excess proceeds to be held by Debtor's counsel in trust until confirmation of the plan and disbursements are to be made to creditors;
2. that Mr. Knellinger be deemed to be a good faith purchaser and entitled to the protections of §363 (m); and;
 3. for such other and further relief to which he may be entitled in law and equity.

Respectfully submitted,

ADAMS AND REESE LLP

/s/ Robin B. Cheatham

Robin B. Cheatham , LA Bar No. 4004
Scott R. Cheatham, LA Bar NO. 31658
4500 One Shell Square
New Orleans, LA 70139
Telephone: (504) 581-3234
Facsimile: (504) 566-0210
Email: robin.cheatham@arlaw.com
Email: scott.cheatham@arlaw.com
Attorneys for Christopher Martin Ridgeway

Bill of Sale of Watercraft (Boat)

IN CONSIDERATION of Bart Knellinger of 1811 Oak Creek Ln., DUNEDIN FL 34698 (the 'Purchaser') providing \$87,500.00 USD, plus any additional sales taxes (the 'Purchase Price'), the receipt and sufficiency of which consideration is hereby acknowledged, to Christopher Ridgeway of 23 Lagarza Ct, Alys Beach FL 32413 (the 'Seller'), the Seller SELLS AND DELIVERS the Boat to the Purchaser.

PURCHASE PRICE: The Purchaser will pay the Purchase Price to the Seller by cash.

WATERCRAFT: The Seller will sell and deliver to the Purchaser the following watercraft (the 'Boat'):

- Make: Yellowfin
- Model: 24 ft
- Year: 2012
- Style: Bay Boat
- Color: Ice Blue
- Length: 24
- Hull Identification Number (HIN): YFY24203F212
- Features: Single engine.

WARRANTIES: The Seller warrants that the Boat is free of any liens and encumbrances except the Security Interest and that the Seller is the legal owner of the Boat. The Seller also warrants that the Seller has the full right and authority to sell and deliver the Boat and that the Seller will defend the title of the Boat against any and all claims and demands except the Security Interest.

SECURITY INTEREST: The Purchaser will assume and pay the following obligations (the 'Security Interest'), and will hold harmless and indemnify the Seller from any claim related to these obligations: US Bank.

Bill of Sale

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'AS IS' CONDITION: The Purchaser acknowledges that the Boat is sold 'as is'. The Seller expressly disclaims any implied warranty as to fitness for a particular purpose and any implied warranty as to merchantability. The Seller expressly disclaims any expressed or other implied warranties.

WORKING ORDER: Any warranty as to the condition of the Boat is expressly disclaimed by the Seller.

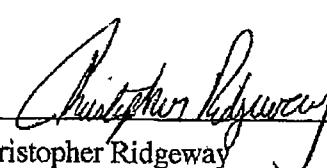
MANUFACTURER'S WARRANTY: Any disclaimer of warranties by the Seller in this Bill of Sale will not in any way affect the terms of any applicable warranties from the manufacturer of the Boat.

LIABILITIES: The Seller does not assume, nor does the Seller authorize any other person on the behalf of the Seller to assume, any liability in connection with the sale or delivery of the Boat.

INSPECTION: The Purchaser accepts the Boat in its existing condition given that the Purchaser has either inspected the Boat or was given the opportunity to inspect the Boat but chose to not inspect it.

This Bill of Sale will be construed in accordance with and governed by the laws of the State of Florida.

SIGNED, SEALED, AND DELIVERED
this 21st day of August, 2016.


Christopher Ridgeway
(Seller)


Bart Knellinger
(Purchaser)