



Order Filed on May 24, 2016
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
LECLAIR RYAN 1037 Raymond Boulevard Sixteenth Floor Newark, New Jersey 07102 (973) 491-3600 Attorneys for Debtor David S. Catuogno (DSC-1397)	
In Re:	Chapter 11
HFIG Old Bridge 2 LLC a/k/a Club Metro Shoppes	Case No.: 16-10564(CMG)
Debtor.	

ORDER PURSUANT TO 11 U.S.C. §363 (I) AUTHORIZING DEBTOR-IN-POSSESSION TO SELL ASSETS FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. §363, AVOIDING LIENS PURSUANT TO 11 U.S.C. §544 AND APPROVING BID PROCEDURES; AND (II) REJECTING LEASE FOR NON-RESIDENTIAL REAL PROPERTY AND FRANCHISE AGREEMENT

The relief set forth on the following pages, number two (2) through fifteen (15) is hereby **ORDERED.**

DATED: May 24, 2016


Honorable Christine M. Gravelle
United States Bankruptcy Judge

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THIS MATTER having been brought before the Court by Debtor HFIG Old Bridge LLC a/k/a Club Metro Shoppes (the “Debtor”), by and through its counsel, LeClair Ryan, upon a motion for an Order (I) Authorizing Debtor-In-Possession to Sell Assets Free and Clear of Liens Pursuant to 11 U.S.C. §363, Avoiding Liens Pursuant to 11 U.S.C. §544 and Approving Bid Procedures; and (II) Rejecting Lease for Non-Residential Real Property and Franchise Agreement (the “Sale Motion”), and the proposed sale contemplating the Debtor’s gym equipment, inventory, goodwill and other intangibles (the “Transferred Assets”) which assets are subject to the secured claim of Firestone Financial¹, but which proposed sale specifically excluding the Debtor’s interest in its real property lease with Old Bridge Holdings, LLC (“OBH”)², its Franchise Agreement with Club Metro USA Inc. (“CMUSA”), and any interest in the members/customers’ contracts or customer information; and good and sufficient notice having been provided to all parties-in-

¹ Marlboro Crunch, Inc. (“MCI”), an affiliate of RFCI, acquired the Firestone lien prior to RFCI submitting its bid and consents to the proposed transaction. Throughout the within application, the word “Firestone” is deemed to mean and should be read as “MCI” inasmuch as MCI has, in fact, acquired the position of Firestone.

² The original parties to the lease are HFIG Old Bridge LLC d/b/a HFIG Old Bridge 2 LLC and Stanberry Old Bridge LLC. OBH is the successor to Stanberry Old Bridge. Also, HFIG Old Bridge is a related entity to this Debtor and itself a Debtor in its own separate bankruptcy proceeding (Case No. 16-10572) albeit said proceedings are subject to a pending (or imminent) Motion to Dismiss. While the Debtor believes that it, as the operator of the Highway 9 Facility, is the proper tenant under the lease, the lease document suggests that HFIG Old Bridge may be the actual tenant. Therefore, the Debtor may not be the tenant under the lease. To the extent it is, or to the extent it has an equitable interest in the lease, it proposes to reject same pursuant to this Motion.

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interest, as evidenced by the Affidavits of Service filed with the Court; and the Court having conducted a hearing on the sale on _____ (the “Sale Hearing”), and the proposed sale being opened up to bidding for the solicitation and evaluation of higher and better offers, and at which time all interested parties were offered an opportunity to bid or be heard with respect to the Sale Motion, and after the conclusion of the bidding process it having been determined that the highest and best offer was submitted by _____ in the amount of \$_____ (the “Buyer”), and the Buyer is therefore deemed the Successful Bidder, and all objections to the Sale Motion, if any, having been denied or resolved by agreement as set forth on the record of the Sale Hearing, and the Court having reviewed and considered (a) the Sale Motion, (b) the objections, if any, thereto, (c) the arguments of counsel, and the evidence proffered or adduced at the Sale Hearing and (d) the full record of this case, and it appearing that the relief sought in the Motion is necessary and in the best interests of the Debtor, its creditors, the estate, and other parties-in-interest; and due deliberation having been had; and good cause appearing for the entry of this Order;

IT IS HEREBY FOUND AND DETERMINED THAT ³

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

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A. The Court has jurisdiction over the Sale Motion under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409

B. The statutory predicates for the relief sought in the Motion are sections 105(a) and 363(b), (f), (k), (m) and (n) of the Bankruptcy Code and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure.

C. As evidenced by the affidavits of service previously filed with this Court, and based on the representations of counsel at the Sale Hearing, (i) the Debtor has provided proper, timely, adequate and sufficient notice of the Sale Motion and the Sale Hearing, in accordance with sections 102(1) and 363 of the Bankruptcy Code, Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, and the Procedures Order, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Sale Motion and the Sale Hearing, or matters related thereto is or shall be required.

D. As demonstrated by the testimony and/or other evidence proffered or adduced in the pleadings and at the Sale Hearing, and the representations of counsel made on the record at the Sale Hearing, the Debtor has sufficiently marketed the Transferred Assets and conducted the sale process in an appropriate fashion.

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E. The sale of the Transferred Assets by the Debtor has been duly and validly authorized by all necessary actions of the Debtor. The Debtor (1) has all of the power and authority necessary to consummate the transactions contemplated by the Sale Motion, and (ii) has taken all actions necessary to authorize and approve the sale and the Sale Motion and the consummation of the transactions contemplated thereby. No consents or approvals, other than those expressly provided for in this Order, are required for the Debtor to consummate such transactions.

F. Approval of the Sale Motion and consummation of the proposed sale at this time is in the best interests of the Debtor, its creditors, the estate, and other parties-in-interest.

G. The Debtor has demonstrated good, sufficient, as well as sound business purpose and justification and compelling circumstances for the sale pursuant to section 363(b) of the Bankruptcy Code, and has further demonstrated good, sufficient and sound reasons for the sale of the Transferred Assets.

H. A reasonable opportunity to bid, object or otherwise be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities (including all parties that had expressed interest in acquiring the Transferred Assets) as set forth in the Affidavits of Service filed with the Court.

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I. The proposed sale was negotiated, proposed, and agreed to by the Debtor and the Buyer without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the sale to be avoided under section 363(n) of the Bankruptcy Code.

J. The Buyer is a good faith Buyer under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transaction contemplated by the Sale Motion at any time after the entry of this Order.

K. The consideration provided by the Buyer for the Transferred Assets (i) is fair and reasonable, (ii) is the highest and best offer for the Transferred Assets, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia.

L. The sale contemplated by the Sale Motion must be approved and consummated promptly in order to preserve and maximize the value of the Transferred Assets and reduce the expenses of the Debtor's estate.

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M. The sale and/or assignment of the Transferred Assets to the Buyer will be a legal, valid, and effective transfer of the Transferred Assets, and will vest the Buyer with all right, title, and interest of the Debtor in and to same, free and clear of all liens, liabilities, claims, interests and encumbrances of any kind or nature whatsoever and all debts arising under or out of, in connection with, or in any way relating to, any acts of the Debtor, claims (as defined in section 101(5) of the Bankruptcy Code), rights or causes of action (whether in law or in equity), obligations, demands, guaranties, rights, contractual commitments, restrictions, interests and matters of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise, (collectively "Adverse Interests"). To the extent holders of Adverse Interests objected to the Sale Motion or the sale, all such objections are hereby resolved subject to the terms negotiated by the parties as stated herein.

N. The Buyer would not have agreed to the sale and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, his estate, and creditors, if the sale of the Transferred Assets were not free and clear of all Adverse Interests, or if the Buyer would, or in the future could, be liable for any of the Adverse Interests.

O. The Debtor may sell the Transferred Assets free and clear of all Adverse Interests because, in each case, one or more of the standards set forth in sections 363(f)(1)-(5) of the

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Bankruptcy Code has been satisfied. Those holders of Adverse Interests who did not object, or who withdrew their objections to the sale or the Sale Motion, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

P. OBH and Firestone have agreed to the terms of the sale and the proposed allocation distribution of proceeds. Specifically, the purchase price shall be \$181,307 consisting of \$95,000 to the estate, \$51,929 to satisfy the Firestone lien and \$34,378 for the May 2016 rent for the premises. \$85,000 of the sales proceeds shall be disbursed to the State of New Jersey for priority sales taxes so that the Buyer may take title to the assets and operate the business free of any tax consequences or issues. Any remaining sale proceeds would remain in the estate and be used towards administrative claims and unsecured claims, to the extent of sufficient funds.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Approval of the Sale

1. The sale as set forth in the Sale Motion, and all of the terms and conditions thereof, except only as modified pursuant to this Order, is hereby approved.
2. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor and the Buyer are authorized and directed to consummate the sale, pursuant to and in accordance with the terms and conditions of the Sale Motion.

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3. The Debtor and the Buyer are authorized and empowered to perform under, consummate and implement, the sale, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the transactions contemplated in the Sale Motion, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying, conferring or reducing to possession the Transferred Assets to the Buyer, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Sale Motion. The Debtor and the Buyer are hereby authorized to take any and all steps necessary to effectuate, consummate and/or implement the terms of this Sale Order. To the extent of any discrepancies between this Order and the Sale Motion, this Order shall control.

4. Pursuant to the terms set forth in the Sale Motion, the Purchaser shall pay \$181,307 at closing, consisting of \$95,000 to the estate, \$51,929 to satisfy the Firestone lien and \$34,378 for the May 2016 rent for the premises. In addition to satisfying the Firestone lien and paying the May rent for the premises, \$85,000 of the proceeds shall be disbursed to the State of New Jersey for sales tax/priority tax. The remaining sale proceeds will remain in the bankruptcy estate and be disbursed subject to the statutory priorities of the Bankruptcy Code.

5. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Transferred Assets shall be transferred to the Buyer, and, except as otherwise expressly provided in this Sale Order, upon consummation (the "Closing") shall be free and clear of all Adverse Interests and other Liens,

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Liabilities, claims and encumbrances of any kind or nature whatsoever, and such Adverse Interests and other Liens, Liabilities, claims and encumbrances have been and shall be terminated and declared to be unconditionally released, discharged and terminated, and such termination and release shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Transferred Assets conveyed to the Buyer, provided that all liens and encumbrances shall attach to the sale proceeds with the same validity, and in the same priority, immediately prior to closing.

6. The Transferred Assets shall not include the Debtor's interest in customers/members' customer information, personally identifying information or in customers/members' contracts.

7. The Closing shall occur on or before the date that is fifteen (15) days from the hearing at which the Court granted the Debtor's Sale Motion (the "Closing Window") which Closing shall take place at the offices of Debtor's counsel, or at some other place as agreed by the parties. The Buyer may take title or assignment of one or more of the Transferred Assets through one or more

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designees. All disbursements pursuant to the terms of this Order shall be made within two (2) days of the Closing. To the extent the Debtor is ready willing and able to deliver good and marketable title to the Transferred Assets and Closing does not occur by the conclusion of the Closing Window and the Closing Window is not extended on the consent of the parties, the Debtor shall be authorized to-retain the buyer's deposit of \$15,000.

8. Subject to the terms and conditions of this Order, OBH, Firestone and ABC (as defined in the Motion) consent to the sale pursuant to this Order for purposes of Section 363(f)(2) of the Bankruptcy Code. The transfer of the Transferred Assets to the Buyer pursuant to the Sale Motion constitutes a legal, valid, and effective transfer of the Property, and shall vest the Buyer with all right, title, and interest of the Debtor and to the Property, free and clear of all Adverse Interests and free and clear of any successor liability. The Debtor and the Buyer are authorized to effect the sale and transfer of Property pursuant to the terms of this Order and the Sale Motion, and compliance with State or local bulk sales and similar laws and regulations, if any, is hereby waived.

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Approval of the Rejection

9. The proposed rejection of the Debtor's interest, if any, in the lease between the Debtor, OBH dated January 14, 2011, with regard to the real property located at 3857 Highway 9, Old Bridge, New Jersey shall be and hereby is approved.

10. The proposed rejection of the Franchise Agreement between the Debtor and CMUSA dated December 27, 2011 with regard to the operation of the Club Metro at the Highway 9 Facility shall be and hereby is approved.

11. Effective as of the Closing, Firestone hereby waives any claims against or collection from the Debtor or its principals for obligations incurred up through the date of this Order except to the extent of any distribution(s) received in the within bankruptcy case.

Miscellaneous Provisions

12. The Debtor shall be obligated to come current on its obligations to file monthly reports with the Office of the United States Trustee and to pay all quarterly fees due within 45 days of the entry of this Order.

13. Each and every federal, state, and local governmental agency, department, or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Motion.

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14. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Transferred Assets are hereby directed to surrender possession of the Property to the Buyer on the Closing Date.

15. Following the Closing Date, no holder of a Claim against, Lien upon or Adverse Interest in the Transferred Assets or against the Debtor shall interfere with the Buyer's title to or use and enjoyment of the Transferred Assets based on or related to such Claim, Lien or Adverse Interests, or any actions that the Debtor may take in his Chapter 11 cases.

16. This Court shall retain jurisdiction to enforce and implement the terms and provisions of this Order, including, but not limited to, retaining jurisdiction to compel delivery of the Transferred Assets to the Buyer, interpret, implement, and enforce the provisions of this Order, and protect the Buyer against any Adverse Interests against the Debtor, the Transferred Assets and/or the proceeds of the Sale.

17. Nothing contained in any plan of reorganization or liquidation confirmed in the Debtor's Chapter 11 case or any order of this Court in this bankruptcy case shall conflict with or derogate from the terms of this Order. To the extent of any conflict, the terms of this Sale Order shall control.

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18. As provided by Bankruptcy Rule 6004(h), this Order shall not be stayed for fourteen (14) days after the entry of the Order and shall be effective and enforceable immediately upon entry.

19. The transactions contemplated by the Sale Motion are undertaken by the Buyer and the Debtor in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer, unless such authorization is duly stayed pending such appeal. The Buyer is a Buyer in good faith of the Transferred Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

20. The terms and provisions of the Sale Motion and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, the Buyer, and their respective affiliates, successors and assigns, the Debtor's estate and creditors, and any affected third parties including, but not limited to, all persons asserting Adverse Interests upon or against the Transferred Assets to be sold to the Buyer pursuant hereto, notwithstanding any subsequent appointment of any trustee, responsible person, estate administrator, representative or similar person (a "Responsible Person") for or in connection with the Debtor's estate or affairs in this case

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or in any subsequent case under the Bankruptcy Code or State proceeding involving the Debtor, as to which Responsible Person(s) such terms and provisions likewise shall be binding in all respects.