

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
PIERRE LIONEL LESPINASSE,	:	Case No. 16-10180 (MEW)
	:	
Debtor	:	

**ORDER AUTHORIZING THE DEBTOR TO HAVE
AN AUCTION SALE OF HIS REAL PROPERTY AND
APPROVING THE PROCEDURES FOR CONDUCTING THAT SALE**

Upon the motion (the “Motion”) [Dkt # 67] of Pierre Lionel Lespinasse (the “Debtor”) seeking orders: a.) pursuant to 11 U.S.C. §§ 105(a), 363(b), (f) and (m), 365(a), (b) and (f) and Fed. R. Bankr. P. Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and (c), 9006, 9007, 9013 and 9014, authorizing the Debtor to sell, at auction, his and his estate’s interests in the proprietary lease and shares of stock allocated to his real estate interest located at 52 East 78th Street, New York, New York, Apartment 3-C (the “Property”) and to assume the proprietary lease for the Property; and b.) granting such other and further relief as the Court deems proper (the “Motion”); and upon of the Objection of U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the WaMu Mortgage Pass-Through Certificates, Series 2006-AR15 (“U.S. Bank”)[Dkt # 72]; and upon the hearings held on March 23, 2017 and April 6, 2017 and the records of those hearing and upon all of the proceedings had herein and after due consideration and sufficient cause appearing to me therefore it is hereby

ORDERED, that, a.) pursuant to 11 U.S.C. §§ 105(a), 363(b), (f) and (m), 365(a), (b) and (f) and Fed. R. Bankr. P. Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 6006(a) and

(c), 9006, 9007, 9013 and 9014, the Debtor be and hereby is authorized to sell, at auction, his and his estate's interests in the Property; and it is further

ORDERED, that the "Bidding Procedures" annexed hereto as Exhibit "A," and incorporated herein by reference be and hereby are approved, however, the Debtor may make administrative changes to the Bidding Procedures to the extent necessary to further the auction sale of the Property; and it is further

ORDERED, that the Debtor is authorized to take any and all action necessary and appropriate to implement the Bidding Procedures; and it is further

ORDERED, that the Auction Sale of the Property will be conducted on June 6, 2017, and it is further

ORDERED, that secured creditor U.S. Bank shall Credit Bid, pursuant to 11 U.S.C.363(k), at the Auction Sale the amount of U.S. Bank's Lien as defined in the Bidding Procedures, and, if U.S. Bank purchases the Property, U.S. Bank may offset its lien against the purchase price and U.S. Bank shall not be required to deliver a Qualifying Deposit unless it intends on bidding an amount that exceeds U.S. Bank's Lien nor shall it be required to pay the additional 6% required in the Minimum Bid section of the Bidding Procedures ; and, it is further

ORDERED, that the Sale Hearing will be conducted on **June 14, 2017 at 10:00 a.m.** prevailing Eastern time. The Debtor will seek the entry of an order of this Court at the Sale Hearing approving and authorizing the Sale to the highest and best offer at the Auction. The Sale Hearing may be adjusted or rescheduled without notice other than by announcement of the adjourned date

at the Sale Hearing.

Dated: New York, New York
April 17, 2017

/s/ Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

Sale and Bid Procedures

Set forth below are the bid procedures (the “**Bidding Procedures**”) to be employed in connection with the sale of the proprietary lease and shares of stock allocated to his real estate interest located at 52 East 78th Street, New York, NY, Apartment 3-C (the “**Real Property**”) owned by Pierre Lionel Lespinasse (the “**Debtor**”) pursuant to the Order, dated April 17, 2017 (the “**Order**”) in the Debtor’s chapter 11 case pending in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), case number 16-10180-MEW (the “**Bankruptcy Case**”).

The Bidding Procedures.

1. **Credit Bid/ Stalking Horse.** U.S. Bank, NA successor trustee to Bank of America NA, successor in interest to LaSalle Bank NA as trustee on behalf of the holders of WaMu Mortgage Pass-Through Certificates, Series 2006-AR15, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing Inc. (“U.S. Bank”) has committed to credit bid an amount equal to the balance due to U.S. Bank on the auction date plus the per diem rate of interest and anticipated advances through closing (“Credit Bid”). The Notice of the Sale will state the amount of the U.S. Bank Credit Bid. As of March 21, 2017, the estimated amount owed to U.S. Bank was \$857,000.00.

2. **Minimum Bid.** The minimum bid for the Real Property at the Sale may not be less than the U.S. Bank Credit Bid plus six percent to cover, the auctioneer’s commission.

3. **Viewing Real Property.** The Real Property will be available for viewing on dates reasonably to be set by the Debtor in consultation with U.S. Bank and the auctioneer. Persons wanting to view the Real Property will register to do so with the Debtor’s attorneys.

4. **Provisions Governing Qualifications of Bidders.** In order to participate in the Bidding Process, prior to the Bid Deadline (defined below), to be deemed a Qualified Bidder a potential bidder (“**Potential Bidder**”) must deliver the following to the Debtor’ attorney and MYC & Associates, Inc. (“MYC”):

(I) a written disclosure of the identity of each entity that will be bidding for the Real Property or otherwise participating in connection with such bid;

(ii) deliver documents necessary to reasonably permit the Debtor and the Court, if necessary, to determine that the Potential Bidder is reasonably likely to submit a *bona fide* offer and to be able to financially and legally consummate a sale if selected as a Successful Bidder.

U.S. Bank is deemed to be a Qualified Bidder to the extent of its Credit Bid and may be a Qualified Bidder at higher amounts if it complies with the terms set forth herein.

5. **Provisions Governing Qualified Bids.** A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a

“Qualified Bid”):

- (i) it is accompanied by a signed copy of these Bidding Procedures;
- (ii) it includes a signed writing that the bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder its offer shall remain irrevocable until the closing of the Sale to the Successful Bidder;
- (iii) it states that there are no conditions precedent to the bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (iv) it is accompanied by a good faith deposit in the form of a wire transfer or certified check payable to the order of the Debtor’s Attorney Trust Account equal to ten percent (10%) of the Minimum Bid (the "**Deposit**");
- (v) it is received prior to the Bid Deadline;
- (vi) it states the Qualified Bidder is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party including the Debtor and its respective agents and representatives regarding the Real Property, the Bid Procedures or any information provided in connection therewith;
- (vii) it acknowledges the bid does not request or entitle the Qualified Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;
- (viii) it states that the bid is not be conditioned on obtaining financing or any internal approval, on the outcome or review of due diligence, environmental, or any other contingencies not otherwise expressly contained in the Purchase Agreement;
- (ix) it states that if the Qualified Bidder is the Successful Bidder, the Qualified Bidder agrees: a.) to meet with the coop board governing the Property; b.) that the sale of the Property is conditioned on the Successful Bidder being approved by the coop’s board to purchase the Property; and c.) the Qualified Bidder will reside at the Property, full time, for two years before seeking permission to sub-let the apartment which is included in the Property;
- (xi) it states that there are no brokers’ or other form of commissions owed or to be paid by the debtor’s estate as a result of the Qualified Bidder being the Successful Bidder.
- (x) it acknowledges that the Real Property is being sold “AS IS,” “WHERE IS,” “WITH ALL FAULTS,” without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever

kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed as of the Petition Date, and sale of the Property is subject to, among other things: (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, the Property shall be delivered free and clear of any and all monetary liens.

(xi) it acknowledges that the Qualified Bidder has had the opportunity to review and inspect the Real Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely on its own independent investigations and inspections of the Real Property in making bids. Neither the Debtor in Possession nor any of his professionals makes any representations or warranties with respect to the permissible uses of the property including, but not limited to, the zoning of the Property.

(xii) it acknowledges that the Qualified Bidder has conducted its own due diligence in connection with the Real Property and is not relying on any information provided by the Trustee or his professionals. The Property will be sold subject to any and all violations requiring corrective action.

6. **Bid Deadline.** The deadline for submitting bids shall be June 2, 2017 at 4:00 p.m. (the "**Bid Deadline**"). Prior to the Bid Deadline, a bidder that desires to make an offer, solicitation or proposal (a "**Bid**") must deliver written copies of its Bid to counsel for the Debtor: Wayne Greenwald P.C., Att: Wayne Greenwald, Esq., 475 Park Avenue S., 26th Floor, NYC, NY 10016 (Email: grimlawyers@aol.com) and MYC (Email: my@myccorp.com).

7. **The Auction Process.** If a Qualified Bid is received, an auction sale (the "**Auction**") will be conducted at the offices of the Debtor's attorneys, Wayne Greenwald P.C., 475 Park Avenue S., 26th Floor, NYC, NY 10016, **on June 6, 2017 at 10:00 a.m.**, or at such other time as the auctioneer may reasonably set. Counsel to the Debtor shall confirm to all Qualified Bidders the time and place of the Auction and notify such bidders of the material terms which the Debtor, believes is the highest, best and otherwise financially superior offer for the Real Property, as determined by the Debtor (the "**Opening Bid**"). If, however, no Qualified Bid other than the Credit Bid is received, then the Auction will not be held. and, at the **June 14, 2017** Sale Hearing, the Debtor will report such to the Court and will pursue a sale pursuant to the Credit Bid. The Auction shall run in accordance with the following procedures:

(i). **Participation at Auction.** Attendance at the Auction shall be limited to the Debtor and its representatives, the auctioneer; representatives of U.S.Bank and any Qualified Bidder, or their duly authorized representative, who has timely submitted a Qualified Bid (and the legal and financial advisers to each of the foregoing).

(ii) **No Collusion.** Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the proposed Sale and is not an

"insider" of the Debtor, as that term is defined by 11 U.S.C. § 101(31).

(iii) at least one (1) Business Day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor's counsel whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) Business Day prior to the Auction, the Debtor's counsel will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtor believes, in its reasonable discretion, is the highest or otherwise best offer (the "**Starting Bid**") to all Qualified Bidders;

(iv) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

(v) bidding at the Auction will begin the Minimum Bid and will continue in bidding increments (each a "**Subsequent Bid**") of at least an additional \$10,000.00 above the prior bid, or in any lower amount the Debtor or MYC deems reasonable. After the first round of bidding and between each subsequent round of bidding, Debtor's counsel shall announce the bid (and the value of such bid) that it believes to be the highest or otherwise better offer (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor shall give effect to any additional costs which may be imposed on the Debtor.

(vi) The Debtor or its retained auctioneer shall direct and preside over the Auction. Other than as set forth herein, the Debtor may conduct the Auction in the manner it determines will result in the highest, best or otherwise financially superior offer for the Real Property.

8. **Selection of Successful Bid.** The Debtor will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or best offer from among the Qualified Bidders submitted at Auction (one or more such bids, collectively the "**Successful Bid**" and the bidder(s) making such bid, collectively, the "**Successful Bidder**"), and communicate to the other Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid.

(i) The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, but shall remain subject to approval by the Bankruptcy Court.

- (ii) Within one (1) day after adjournment of the Auction, the Successful Bidder shall, to the extent necessary, augment its deposit by wire transfer or other immediately available funds such that its deposit continues to equal ten percent (10%) of the highest and best bid and complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made, unless the Successful Bid is the U.S. Bank Credit Bid, in which case such requirement is waived;
- (iii) Within one (1) day after adjournment of the Debtor's auctioneer shall file a notice identifying the Successful Bidder with the Bankruptcy Court;
- (iv) The sale of the Real Property to the Successful Bidder will take place consistent with the Order, pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court.
- (v) At the conclusion of the Auction, Debtor's counsel will also announce the second highest and best bid (the "**Back-Up Bidder**"). If, for any reason, the Successful Bidder fails to augment its deposit or consummate the purchase of the Real Property the Back-Up Bidder will be deemed to have submitted the highest and best bid. If the Successful Bidder closes, the Back-Up Bidder's deposit (plus accrued interest, if any) shall be returned to the Back-Up Bidder. If the Successful Bidder fails to close, the Back-Up Bidder's deposit shall be treated in the manner described below.
- (vi) **Subject to Court Approval.** The Debtor's estate will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing.
If the Successful Bidder or the Back-Up Bidder shall fail to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder (or Back-Up Bidder, as the case may be), the Debtor's estate shall be entitled to retain such Successful Bidder's (or Back-Up Bidder's, as the case may be) Deposit, in addition to other additional remedies available to the Debtor under applicable law. The Debtor shall credit the Good Faith Deposit of such Successful Bidder or the Back-Up Bidder toward the purchase price.

9. **Escrow of Bid Deposits.** Within two (2) business days after entry of the Sale Order approving the sale of the Real Property, Deposits shall be returned to all bidders except the Successful Bidder and Back Up Bidder. The deposit of the Successful Bidder shall be applied to the purchase price at closing.

10. **Deposit Forfeit.** The Deposit will be forfeited to the Debtor's estate as liquidated damages and the Successful Bidder, held liable to the Debtor's estate for compensatory damages if the Successful Bidder fails to close by reason of its breach of the Purchase Agreement to be signed by the Successful Bidder, subject to the terms of the Purchase

Agreement.

11. **Hearing.** The Bankruptcy Court shall conduct a hearing to confirm the results of the Auction before the Honorable Michael E. Wiles, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, 10004, on **June 14, 2017 at 10:00 a.m.** EDT.

12. **Closing.** The closing of the sale must occur within fifteen (15) days of the Bankruptcy Court order approving the Sale, unless agreed to in writing by the Debtor, or as otherwise provided by Order of the Court.

13. **Transfer Expenses** The Successful Bidder will pay all costs associated with the transfer of the Real Property, except for the Debtor's and U.S. Bank's attorneys fees.

14. **Time of the Essence** Time is of the essence for all aspects and each stage of the Auction Sale described in these bidding procedures.

15. **Objection Deadline to the proposed Sale of Real Property.** Any party that wishes to object to the proposed sale of Real Property pursuant to the Order ("**Sale Objection**"), shall be required to file an objection on or before 12:00 p.m. (prevailing Eastern Time) on June 9, 2017 (the "**Sale Objection Deadline**") and serve a copy of the Sale Objection, so as to be actually received by the Sale Objection Deadline, upon (I) counsel for the Debtor: Wayne Greenwald P.C., Att: Wayne Greenwald, Esq., 475 Park Avenue S., 26th Floor, New York, NY 10016 (Email: grimlawyers@aol.com) (ii) the Office of the United States Trustee for the Southern District of New York, Att: Paul Schwartzberg, Esq.; and (iii) all parties filing an entry of appearance and request for notices pursuant to Fed. R. Bankr. P. 2002. Objections to the Auction or the selection of the highest bidder or otherwise best bid shall be heard at the Sale Hearing.

16. **Bankruptcy Court Jurisdiction** The Bankruptcy Court shall determine any disputes concerning the Auction Sale of the Real Property. By participating in the Auction Sale all Qualified Bidders consent to the Bankruptcy Court's jurisdiction to determine such disputes in the Debtor's pending Case.

The undersigned Bidder acknowledges that such Bidder read and understands a copy of these Bidding Procedures and accepts the Bidding Procedures.

Name of Bidder (Print Clearly)

Signature of Bidder

Title of Bidder (For Bidders other than Individuals)