

Alla Kachan, Esq.
Law Offices of Alla Kachan, P.C.
3099 Coney Island Avenue, Third Floor
Brooklyn, NY 11235
Tel.: (718) 513-3145

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

Chapter 11

Pyrgos Taxi Corp.,

Case No.: 1-18-41344-ess

Debtor.

NOTICE OF MOTION

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PLEASE TAKE NOTICE that upon the annexed Motion sell real property free and clear of all liens, together with exhibits, the Debtor will move this Court on **November 30, 2018 at 11:00 A.M.**, before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge for the Eastern District of New York – Brooklyn Division, Room 3585, for an Order to allow the Debtors to sell real property free and clear of all liens, pursuant to §§105(a), 363(b), (f) and (m), 503 and 507 of title 13 of the United States Code, 11 U.S.C. §§ 101, et seq. (“Bankruptcy Code”), Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (g), 9006, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE FURTHER NOTICE, that objections to the relief requested or to the must be made in writing, shall state with particularity the grounds therefore, shall conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Eastern District of New York, and shall be filed with the Bankruptcy Court electronically in accordance with the User’s Manual for the Electronic Case Filing System which can be found at www.nyeb.uscourts.gov, the official website for the bankruptcy court by registered users of the Bankruptcy Court’s case filing system, and by all other parties in interest, on a 3.5.-inch disk or CD-ROM, preferably in

Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) so as to be actually received no later than November 23, 2018 at 5:00 p.m.

PLEASE TAKE FURTHER NOTICE, that a copy of the moving papers, including all exhibits, is available for review at (i) the Office of the Clerk, United States Bankruptcy Court for the Eastern District of New York and (ii) the bankruptcy Court's website by registered users of the Bankruptcy Court's case filing system. A copy of the moving papers may also be obtained by contacting the undersigned counsel for the debtor.

Dated: Brooklyn, New York
November 6, 2018

/s/ Alla Kachan

Alla Kachan, Esq.
Law Office of Alla Kachan
3099 Coney Island Avenue, 2nd Fl.
Brooklyn, New York 11235
Tel.: (718) 513-3145
Email: alla@kachanlaw.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Hearing: 11/30/2018
11:00 A.M.

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Objection By: 11/26/2018

In re

Pyrgos Taxi Corp.,
Debtors.

Chapter 11
Case No.: 1-18-41344-ess

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**DEBTOR’S APPLICATION FOR AN ORDER ALLOWING THE DEBTOR TO SELL PROPERTY
FREE AND CLEAR AND APPROVING CONTRACT OF SALE
BETWEEN THE DEBTOR/OWNER, PYRGOS TAXI CORP., AS SELLER AND JOHN GIOVANIS,
(FOR SOON TO BE NAMED CORPORATIONS), AS PURCHASER**

TO: THE HONORABLE CARLA E. CRAIG,
Chief Bankruptcy Judge.

The application (“Application”) of Pyrgos Taxi Corp., (the “Debtor”), by their attorney, Alla Kachan, Esq. of the Law Offices of Alla Kachan, P.C., for an order allowing the Debtor to Sell Property Free and Clear and Approving a Proposed Agreement of Sale of Taxi Medallions (the “Sale Agreement”) between Pyrgos Taxi Corp., as the Debtors/Owners, and John Giovanis (for a soon to be name corporation), as Purchaser (“Purchaser”), annexed as **Exhibit A** to the Application ; authorizing the Debtor, Pyrgos Taxi Corp to sell two (2) NYC Taxi Medallions identified as 9N35 and 9N36, (the “Medallions”), free and clear of any liens, claims and encumbrances, pursuant to sections 363(b) and 363(f) of title 11 of the United States Code (the “Bankruptcy Code”), except as set forth in the Proposed Agreement for Sale, for the sum of \$350,000.00, to Purchaser, Approving the Proposed Agreement of Sale of Taxi Medallions, pursuant section 363 of title 11 of the United States Code.

BACKGROUND

1. The Debtor is a New York corporation that formed on or about September 1,

1976. The stock of which is owned 100% or 200 shares by John Janetos "Borrower". The Borrower is the sole officer of the individual Debtor.

2. The Debtor is the licensed owner of the business which is operated at a principle place of business located at 39-32 21st Street, Bay Ridge, NY 11361.

3. On March 9, 2018 (the "Petition Date"), the Debtor file a voluntary bankruptcy petition with this Court for relief under chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101 et seq. ("Bankruptcy Code").

4. Under Bankruptcy Code §§ 1107 and 1108, the Debtor retained possession of its assets and was authorized, as the Debtor in possession, to continue to operate and manage its business.

5. No official committee of unsecured Creditors has been appointed in this case.

6. Prior to the filing date, the Borrower/Debtor as Cosigner/Comaker and Guarantor, entered into a certain secured loan agreement with Bay Ridge Federal Credit Union ("Lender"), hereby Bay Ridge, loaned the principal amount of \$820,000.00 to the borrowers. As of the filing date, the individual Borrowers/Debtors are indebted to Lender in the aggregate principal amount of not less than \$820,000 plus accrued and unpaid interest, costs expenses including, without limitation, attorneys' fees and disbursements (collectively, and together with all other pre-filing date debts, obligations and liabilities of Debtors to Lender, whether principal, interest, fees or otherwise, direct or indirect, absolute or contingent, the "Prepetition Debt"). As of the date of May 9, 2018, Bay Ridge contends that the payoff amount due under the Note is \$ \$771,824.76.

7. On May 21, 2018, Creditor, Bay Ridge Credit Union filed a Motion to Lift the Automatic Stay.

8. On June 18, 2018, the Debtor filed an Opposition to the Creditor's motion, as

well, filed a Motion for Use of Cash Collateral. On the same date, the Court file an Order scheduling a hearing on the Creditor's Motion to Lift Stay and Debtor's Motion for the Use of Cash Collateral to be heard on June 20th, 2018.

9. On June 20, 2018 and several further hearing dates, hearings were held and subsequently adjourned.

10. During and throughout the bankruptcy case, the Debtor has been diligently working to reach a stipulated agreement with Bay Ridge Credit Union for treatment of their claim.

11. The Debtor was contacted by Omega Brokerage Inc. about selling Debtor's medallions. The prospect of the sale prompted extensive communication and negotiations with Bay Ridge Credit Union to work out a settlement that would involve Bay Ridge to consent to the sale of the medallions fore \$350,000.00 per corporation and where the Debtor would make \$75,000.00 towards the agreed upon deficiency amount for each corporation.

12. The Debtor proffers that the proposed sale is in the best interest of the estate, as the Debtor intends to utilize the proceeds of the sale to partially resolve the claim of the largest creditor of the estate, Bay Ridge Credit Union.

**AUTHORITY TO SELL FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS**

13. The Bankruptcy Code provides the authority for the Trustee to sell the property of the estate free and clear of all liens, claims, encumbrances and interests.

14. *11 U.S.C. §363(b)(1)* provides 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.

15. *11 U.S.C. §363(f)* states that the trustee may sell property under subsection (b) of this section free and clear of any interest in such property or an entity other than the estate, only if (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

16. Since Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Property "free and clear" of Liens and Interests. *See In re Dundee Equity Corp.*, 1992 WL 53743, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *Accord In re Bygaph, Inc.*, 56 B.R.596, 606 n.8 (Bankr. S.D.N.Y. 1986); *In re Wolverine Radio Co.*, 930 F.2d 1132, 1147 fn.24 (6th Cir. 1991).

17. *11 U.S.C. §1203*, the Debtor in possession rights include the following: Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation.

18. It is well-settled that a debtor in possession may sell assets out of the ordinary course of business pursuant to § 363(b) of the Bankruptcy Code if there is a sound business justification for doing so. *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2nd Cir. 1983); *In re Naron*

& Wagner, Chartered, 89 B.R. 85, 89 (Bankr. D. Md. 1988) (adopting standard set forth in *Lionel Corp.*); See also *McDow v. Official Committee of Equity Security Holders of Criimi Mae*, 118274.01600/6288030v4 Inc., 247 B.R. 146, 149 (D. Md. 1999) (“court may authorize the use of estate property other than in the ordinary course of business when some business justification for doing so exists”).

SALE OF PROPERTY

19. At the time of the Debtor’s filing of the instant bankruptcy case, the Principle of the Debtor was operating two (2) taxi medallions. Due to age and the onset of health issues, the Debtor’s Principle is no longer able to maintain the daily operations of operating and maintaining the medallions and as such, has ceased the businesses. As the debtor has terminated their operations, the sale of the Medallions will not affect the debtor’s businesses under Reorganization Plan.

20. The Debtor/Owner of the two (2) Medallions, now intend to enter into an Agreement for Sale of Medallions (“Sale Agreement”) with John Giovanis (for a soon to be named corporation) (“Purchaser”) to sell the Medallions for the amount \$350,000.00 for the two medallions and associated rate cards. The Purchaser will deposit the sum of \$35,000.00 (10% of the purchase price), upon approval of the Court, which will be held in escrow with the balance of \$315,000.00 per contract for a combined total of \$350,000.00, to be paid five days before the closing by certified check to the broker. The Medallions are subject to a lien by Bay Ridge Credit Union, in the amount of \$744,516.62.

21. The Debtor through Omega Brokerage Inc. as the broker in this case, sale terms will comport with the terms to be approved by this Court in the context of the Debtor’s filed 9019 Motion.

22. A closing date shall take place on or about November 19, 2018 at the New York City Taxi and Limousine Commission Office, depending upon the final approval from the New York City Taxi and Limousine Commission, (“TLC”).

23. The Purchaser has the financial resources to purchase the Medallions, and is acting in good faith by providing necessary and relevant disclosures of the financial resources, and therefore, should be considered as a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code.

24. The Purchaser is not related or employed by the Debtor or her family, thus he is not an “insider” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

25. The proposed sale makes sense because it allows the Debtor as Debtor-in-Possession to fulfill their obligations under the settlement terms reached with the main Creditor of the case, Bay Ridge Credit Union, to be approved by the Court in the Context of the Debtor’s filed 9019 Motion.

26. By this Application, Applicants seeks the entry of an order:

- (a) pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code, authorizing the Debtors to sell the Property, free and clear of all liens, claims, encumbrances and interests, except as set forth in the Contract of sale to the Purchaser.
- (b) pursuant to 11 U.S.C. Sec. 363, authorizing the Debtors to enter into and consummate the Sale Agreement; and
- (c) granting the Debtors such other and further relief as may be just and proper.

27. The Debtor believes that an immediate sale of the Property is in the best interests of the estate. Should the Court not enter an order approving the sale of Debtor’s property, Debtor will not be able to satisfy the terms of the main Creditor, Bay Ridge Credit Union as set forth in the Settlement

Agreement thereby not resolving the Creditors claim which thereby diminishes the Debtor's ability to enter into a feasible plan of reorganization. Additionally, the costs associated with the necessary further litigation, the fees incurred as a result of lengthening the closure of the bankruptcy case, and the usurp of the Court's time and resources would far exceed the benefit that would be obtained by allowing the sale to move forward, and it would also have lasting effects to the bankruptcy estate that would not benefit the Creditors of the case.

CONCLUSION

28. The Debtors should be authorized to sell the Property free and clear of liens, claims, interests, and encumbrances against the Debtors or their estate, because one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied, provided that, other than the permitted exceptions, all liens, claims, interests, and encumbrances, if any, on and against the Property shall attach to the Proceeds with the same validity, force, and effect, and in the same order of priority that existed immediately prior to the Closing, all without prejudicing any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

29. It is the Debtor's belief, that for the reasons set forth above, an Order authorizing the sale of Debtor's property pursuant to the relevant sections of Bankruptcy Code 363, should hereby be granted.

WHEREFORE, the Debtor respectfully requests the entry of an order granting this Sale Motion, including approving the Agreement of Sale of Taxi Medallions identified as 4J40 and 4J41, free and clear of all liens, claims, encumbrances, and interests, and grant such other and further relief as is just and proper.

NOTICE OF RELIEF REQUESTED

30. The Debtor intends to serve a copy of the Notice of Motion and Application, together with Exhibits thereto, on the U.S. Trustee, counsel to the Purchaser, counsel to the Bay Ridge Credit Union, and all creditors or parties of interest who has filed a Notice of Appearance. The Debtor submits that the foregoing notice complies with the Bankruptcy Code and Rules and is good and sufficient notice of the sale and relief requested in this Application. A proposed order approving the sale and granting all other related relief is annexed as Exhibit C.

WHEREFORE, the Debtor requests entry of an Order for the relief requested in the Application and for such other and different relief that may be just and proper.

Dated: Brooklyn, New York
November 6, 2018

LAW OFFICES OF ALLA KACHAN, PC
Attorneys for Debtor

By: /s/ Alla Kachan, Esq.
Law Offices of Alla Kachan, P.C.
3099 Coney Island Avenue, 3rd Fl.
Brooklyn, NY 11235
Phone: (718)513-3145

EXHIBIT A

**AGREEMENT FOR SALE OF
OF MEDALLIONS**

A G R E E M E N T made on this 19th day of October, 2018 by and between PYRGOS TAXI INC. residing and/or conducting business from 39-32 212 ST., BAYSIDE, N.Y. 11361 after referred to as "seller" and John Giovanis (for a soon to be named corporations) residing and/or conducting business from 33-21 21st Street, Astoria, NY 11106 herein after referred to as "purchaser".

W I T N E S S E T H:

WHEREAS, the seller is the owner of certain New York City Taxi Medallion numbers PYRGOS TAXI INC. (Medallions: 9N35, 9N36)

WHEREAS, the seller wishes to sell and the purchaser wishes to purchase the above-mentioned New York City Taxi Medallion numbers PYRGOS TAXI INC. (Medallions: 9N35, 9N36)

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, it is agreed as follows:

1. SALE OF MEDALLIONS

Seller agrees to sell and the purchaser agrees to purchase New York City Taxi medallion numbers : PYRGOS TAXI INC. (Medallions: 9N35, 9N36)

PURCHASE PRICE.

The purchase price for the medallions and roof lights are \$ 350,000.00 payable as follows:

- a. Ten percent (10%) of purchase price paid by check subject to collection, **upon court approval of transfer**, which sum shall be held in a special account by the broker.
 - b. The remaining balance which will be paid five days before the closing by certified check to the broker. The proceeds from the sale will be disbursed to Lender as per court order unless otherwise agreed to by Lender and Seller. Seller will cover any outstanding judgments and closing expenses and Broker will disburse funds to Lender within 48 hours of closing.
2. The Parties agree that the Seller shall pay for any outstanding TLC violations, fees, MTA tax, associated with the medallion.
 3. The Parties agree that the Purchaser shall reimburse the Seller for the Purchaser's prorated share of prepaid medallion renewal fees made by the Seller.

4. CLOSING

The closing shall take place on or about November 19th, 2018, depending upon final approval from the New York City Taxi and Limousine Commission, "TLC." The closing shall take place at the TLC.

5. BROKER

OMEGA BROKERAGE INC. is the broker who will represent the purchaser and the seller in this transaction. The purchaser and the seller will pay OMEGA BROKERAGE INC. its commission pursuant to a separate agreement.

6. SELLER'S WARRANTIES AND REPRESENTATIONS

Seller warrants and represents the following:

- a. Seller has authority to make this sale contemplated in the agreement.
- b. Seller is the owner of the medallions being sold therewith, which shall be delivered to purchaser free, clear and unencumbered.
- c. That if requested by the TLC, the Seller shall obtain all necessary tort letter releases from its past and current insurance companies.

7. INDEMNIFICATION

Seller agrees to indemnify and hold harmless the Purchaser from any claims or actions resulting from Seller's conduct of its business prior to closing.

8. DELIVERY OF DOCUMENTS

Purchaser and seller agree to execute and deliver to the TLC, and any other governmental agency, all documents necessary to effectuate the closing of this sale.

9. BREACH OF CONTRACT

The parties agree that the only legal excuse for this transaction not closing shall be if the TLC does not approve of the transfer or if the TLC requests tort letters from the Seller's past and/or present insurance companies and those letters are unavailable.

10. REMEDY FOR DEFAULT

11. The party that defaults in this agreement is liable to pay to the broker the full commission for the purchaser and the seller according to their agreements.

12. BINDING EFFECT

This Agreement shall be binding upon the parties and their heirs and assigns.

13. GOVERNING LAW. This Agreement shall be construed, interpreted and enforced, both as to substance and remedies, in accordance with the laws of the State of New York.

14. This Agreement, and all exhibits and schedules referenced herein constitute the entire agreement of the parties as to the subject matter hereof, and supersede all prior discussions, negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. All disclosures in the Schedules to this Agreement are incorporated by reference herein and in each of the other Schedules.
15. MODIFICATION Agreement may not be modified except by a writing executed by duly authorized representatives of all parties.
16. SEVERABILITY. A determination that any portion of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of the Agreement or of this Agreement as a whole.

SELLER - _____
GEORGE JANETOS, PRES. OF PYRGOS TAXI INC.

SELLER - _____
JOHN JANETOS, SEC. OF PYRGOS TAXI INC.

PURCHASER - _____
John Giovanis (for a soon to be named corporation)

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

PYRGOS TAXI CORP.,

Debtor

Chapter 11

Case No. 1-18-41344-ESS

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**PROPOSED ORDER AUTHORIZING AND APPROVING AGREEMENT
FOR SALE OF MEDALLIONS (9N35 and 9N36) BETWEEN
THE DEBTOR, PYRGOS TAXI CORP., AND JOHN GIOVANIS**

THIS MATTER having come before the Court on Debtor's motion to approve the Agreement of Sale of Medallions (9N35 and 9N36), made between the Debtor, Prygos Taxi Corp., and John Giovanis (for a soon to be named corporation), and the Court having considered the pleadings and documentation submitted herein, and being otherwise fully advised, it is hereby

ORDERED, that the sale of the Property to the Purchaser be approved in accordance with the Contract, attached as "**Exhibit A**" and from the proceeds of sale, all outstanding liens, encumbrances, and other customary closing expenses shall be paid, and the Debtor shall utilize the net proceeds to effectuate a successful reorganization of her bankruptcy estate.

ORDERED, that the approving of the Agreement of Sale of Medallions, made between the Debtor, Prygos Taxi Corp., and John Giovanis (for a soon to be named corporation), regarding two New York City Taxi Medallions (4J40 and 4J41), is in the best interest of the debtor; and it is further

ORDERED, that the Debtor's Motion to Approve the Agreement of Sale of Medallions, made between the Debtor, Pyrgos Taxi Corp., and John Giovanis (for a soon to be named corporation), regarding the two New York City Taxi Medallions (9N35 and 9N36), is granted.

Dated: Brooklyn, New York

Elizabeth S. Stong
United States Bankruptcy Judge