



Order Filed on September 21, 2018
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9013-4

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In the Matter of:

ROBERT T. WINZINGER, INC.,

Debtor

Chapter 11

Case No. 17-25972/KCF

September 20, 2018 at 10 a.m.

Hearing Date: ~~August 20, 2018 at 10 a.m.~~

Judge: Ferguson

ORDER: (I) APPROVING "STALKING HORSE" ASSET PURCHASE AGREEMENT; (II) APPROVING BIDDING PROCEDURES; (III) APPROVING THE FORM, MANNER AND SUFFICIENCY OF NOTICE OF THE BIDDING PROCEDURES; (IV) SCHEDULING AN AUCTION AND A SALE HEARING TO CONSIDER APPROVAL OF THE HIGHEST AND BEST OFFER THEREFROM; AND (V) GRANTING OTHER RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through nine (9), is hereby
ORDERED.

DATED: September 21, 2018


Honorable Kathryn C. Ferguson
United States Bankruptcy Judge

Case No.: 17-25972/KCF

Debtor(s): ROBERT T. WINZINGER, INC.

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THIS MATTER having been opened to the Court by David A. Kasen, Esquire, of Kasen & Kasen, P.C., attorneys for the above-captioned Debtor, pursuant to *Debtor’s Motion, Pursuant to 11 U.S.C. §§ 363 and 105 and Fed. R. Bankr. P. 2002 and 6004, for Orders: (i) Authorizing the Debtor to Sell Certain Estate Property Free and Clear of all Liens, Claims and Encumbrances; (ii) Approving a "Stalking Horse" Asset Purchase Agreement; (iii) Approving Bidding Procedures; (iv) Approving the Form, Manner and Sufficiency of Notice of the Bidding Procedures; (v) Scheduling an Auction and a Sale Hearing to Consider Approval of the Highest and Best Offer Therefrom; and (vi) Granting Other Related Relief [Dckt. no. 202]*, as supplemented by the revised Asset Purchase Agreement (“**APA**”) [Dckt. No. 303] (collectively, the “**Motion**”); and the Court having found that due and sufficient notice was given under the circumstances, and for good cause shown;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the APA¹ pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant

¹ Terms not defined herein shall have the meanings assigned to them in the Motion.

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to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and procedural predicates for the relief requested in the Motion are Bankruptcy Code sections 363 and 105 and Bankruptcy Rules 2002 and 6004.

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no further notice is required except with respect to the hearing to be conducted to approve the transactions contemplated by the APA. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor’s proposed notice of the Bidding Procedures, as hereby amended, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of the Property, the Auction, and the Bidding Procedures.

F. The Debtor has articulated good and sufficient reasons for the Court to approve the APA and Bidding Procedures.

G. The entry of this Order is in the best interests of the Debtor, its estate, creditors and other parties in interest.

H. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value to be achieved for the Property. The Bidding Procedures were negotiated in good faith by the Debtor, Mill Race, Investors Bank and JPC Group Real Estate, LLC (“JPC Realty”).

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I. The Bidding Procedures comply with the requirements of Local Rule 6004-2.

J. The sale of the Property will effectuate, in part, the Debtor’s Plan of Reorganization.

Amendments to APA. The APA is amended as set forth below (the “**APA Amendments**”).

K. The Effective Date of the APA is September 20, 2018.

L. Section 4.1(b) is revised to obligate Buyer to obtain a Title Commitment within forty-five (45) days of the Effective Date.

M. Section 4.1(f) is revised to provide that it does not apply to the mortgage secured loan of Investors Bank.

N. Section 8.1(Closing and Closing Date) is revised to set the Closing Date as follows if the Closing has not otherwise occurred sooner:

(i) On or before December 4, 2018 each Seller shall deliver to the Buyer and to the Title Agent all of the items referenced in Section 9.2 and by that date the Seller shall also perform all of its other obligations set forth in the APA and the Closing shall then occur on or before December 18, 2018; and

(ii) If the items referenced in Sections 9.2(g), (i)(to the extent that the State of New Jersey, Department of Environmental Protection (the “**NJDEP**”) is the certifying body), (k) and (l) and 12.1(i)(the “**NJDEP Items**”) have not been delivered to the Buyer and to the Title Agent on or before December 4, 2018, the Closing shall occur on the earlier of February 1, 2019 or fourteen (14) days after all NJDEP Items have been delivered by the Sellers to the Title Agent.

(iii) Unless waived by Buyer, the Closing Date shall not occur sooner than fourteen (14) days after the expiration of the Due Diligence Period, including any extension under Section 5.1.

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O. Section 10.1 (a) is revised to provide as follows:

Real Estate Taxes; Rollback Taxes. Real estate taxes for the Property and the Improvements based on the tax bill for the calendar year shall be prorated as of the Closing Date. If the Closing Date shall occur before the tax rate or assessed valuation is fixed, the apportionment of real estate taxes shall be upon the basis of the tax rate for the preceding year applied to the most recently applicable assessed valuation, subject to further and final adjustment when the tax rate and/or assessed valuation is fixed for the year in which the Closing occurs. Notwithstanding the foregoing, Buyer shall assume responsibility for any farmland assessments and rollback taxes incurred on or after the Closing Date. Buyer may, at Buyer's option, retain farmland assessment, in accordance with applicable law.

IT IS THEREFORE HEREBY ORDERED as follows:

1. As hereby amended, the APA is hereby approved and the Debtor is authorized to enter into the APA. In the event of any conflict between this Order and the APA, this Order controls.
2. The final form of the APA for a higher and better bid solicited in accordance with the Bidding Procedures and the Debtor's request to consummate the transactions contemplated therein and pursuant thereto shall be subject to further approval at the sale hearing, outlined below.
3. The Bidding Procedures, as presented in the Motion and as modified herein as set forth in Exhibit "A" hereto, are reasonable and appropriate under the circumstances of this case and are hereby approved and authorized to be implemented by the Debtor in all respects.
4. JPC Realty is approved as the stalking horse bidder for the Property pursuant to the terms of the APA.

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5. The Debtor is hereby authorized to solicit higher and better bids for the sale of the Property, and to conduct an Auction, if necessary, of the Property in accordance with the Bidding Procedures.

6. The Bid Deadline is 5:00 p.m. on October 5, 2018.

7. The Auction, if any, shall be conducted at the offices of Debtor's counsel, at 11:00 a.m. (EST) on October 12, 2018. Representatives of Investors Bank shall be entitled to attend the Auction and shall be give suitable notice of any change in the time and location of the Auction.

8. Closing will take place within the time frames provided in the APA, as amended herein.

9. Pursuant to Bankruptcy Code §1146(a), the sale of the Property by the Debtor shall be exempt from all New Jersey realty transfer fees imposed by N.J.S.A. 46:15-10(g), including any applicable "Mansion Tax", and the Gloucester County Clerk shall record any deed(s) made in connection with such sale without payment of any realty transfer fees or Mansion Tax.

10. This Order and the Bid Procedures as appended hereto as Exhibit "A" shall be served, within three (3) business days of its entry, via commercial overnight delivery service (i.e. FEDEX or UPS) for next business day delivery, on: (i) counsel to JPC Realty; (ii) all potential buyers or their known counsel currently known by the Debtor or that have expressed an interest in purchasing the Property; (iii) counsel to Investors Bank; (iv) all other parties who are known

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to assert interests in or liens on the Property; (v) the Internal Revenue Service and applicable state and local taxing authorities; (vi) the United States Trustee for the District of New Jersey; and (vii) all other parties who have filed a Notice of Appearance and Request for Service of Papers.

11. Notice provided in accordance with the preceding paragraph shall be good and sufficient and no further notice of the Bidding Procedures, Auction, sale hearing or the Debtor's request for authority to sell the Property free and clear of all liens, claims and encumbrances shall be necessary.

12. The sale hearing shall be conducted at 10:00 a.m. on October 9, 2018 in Courtroom # 2 at the U.S. Bankruptcy Court, Clarkson S. Fisher US Courthouse, 402 East State Street, Trenton, New Jersey 08608 if there is no Auction, and at 10:00 a.m. on October 16, 2018 if there is an Auction.

13. Objections, if any, to final approval of the sale of the Property free and clear of all liens, claims and encumbrances shall: (i) be in writing; (ii) specify the nature and basis for the objection; (iii) be filed with the Clerk of the United States Bankruptcy Court electronically via the Electronic Case Filing System ("**ECF**") on or before 4:00 p.m. (Eastern Time) on the day preceding the appropriate hearing date referenced in Paragraph 12; and (iv) simultaneously served on (a) counsel to the Debtor, (b) the Successful Bidder, (c) counsel to JPC Realty, (d) counsel to Investors Bank, and (e) the United States Trustee for the District of New Jersey. Unless such objections are timely filed, all holders of claims and interests against the Debtor

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and/or the Property shall be deemed to have consented to a sale of the Property free and clear of all liens, claims and encumbrances, and shall forever be barred from objecting thereto.

14. This Court shall retain jurisdiction to: (i) to interpret, implement and enforce the terms and provisions of this Order; (ii) to enter Orders in aid or furtherance of this Order; and (iii) adjudicate any issues concerning the Debtor’s right and authority to sell, assign and transfer the Property to the Successful Bidder at a sale hearing.

15. All valid liens against the Property, including the first mortgages of Investors Bank, shall attach to the gross proceeds of sale and shall be paid from available proceeds at the Closing in the priority of each lien.

16. Debtor shall arrange for Mill Race and/or the principals of the Debtor to deposit the sum of \$100,000.00 (the “**Escrow**”) in escrow with Robert Keyser, Esq. on or before 5:00 p.m. on October 5, 2018. If the Property sale proceeds are insufficient at Closing to satisfy in full the amount then due on the Investors Bank secured claim, the Escrow (to the extent necessary) shall be disbursed at Closing to Investors Bank. If the Investors Bank secured claim is not satisfied in full at the Closing after application of the Property sale proceeds and the full amount of the Escrow at Closing, the balance (“**Post Closing Balance**”) shall be paid to Investors Bank in equal monthly payments of \$23,811.80 on or before the fifteenth (15th) of each calendar month, beginning on the 15th of the calendar month next following the Closing, until the Post Closing Balance is paid in full. These monthly payments are instead of the monthly payments being made to Investors Bank prior to the Closing pursuant to Orders allowing use of cash

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collateral. The Post Closing Balance shall include continuously accruing interest at the default rate set forth in the Investors Bank loan documents plus all attorneys' fees and related expenses incurred by Investors Bank after the Closing. The amount of the Closing Balance upon completion of the Closing shall not exceed \$75,000.00.

EXHIBIT A

BIDDING PROCEDURES

The following bidding procedures (the “**Bidding Procedures**”) shall govern competing bids to purchase the Property to be sold under the APA as amended by the *ORDER: (I) APPROVING “STALKING HORSE” ASSET PURCHASE AGREEMENT; (II) APPROVING BIDDING PROCEDURES; (III) APPROVING THE FORM, MANNER AND SUFFICIENCY OF NOTICE OF THE BIDDING PROCEDURES; (IV) SCHEDULING AN AUCTION AND A SALE HEARING TO CONSIDER APPROVAL OF THE HIGHEST AND BEST OFFER THEREFROM; AND (V) GRANTING OTHER RELATED RELIEF* entered by the Court on September 21, 2018:

a. The Property may be sold only to a single bidder, in a single sale for cash. All bidders making an offer for the Property must be willing to sign an asset purchase agreement substantially in the same form as the APA (as made applicable to other Qualified Bidders (as defined below)), except as to the purchase price, which shall be at least in the amount set forth in subparagraph (c) below.

b. The sale of the Property shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, Mill Race, their agents, or their estates, except to the extent set forth in the APA or the purchase agreement of the successful bidder. JPC Group Realty, LLC (“**JPC Realty**”) and each Qualified Bidder shall be deemed to acknowledge and represent that each has had an opportunity to conduct due diligence regarding the Property before making its bid, that it has relied solely on its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely on any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property or the completeness of any information provided in connection therewith or the sale process, except as expressly stated in these bidding procedures or (i) as to JPC Realty, as set forth in the APA, or (ii) as to another successful bidder, as set forth in its asset purchase agreement.

c. To bid on the Property, a bidder must deliver to Debtor's counsel by **5:00 p.m. (Eastern Standard Time) on October 5, 2018** (the "**Bid Deadline**"), a written irrevocable offer for the Property in the form of a signed asset purchase agreement no less favorable to the Debtor and Mill Race than the APA (as made applicable to other Qualified Bidders), including a purchase price in the amount of at least \$3,950,000.00 in cash (the "**Minimum Bid**") which includes the aggregate consideration provided pursuant to the APA of \$3,900,000.00 *plus* an initial overbid of \$50,000, and deliver an earnest money deposit to Debtor's counsel equal to five percent (5%) of the Minimum Auction Bid (the "**Deposit**") in the form of a certified check or wire transfer payable to the trust account of Debtor's counsel. The bid also must: (i) identify the bidder and the officer(s) or authorized agent(s) who will appear on behalf of such bidder; (ii) contain such documents and information so as to establish the bidder's financial ability to close on the sale of the Property; (iii) if the bidder is an entity created to purchase the Property, the bid also must contain such documents and information from the bidder's parent or other appropriate affiliated company so as to establish such entity's financial ability to cause the bidder to close on the sale of the Property and a written guarantee from such parent or affiliated company of the bidder's obligations in connection with any such sale; (iv) be accompanied by a blacklined version of the APA comparing its form of asset purchase agreement to the APA; and (v) the form of order the bidder would request the Debtor seek Court approval of. For purposes of these bidding procedures, Debtor's counsel shall mean Kasen & Kasen, P.C., 1874 E. Marlton Pike, Suite 3, Cherry Hill, New Jersey 08003.

d. All bidders must be willing and able to close on the purchase of the Property at the offices of the Debtor's counsel at a mutually agreed upon time on or before all conditions in the APA are satisfied.

e. No prospective purchaser will be permitted to bid unless such party has been determined to be “financially qualified.” The Debtor reserves all rights with respect to such determination, except that JPC Realty is deemed to be “financially qualified.”

f. Only those bids that meet the requirements of the preceding five (5) subparagraphs will be considered a “Qualified Bid.” The Debtor shall notify any bidder promptly upon the determination by the Debtor of whether its bid is a Qualified Bid. Any bidder notified that its bid is a Qualified Bid will be considered a “Qualified Bidder.”

g. If Qualified Bids in addition to the APA are submitted by the Bid Deadline, an auction will be conducted at the offices of Debtor’s counsel on **October 12, 2018, at 11:00 a.m. (EST)** (the “**Auction**”).

h. Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. JPC Realty is a Qualified Bidder, and the bid submitted by JPC Realty under the APA is a Qualified Bid. Before the commencement of the Auction, if any, the Debtor will select the highest or otherwise best bid to serve as the starting point for the Auction (the “**Baseline Bid**”). The Baseline Bid will be a Qualified Bid that is determined to be a higher and better bid than that set forth in the APA and that proposes a purchase price that is at least in the amount of the Minimum Auction Bid. The Debtor will provide JPC Realty with a copy of all documentation evidencing any such bid on the same day any Qualified Bid is selected as the Baseline Bid.

i. Bidding at the Auction shall start at the Baseline Bid. At the Auction, Qualified Bidders may improve their bids in increments of \$50,000.00. Should overbidding occur, JPC Realty shall have the right, but not the obligation, to participate in the bidding pursuant and to be approved as the successful bidder at the sale hearing based on any such subsequent successful overbid. The bidding shall be continuous and competitive and shall

not end until all bidders have submitted their last and best offers. The Debtor may adopt such other rules for the bidding process at the Auction that, in their discretion, will best promote the goals of the bidding process and are not inconsistent with, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any of the orders of the Bankruptcy Court entered in connection herewith. Such rules will provide that, among other things: (i) the procedures must be fair and open, with no participating Qualified Bidder disadvantaged in any material way as compared to any other participating Qualified Bidder; (ii) all bids will be made and received in one room, on an open basis, and all other bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction; and (iii) each Qualified Bidder will be permitted a fair, but limited, amount of time to respond to the previous bid at the Auction.

j. At the conclusion of the Auction, if any, the Debtor will announce the highest and best Qualified Bid (the “**Successful Bid**”), the entity making the Successful Bid (the “**Successful Bidder**”), the second highest and best bid (the “**Back-Up Bid**”), and the entity making the Back-Up Bid (the “**Back-Up Bidder**”). In determining the Successful Bid and Back-Up Bid, the Debtor shall consider, among other things, (i) the amount of consideration to be paid, (ii) the changes to and conditions contained in the asset purchase agreement (as compared to the APA), (iii) the extent to which such changes or conditions are likely to delay closing of the sale, and the cost to the Debtor of such changes, conditions or delay, (iv) if applicable, the nature of the bidder’s financing commitment, (v) the impact on the Debtor’s reorganization efforts, and (vi) the bidder’s ability to close a sale and the timing thereof (including the likelihood it will obtain any required regulatory approvals or licenses). The closing on the

sale of the Property to the Successful Bidder will take place at the offices of the Debtor's counsel, or at the offices of JPC Realty's if JPC Realty is the Successful Bidder, at a mutually agreed upon time consistent with the APA. If, for any reason, the Successful Bidder fails to consummate the purchase of the Property, the Back-Up Bidder automatically will be deemed to have submitted the highest and best bid and the Debtor shall be authorized to effect the sale, assignment and transfer of the Property to the Back-Up Bidder and the Back-Up Bidder shall be directed to purchase the Property as soon as is commercially reasonable without further order of the Bankruptcy Court. Debtor's counsel shall retain the Back-Up Bidder's deposit in an interest-bearing trust account (assuming an executed W-9 form is delivered by the Back-Up Bidder to Debtor's counsel) until the sale to the Successful Bidder closes.

k. Except as provided in the APA, all deposits shall be held by Debtor's counsel in an interest-bearing bank account (assuming executed W-9 forms are delivered to Debtor's counsel), with interest to accrue for the account(s) of the relevant bidder(s). Upon entry of the Sale Order, deposits shall be returned to the relevant bidder(s) except the Successful Bidder(s) and Back-Up Bidder(s). If the sale of the Property to the Successful Bidder closes, the Successful Bidder's deposit (plus any accrued interest) shall be applied to the purchase price at closing, and the Back-Up Bidder's deposit returned to the Back-Up Bidder. If the sale of the Property to the Successful Bidder does not close as a result of the Successful Bidder's breach or default, then, the Successful Bidder's deposit shall be forfeited to the Debtor (in addition to the Debtor reserving all other rights and remedies against the Successful Bidder), and the Back-Up Bidder's deposit (and any accrued interest) shall be applied to the Purchase Price at Closing of the Back-Up Bidder's purchase of the Property.

l. If no higher and better bids are submitted by the Bid Deadline, the Auction will not be held, JPC Realty will be the Successful Bidder, the APA will be the Successful Bid and the Debtor will seek approval and authority to consummate the transactions contemplated by the APA on the terms and conditions described therein.

m. A BID FAILING TO COMPLY WITH THESE REQUIREMENTS WILL NOT BE CONSIDERED BY THE DEBTOR.