

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov**

In re:

Ronald Earl Scherer, Sr.,

Debtor.

**Case No: 6:17-bk-02004-RAC
Chapter 11**

Expedited Hearing Requested

**DEBTOR-IN- POSSESSION'S MOTION TO SELL
LOWESTONE ROAD REAL PROPERTY FREE AND CLEAR OF LIENS
(Property Address: 4425 and 4427 Lowestone Road, Columbus, Ohio 43220)**

Expedited Hearing and Reduced Notice Requested:

Because Buyer requests a closing date on or before August 15, 2017,
Debtor requested an expedited hearing **no later than Tuesday, August 8,**
2017.

Ronald Earl Scherer, Sr., as Debtor-In-Possession (hereinafter referred to as "Debtor"), by and through his undersigned attorney, moves this Court for authority to sell property of the estate, free and clear of liens pursuant to sections 105 and 363 of title 11 of the United States Code , Rules 2002, 6004 and 9019 of the Federal Rules of Bankruptcy Procedure and Rule 2002 of the Local Rules, and requests an expedited hearing on the Motion. In support of the Motion, Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein are Bankruptcy Code §§ 105 and 363; Bankruptcy Rules 2002, 6004 and 9019; and Local Rule 2002.

BACKGROUND FACTS

4. The Debtor is an individual who filed for protection under Chapter 11 of the United States Bankruptcy Code on March 29, 2017. Since that time Debtor has continued to manage his property as Debtor-in-Possession under this Court's Order (Doc. No. 3).

5. On June 16, 1993, Debtor established three separate, yet identical revocable living trusts, each with a separate trustee. All three trusts were amendable by Debtor under their own terms. On June 16, 1997, the Debtor amended those trusts restating them in their entirety and consolidating them under one trust ("Revocable Trust") with one trustee. In December 23, 1997, Debtor again amended the Revocable Trust to allow the encumbrance and pledging of assets. Since that time no further amendments have been made by Debtor.

6. The Revocable Trust, through its trustee ("Trustee"), holds real property located at 4425 and 4427 Lowestone Road, Columbus, Ohio 43220 ("Lowestone Property"). After dismissing the previous Trustee, the current Trustee of Revocable Trust is Debtor.

7. The real property consists of a residential duplex used as rental real property. One of the units is currently rented.

8. Trustee has authority under Article 11, Section 11.1.2 of the Revocable Trust to sell real property at a private sale.

10. The Debtor acting as Trustee of the Revocable Trust has obtained a contract for sale ("Contract") of the Lowestone Property by an investor, Michael P. Capraro ("Buyer"), a resident Detroit, Michigan. Trustee of Revocable Trust has signed the Contract. A copy of the Contract with addendums is attached hereto as Exhibit "A" which is incorporated herein in its entirety by reference.

11. The parties have agreed that within the terms of the Contract, that the Contract is contingent upon the approval of this Court. The Contract becomes binding only upon entry of an Order approving the sale.

BASIS FOR RELIEF REQUESTED

12. It is in the best interest of the estate and its creditors to sell the Lowestone Property. The Debtor believes that the sale of Lowestone Property will result in distribution to pay down secured liens on the real property and increase the cash flow to creditors in the Plan of Reorganization.

13. Bankruptcy Code § 363(b)(1) provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although Bankruptcy Code § 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of property of a debtor if such sale is based upon the sound business judgment of the debtor. *See Inst’l Creditors of Cont’l Airlines, Inc. v. Cont’l Airlines, Inc. (In re Cont’l Airlines)*, 780 F.2d 1223, 1225-26 (5th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 17-18 (Bankr. M.D. Fla. 2005) (applying sound business justification standard in authorizing payment of prepetition claims pursuant to Bankruptcy Code § 363(b)); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under Bankruptcy Code § 363 requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

14. In the circumstances of valid business justifications, applicable principles of law attach to a debtor’s decision a strong presumption “that in making a business decision[,] the directors

of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990). Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (i) the debtor in possession has provided interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); accord *In re Decora Indus., Inc.*, 2002 WL 323332749 at *3 (Bankr. D. Del. May 20, 2002).

15. The Debtor submits that the decision to sell the Lowestone Property in the manner set forth herein is based upon his sound business judgment. The Debtor believes that the sale of the Lowestone Property is in the best interests of the estate and all parties in interest.

16. The Debtor has marketed the property and had one other offer after the date of the petition which did not materialize. The Debtor believes that this is the best offer that can be obtained post-petition on the real property.

17. The property is being sold to a good faith purchaser within the meaning of 11 U.S.C. § 363(m). The Buyer is not an insider to Debtor and negotiations between Debtor and Buyer have been at arms'-length. The property is being sold at fair market value and the sale has achieved the best results for all parties in interest. Thus, the Debtor submits that the sale of the Property is within his sound business judgment.

THE TERMS OF THE SALE

18. The particulars and terms of the private sale are set out in the Contract with a purchase price of \$405,000. Debtor believes that this is the fair market value of the real property.

19. There is no real estate agent or broker involved and no commission is due upon sale.

20. The sale is a private sale to an individual.

21. The sale is contingent upon: (1) approval of the contract by the United States Bankruptcy Court; (2) upon Buyer obtaining financing by July 15, 2017; (3) a satisfactory home inspection; and (4) closing by August 15, 2017. All the terms of the sale are included in Contract attached as Exhibit "A".

22. Debtor proposes to convey the property by statutory fiduciary deed, free and clear of all encumbrances, other than taxes, zoning restrictions, and other requirements imposed by governmental authority, restrictions and matters appearing on the plat or otherwise common to the subdivision, and public utility easements of record.

23. There is no homeowner's association for the community in which the real property is located. There are no mortgages from financial institutions or individuals attached to the real property. Under the terms of the Contract all real property taxes shall be pro rated at the time of closing. Debtor is aware of federal tax liens which have attached to the real property.

24. Debtor requests that the Court approve the sale, pursuant to 11 U.S.C. § 363(f), free and clear of liens, claims, and interests, with the liens, claims, and interests attaching to the proceeds at closing. Debtor requests that all real property taxes and closing costs be disburse at closing and that amounts owed for federal tax liens be held in escrow until such time as a claim is filed in the this bankruptcy case. However, in the event that a claim by IRS has been filed, then the proceeds pursuant to the federal tax liens shall be paid at closing. Debtor requests that the proceeds be applied with the trust fund penalties being paid and satisfied first, with the balance being applied to liens for federal income tax.

NO 14 DAY STAY OF SALE NECESSARY AFTER ENTRY OF ORDER

25. Because of the need to close rapidly on the sale by August 15, 2017, the Debtor submits that the circumstances warrant the elimination of the 14 day stay provided by Bankruptcy Rule 6004(h).

EXPEDITED HEARING REQUESTED

26. Because Buyer has requested that Debtor through Trustee close on the sale by August 15, 2017, Debtor has requested an expedited hearing to approved the sale no later than August 8, 2017, with the 14 day rule waived.

WHEREFORE, Debtor requests that the Court enter an Order:

- a) approving the sale of Property free and clear of liens under the terms of this motion;
- b) set expedited hearing on this Motion no later than August 8, 2017 waiving the 14 day rule;
- c) shorten the time periods allowing the sale and disbursement on an expedited basis;
- d) and granting such other and further relief as the Court deems just and proper under the circumstances of the case.

/s/ James H. Monroe

James H. Monroe
James H. Monroe, P.A.
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Email: jamesmonroe@jamesmonroepa.com
Attorney for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing including the attached Exhibit "A" have been sent by U.S. Mail delivery or electronic transmission to the creditors and parties in interest on the attached mailing matrix, Debtor, Ronald Earl Scherer, Sr., Post Office Box 730478, Ormond Beach, FL 32173-0478; Alan Shapiro, Trial Attorney, Tax Division, U.S.

Department of Justice, Post Office Box 55, Washington, D.C. 20044; United States Trustee, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; and all creditors and parties in interest on the attached mailing matrix this 3rd day of July, 2017.

/s/ James H. Monroe

James H. Monroe

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement"), is dated this 30th, day of June 2017, between Ronald E. Scherer, Sr., as trustee of the Ronald E. Scherer Revocable Trust (the "Seller"), and Michael P Capraro, a resident of Birmingham, Michigan (the "Purchaser").

1. In consideration of the mutual promises contained in this Agreement, and on the terms and conditions set forth in this Agreement, the Seller agrees to sell and convey, and the Purchaser agrees to buy and pay for the property known as 4425 & 4427 Lowestone Road, Columbus, Ohio 43220, and as more fully described on Exhibit A to this Agreement (the "Property"), including all electrical, heating, plumbing, and bathroom fixtures, all landscaping, smoke detectors, kitchen appliances and fixtures, garage openers, drapes, window shades and blinds, awnings, curtain rods, screens and storm windows, wall-to-wall carpeting, wiring and antennas, attached to the Property. Notwithstanding the previous sentence, the items on the attached Exhibit Bare not included in the sale contemplated in this Agreement.

2. The Purchase Price for the Property shall be \$405,000 (the "Purchase Price"), payable \$10,000 as earnest money, paid within five days upon approval of the US. Bankruptcy Court of this Agreement and held by the Escrow Agent (as defined below) and applied to the purchase price upon the closing (as defined below). The balance of the Purchase Price is to be paid at the closing.

3. The obligations of the parties under this Agreement are contingent upon the Purchaser obtaining a satisfactory home inspection of the facility and financing commitment from a mortgage from a lending institution satisfactory to buyer no later than July 31st, 2017, unless extended by written agreement of the parties. If no commitment is received by that date, the obligations of the parties under this Agreement will be null and void, and the earnest money held by the Escrow Agent will be returned to the Purchaser. The obligations of the parties under this Agreement are contingent upon the closing of the purchase and sale no later than August 15th, 2017. If the closing has not occurred by that date, the obligations of the parties under this Agreement will be null and void, and the earnest money held by the Escrow Agent will be returned to the

Purchaser. If the property does not close buyer will provide the seller with a copy of the home inspection report.

4. The Purchaser will notify the seller in writing of its acceptance of the results of the home inspection which acknowledges he has had the opportunity to inspect the Property, and the Property is transferred on an "as is, where is" basis. No representation or warranty as to the physical condition of the Property is made in this Agreement.

5. The Seller will convey the Property with a fiduciary deed executed in compliance with Chapter 5301 of the Revised Code of the State of Ohio, conveying to the Purchaser good and marketable fee simple title to the Property free and clear of all liens, claims and encumbrances except: restrictions, reservations, conditions, covenants, and easements of record; encroachments as do not materially and adversely affect the use of value of the Property; zoning ordinances; and current taxes and assessments, both general and specific, that are not yet due and payable. The Seller will provide to the Purchaser an Owner's Fee Policy of Title Insurance in the amount of the Purchase Price.

6. Taxes and assessments will be prorated as of the date of recording the deed based upon the latest available tax duplicate. The Seller will pay directly all utility charges due up to the date the deed is filed.

7. All funds and documents necessary for closing will be deposited with _____, as Escrow Agent, no later than July 15th, 2017, and the deed will be recorded on or about August 16th, 2017. The Purchaser will be entitled to possession on the date of recording of the deed.

8. The Escrow Agent will charge the Seller and pay out of the Purchase Price:

- a. one half of the escrow fee;
- b. the cost of the real estate conveyance fee;
- c. any amount due the Purchaser be reason of proration;
- d. the cost of title examination; and
- e. the cost of preparation of the warranty deed.

The Escrow Agent will charge the Purchaser:

- a. all fees for filing the deed and mortgage deed if any;
- b. all other costs associated with the Purchaser's financing;

- c. the cost of the Owner's Fee Policy of Title Insurance; and
- d. one half of the escrow fee.

9. The Purchaser acknowledges receipt of the "Residential Property Disclosure Form", and "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards", which are attached to this Agreement. The Seller warrants that it has disclosed to the Purchaser all notices received pursuant to Ohio's sex offender law (Megan's Law).

10. The risk of loss shall remain with the Seller until title transfer. Should the Property be substantially damaged by fire or other casualty prior to filing the deed, the Purchaser shall have the option to void this Agreement, and all earnest moneys shall be returned to the Purchaser. The Purchaser also shall have the option to complete the purchase of the Property, with all insurance proceeds, or the right to receive such proceeds, deposited in escrow and delivered to the Purchaser at the closing.

11. The parties acknowledge and agree that no real estate agent or broker has been used in this transaction.

12. This Agreement shall be governed by the laws of the State of Ohio. The covenants, conditions and agreements herein shall be binding upon each of the parties, and their respective heirs, devisees, executors, administrators, successors and assigns. The entire agreement between the parties is contained in this Agreement, and no prior written or oral agreement between the parties may be used to amend the terms of this Agreement. The terms of this Agreement shall survive the closing. Any portion of this Agreement declared invalid by law will not void the remainder of this Agreement.

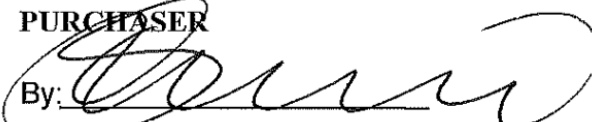
13. This Agreement is contingent upon the approval of the United States Bankruptcy Court, Middle District of Florida, Orlando Division (Case No: 6:17-bk-02004-RAC). The terms of this Agreement are not binding unless or until an Order approving the sale becomes final.

SELLER

Ronald E Scherer Sr., as trustee

By: 
Title: Trustee

PURCHASER

By: 
Title: Michael P. Capraro