

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

IN RE:)
)
SAMUEL J. HAMILTON AT YORK,)
LLC)
)
Debtor.)

CASE NO.: 17-71253-JHH11

**MOTION TO SELL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES**
(Grocery Store Equipment)

COMES NOW Samuel J. Hamilton at York, LLC (“Debtor” or “Debtor-in-Possession”), as Debtor and Debtor-in-Possession, by and through its undersigned counsel, pursuant to §§ 105(a), and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and moves this Court to enter an order authorizing Debtor to sell certain assets free and clear of liens, claims, and encumbrances except as otherwise stated herein. In support of this Motion, Debtor states as follows:

JURISDICTION AND VENUE

1. On July 14, 2017 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Clerk of this Court. Debtor continues to operate and manage its assets as a debtor-in-possession pursuant to §§ 1107(a) and 1108.
2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of Debtor’s chapter 11 case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b).
3. There is no Trustee appointed in this case.

4. Debtor proposes to sell to City of York Industrial Board, an agency of the City of York, Alabama, all of the estate's right, title and interest in the assets described herein

5. Debtor proposes to sell the estate's interest described herein free and clear of any and all mortgages, liens, interests and/or other encumbrances as set forth herein.

IF YOU CLAIM A LIEN ON OR INTEREST IN ANY OF THE PROPERTY AND IT IS NOT SET FORTH HEREIN YOU SHOULD IMMEDIATELY MAKE SUCH LIEN OR INTEREST KNOWN TO DEBTOR AND THE COURT. THE PROPOSED SALE MAY AFFECT YOUR RIGHTS UNDER TITLE 11 UNITED STATES CODE SECTION 363.

6. There are no known liens, mortgages, or other interests in the property sought to be sold, however, Debtor reserves the right to contest the validity, priority, and extent of any claim, lien or other interest if any exist.

PROPOSED SALE OF ASSETS

7. Debtor owns grocery store equipment, which is located in a leased property located at 205 2nd Avenue, York, AL, 36925. The equipment includes refrigeration units, heating equipment, display counters, shelving, and cooling equipment, among other items (the "Equipment")(See the list of items to be sold in "Exhibit A"). The equipment has been marketed for several months by a Samuel J. Hamilton. Such marketing efforts are more particularly described in the affidavit attached hereto as "Exhibit B".

8. The proposed sale of the Equipment will be by private sale to City of York Industrial Board, an agency of the City of York, Alabama, who has entered into an contract to purchase the Equipment (See the attached Intent for the Sale of Grocery Equipment attached hereto as "Exhibit C"). The contemplated sale price is \$45,000.00. Upon completion of the sale,

the proceeds will be deposited into the DIP Account, and will be accounted for to the Bankruptcy Administrator through monthly operating reports.

LEGAL AUTHORITY

9. Section 363(b)(1) of the Bankruptcy Code provides that a debtor in possession, “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). A debtor-in-possession is given these rights by § 1107(a) of the Bankruptcy Code and § 105(a) provides that bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

10. Debtor has determined, in its sound business judgment, that proceeding with the sale as requested in this Motion is in the best interests of the Estate and its creditors. “[T]he proper standard to use when considering a proposed motion to sell is the business judgment test. [It is this standard which has been adopted by the vast majority of courts.” *In re Diplomat Const., Inc.*, 481 B.R. 215, 218-219 (Bankr. N.D.Ga. 2012) (MGD) (citations omitted); *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard.”) Sound business judgment exists in support of the sale, in that the sale will liquidate unused assets, which would be expensive to move from its current location. The proposed sale will generate cash for use in the estate, and should not hamper Debtor’s ability to operate going forward. The Equipment identified herein is not necessary for Debtor’s effective reorganization. Thus, this Court should grant the relief requested in this Motion if Debtor demonstrates a sound business justification therefor.

11. Debtor's sale of the Equipment satisfies the requirements of Section 363(f) of the Bankruptcy Code to sell the assets free and clear of all liens, claims, interests and encumbrances. Section 363(f) states:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of 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 money satisfaction of such interest.

12. Because section 363(f) of the Bankruptcy Code is phrased in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet one of the five conditions of section 363(f). With respect to any other entity asserting a lien, claim, or encumbrance against the Assets, Debtor anticipates that it will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. Any entity holding a lien on the Assets will receive notice of this Motion, and such entity will be deemed to consent if it does not object. *See Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343,

345 (E.D. Pa. 1988) (same). The sale proposed herein meets at least one of the 363(f) requirements, because applicable state law permits the sale of the Equipment described herein.

RELIEF REQUESTED

The proposed sale qualifies under Bankruptcy Code Section 363(f)(1) and (2). Accordingly, Debtor moves the Court as follows:

- A. To order a hearing on this matter;
- B. Upon such hearing, to approve the proposed sale and grant Debtor the authority to sell and convey the Equipment identified herein; and to execute any instrument necessary by order of the Court, or otherwise, to effect the transfer to a purchaser, pursuant to Federal Rule of Bankruptcy Procedure 6004(f)(2);
- C. To approve the sale free and clear of all liens and interests, and should it appear that there are parties claiming an interest in the property to be sold, to approve and confirm the sale nevertheless, and to order Debtor to hold the consideration paid on the date of the sale until the dispute can be resolved; and
- D. To grant such other, further and different relief as may be proper in the premises to effect the sale of the said property.

NOTICE OF SALE

Bankruptcy Rule 2002(a) and (c) requires Debtor to notify all creditors of the proposed sale of the assets identified herein. Service of this Motion shall be provided by U.S. Mail to the **creditor matrix** and to all parties who have registered as a participant in the CM/ECF System for the United States Bankruptcy Court for the Northern District of Alabama pursuant to FRBP 9036.

Respectfully submitted this the 20th day of September, 2017.

/s/ Samuel C. Stephens

Lee R. Benton (ASB-8421-E63L)
Samuel C. Stephens (ASB-0400-X11T)
Counsel for the Debtor

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been electronically filed with the Court and served by electronic notice generated via the Court's ECF system and by first class mail to the **Creditor Matrix (copy attached)**, by depositing a copy of same in the United States mail, properly addressed, on this 20th day of September, 2017.

Rachel L. Webber
Assistant U.S. Bankruptcy Administrator
2005 University Boulevard, Suite 1300
Tuscaloosa, Alabama 35401

/s/ Samuel C. Stephens

Of Counsel

Label Matrix for local noticing
1126-7
Case 17-71253-JHH11
NORTHERN DISTRICT OF ALABAMA
Tuscaloosa
Wed Sep 20 13:16:07 CDT 2017

Bailey Rodgers
940 Maple Leaf Drive
McDonough, GA 30253-8083

Crystal Chaney
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York, AL 36925-9778

David Scott White, Esq.
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Birmingham, AL 35202-1734

Deeann Truelove
Administratrix Estate of Lasonia Terrell
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Livingston, AL 35470

Eastern Star Baptist Church
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York, AL 36925

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Carrie Lawson
315 Webster Avenue
York, AL 36925-2528

David Brown
608 Boulevard Avenue
York, AL 36925-2610

Dawn Scott
4634 Deer Foot Path
Pinson, AL 35126-6210

Dorine Watkins
101 Railroad Street
York, AL 36925-2310

Evelyn Terrell
402 Alabama Street
York, AL 36925-2602

Gertie Jenkins
114 Walker Avenue
York, AL 36925-2921

Jalisa Thomas
306 Childs Street
York, AL 36925-2437

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Paula Stephens, Administratrix
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York, AL 36925-2067

Pearl Campbell
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Florissant, MO 63034-1605

Piggly Wiggly
7 Corporate Drive
Keene, NH 03431-5042

Rachel Chaney
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Shermika Rodgers
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U.S. Securities and Exchange Commission
Regional Director, Branch of Reorganizat
Atlanta Regional Office, Suite 900
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Birmingham, AL 35223-2468

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Samuel J. Hamilton, LLC
703 Moreland Drive
Mount Juliet, TN 37122-3438

(d)Scott E. Denson, Esq.
2160 Highland Avenue South, Ste. 100-116
Birmingham, AL 35205-4034

End of Label Matrix	
Mailable recipients	71
Bypassed recipients	2
Total	73

EXHIBIT A

Item
Supplies
Tyler Egg Case 4 ft.
Tyler Dairy Cases 3 @12ft.
Tyler 3 door Frozen Ice Cream
Master Bilt 3 Door Frozen Ice Cream
Ice Machine
Bascarts
156' of Grocery Shelving
144' of Grocery Shelving
12' of Grocery Shelving
6 End Caps
4' of Grocery Shelving I/C
28' of Grocery Shelving So. Wall
24' of Grocery Shelving Chips
12' of Grocery Shelving Juice\Water
2 Cigarette Caes
6 End Caps
Master Bilt 5 doors Frozen Food
Master Bilt 3 doors Frozen Food
Coffin Case Frozen Food 3'
Smoke Meat Case 8'
Smoke meat Case 4'
5 Produce Tables 5'
2 Tyler Produce Cases 12'
1 Tyler Produce Case 8'
1 Potato Bin 6'
Motor Room Rack System
1 Tyler Frozen Food 5 dr.
2 Master Bilt Frozen Food 5 doors
2 Tyler Multi Deck Smoke Meat cases 12'
1 Tyler Multi Deck Smoke Meat cases 8'
2 Tyler Multi Deck Meat cases 12'
1 Tyler Frozen Food 3 dr.
1 Meat Cuber
1 Meat Slicer
1 Steel Meat Table 6'
1 Steel Hand Washing Sink
1 Steel 3 Compartment Sink
1 Water Hose Wall Rack
1 Cleaning\Sanitation Station
1 Steel Cutting Table 12'
1 Hobart Meat Saw
1 Steel Cutting Table 3'
1 Meat Rack 8'
2 Steel Supply Racks on Wall
1 Steel Meat Dolly

2 Steel Meat Tables 4'
1 Tec Meat Scale\Pricing\Wrapping Station
1 Steel Meat Rack 4 ft.
1 Hobart Meat Grinder
1 Biro Meat Saw
1 Meat Wrapping Station
4 Meat Dollies
Meat Shelving in Meat Cooler 20'
1 Walk-in Meat Freezer
1 Hobart Produce Scale
Steel Produce Table 6'
1 Produce Wrapping Station
1 Produce Scale
1 - 2 Compartment Steel Produce Sink
1 Hand Washing Station Produce
1 Floor Machine
5 Grocery Dollies
1 Steel Sink 2'
1 Buffing Machine
1 10ft. Ladder
2 Floor Fans
1 Roller for unloading Truck
1 Hand Jack
Motor Room Rack System
Telephone System
Front Doors
4 Check Lanes
4 printers
4 Scanners
4 Point of Sales
4 Scales
4 CPU's
1 Server
2 Personal Computers
2 Printers
1 Camera System
1 Henny Penny Delii Case
1 Steel Deli Table 24" by 36"
1 Steel Deli Table 24" by 48"
1 Steel Deli Table 24" by 72"
1 Deli Smoker Cooker
1 Deli Chicken Fryer
1 Deli Gas Oven
1 Deli Sink\Hand Station
1 Steel Deli 3 Compartment Sink
1 Steel Deli Table 30" by 72"
1 Micro Wave Oven

4 Steel Deli Bowls
18 Steel Deli Pans
8 Steel Deli Pots
5 Steel Deli Skillets
1 Steel Roll Around Deli Table
24 Steel Deli Cooking Utensils
1 Steel Deli Stool
1 Deli Wall Exhaust System
Walk-in Produce Cooler
Walk-in Meat Cooler
Walk-in Dairy Cooler
Walk-in Grocery Freezer
Water Heater
2 Overhead Door Fan\Fly Control
Fixtures\Lighting
1 Camera System
Beer Cases & Installation
Cash register systems
Temp Alarm
Southern Refrigeration Compressor
Anderson Plumbing
U.S. Bank Compressor
Sodoma Refregeration Compressor 10 hp.
U Boats
1 Camera System
Tuscaloosa Locksmith \ Safe
1 Check Lanes
1 printers
1 Scanners
1 Point of Sales
1 Scales
1 CPU's
Motor Room Rack System
Motor Room Rack System
Motor Room Rack System
Meat dollies
Compressor
Smoke Meat Case
Pin Pads Front End System
Compressor
Smoke Meat Case
4 Point of Sales
Meat Cuber
Meat Condensor Fan for Meat Cooler

Compressor
1 Meat Cuber
Compressor
Ice Cream Compressor
Frozen Food Compressor
Air Conditioner Compressor
Meat Slicer
Ice Cream Compressor
Frozen Food Compressor
Air Conditioner Compressor
Meat Slicer
Bascarts
Dollies
Meat department condensing unit

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

IN RE:

SAMUEL J. HAMILTON AT YORK,
LLC

Debtor.

)
)
)
)
)
)
)

CASE NO.: 17-71253-JHH11

AFFIDAVIT OF SAMUEL J. HAMILTON

STATE OF TENNESSEE }
COUNTY OF Robertson }

Before me, the undersigned Notary Public, personally appeared Samuel J. Hamilton, who being known to me and first duly sworn deposes on oath and says as follows:

1. My name is Samuel J. "Jacky" Hamilton. I am the president of Samuel J Hamilton at York, LLC, a retail outlet for Piggly Wiggly stores. I am over the age of nineteen and competent to testify, and I have personal knowledge of all facts set forth in this affidavit.
2. The Piggly Wiggly grocery store operated by Samuel J Hamilton at York, LLC (the "Store") was put on the market for sale in June of 2014. The store was open at the time and had sales revenue of approximately \$210,000 per period. The store was showing an operating loss of approximately \$85,000 per year due to the low sales volume. The following paragraphs summarize my marketing attempts to sell the whole business over that last 2 years.
4. I contacted Jerry McCann at the Piggly Wiggly Bessemer, Alabama wholesale warehouse and let him know that I was interested in selling the Store. Jerry handles the sales of retail

outlets for the Piggly Wiggly warehouse. Jerry was the agent that handled the sale when I bought the store in 2011.

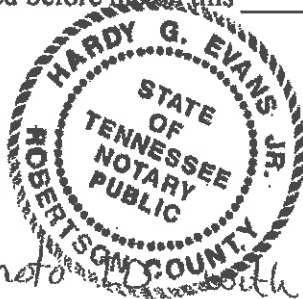
5. I Contacted an AWG Grocery Wholesale sales representative named Matt Brooks. Matt listed the Sstore within his organization from June 2014 thru the present date as available for purchase. Matt had 3 to 4 operators express an interest in the Store. I provided sales records and financial information for Matt to each of the operators showing an interest. Matt visited the Store with 2 to 3 potential buyers, but none of them made an offer.
5. I contacted a sales representative, Bubba Jenkins, with the Associated Groceries warehouse in Birmingham, Alabama. Bubba listed the store within his organization from June 2014 thru December 2015 as being available for purchase. Bubba found 2 operators that expressed an interest, and I provide sales and financial statements to their warehouse for their operators to review, but neither of them made an offer.
6. I contacted a Mitchell Grocery sales representative named Mike Jaynes about the availability of the York location. Mitchell Grocery listed the store for sale with their operators but none of their operators expressed any interest.
7. I met with Chad Harrison who owned the local hardware store in York, Alabama. I provided Chad with the store's financial statements and all the sales records. Chad did make an offer in 2015 of \$75,000 but withdrew the offer after changing his mind. I have contacted Chad several times over the last year and a half to offer the store at a reduced price due to it being closed. Chad has expressed no interest.
8. Eventually, I was contacted the mayor of York, Gena Robbins. Gena has worked with several state employees trying to help locate a buyer for the York location. Jena contacted me in April of 2017 with an offer from the Sumter Country Industrial board of \$30,000 for the equipment and the lease at the Samuel J Hamilton at York, LLC.

9. I made a counter offer to sell the equipment for \$45,000 and a bargained for a release from the current lease effective immediately. Sumter County Industrial Board accepted the offer and we signed a letter of intent.
10. The letter of intent states that Samuel J Hamilton at York, LLC will sell the equipment currently in the York location to the Sumter County Industrial Board for \$45,000 and the landlord had agreed to waive the remainder of the lease agreement with Samuel J Hamilton at York, LLC upon the execution of the sale agreement.

I hereby declare and testify that the above and foregoing facts are true and correct.

Samuel J. Hamilton
Samuel J. Hamilton

Sworn to and subscribed before me on this 20th day of September 2017.



Hardy G. Evans Jr
Notary Public

My commission expires: 04/19/2021

Verified photo ID with TNDL 2/1/17

EXHIBIT C

STATE OF ALABAMA
COUNTY OF SUMTER

INTENT FOR THE SALE OF GROCERY STORE EQUIPMENT

This agreement is made and entered into by and between the City of York Industrial Board, an agency of the City of York, Alabama, an incorporated municipality in the State of Alabama, hereinafter referred to as the "Buyer", and Jacky Hamilton, hereinafter referred to as the "Seller". Seller agrees to sell to the Buyer and Buyer in turn agrees to purchase from the Seller all of the grocery store equipment located in the former Piggly Wiggly Store building located at 205 2nd Avenue in the City of York, Alabama, including all refrigeration, heating fixtures, display counters and cooling equipment, and other items in the attached inventory list.

This agreement shall be subject to the following terms and conditions:

1. Purchase Price – The consideration to be paid to the Seller by the Buyer shall be Forty Five Thousand Dollars (\$45,000.00) shall be paid to Seller at the closing.

2. Conveyance – Seller shall convey the above described property to the Seller by means of a chattel deed conveying good and merchantable title thereto free and clear of any liens and encumbrances.

3. Closing Date- This agreement shall be closed on or before August 31, 2017.

4. Contingency – This agreement is made subject to the provision that the City of York, Alabama, and or the York Industrial Development Board receive a grant from the Delta Regional Commission which will allow for capital improvements to be made to the real property listed above and an incentive to attract a tenant to operate a grocery store in York.

5. Modification – Any modification to this agreement shall be in writing and mutually agreed to by the parties hereto.

IN WITNESS WHEREOF the parties hereto have placed their hands and signatures to this agreement on this the ____ day of June, 2017.

Seller:

Jacky Hamilton

**Allison Derby, Vice Chairman
York Industrial Development Board**