


ORDERED.

Dated: December 21, 2017



Karen S. Jennemann
United States Bankruptcy Judge

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

In re:

SQUARE ONE DEVELOPMENT, LLC,
et al.,

Case No: 6:17-bk-03846-KSJ
Chapter 11

Debtor.

Jointly Administered¹

Applicable Debtors:

SQUARE ONE DEVELOPMENT, LLC,
CASE NO. 6:17-bk-03846-KSJ;

SQUARE ONE FORT MYERS, LLC,
CASE NO. 6:17-bk-03849-KSJ;

SQUARE ONE BRANDON, LLC,
CASE NO. 6:17-bk-03852-KSJ;

SQUARE ONE THE VILLAGES, LLC,
CASE NO. 6:17-bk-03855-KSJ

**ORDER (A) AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (B)
AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND GRANTING OTHER RELIEF**

THIS CASE came on for hearing on December 20, 2017 (the "Hearing"), on the amended motion (the "Amended Sale Motion") of SQUARE ONE DEVELOPMENT, LLC

¹Jointly-administered cases: Square One Development, LLC, Case No.: 6:17-bk-03846-KSJ; Square One Winter Park, LLC, Case No.: 6:17-bk-03843-KSJ; Square One Tamiami, LLC, Case No.: 6:17-bk-03847-KSJ; Square One University, LLC, Case No.: 6:17-bk-03848-KSJ; Square One Ft. Myers, LLC, Case No.: 6:17-bk-03849-KSJ; Square One Tampa Bay, LLC, Case No.: 6:17-bk-03850-KSJ; Square One Henderson, LLC, Case No.: 6:17-bk-03851-KSJ; Square One Brandon, LLC, Case No.: 6:17-bk-03852-KSJ; Square One Tyrone, LLC, Case No.: 6:17-bk-03853-KSJ; Square One The Villages, LLC, Case No.: 6:17-bk-03855-KSJ; Square One Gainesville, LLC, Case No.: 6:17-bk-03856-KSJ; Square One Burgers Prop Co., LLC, Case No.: 6:17-bk-03857-KSJ; and Square One Lakeland, LLC, Case No.: 6:17-bk-03858-KSJ.

("Square One Development"), SQUARE ONE FORT MYERS, LLC ("Fort Myers"); SQUARE ONE BRANDON, LLC ("Brandon") and SQUARE ONE THE VILLAGES, LLC ("The Villages") (Fort Myers, Brandon, and The Villages are collectively referred to herein with Square One Development as the "Debtors" – where appropriate), for the entry of an order (a "Sale Order"), (a) authorizing the sale (the "Sale") of the Sale Assets, as described in the Amended Sale Motion, to 3 Square Restaurant Group, LLC, an entity formed by William Milner, Sheryl Rutolo and Mikaela Walter (collectively the "Purchaser"), free and clear of all liens, claims and interests, with such liens, claims and encumbrances to attach to the net proceeds thereof; (b) authorizing the assumption and assignment to the Purchaser of the executory contracts designated by the Purchaser (the "Executory Contracts"); and (c) granting certain related relief, all as more fully set forth in the Amended Sale Motion (Doc. No. 252).

Upon consideration of the Amended Sale Motion, the limited objection filed by MGM Investment Properties, LLC d/b/a VistaServ ("VistaServ") (Doc. No. 257); the limited objection of Stearns Bank, N.A. ("Stearns Bank") (Doc. No. 259); the Objection to the Sale Motion filed by the United States Trustee ("UST") (Doc. No. 275) (collectively, the "Objections"); the proffer of testimony, the positions of the Debtors, the Purchaser, VistaServ, First Citrus Bank, Stearns Bank, the UST, and all creditors present at the Hearing with respect to the Amended Sale Motion, having noted no other offers were made within the time period permitted by the Court, and being otherwise fully advised in the premises,

IT IS HEREBY FOUND AND DETERMINED AS FOLLOWS:

A. This Court has jurisdiction over the Amended Sale Motion and the transfer of the Sale Assets to Purchaser pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Hearing and the Amended Sale Motion and the relief sought therein has been given to all interested persons and entities, including, without limitation, (i) the UST; (ii) counsel to First Citrus Bank; (iii) counsel to Steams Bank; (iv) all unsecured creditors for the Debtors as identified in the Debtors' chapter 11 petition and schedules; (v) all taxing authorities having jurisdiction over any of the Sale Assets; (vi) all parties who are known to possess or assert a secured claims against the Sale Assets; (vii) all contract and lease counterparties; (viii) all parties who have filed a request for notice in the above-captioned cases pursuant to Bankruptcy Rule 2002. No other or further notice of the Hearing, the Sale Motion or this Sale Order is necessary or required.

C. The legal and factual bases set forth in the Amended Sale Motion establish just cause for the relief granted herein. Specifically, consummation of the sale (the "Sale") contemplated by the Amended Sale Motion constitutes the exercise of Debtors' sound business judgment and fiduciary duties, and such acts are in the best interests of the Debtors' estates and their creditors.

D. The Sale Assets constitute assets of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of § 541(a) of the Bankruptcy Code. The Debtors have all right, title and interest in, to and under the Sale Assets to transfer and convey the Sale Assets as contemplated by the Amended Sale Motion.

E. The consideration to be paid to Purchaser to the Debtor for the Sale Assets: (i) is fair and reasonable; (ii) is the highest and best offer received for the Sale Assets; (iii) is in the best interests of the Debtors' creditors and their estates; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any state fraudulent conveyance law applicable to the contemplated transaction. Therefore, the sale, conveyance, and transfer of the Sale Assets approved by this Sale Order is not subject to avoidance pursuant to § 363(n) of the Bankruptcy Code.

F. First Citrus Bank, which holds a first-priority security interest in the Sale Assets, has consented to the Sale.

G. The transactions contemplated are undertaken by the Debtors, First Citrus Bank and Purchaser at arms' length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (a) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Sale Assets; (b) Purchaser in no way induced or caused the chapter 11 filing of the Debtors; (c) Purchaser made the highest and/or otherwise best bid for the Sale Assets; (d) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the transactions have been disclosed; and (e) Purchaser's offer was submitted in good faith pursuant to an arms' length transaction between the Purchaser and the Debtors.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Amended Sale Motion is **GRANTED** and the objections are **OVERRULED**.
2. Pursuant to 11 U.S.C. §§ 105(a), 363(f), and 365 of the Bankruptcy Code, the Sale by the Debtors to the Purchaser of the Sale Assets, as contemplated in the Amended Sale Motion, is authorized and approved in all respects. Fifteen days after entry of this Sale Order, Debtors shall have full power and authority to consummate the Sale.
3. Subject to the payment or delivery by the Purchaser of the consideration provided for pursuant to the parties' agreement, pursuant to § 363(f) of the Bankruptcy Code, the sale of the Sale Assets by the Debtors to Purchaser shall constitute a legal, valid and effective transfer of the Sale Assets and shall vest Purchaser with all right, title and interest of the Debtors in and to

the Sale Assets free and clear of any and all security interests, mortgages, liens, judgments, encumbrances, interests and restrictions of any kind, effective as of the closing date of the Sale. At closing, Purchaser shall pay the amount of \$200,000.00, the cash portion of which shall be disbursed to First Citrus Bank. The allocation of the purchase price shall be one-third each to Ft. Myers, Brandon, and the Villages and the U.S. Trustee's Fees in respect of the cash distribution shall be paid at closing.

4. Pursuant to Bankruptcy Code Section 365(f), the Leases (as defined in the Motion) and Executory Contracts (as defined in the Motion) are hereby assumed and assigned to Purchaser. Purchaser shall pay the amounts outlined in Exhibit "A" attached hereto to cure and assume the executory contracts and unexpired leases. Additionally, Purchaser and the landlord at The Villages have agreed to the modifications set forth on Exhibit "B".

5. The Sale of the Sale Assets to Purchaser is a sale in good faith within the meaning of § 363(m), and the Purchaser is entitled to the benefits and protections afforded by the section. Accordingly, the reversal, modification on appeal, or vacatur by subsequent order of the Court of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Sale Assets to Purchaser. Moreover, pursuant to 11 U.S.C. §§ 105(a) and 363(b) of the Bankruptcy Code, after closing of the Sale, all "persons" (as that term is defined in § 104(41) of the Bankruptcy Code) are hereby enjoined from taking any action against the Purchaser of the Sale Assets to recover any claims such "person" has against the Debtors.

6. Nothing in this Sale Order shall be deemed an explicit or implicit approval of the releases being sought by Debtors in the plan of liquidation (Doc. No. 274). Moreover, the entry of this Sale Order will not impact the rights of any party with respect to any guarantees or other obligations in respect of the Sale Assets and lease assumptions.

7. This Court shall retain exclusive jurisdiction to construe, interpret and enforce the terms and provisions of this Sale Order, and to further hear and determine any claims, disputes, or any and all other matters arising from or relating to the Sale of the Sale Assets.

8. To the extent of any inconsistency between the provisions of this Sale Order and the Amended Sale Motion, or any documents executed in connection therewith, the provisions contained in this Sale Order shall govern and control.

Attorney R. Scott Shuker is directed to serve a copy of this order on all interested parties and file a proof of service within three (3) days of entry of this order.

EXHIBIT A

SQUARE ONE BRANDON, LLC
 SQUARE ONE FORT MYERS, LLC
 SQUARE ONE THE VILLAGES, LLC

LEASE CURE-AMOUNTS AND PAYMENT TERMS

Square One Fort Myers
 RPAI Fort Myers Page Field, LLC
 Retail Properties of America, Inc.
 Attn: David J. Riski
 2021 Spring Road, Suite 200
 Oak Brook, IL 60523

\$ 28,000.00 payable at assumption plus timely payment of the reconciliation for the 2017 lease year.

Square One Brandon
 2042 Badlands Drive
 Brandon, FL 33511

\$ 13,001.05 payable over 6 months.

Square One The Villages
 2542 Burnsed Blvd.
 The Villages, FL 32163

\$ 42,561.42 payable over 12 months.

EXECUTORY CONTRACTS TO BE ASSUMED AND CURE AMOUNTS

<u>CONTRACT</u>	<u>TYPE OF CONTRACT</u>	<u>LOCATION</u>	<u>CURE AMOUNT</u>
Century Link PO Box 1319 Charlotte, NC 28201-1319	Router	Ft Myers	\$0.00
Comcast Cable PO Box 105184 Atlanta, GA 30348-5184	Router	The Villages	\$0.00
Frontier Communications PO Box 5157 Tampa, FL 33675	Cable Boxes/ Router	Brandon	\$0.00
NuCo2 PO Box 417902 Boston, MA 02241-7902	C02 Tank. and Cylinder Leases	Brandon Ft Myers The Villages	\$363.30 \$468.03 \$236.76
Vista Serv 1509 Edgar Place Sarasota, FL 34240	Dishwashing and Water Softening Equipment	Brandon Ft Myers The Villages	\$995.91 \$571.66 \$1,514.05

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Commercial Property Management

Executive Summary – Square One Burgers and Bar

Current Tenant & Guarantors
Otho W. Shumate
Joanie Cornell
Ray Leich

Proposed Buyers & Additional Guarantors
Sherri Rutolo
Biii Milner
Mikaela Walters

proposed Terms of Landlord Counter Proposal

1. sign Current Lease to Proposed Buyers.
2. Extend Term of Lease five (5) years.
3. Current Guarantors to remain on Lease as Personal Guarantors. (Unless otherwise ruled by Bankruptcy Court)
4. Proposed Buyers to be added as Personal Guarantors.
5. Landlord to forgive late Fees assessed on all rents in arrears.
6. All rents in arrears to be paid over twelve (12) months.
7. All rents in arrears to be assessed a flat Interest Charge at a five percent rate (5%) on the Total Due.
8. Current lease Rent Schedule to be amended as per the Landlord Counter Proposal below.
9. Rent Schedule reflects a DEFERMENT of rents over the first five (5) years.
10. All DEFERRED rents to be paid back over a five (5) year period.
11. All DEFERRED rents to be assessed a flat Interest Charge at a five percent (5%) rate for each period of deferment.

Rents in Arrears

Rents In Arrears	\$40,534.69
<u>Flat Interest charge on rents in Arrears (5%)</u>	<u>\$2,026.73</u>
Total Due	\$42,561.42

Phone: 3521750-945.5 • Fax: 3521750-3381
Correspondence: 3231 Wedgewood Lane • The Villages, Florida 32162
Website: www.TheVillagesCPM.com

EXHIBIT "B"

LANDLORD COUNTER PROPOSAL

Period	Client Type	Current Rent Schedule		Landlord Proposed Rent Schedule		Difference	
		Annually	Monthly	Annually	Monthly	Annually	Monthly
Year 4	Base Rent	\$ 121,488.00	\$ 10,124.00	\$ 111,488.00	\$ 10,044.00	\$ 10,000.00	\$ 128,512.00
Year 5	Base Rent	\$ 121,500.00	\$ 10,376.00	\$ 96,000.00	\$ 8,000.00	\$ 25,500.00	\$ 128,512.00
Year 6	Base Rent	\$ 128,352.00	\$ 10,696.00	\$ 96,000.00	\$ 8,000.00	\$ 32,352.00	\$ 128,512.00
Year 7	Base Rent	\$ -	\$ -	\$ 31,116.72	\$ 2,590.56	\$ -	\$ 31,086.72
Year 8	Base Rent	\$ 130,800.00	\$ 10,900.00	\$ 108,000.00	\$ 9,000.00	\$ 22,800.00	\$ 128,512.00
Year 9	Base Rent	\$ 134,064.00	\$ 11,172.00	\$ 108,000.00	\$ 9,000.00	\$ 26,064.00	\$ 128,512.00
Year 10	Base Rent	\$ 137,424.00	\$ 11,452.00	\$ 120,000.00	\$ 10,000.00	\$ 17,424.00	\$ 128,512.00
Year 11	Base Rent	\$ 140,880.00	\$ 11,740.00	\$ 120,000.00	\$ 10,000.00	\$ 20,880.00	\$ 128,512.00
Year 12	Base Rent	\$ -	\$ -	\$ 144,000.00	\$ 12,000.00	\$ -	\$ 128,512.00
Year 13	Base Rent	\$ -	\$ -	\$ 144,000.00	\$ 12,000.00	\$ -	\$ 128,512.00
Year 14	Base Rent	\$ -	\$ -	\$ 144,000.00	\$ 12,000.00	\$ -	\$ 128,512.00
Year 15	Base Rent	\$ -	\$ -	\$ 156,000.00	\$ 13,000.00	\$ -	\$ 128,512.00
TOTAL		\$ 917,520.00	\$ 74,460.00	\$ 1,675,488.00	\$ 159,122.59	\$ 757,365.02	\$ 1,285,120.00