

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Tracy John Clement,

Debtor.

Case No. 16-31189

Chapter 11

**NOTICE OF HEARING AND MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE SALE OF 2011 TIMPTE 42' GRAIN TRAILER FREE AND CLEAR OF LIENS,
ENCUMBRANCES, AND OTHER INTERESTS**

TO: The parties specified in Local Rule 9013-3.

1. The chapter 11 trustee, Phillip L. Kunkel (the "Trustee"), by and through his undersigned attorneys, moves the Court for the relief requested below and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at 1:00 p.m. on November 9, 2017, in Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and served not later than November 3, 2017, pursuant to the applicable Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rules. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding. The petition in this case was filed on April 11, 2016 (the "Petition Date"). The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 363(b) and 363(f), and Fed. R. Bankr. P. 6004. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3, and Local Rule 6004-1. The Trustee requests an order of this Court granting the Trustee's motion to sell that certain 2011 Timpte 42' Grain Trailer, Serial No. H4803-8-BB130356, free and clear of liens, encumbrances, and other interests.

BACKGROUND

6. On the Petition Date, Tracy J. Clement (the "Debtor") filed a voluntary petition under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in this Court.

7. On May 3, 2016, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee").

8. By order dated September 19, 2017, the Trustee was appointed as the chapter 11 trustee for the Debtor [Doc. No. 518].

9. The Trustee has received a cash offer from Meadow View Farms to purchase that certain 2011 Timpte 42' Grain Trailer, Serial No. H4803-8-BB130356 (the "Trailer") for \$18,500.00 (the "Offer"). The sale of the Debtor's interest in the Trailer shall be free and clear of all liens, claims and encumbrances. A copy of the Offer is attached hereto as Exhibit A.

10. Upon review of the Offer, the Trustee believes the sale, as proposed herein, is in the best interest of all creditors of the estate and should be approved. The Offer constitutes the highest and best offer for the Trailer and will provide a benefit to the estate.

11. The Debtor is the current title holder of the Trailer, and the Trailer is property of the bankruptcy estate.

12. Upon information and belief, the Trailer is in fair condition and is in need of new brakes. Meadow View Farms has agreed to purchase the Trailer on an "as-is, where-is" basis

without any representations or warranties.

13. The Trustee has discussed the Offer with counsel for the Committee. Trustee understands that the Committee believes the value of the Trailer in fair condition is between \$20,000.00 and \$22,000.00, and \$18,500.00 if the Trailer is “very worn”, meaning that the brakes, tire, and frame are in “less than ideal condition.”

14. The Trustee has further discussed the Offer with an owner of local trucking company, and has been advised the grain trailer market is currently “soft” and that a purchase price of \$18,500.00 for the Trailer, in its current condition, is fair and reasonable. To realize the same amount at auction would require a sale price of approximately \$19,100.00, but would require the estate to continue to incur costs of insuring the Trailer and the continued depreciation of the estate asset.

15. The Trustee has not received any other offers or interest for the purchase of the Trailer. Given the repairs which are necessary, the Trustee, in the exercise his business judgment, believes a cash offer of \$18,500.00, all of which the Trustee expects will be net to the estate, is fair and reasonable, and constitutes the best price that could be obtained for the Trailer.

16. The Trustee believes that the sale of the Trailer to Meadow View Farms is in the best interest of the estate and creditors, and that sound business justification exists for sale of the Trailer pursuant to the Offer on an “as-is, where-is” basis without any representations or warranties.

17. The Trustee seeks authority to sell the Trailer free and clear of all liens, claims and encumbrances under 11 U.S.C. § 363(f). CUSB Bank (“CUSB”) may claim a security interest in the Trailer. However, the Trustee believes any security interest of CUSB in the

Trailer is unperfected and subject to avoidance. Any such lien, if effective, would not preclude approval of this sale.

18. The Trustee has sent this notice to all counsel of record in this case, all scheduled creditors in the case, all parties entitled to notice under Local Rule 9013-3, and all other known parties with an interest in this matter.

19. If testimony is required, the following parties may be called to testify relative to this sale: Tracy Clement, Andrew Hamilton and Bill Hilton.

RELIEF REQUESTED

WHEREFORE, the Trustee respectfully moves the Court for an order authorizing the sale of the Trailer to Meadow View Farms free and clear of all liens, encumbrances, and other interests, waiving the fourteen (14) day stay of the order otherwise required under Fed. R. Bankr. P. 6004(h) to make the order effective immediately, and for such other and further relief as the Court deems just and equitable.

Dated: October 17, 2017.

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

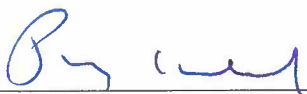
/e/ P. Jason Thibodeaux
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Attorneys for Phillip L. Kunkel, as Trustee

VERIFICATION

I, Phillip L. Kunkel, state that I am the appointed chapter 11 trustee of the Tracy J. Clement bankruptcy estate, and declare under penalty of perjury that the facts and exhibits set forth in the foregoing motion are true and correct, according to the best of my knowledge, information and belief.

Dated: October 17, 2017.



Phillip L. Kunkel, Chapter 11 Trustee

EXHIBIT A

Offer

Meadow View Farms

22804 680th Ave, Dexter, MN

Trailer Proposal : Tracy Clement Bankruptcy

2011 Timpfe Sr# H4803-8-BB130356

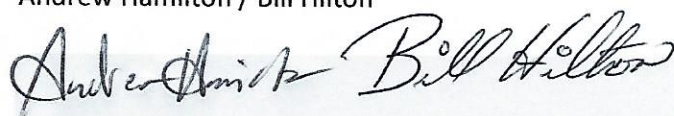
\$18,500

Sale upon approval

9-27-17

Meadow View Farms

Andrew Hamilton / Bill Hilton

Handwritten signatures of Andrew Hamilton and Bill Hilton in cursive script.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Tracy John Clement,

Debtor.

Case No. 16-31189

Chapter 11

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE SALE OF 2011 TIMPTE 42' GRAIN TRAILER FREE AND
CLEAR OF LIENS, ENCUMBRANCES, AND OTHER INTERESTS**

The chapter 11 trustee, Phillip L. Kunkel (the "Trustee"), by his undersigned attorneys, submits this memorandum of law in support of his motion for entry of an order authorizing the sale of 2011 Timpte 42' Grain Trailer free and clear of liens, encumbrances and other interests (the "Motion").

FACTS

The facts in support of this memorandum of law are set forth in the Motion. All capitalized terms have the meaning ascribed to them in the Motion.

ARGUMENT

Section 363 of the Bankruptcy Code 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." 11 U.S.C. § 363(b)(1); *In re Hanson Industries*, 90 B.R. 405 (Bankr. D. Minn. 1988). Section 363(f) allows the Trustee to sell property "free and clear of any interest in such property of an entity other than the estate," if one of five criteria is met. *Lindsey v. Ipock*, 732 F.2d 619, 622 (8th Cir. 1984). Section 363(f) provides:

- (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 nonbankruptcy 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.

11 U.S.C. § 363(f). Courts consider the amount of the lien as well as to whether the estate has any equity in the property in approving sales. *In re Riverside Inv. Partnership*, 674 F.2d 634, 640 (7th Cir. 1982). The failure to object to a proposed sale could be construed as consent to the sale. *Veltman v. Whetzal*, 93 F.3d 517, 521-522 (8th Cir. 1996). In the immediate matter, the proceeds will be distributed to creditors and parties in interest pursuant to the terms set forth in the Motion and pursuant to the provisions of the Bankruptcy Code. The Trustee anticipates that the estate may realize \$18,500.00 from the sale.

Here, at least one of the five criteria set forth by 11 U.S.C. § 363(f) exists. The valid and enforceable liens on Trailer, if any, will follow the proceeds of the sale and will be paid pursuant to the priorities set forth by the Bankruptcy Code. The Trustee is also hopeful that anyone with a valid and enforceable lien will consent. Moreover, if no objections are filed, consent will be established.

The Trustee believes it is in the best interest estate that the sale of the Trailer to Meadow View Farms is approved. The Trustee further believes that all of the interest holders in the

Trailer, if any, which the Trustee seeks to eliminate, will have their interests protected by 11 U.S.C. § 363. Accordingly, the sale of the Trailer to Meadow View Farms should be approved.

CONCLUSION

Because the sale of the Trailer to Meadow View Farms on an “as-is, where-is” basis without any representations and warranties, and pursuant to the Offer is in the best interest of the estate, the Trustee respectfully requests that the motion for entry of an order authorizing the sale of 2011 Timpfe 42’ Grain Trailer free and clear of liens, encumbrances and other interests be approved, and the fourteen (14) day stay otherwise required under Fed. R. Bankr. P. 6004(h) be waived, such that the Trustee may move as expediently as possible to consummate the sale.

Dated: October 17, 2017.

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

/e/ P. Jason Thibodeaux _____
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Tracy John Clement,

Debtor.

Court File No. 16-31189

Chapter 11 Case

CERTIFICATE OF SERVICE

I, Abigail M. McGibbon, hereby certify that on the 17th day of October, 2017, I caused a true and correct copy of the foregoing ***NOTICE OF MOTION and MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE SALE OF 2011 TIMPTE 42' GRAIN TRAILER FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER INTEREST*** to be served on the following parties in the manner indicated below by United States Mail and on the parties receiving service through the Electronic Case Filing (ECF) system via electronic mail in this proceeding.

| | | |
|--|---|---|
| <u>US TRUSTEE AND OTHER REQUIRED PARTIES</u> | Internal Revenue Service Wells Fargo Place 30 E 7 th St Mail Stop 5700 St. Paul, MN 55101 | Fillmore County Treasurer 101 Fillmore Street PO Box 466 Preston MN 55965 |
| United States Trustee U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 ustregion12.mn.ecf@usdoj.gov (Via ECF) | Internal Revenue Service Centralized Insolvency Operations Unit PO Box 7346 Philadelphia, PA 19101 | Goodhue County Assessor 509 W Fifth Street Red Wing MN 55066 |
| U.S. Trustee Michael R. Fadlovich U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 michaelladlovich@usdoj.gov (Via ECF) | MN Department of Revenue Collection Enforcement 551 Bankruptcy Section 600 North Robert Street St Paul, MN 55101-2228 | Howard County Treasurer Howard County Courthouse 137 N Elm Street Cresco IA 52136 |
| IRS District Counsel 380 Jackson St, Ste 650 St Paul, MN 55101-4804 | Office of the U.S. Attorney 600 US Courthouse 300 S Fourth St Minneapolis, MN 55415 | Mower County Treasurer 201 First Street NE, Ste 7 Austin MN 55912 |
| | | Olmsted County Treasurer Olmsted County Government Center 151 Fourth Street SE Rochester MN 55904 |
| | | <u>DEBTOR</u> |

| | | |
|--|--|---|
| <p>Tracy Clement 12515 County 3 Spring Valley, MN 55975</p> | <p>David C. McLaughlin Fluegel, Anderson, McLaughlin & Brutlag, Chartered 25 NW 2nd Street, Suite 102 Ortonville, MN 56278 David.fhmab@midconetwork.com (Via ECF)</p> | <p>Michael A. Stephani Gurstel Chargo PA 6681 Country Club Drive Golden Valley, MN 55427 m.stephani@gurstel.com (Via ECF)</p> |
| <p>MAJOR SECURED LENDERS</p> | <p>Keith A. Gauer Davenport, Evans, Hurwitz & Smith, L.L.P. 206 West 14th St, P.O. Box 1030 Sioux Falls, SD 57101-1030 KGauerdehs.com (Via ECF)</p> | <p>Christopher A. Camardello Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 ccamardell@winthrop.com (Via ECF)</p> |
| <p>C US Bank 111 N Elm Street Cresco IA 52136</p> | <p>Paul W. Bucher Dunlap & Seeger, P.A. 30 3rd Street Southeast, Suite 400 PO Box 549 Rochester, MN 55903 pbucher@dunlaplaw.com (Via ECF)</p> | <p>David Orenstein DeWitt Mackall Crouse & Moore, SC 1400 AT&T Tower 901 Marquette Avenue Minneapolis, MN 55402 dao@dewittmcm.com (Via ECF)</p> |
| <p>Citizens State Bank PO Box 5 Hayfield MN 55940</p> | <p>Christopher D. Nelson Dunlap & Seeger, P.A. 30 3rd Street Southeast, Suite 400 PO Box 549 Rochester, MN 55903-0549 cdn@dunlaplaw.com (Via ECF)</p> | <p>Jeffrey D. Smith Lindquist & Venum LLP 80 South Eighth Street, Suite 4200 Minneapolis, MN 55402 jsmith@lindquist.com (Via ECF)</p> |
| <p>Lake City Federal Savings 201 E Marion St. Lake City, MN 55041</p> | <p>Benjamin B. Bohnsack Rinke Noonan US Bank Plaza Building 1015 W St. Germain St. Suite 300 PO Box 1497 St. Cloud, MN 56302-1497 Bbohnsack@rinkenoonan.com (Via ECF)</p> | <p>Benjamin J. Court, Esq. Stinson Leonard Street LLP 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402 Benjamin.courtAstinson.com (Via ECF)</p> |
| <p>CNH Industrial Capital America 100 Brubaker Ave New Holland PA 17557</p> | <p>Jon R. Brakke Vogel Law Firm 218 NP Avenue PO Box 1389 Fargo, ND 58107-1389 jbrakke@vogellaw.com (Via ECF)</p> | <p>George E. Warner, Jr. Warner Law, LLC 120 South Sixth Street, Suite 1515 Minneapolis, MN 55402-1817 George@warnerlawmn.com (Via ECF)</p> |
| <p>OFFICIAL COMMITTEE OF UNSECURED CREDITORS</p> | <p>George E. Warner, Jr. Warner Law, LLC 120 South Sixth Street Suite 1515 Minneapolis, MN 55402-1817 George@warnerlawmn.com (Via ECF)</p> | <p>FLCC Financing 103 20th Street NE, Ste. 4 Stewartville, 55976</p> |
| <p>Thomas J. Lallier Foley & Mansfield, P.L.L.P. 250 Marquette Avenue, Suite 1200 Minneapolis, MN 55401 tlallier@foleymansfield.com (Via ECF)</p> | | |
| <p>OTHER INTERESTED PARTIES & PARTIES REQUESTING NOTICE</p> | | |
| <p>Nancy Clement 12915 County Rd 3 Spring Valley MN 55975</p> | | |
| <p>Jacob B. Sellers Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 jsellers@winthrop.com (Via ECF)</p> | | |
| <p>Michael S. Dove Gislason & Hunter LLP 2700 South Broadway PO Box 458 New Ulm, MN 56073-0458 mdove@gislason.com (Via ECF)</p> | | |
| <p>Roylene A. Champeaux Assistant United States Attorney 600 United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 Roylene.Champeaux@usdoj.gov (Via ECF)</p> | | |

Dated: October 17, 2017

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

/s/ Abigail M. McGibbon

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Tracy John Clement,
Debtor.

Case No. 16-31189

Chapter 11

**ORDER AUTHORIZING THE SALE OF 2011 TIMPTE 42' GRAIN TRAILER FREE
AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER INTERESTS**

This matter came before the court on the motion of the chapter 11 trustee, Phillip L. Kunkel, for an order authorizing the sale of certain personal property free and clear of liens, encumbrances, and other interests to Meadow View Farms. Based upon all of the files, record and proceedings herein.

THE COURT HEREBY FINDS AND DETERMINES THAT:

1. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.
2. Adequate and sufficient notice to all creditors and interested parties to this case of the proposed entry of the order has been given.
3. The relief granted is in the best interest of the estate, all creditors and other interested parties in this case.

IT IS HEREBY ORDERED:

1. The motion for the sale of that certain 2011 Timpte 42' Grain Trailer, Serial No. H4803-8-BB130356, free and clear of all liens, encumbrances, and other interests is granted.

2. The chapter 11 trustee shall sell that certain 2011 Timpfe 42' Grain Trailer, Serial No. H4803-8-BB130356, to Meadow View Farms free and clear of all liens, encumbrances, and other interests for the cash price of \$18,500.00 on an "as-is, where is" basis, without any representations and warranties.
3. All liens, encumbrances, and other interests shall attach to the proceeds of the sale of the Trailer with the same dignity, priority and extent as held against the Trailer prior to the sale.
4. The fourteen (14) day stay as provided by Fed. R. Bankr. P. 6004(h) is waived, and this order is effective immediately.
5. The chapter 11 trustee is authorized to take such other actions and execute and deliver such additional documents or instruments as will be reasonably necessary to effectuate the transaction contemplated by the motion.
6. The chapter 11 trustee is authorized and directed to sell the Trailer upon all the terms set forth in the motion, this order, and any agreements entered into by the parties.

Dated:

Michael E. Ridgway
United States Bankruptcy Judge