

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

In re: *
*
MASE BUILDERS LLC, * **Case No. 23-11722-KHK**
* **Chapter 7**
*
Debtor. *

**TRUSTEE’S MOTION FOR APPROVAL OF THE SALE OF EQUIPMENT BY LIVE
ONLINE AUCTION AND FOR APPROVAL OF AUCTION PROCEDURES**

DONALD F. KING, TRUSTEE (“**Trustee**”), by counsel, files this motion (“**Motion**”) for:
(1) approval of the sale of the Debtor’s assets, consisting primarily of equipment, by live online auction, and (2) approval of the procedures for the auction pursuant to 11 U.S.C. §§ 363(b). In support of this Motion, the Trustee states as follows:

BACKGROUND

1. On October 23, 2023 (the “**Petition Date**”), Mase Builders LLC (the “**Debtor**”) commenced this case (“**Case**”) with the filing of a voluntary petition (“**Petition**”) under chapter 7 of title 11 of the Bankruptcy Code.
2. The Trustee was appointed and presently serves as the chapter 7 trustee for the bankruptcy estate of the Debtor (“**Bankruptcy Estate**”).
3. The Debtor primarily operated as a general contractor constructing new and renovating existing single-family houses.
4. By separate application, the Trustee is seeking to employ Nick Arrington, a Virginia Licensed Auctioneer 1291/ Contractor, as his sales agent (“**Sales Agent**”).

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ASSETS TO BE SOLD

5. As reflected on the Debtor's Schedules of Assets and Liabilities, the Debtor owned a 1999 Nissan UD truck, a 2014 Bobcat Skid Steer, and a 2015 John Deere Excavator 135D (collectively, the "**Assets**").

6. The Trustee is seeking to sell the property as quickly as possible because the Bankruptcy Estate may be liable for impound and storage fees.

TERMS OF SALE

7. The Trustee proposes to sell the Assets via live online auction (the "**Auction**"). The Trustee has examined the suitability of using the Internet to sell the Assets, and has reviewed the Sales Agent's proposed auction terms and proposed compensation to the Sales Agent, a copy of which is attached hereto and incorporated herein as **Exhibit A**. In his business judgment, the Trustee has determined that the auction sale of the Assets, as proposed by the Sales Agent, is the sale method most likely to maximize recovery for the Bankruptcy Estate while minimizing administrative expenses.

8. The terms will be as follows:

8.1 Type of Sale: Public sale via live online Auction.

8.2 Property for Sale: The Assets.

8.3 Terms of Sale: The sale is "AS-IS, WHERE-IS" with no representations or warranties of any kind.

8.4 Proposed Place and Time of Sale: Live online Auctions to be concluded by the end of June 2024. The proposed time of the auction is subject to change based on the Court's rulings and the exercise of the Trustee's business judgment and any recommendations from the Sales Agent or his professionals.

- 8.5 Property Previews: No public inspection of the Assets prior to the Auction, only electronic inspection via the Proxibid.com auction application.
- 8.6 Buyer: Highest and best bidder at the conclusion of the Auction.
- 8.7 Appraisal Value: The Trustee has not obtained an appraisal of the Assets.
- 8.8 Closing: Closing of the sale will be to the high bidder at the live online Auction upon receipt by the Sales Agent of full payment by the Successful Bidder of the Winning Bid. If the Successful Bid fails to close, closing may be made by the Trustee and his Sales Agent to a Backup Bidder.
- 8.9 Compensation to Sales Agent: Ten percent (10%) commission on the gross sales price of the Assets to the Sales Agent, Nick Arrington. The Sales Agent also will be reimbursed for actual expenses incurred for marketing and advertising, not to exceed \$795.00, and any other reasonable costs incurred by the Sales Agent to Auction the Assets.
- 8.10 Trustee's Commission: The Trustee will seek compensation based upon the gross sales price in accordance with 11 U.S.C. § 326.
- 8.11 Liens: To the best of Trustee's knowledge, after reviewing the Debtor's Schedule D and conducting a UCC lien search, the Trustee believes the Assets are not encumbered by any liens.
- 8.12 Costs of Sale: The Sales Agent anticipates incurring marketing and advertising costs not to exceed \$795.00, and possibly incurring other minor incidental expenses to facilitate the Auction. In addition, there may be a reimbursement of third-party heavy equipment repair service, transportation, and storage/impound fees paid by the Auctioneer.
- 8.13 Tax Consequences of Sale to Bankruptcy Estate: In the event the sale price for the Assets exceeds the depreciated basis in those Assets, the Bankruptcy Estate may have tax on the gain. However, the Trustee does not expect the sales price to exceed the tax basis and is not aware of any tax liability.
- 8.14 Proceeds of Sale to Bankruptcy Estate: The Trustee will receive payment from the Sales Agent within seven (7) days after the Auction of the gross proceeds, less the Sales Agent's commission and expenses.

AUCTION PROCEDURES

9. The Trustee seeks authority from the Court to approve the Trustee's live online Auction of the Assets. The Auction will be completed, and all sold Assets removed by the end of June 2024. The timing of the Auction is subject to the Court's rulings and the exercise of the

Trustee's business judgment and any recommendations from the Sales Agent or his professionals.

10. The Trustee requests that this Court approve the auction procedures as set forth herein (**"Auction Procedures"**):

- a. The Sales Agent will advertise the Auction on Proxibid.com, which aggregates more than 4,000 unique auctioneers, asset owners, and consignors with buyers from 190 countries to market and sell products primarily through live and online auctions.
- b. The Auction will be open to public bidding and will be conducted with bidding increments in amounts determined by the Sales Agent to encourage bidding increments high enough to provide value to the Bankruptcy Estate.
- c. Subject to modification as set forth above, the live online Auction shall be completed, and all property removed, by the end of June 2024.
- d. At the start of the live online Auction, the Sales Agent will arrange for the actual bidding at the Auction to be recorded by any means that it deems appropriate.
- e. Upon conclusion of the bidding, the Auction shall be closed, subject to the terms contained in these Auction Procedures.
- f. After the conclusion of the live online Auction, the Trustee, in consultation with his Sales Agent and professionals, shall determine the highest or otherwise best bid and designate such bid as the **"Winning Bid"** and the bidder who submitted that Winning Bid will be the **"Successful Bidder."** The Trustee, in consultation with his Sales Agent, may also determine a next highest or otherwise next best bid and designate such bid as the **"Backup Bid"** and the backup bidder will have the option to purchase the property in the event that the Successful Bidder is unable or refuses to close on the Winning Bid.
- g. If the Successful Bidder fails to consummate the proposed sale on the terms and conditions of the Winning Bid, breaches the terms and conditions of the Winning Bid, or otherwise fails to perform its obligations hereunder or thereunder, other than as a result of a material default by the Trustee, the Trustee may, in consultation with its professionals and Sales Agent, and without further order of the Bankruptcy Court, deem the successful bidder to be a **"Defaulting Buyer,"** at which time the Successful Bidder's bid shall be deemed rejected.
- h. A report of sale will be filed by the Trustee following the conclusion of the Auction pursuant to Fed. R. Bankr. P. 6004(f)(1).

- i. All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the successful bid, as applicable.

PAYMENTS AT CLOSING

11. The Sales Agent's commission and expenses shall be paid at the closing of the Auction from the proceeds of sale (the "**Payments at Closing**"). The Trustee's statutory commission and the fees and expenses of the Trustee's professionals, other than the Sales Agent, are subject to approval by this Court following the filing of the Trustee's final report.

APPROVAL OF THE SALE

12. The Trustee requests the Court approve the sale of the Assets by way of a live online auction pursuant to section 363(b) of the Bankruptcy Code on the terms set forth herein.

13. Section 363(b)(1) 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).

14. The proposed on-site auction represents the exercise of reasonable business judgment by the Trustee. "Courts generally look to the trustee's business judgment in analyzing asset sales under Section 363(b)." *In re MCSGlobal Inc.*, 562 B.R. 648, 654 (Bankr. E.D. Va. 2017).

15. "The court should review the trustee's actions utilizing a business judgment standard. *See, e.g., In re Cult Awareness Network, Inc.*, 205 B.R. 575 (Bankr. N.D. Ill. 1997); *In re Wilson*, 94 B.R. 886 (Bankr. E.D. Va. 989). 'So long as the trustee's decision concerning how or whether to administer an asset or to pursue a cause of action falls within the proper scope of the trustee's business judgment, the trustee's decision [should] be upheld.'" *In re CHN Constr., LLC*, 531 B.R. 126, 133 (Bankr. E.D. Va. 2015).

16. In determining whether a sale satisfies the business judgment standard for purposes of

approval, courts should require a showing that there is a sound business reason for the sale, that accurate and reasonable notice of the sale has been given, the sale will yield an adequate price (i.e., one that is fair and reasonable), and the parties to the sale have acted in good faith. The proposed on-site auction will satisfy this standard.

17. The sale of the Assets by way of the live online auction is in the best interests of the Debtor's estate and all interested parties.

WHEREFORE, the Trustee, by counsel, requests that the Court enter an Order (i) approving the Auction Procedures set forth herein; (ii) authorizing the sale of the Assets upon the terms herein; (iii) authorizing the Trustee to pay the Payments at Closing without further order of the Court; (iv) authorizing the Trustee to take all actions necessary and reasonable to consummate the sale of the Assets; and (v) granting such other and further relief as it may deem necessary or appropriate.

DONALD F. KING, TRUSTEE
By Counsel

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