

  
Patrick M. Flatley  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re**

**SHAFFER & ASSOCIATES, LIMITED,                      Bankruptcy Case No. 17-00185  
Debtor-in-Possession.                      Chapter 11**

**AGREED ORDER GRANTING DEBTOR-IN-POSSESSION’S MOTION TO SELL AND  
AUTHORIZING THE TRUSTEE TO SELL REAL PROPERTY OF THE ESTATE BY  
PRIVATE SALE FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES  
PURSUANT TO 11 U.S.C. §363(f) AND TO ALLOW 11 U.S.C. §506(c) EXPENSES AND  
WITHDRAWING THE DEBTOR-IN-POSSESSION’S OBJECTION TO CLAIM NO. 2-1  
OF HUNTINGTON NATIONAL BANK**

This day came the debtor-in-possession, Shaffer & Associates, Limited (the “Debtor”) by undersigned counsel on the Debtor’s motion to sell real property of the bankruptcy estate and on Debtors’ objection to the claim of Huntington National Bank. Also appearing is the City of Clarksburg, West Virginia (the “City”), by undersigned counsel, and the Huntington National Bank (“HNB”), by undersigned counsel. The Court, after reviewing the pleadings, does hereby find as follow:

1. In accordance with Rule 6004 of the Federal Rules of Bankruptcy Procedure, a notice of the hearing on the Debtor-in-Possession’s Motion to Sell Real Property Free and Clear of All Liens and Encumbrances Pursuant to 11 U.S.C. §363(f), and to Allow 11 U.S.C. §506(c) Expenses (the “Motion”) was given to, and a reasonable opportunity to object was provided to, the creditors and interested parties regarding the Debtor’s proposed sale of two (2) parcels, 1 Lot 108 FT Main ST and 1 LOT 2 MAIN ST, in the Clark Clarksburg Corp. District, located in the City of Clarksburg, County of Harrison County, West Virginia (the “Real Property”) of the bankruptcy estate;

with the Debtor have negotiated a resolution to the sale of the Real Property in the manner and on the terms and conditions proposed in this order; specifically,

(a) the City consents to the sale of the Real Property to Timothy Gentilozzi and Joseph Gentilozzi (“the Purchaser”), the Purchaser will have sixty (60) days from the date of this order to obtain a building permit from the City of Clarksburg, West Virginia, the Purchaser shall have an additional one hundred twenty (120) days to start construction upon the receipt of a building permit the parties to this agreement recognize, acknowledge that the Purchaser is able to apply for building permit because of previous rulings of the United States Bankruptcy Court for the Northern District of West Virginia, the application for a building permit being in furtherance of the orderly and expeditious administration of the Debtor’s bankruptcy estate, the application for a building permit is unique to facts and circumstances in this case, and does not set any precedent and is not an impediment to the City’s exercise of its police power and enforcement of the City’s municipal codes and ordinances, and

(b) the Debtor withdraws its objection to the lien held by HNB, and HNB is entitled to full payment of its claim, Claim No. 2-1, in the amount of Forty-Four Thousand Five Hundred Fifty-Four Dollars and Sixty-Two Cents (\$44,554.62) at closing;

3. No other objections were made to the Debtor’s acceptance of the offer by;

4. No objections have been made to the sale of the real property on the grounds of fraud, collusion or insufficient value;

5. The Purchaser has acted in good faith with respect to its negotiations for, and purchase of, the Real Property;

6. The terms of and conditions to, the sale of the real property to the Purchaser as set forth herein are fair and reasonable;

7. The Debtor's sale of the Real Property on the terms and conditions negotiated  
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by the Debtor and the Purchaser is an exercise of sound business judgment; and,

8. The sale of the Real Property is in furtherance of the orderly and expeditious administration of the Debtor's bankruptcy estate.

**NOW, THEREFORE**, based upon the foregoing findings and based upon good cause which has otherwise been shown, it is hereby:

**ORDERED** that, pursuant to the provisions of 11 U.S.C. §363(b), the Debtor shall be, and is, authorized to sell the real property asset of this bankruptcy estate consisting of two (2) parcels, 1 Lot 108 FT Main ST and 1 LOT 2 MAIN ST, in the Clark Clarksburg Corp. District, located in the City of Clarksburg, County of Harrison County, West Virginia (the "Real Property") for the sum of Seventy Thousand Dollars (\$ 70,000.00), of which Fifty Thousand (\$ 50,000.00) will be paid at closing and the remaining twenty Thousand Dollars (\$ 20,000.00) will be allocated to attorney fees to be paid in four (4) quarterly installments; it is further

**ORDERED** that pursuant to the provisions of 11 U.S.C. §363, the sale of the Real Property by the Debtor to the Purchaser shall be sold on an "As Is, Where Is" basis; it is further

**ORDERED** that the Debtor shall be, and is, authorized to perform his obligations as seller and is further authorized pursuant to the provisions of Rule 6004(f) (2) of the Federal Rules of Bankruptcy Procedure to execute and deliver all documents necessary for the conveyance of the title to the Real Property to the Purchaser; it is further

**ORDERED** that pursuant to the provisions of 11 U.S.C. §363(f), the Debtor shall be, and is, authorized to sell the Real Property free and clear of all liens, claims, encumbrances, pledges, security interests, and charges of whatever type or description; it is further

**ORDERED** that the transfer of the Real Property by the Debtor shall represent an arms' length transaction and that will be negotiated in good faith between the parties; it is further

charges against the Real Property, shall attach to the proceeds of the sale of the Real Property and the Debtor shall be, and is, authorized to distribute the proceeds of the sale of the Real Property upon consummation of the sale as follows:

first, an amount sufficient to pay any transfer taxes;

second, an amount sufficient to pay *ad valorem* real property taxes constituting a lien on the Real Property and to the extent that taxes have not yet been determined, then the taxes shall be deemed to be the same amount as the preceding tax year and shall be prorated on a calendar year basis between the Debtor and the Purchaser, as of the date of the closing of the sale of the Real Property;

third, to pay the lien held by HNB in the amount of Forty-Four Thousand Five Hundred Fifty-Four Dollars and Sixty-Two Cents (\$44,554.62);

fourth, to pay the judgment lien held by West Virginia Department of Tax and Revenue in the amount of Four Hundred Thirteen Dollars and Forty-Seven Cents (\$413.47); and

fifth, to hold the remaining sale proceeds until further order of this Court; it is further

**ORDERED** that all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Real Property in accordance with the terms of this Order; it is further

**ORDERED** that this Order is and will be binding upon and govern the acts of all entities to the extent allowed by law, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any

accept for filing any and all of the documents and instruments necessary and appropriate to consummate  
the transactions contemplated by this motion; it is further

**ORDERED** that the Purchaser of the Real Property shall have sixty (60) days from the date  
of the sale to obtain a building permit from the City of Clarksburg, West Virginia, and shall have an  
additional one hundred twenty (120) days to start construction upon the receipt of a building permit,  
and

**IT IS HEREBY FURTHER ORDERED** that the Court shall, and does, retain jurisdiction over the  
Real Property for the purposes of enforcing the provisions of this Order.

**Presented and Agreed to by:**

/s/ Brian R. Blickenstaff  
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**Reviewed and Agreed to by:**

/s/ Geraldine Roberts (with Permission)  
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*Counsel for the City of Clarksburg*

**Reviewed and Agreed to by:**

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/s/ Josef A. Horter (with Permission)

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