

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
ALEXANDER E. JONES	§	
	§	Case No. 22-33553 (CML)
Debtor.	§	
	§	
	§	

**DEBTOR’S MOTION FOR ORDER (I) AUTHORIZING SALE OF REAL PROPERTY
FM 621 FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES AND
(II) GRANTING RELATED RELIEF**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE CHRISTOPHER M. LOPEZ,
UNITED STATES BANKRUPTCY JUDGE:

Alexander E. Jones (“Debtor”), debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Chapter 11 Case”), pursuant to 11 U.S.C. §§ 105(a) and 363(b) files this *Motion for Order (I) Authorizing Sale of Real Property FM 621 Free and Clear of All Liens, Claims, and Encumbrances and (II) Granting Related Relief* (the “Motion”). In support of this Motion, Debtor respectfully states as follows:

I. JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (O).
2. Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

II. BACKGROUND

4. Debtor hosts a syndicated radio and video talk show in Austin, Texas. Free Speech Systems, LLC (“FSS”) is a single member LLC, 100% owned by Debtor, that produces and syndicates much of the show. In addition, FSS offers high-end dietary supplement products, books, t-shirts, and other products, which are solely promoted and advertised by Debtor during his radio and streaming video talk shows, for online sale to customers at the Infowars website.
5. On December 2, 2022 (the “Petition Date”), Debtor filed his voluntary petition for relief under the Bankruptcy Code.
6. Jones continues in possession of his holdings and is managing as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.
7. An official committee of unsecured creditors (the “Official Committee”) was appointed in this Chapter 11 Case on December 13, 2022 [Docket No. 42].
8. On or about January 30, 2024, Debtor filed that certain *Application to Employ Broker to Assist in the Sale of FM 621* (the “Broker Application”) seeking to employ Century 21 The Hills Realty and its related subsidiary entities, pursuant to the terms and conditions set forth in the Exclusive Sales Listing Agreement attached to the Broker Application (the “Listing Agreement”).

On February 27, 2024, the Court entered that certain *Order Approving Application to Employ Broker to Assist in the Sale of FM 621* (the “Broker Order”).

9. Debtor currently owns real and personal property located on 127.28 acres, in the Edward Pettus Survey, Guadalupe County, TX, FM 621, Staples, TX (the “Ranch”) that he wishes to sell.

10. Debtor submits that the Ranch is free of liens or any other similar interests apart from his own.

III. THE PROPOSED SALE

11. For the reasons set forth herein, and in the exercise of its business judgment, Debtor believes the sale of the Ranch is in the best interests of Debtor and his creditors. It will not only bring in slightly in excess of \$2.7 million in net proceeds to the estate, but it also liquidates a non-exempt asset and eliminates the need to maintain or insure the property. In addition, it provides liquidity to his estate for administrative expenses, and if it is more than those, cash for making the initial payment to creditors under a confirmed plan in this case. A true and correct copy of the Farm and Ranch Contract executed as of April 3, 2024 (the “Contract”), is attached hereto as **Exhibit “A”** and incorporated herein by reference.

12. The Debtor’s Broker marketed the property beginning on March 3, 2024, and received two (2) offers from two (2) interested parties, neither of which is an affiliate or insider of the Debtor. After soliciting final and best offers, the highest and best offer was received from EMS Ranch, LLC, for \$2.8 million, which is \$300,000 more than the next-highest offer. This Contract accepts the Ranch as-is, where-is, and includes all the personal property on the Ranch, including portable buildings, game feeders, hunting blinds, tanks and gates. This Contract is also

improved by the reduced commission of 2% agreed to by the Broker in the event this purchaser or a company affiliated with him were to be the purchaser.

13. The net proceeds of this sale, after payment of reasonable costs attributable to Debtor as seller and estimated taxes to the Internal Revenue Service attributable to the gain realized, shall be deposited into an escrow account (the “Escrow Account”) established by Debtor’s counsel. The only use authorized for these net proceeds, without further order of this Court, is the payment of professional fees payable by Debtor’s estate during the pendency of the Chapter 11 Case, subject to approval by the Bankruptcy Court pursuant to interim compensation procedures, including notice and the opportunity to object, which rights are expressly preserved for all parties in interest. For the avoidance of doubt, Debtor shall not be a signatory to the Escrow Account and no portion shall be deposited into his debtor-in-possession bank account. At the conclusion of the Chapter 11 Case, any excess amounts in the Escrow Account shall be distributed in accordance with a plan in the Chapter 11 Case or as otherwise ordered by the Bankruptcy Court or agreed to by Debtor, the Official Committee, the Texas Plaintiffs¹, and the Connecticut² Plaintiffs.

14. Reducing recurring costs and obtaining liquid funds can only move this Debtor towards effective reorganization and avoidance of leaking administrative costs—which can only serve as a benefit to all creditors in this Chapter 11 Case.

IV. RELIEF REQUESTED AND BASIS FOR RELIEF

15. By this Motion, pursuant to §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, Debtor seeks Court approval of the sale of the Ranch and to pay

¹ Neil Heslin, Scarlett Lewis, Leonard Pozner, and Veronique De La Rosa (collectively, the “Texas Plaintiffs”).

² David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto Marino, William Aldenberg, William Sherlach, Robert Parker, and Erica Lafferty (collectively, the “Connecticut Plaintiffs”).

reasonable closing costs including the commission to the Broker and estimated taxes paid to the IRS on the gain and deposit the net proceeds into the Escrow Account.

A. Sale of the Ranch is Authorized Under Section 363(b) of the Bankruptcy Code.

16. A trustee or 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). In determining whether to grant a debtor-in-possession’s motion to use, sell, or lease property of the estate, the Court should grant the relief sought if Debtor is exercising sound business judgment. *In re Cont’l Airlines*, 780 F.2d 1223, 1226 (5th Cir. 1986); *see Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1311 n.10 (5th Cir. 1985); *see also In re Lane*, No. 08-80414-G3-7, 2010 WL 4607527, at *1 (Bankr. S.D. Tex. Nov. 4, 2010) (citing *In re Cont’l Airlines*). If a “good business reason” exists to grant a debtor’s motion to sell, the debtor has met his burden and the Court should authorize the sale. *In re Lane*, 2010 WL 4607527, at *1. Although approval is within the sound discretion of the bankruptcy judge, the judgment of a debtor is entitled to some deference. *See In re West Pointe Props., L.P.*, 273, 281–82 (Bankr. E.D. Tenn. 2000).

17. Courts generally permit a debtor to sell property of the state outside of the ordinary course where the proposed sale is a sound exercise of the debtor’s business judgment and when such sale is for fair and reasonable consideration and in good faith. *In re Continental Airlines*, 780 F.2d at 1226; *In re Lane*, 2010 WL 4607527 at *1.

18. In evaluating a proposed sale of assets, a court must balance the need for flexibility with the concern of affected creditors. *See In re Terrace Gardens Park P’ship*, 96 B.R. 707, 715 (Bankr. W.D. Tex. 1989). The court must also determine that creditors’ interests are adequately protected and that the offered price is the highest price obtainable under the circumstances in the

particular case. *See id.*; *see also In re Beker Indus. Corp.*, 63 B.R. 474, 477–78 (Bankr. S.D.N.Y. 1986).

19. Debtor, in the exercise of his business judgment, believes that closing on the Contract to sell the Ranch is in the best interests of Debtor’s estate, its creditors, and all interested stakeholders. Debtor believes that the current transaction is for fair value of the Ranch, representing a value of \$1.3 million increase from its purchase less than four years ago. Debtor’s maintenance of the Ranch has been in good faith during this Chapter 11 Case, and the purchaser is a good faith purchaser as that term is used in 11 U.S.C. § 363(m).

B. Sale of the Ranch Free and Clear.

20. Debtor further requests that the Court approve the sale of the Ranch free and clear of liens, claims, interests, and encumbrances under 11 U.S.C. § 363(f). Although there are no liens, interests, or encumbrances on the Ranch, Debtor is entitled to sell the Ranch free and clear of them.

21. Section 363(f) of the Bankruptcy Code provides:

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 should be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

22. As quoted above, § 363(f) of the Bankruptcy Code provides for the sale of assets

“free and clear of any interests.” The term “any interest,” as used in § 363(f), is not defined in the Bankruptcy Code. *Folger Adam Sec. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259 (3d Cir. 2000). In *Folger Adam*, the Third Circuit specifically addressed the scope of the term “any interest.” *Id.* at 258. The court observed that while some courts have “narrowly interpreted that phrase to mean only *in rem* interests in property,” the trend in modern cases is towards “a broader interpretation which includes other obligations that may flow from ownership of the property.” *Id.* (citing 3 *Collier on Bankruptcy* 363.06[1]).

23. As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, a case cited approvingly and extensively by the Third Circuit in *Folger Adam*, the scope of § 363(f) of the Bankruptcy Code is not limited to *in rem* interests. 99 F.3d 573, 581–82 (4th Cir. 1996). Thus, the Third Circuit in *Folger Adam* stated that *Leckie* held that the debtor “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger Adam*, 209 F.3d at 258.

24. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the sale of the Personal Property free and clear of all interests. *See In re Patriot Place, Ltd.*, 486 B.R. 773, 814–15 (Bankr. W.D. Tex. 2013) (“In short, if a debtor . . . can satisfy one of the five different conditions set forth in the subsections of § 363(f), a debtor can sell its property . . . free and clear of all interests of a third party”); *see also In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002). Debtor submits that the sale and sale price for the Ranch will be greater than the aggregate value of any liens or interests on the Ranch—which there are none. These facts satisfy subsections (1), (3), and (5) of § 363(f) even in the event liens, interests, or encumbrances existed on the Ranch. Debtor accordingly requests authority to execute the sale of the Ranch as described herein as it would

adequately protect any interest holders even with the existence of stakeholders.

V. MODIFICATION OF AUTOMATIC STAY; WAIVER OF STAY

25. Debtor requests that the automatic stay provisions of Bankruptcy Code § 362 are modified to the extent necessary to implement the sale of the Ranch under the terms of the Contract.

26. The approval of the Ranch sale will provide capital to Debtor's estate to allow for an efficient exit from bankruptcy. To promptly consummate the sale by its anticipated closing date of June 7, 2024, and relief the estate of ongoing administrative obligations and risk, Debtor requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h) and allow Debtor to consummate the transaction contemplated herein. No party will be prejudiced by the requested waiver.

27. Debtor has determined that, in its business judgment, this proposed sale of his Ranch pursuant to the terms of the Contract is in the best interest of Debtor's Chapter 11 estate and creditors. The sale is for fair and reasonable consideration, is in good faith, does not unfairly benefit any insiders or creditors of Debtor, and will maximize the value of Debtor's estate.

VI. CONCLUSION

28. WHEREFORE, Debtor hereby respectfully requests entry of an Order following a hearing: (a) authorizing Debtor to execute the Contract and sell the Ranch, free and clear of liens, claims, and encumbrances, (b) depositing the net proceeds of the sale to into an Escrow Account paid only to satisfy professional fees as stated herein, (c) modifying the automatic stay to allow Debtor to execute and consummate the Contract, and (d) granting such other and further relief to which Debtor may show himself justly entitled.

Dated: May 1, 2024

Respectfully submitted,

CROWE & DUNLEVY, P.C.

By: /s/ Vickie L. Driver

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ATTORNEYS FOR ALEXANDER E. JONES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon all parties registered to receive notices via the Court's ECF noticing system, the U.S. Trustee's Office, Counsel for the Unsecured Creditors' Committee, and all parties requesting notice pursuant to Rule 2002 on this 1st day of May, 2024.

/s/ Vickie L. Driver