

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
93 JUN -5 AM 11:17

IN RE: )  
LONG POINT ROAD LIMITED )  
PARTNERSHIP, A )  
PARTNERSHIP, )  
Debtor. )

CASE NO. 93-72769-W  
CHAPTER 7

ENTERED  
JUN 06 1996  
R. S. S.

JUDGMENT

This Judgment is entered pursuant to the Order Authorizing Sale of Assets Free and Clear of Lien allowing the sale of the Debtors Real Property as described in the attached Order to Jupiter Realty Corporation for the purchase price of \$3,000,000.00.

IT IS ORDERED, ADJUDGED, and DECREED that the Trustee is authorized to sell and convey the Estate's interest in the Property free and clear of all liens, including that of PNL and other creditors, to Jupiter Realty Corporation for \$3,000,000.00. The lien claimed by PNL shall attach to the net proceeds of the sale remaining after deduction of the Trustee's commissions, expenses and fees.

IT IS FURTHER ORDERED that should Jupiter not close within 90 days from the date of this Order that the Trustee is authorized to sell and convey the Estate's interest in the Property free and clear of all liens to Westwood Development Corporation for \$3,300,000.00. The lien claimed by PNL shall attach to the net proceeds of the sale remaining after deduction of the Trustee's commissions, expenses and fees.

IT IS FURTHER ORDERED that no material changes, including

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but not limited to, extensions of time or price adjustments shall be permitted without further order of this Court.

  
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U.S. Bankruptcy Judge

June 5, 1996  
Columbia, South Carolina

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R. S. S.

ORDER AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS

This matter came before me for hearing on May 21, 1996 pursuant to the Motion of the Chapter 7 Trustee, Cynthia J. Lowery, Esquire, to sell approximately 230 acres located in Mt. Pleasant, SC and comprised of Tracts 7, 8, 9, 10, 11, Belle Hall Plantation as shown in Plat Book CE, Pages 161 and 162, R.M.C. Office for Charleston County (TMS Nos. 537-00-00-51, 56, 52, 53, and 48), Tract 12, containing approximately 47.931 acres of highland as shown in Plat Book CG, Page 9, R.M.C. Office for Charleston County (TMS No. 540-00-00-53) and a 26.05 acre residual tract as shown on Plat Book EA, Page 202, Charleston County R.M.C. Office (TMS # 537-00-00-45), along with all rights, privileges and easements appurtenant to the above described property, including all rights, rights of way, roadways, roadbeds, and reversions (the "Property") free and clear of liens pursuant to 11 U.S.C. §363(f)(3), said Motion having been filed on April 26, 1996. All parties were served. An objection to the Trustee's Motion was filed by RTC Land Assets Trust 1995-NP2B ("PNL"), alleging the insufficiency of the proposed sales price. The Trustee's Motion requested Court approval of the sale of the

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Property to Jupiter Realty Corporation for a purchase price of \$2,700,000.00 ("Jupiter Offer"), closing within ninety days, with proceeds to be applied first to costs of sale including Trustee and Realtor Commissions, then to ad valorem real property taxes and the remainder to be paid to PNL. The Trustee was contacted by another interested purchaser, Westwood Development Corporation, which extended an offer for the Property in the amount of \$3,100,000.00 ("Westwood Offer"). Prior to the hearing Westwood submitted a contract for \$3,300,000.00 and Jupiter increased its offer to \$3,000,000.00, both under substantially similar terms.

Making a business judgment decision, the Trustee requested approval of the \$3,000,000.00 offer by Jupiter. It was the Trustee's opinion that Jupiter was more likely to close the sale within the parameters of the terms of its Contract, rather than Westwood. While the Westwood offer involved a greater sum, the Trustee cited the long term interest and investigation in the Property conducted by Jupiter, Jupiter's familiarity with the Property, a shorter closing timeframe, as well as Jupiter's represented financial condition, as factors she believed to dictate the highest probability of actually consummating the sale with Jupiter. While PNL favored the offer extended by Westwood, other creditors present at the hearing, all of whom hold subordinate lien positions to PNL, supported the Trustee's recommendation.

Trustee sought authority for the sale herein pursuant to the

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provisions of 11 U.S.C. §363(f)(3):

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 such interest is a lien and a price at which such property is to be sold is greater than the aggregate value of all liens on such property.

While no party at the hearing objected to the sale of the Property as violative of this provision, the Court is compelled to note that the clear language of §363(f)(3) permits sale at a price greater than the value of liens on the Property, as opposed to the amount of liens on the Property. No evidence was presented to indicate that the Jupiter offer was less than the value of the Property and therefore the Court finds that the sale of the Property pursuant to §363(f)(3) is appropriate. That the value of a lien interest must be determined in conjunction with the value of the Property it encumbers, rather than the amount of the lien, has been borne out by a number of courts, see e.g. In Re: Beker Industries, Corp. 63 BR 474 (Bankr. SDNY 1986); In Re: Collins, 180 BR 447 (Bankr. EDVA 1995).

In light of the age and nature of the case, the Court believes it is in the best interest of creditors to seize upon the opportunity to sell the Property to an entity that is likely to close the sale. The Court finds that the Trustee's judgment in this matter is entitled to considerable weight, is well founded in the case at hand and finds that the Sale to Jupiter is in the best interest of all creditors of the Bankruptcy Estate and should be approved.

Further, this Court finds that the Westwood offer for

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\$3,300,000.00 shall be recognized as a back-up offer, should Jupiter not be able to close the subject Property within 90 days. Westwood's offer, in the form presented at the hearing, shall be approved should Jupiter not be able to close the Sale within 90 days from the date of this Order. Westwood's time parameters will begin upon notification by the Trustee that Jupiter has not performed under the terms of the Contract.

This Court finds that Jupiter Realty Corp. and Westwood Development Corporation are good faith purchasers pursuant to 11 U.S.C. §363(m).

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED, that the Trustee is authorized to Sell and Convey the Estate's interest in the Property free and clear of all liens, including that of PNL and other Creditors, to Jupiter Realty Corporation for \$3,000,000.00. The lien claimed by PNL shall attach to the net proceeds of sale remaining after deduction of the Trustee's Commissions, expenses and fees.

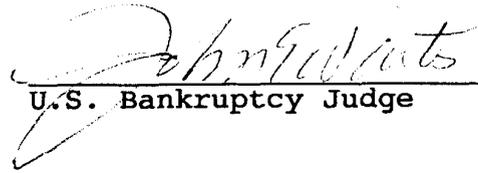
IT IS FURTHER ORDERED that should Jupiter not close within 90 days from the date of this Order that the Trustee is authorized to sell and convey the Estate's interest in the Property free and clear of all liens to Westwood Development Corporation for \$3,300,000.00. The lien claimed by PNL shall attach to the net proceeds of sale remaining after deductions of the Trustee's Commissions, expenses and fees.

IT IS FURTHER ORDERED that no material changes, including but not limited to, extensions of time or price adjustments,

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shall be permitted without further order of the Court.

AND IT IS SO ORDERED.

  
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U.S. Bankruptcy Judge

June 5, 1996  
Columbia, SC

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