

FILED
06-27-2022
Clerk of Court
Shawano County, WI
2022CV000079

STATE OF WISCONSIN CIRCUIT COURT SHAWANO COUNTY

In re:

ANNIE'S CAMPGROUND LLC,

Case No.: 22-CV-079

Debtor.

RECEIVER'S MOTION (i) TO SELL SUBSTANTIALLY ALL OF DEBTOR'S ASSETS PURSUANT TO AUCTION TERMS AND PROCEDURES, FREE AND CLEAR OF ALL LIENS, CLAIMS, LEASEHOLD INTERESTS, AND ENCUMBRANCES; (ii) FOR DETERMINATION OF VALUE PURSUANT TO WIS. STAT. § 128.25(6)(c); AND (iii) FOR AUTHORIZATION TO DISBURSE A PORTION OF THE SALE PROCEEDS

Seth E. Dizard (the "Receiver"), the Court-appointed receiver of Annie's Campground LLC ("Annie's Campground"), through his counsel, O'Neil, Cannon, Hollman, DeJong & Laing S.C., moves the Court for an order (i) authorizing the sale, assignment, and transfer of substantially all of the assets of Annie's Campground (the "Assets") pursuant to the attached Auction Terms and Procedures, free and clear of all liens, claims, leasehold interests, and encumbrances, with any all liens, claims, leasehold interests, and encumbrances attaching to the proceeds of sale to the same extent and priority as they existed with respect to the Assets immediately prior to the sale, (ii) determining the value of the assets of Annie's Campground constituting security for the secured creditors of Annie's Campground, and (iii) authorizing the Receiver to disburse a portion of the sale proceeds as provided herein (the "Sale Motion").

In support of this Sale Motion, the Receiver states as follows:

JURISDICTION AND BACKGROUND

1. The Court has jurisdiction over the Sale Motion pursuant to Wis. Stat. § 128.01.
2. Annie's Campground operates a campground, bar, and restaurant located at W12505 Roosevelt Road, Gresham, Wisconsin 54128.

3. On May 5, 2022, Bank First (the “Bank”) petitioned the Court for the appointment of a receiver of Annie’s Campground pursuant to Chapter 128 of the Wisconsin Statutes. Doc. No. 2.

4. The Bank has a properly perfected, first priority lien on all assets of Annie’s Campground. As of around April 25, 2022, Annie’s Campground owed the Bank approximately \$1,500,000.00, exclusive of attorneys’ fees and costs of collection.

5. On May 25, 2022 (the “Appointment Date”), the Court entered an order appointing the Receiver as the Wis. Stat. Chapter 128 receiver of Annie’s Campground. Doc. No. 16. Under the order, the Receiver is authorized to sell any and all assets of Annie’s Campground free and clear of all liens in a commercially reasonable manner subject to the prior consent of the Bank and approval of the Court. *Id.* ¶ 7.

6. On the Appointment Date, the Court also entered a Case Management Order authorizing the Receiver to operate the business until he could determine whether Annie’s Campground’s assets could be sold as a going concern. Doc. No. 17.

7. Since the Appointment Date, the Receiver and Gregory Fritsch, the business consultant retained by the Receiver, have overseen the operations of Annie’s Campground, and have restored it to a going concern for the benefit of creditors.

RELIEF REQUESTED

8. The Receiver has determined that the best method of maximizing the value of Annie’s Campground’s assets for the benefit of its creditors is to conduct a going concern auction to sell the Assets and thereafter ask the Court to approve the highest and best offer for the Assets at a sale confirmation hearing (the “Sale Hearing”). Accordingly, the Receiver has retained an auctioneer, and hereby requests authorization to sell the Assets at auction pursuant to the Auction

Terms and Procedures, free and clear of all liens, claims, leasehold interests, and encumbrances, and to disburse the net sale proceeds to the Bank up to the amount of its secured claim. Furthermore, the Receiver requests this Court determine that the ultimate purchase price for the Assets will be the value of the Bank's collateral.

A. Auction Terms and Procedures

9. Subject to Court approval, the Receiver will conduct a going concern auction of the Assets (the "Auction") pursuant to the Auction Terms and Procedures filed herewith.

10. The Auction Terms and Procedures contain a general listing of the assets to be sold and a list of assets excluded from the sale. The Auction Terms and Procedures also set forth the specific procedures that the Receiver intends to follow for conducting the auction of the Assets. The Receiver believes the Auction Terms and Procedures are commercially reasonable and will maximize the value of the Assets for the benefit of creditors.

11. The Receiver intends to retain Micoley and Co. a/k/a Realty Hive ("Micoley"), an experienced auctioneer, to market and conduct the auction of the Assets. Micoley will receive a commission equal to 7% of the purchase price of the Assets.

12. Micoley will market the Assets in a commercially reasonable manner, including identifying and contacting potential purchasers of the Assets. All potential purchasers who execute confidentiality agreements will be granted access to due diligence information regarding the Assets in order to evaluate whether to make a bid on the Assets. Furthermore, potential purchasers who execute confidentiality agreements will be entitled to conduct site visits of the campground.

13. Pursuant to the Auction Terms and Procedures, the Receiver requests authorization to enter into an Asset Purchase Agreement with a potential purchaser prior to the Auction who will serve as the initial bidder for the Assets (the "Stalking Horse Bidder"), including authorization to

offer the Stalking Horse Bidder bid protection on commercially reasonable terms to be agreed upon by the Receiver and the Stalking Horse Bidder, subject to approval by the Bank. No Stalking Horse Bidder will be entitled to bid protection unless (a) the Stalking Horse Bidder (i) executes an Asset Purchase Agreement acceptable to the Receiver and the Bank and (ii) is ready, willing, and able to close on the Assets pursuant to such Asset Purchase Agreement; and (b) the Assets are sold to another bidder and the closing has taken place. As part of its bid, the Stalking Horse Bidder may be required to submit an earnest money deposit in an amount acceptable the Receiver and the Bank.

14. The Assets will be sold free and clear of all liens, claims, leasehold interests, and encumbrances, including the Bank's liens, with all such liens, claims, leasehold interests, and encumbrances to attach to the proceeds of the sale to the same extent and priority as they existed with respect to the Assets immediately prior to the sale. The sale of the Assets is subject to the prior consent of the Bank and Court approval.

15. The Receiver will file a Report of Sale with the Court prior to the Sale Hearing describing the Auction, identifying the Winning Bid (as defined in the Auction Terms and Procedures), and seeking Court approval of the Winning Bid.

B. Determination of Value of Collateral

16. The value of the Bank's collateral is uncertain. Section 128.25 of the Wisconsin Statutes provides a procedure by which the Court may order the value of the secured creditor's collateral be determined by a liquidator's sale of assets. *See also BNP Paribas v. Olsen's Mill, Inc.*, 2011 WI 61, ¶ 52, 335 Wis. 2d 427, 799 N.W.2d 792 ("When the value of the secured creditor's collateral is uncertain or in dispute, Wis. Stat. § 128.25 sets forth a procedure by which its value may be determined.").

17. The Receiver is a liquidator as defined by Wis. Stat. § 128.25(1)(c) because he is administering the assets of Annie's Campground in this Chapter 128 proceeding. Accordingly, the Receiver requests this Court order that the ultimate purchase price of the Assets be deemed the value of the Bank's collateral.

C. Distributions

18. The Receiver requests authorization to pay all outstanding personal property and real estate taxes, necessary closing costs, Micoley's commission, and customary prorations. The Receiver further requests authorization to pay to the Bank the net proceeds from the sale of the Assets up to the amount of its secured claim. Any remaining sale proceeds will be held by the Receiver, in trust, pending further order of this Court.

19. The Receiver will send notice of this Sale Motion to all known creditors of Annie's Campground, parties-in-interest, and potential purchasers of the Assets. In the event parties have questions regarding the Sale Motion or Auction Terms and Procedures, they may contact the Receiver or his counsel.

20. The Receiver is authorized to state that the Bank has consented to the relief requested in this Sale Motion.

CONCLUSION

21. For the above reasons, the Receiver respectfully requests entry of an order (i) authorizing the Receiver to sell the Assets pursuant to the Auction Terms and Procedures, free and clear of all liens, claims, leasehold interests, and encumbrances, (ii) determining the value of the Bank's collateral pursuant to Wis. Stat. § 128.25, (iii) authorizing the Receiver to make disbursements as described above, and (iv) granting any other and further relief that is appropriate under the circumstances.

Dated: June 27, 2022

O'NEIL, CANNON, HOLLMAN, DEJONG
& LAING S.C.

Seth E. Dizard, Receiver of Annie's
Campground

Electronically signed by Seth E. Dizard

Seth E. Dizard

State Bar No. 1025871

Seth.Dizard@wilaw.com

Jessica K. Haskell

State Bar No. 1113326

Jessica.Haskell@wilaw.com

P.O. Address:

111 East Wisconsin Avenue, Suite 1400
Milwaukee, Wisconsin 53202
(414) 276-5000