

FILED
08-22-2022
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 REPORT OF SALE

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., submits this Report of Sale to inform the Court and the parties-in-interest about the results of the going concern auction of the assets of Annie’s Campground.

1. On May 25, 2022, the Court appointed the Receiver as the Chapter 128 receiver of Annie’s Campground. Doc. No. 16.

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

3. On June 27, 2022, the Receiver moved the Court for an order (i) authorizing the sale, assignment, and transfer of substantially all of the assets of Annie’s Campground pursuant to the Auction Terms and Procedures, free and clear of all liens, claims, leasehold interests, and encumbrances, (ii) determining the value of the assets constituting security for the secured creditors of Annie’s Campground, and (iii) authorizing the Receiver to disburse a portion of the sale proceeds (the “Sale Motion”). Doc. No. 40.

4. Notice of the hearing on the Sale Motion, the Sale Motion, and the Auction Terms and Procedures was provided to all creditors, parties-in-interest, potential purchasers, and the owner of Annie's Campground. *See* Doc. Nos. 42, 50.

5. A hearing on the Sale Motion was held on July 11, 2022. Following the hearing, the Court entered an order granting the Sale Motion and authorizing the Receiver to sell the assets of Annie's Campground pursuant to the Auction Terms and Procedures free and clear of all liens, claims, leasehold interests, and encumbrances (the "Sale Order"). Doc. No. 56. The Sale Order further authorized the Receiver to adopt additional commercially reasonable rules for the auction, including rules governing the method for submitting bids. *Id.*

6. Any sale of the assets of Annie's Campground is subject to the Court's approval at the sale confirmation hearing scheduled for August 23, 2022, at 11:30 a.m. (the "Sale Hearing"). Notice of the Sale Hearing was provided all creditors, parties-in-interest, potential purchasers, and the owner of Annie's Campground. *See* Doc. Nos. 64–65.

7. Since entry of the Sale Order, Micokey and Co. a/k/a Realty Hive ("Micokey"), the auctioneer retained by the Receiver, actively marketed the assets of Annie's Campground on a going concern basis.

8. As a result of its marketing efforts, there were 128 separate expressions of interest. Out of the 128 expressions of interest, 90 potential purchasers executed Confidentiality Agreements. Upon execution of a Confidentiality Agreement, a potential purchaser was entitled to receive confidential due diligence related information concerning Annie's Campground in order to evaluate whether to make a bid on the assets. Furthermore, potential purchasers who executed Confidentiality Agreements were entitled to conduct site visits of the campground, and numerous potential purchasers visited the campground.

9. After consultation with the Receiver, Micoley determined that the best method for maximizing the value of the assets was to conduct a sealed bid auction of the assets of Annie's Campground. Pursuant to the Auction Terms and Procedures, only bidders that met certain qualifications were authorized to submit bids for the assets.

10. The deadline to submit sealed bids was August 19, 2022, at 12:00 p.m. Nine bidders submitted sealed bids for the assets of Annie's Campground. The bids ranged from \$527,777.00 to \$2,500,000.00. All bidders submitted an earnest money deposit of \$100,000.00.

11. Bob & Geri Enterprises, LLC ("BGE") submitted the highest bid in the amount of \$2,500,000.00. However, BGE did not present to the Receiver at or before the sealed bid deadline evidence of its financial ability to consummate a purchase of the assets, which was required to be deemed a qualified bidder for the assets.

12. Accordingly, the Receiver designated BGE the Winning Bidder (as defined in the Auction Terms and Procedures), conditioned upon BGE submitting sufficient evidence of its financial ability to consummate a purchase of the assets by August 22, 2022, at 12:00 p.m.

13. After conditionally designating BGE as the Winning Bidder, Micoley allowed the bidders who submitted the second, third, and fourth highest bids to submit their best and final back-up bids by August 22, 2022, at 12:00 p.m. The remaining bidders were informed their bids were rejected as too low.

14. BGE failed to timely provide sufficient evidence of its financial ability to consummate a purchase of the assets, and the Receiver was further informed that BGE's bid was contingent on financing, which is not allowed under the Auction Terms and Procedures. For these reasons, the Receiver deemed BGE an unqualified bidder and rejected its bid for the assets.

15. Out of the three back-up bids that were submitted, Positive Ventures, LLC (the “Buyer”), a Wisconsin limited liability company, submitted the best and highest bid of \$2,053,900.00 for the assets (the “Winning Bid”). The Buyer is a qualified bidder, and its bid has no contingencies whatsoever other than Court approval. Accordingly, the Receiver designated the Buyer as the Winning Bidder.

16. Subject to Court approval, the Receiver has entered into an Asset Purchase Agreement with the Buyer to purchase substantially all of the assets of Annie’s Campground.

17. The Winning Bid is the best and highest qualified offer the Receiver has received for the assets of Annie’s Campground and is greater than the liquidation value of the assets.

18. The auction was conducted in a commercially reasonable manner and in accordance with the Auction Terms and Procedures and the Sale Order. The Receiver believes the sale of the assets of Annie’s Campground to the Buyer is in the best interests of creditors. If the sale is not confirmed at the Sale Hearing, the Receiver believes creditors will receive substantially less in this receivership proceeding.

19. The Receiver has been advised that the Buyer is ready, willing, and able to close on the sale of the assets pursuant to the terms of the Winning Bid and the Asset Purchase Agreement.

20. The Buyer and its principals have no relation to Annie’s Campground or its principals.

21. The closing of the sale of the assets of Annie’s Campground must take place within five business days after entry of an order authorizing the Receiver to sell the assets to the Buyer.

22. Bank First, which has a properly perfected, first priority lien on all assets of Annie's Campground, consents to the sale of the assets to the Buyer pursuant to the terms of the Winning Bid and the Asset Purchase Agreement.

23. Under the circumstances, the Receiver requests that, at the Sale Hearing, the Court enters an order granting the following relief:

- a. Approving the Winning Bid and authorizing the Receiver to transfer the assets to the Buyer free and clear of all liens, claims, leasehold interests, and encumbrances pursuant to the terms of the Winning Bid and the Asset Purchase Agreement;
- b. Authorizing the Receiver to make the distributions set forth in the Sale Order; and
- c. Granting any other and further relief that is appropriate under the circumstances.

Dated: August 22, 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