

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
JOVA/DANIELS/BUSBY)
INCORPORATION,) CASE NO. 13-50728-JRS
)
Debtor.)
_____)

MOTION TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS

COMES NOW S. Gregory Hays, the Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Jova/Daniels/Busby Incorporation ("Estate"), by and through counsel, and pursuant to 11 U.S.C. §§363(b) and (f) and Fed. R. Bankr. P. 2002(a)(2), 6004(a), 6004(c) and 9014, and through undersigned counsel, files this *Motion to Sell Property of the Estate Free and Clear of Liens* ("Motion") other than in the ordinary course of business and shows the Court as follows:

1. The debtor Jova/Daniels/Busby Incorporation ("Debtor") filed its Petition under Title 11, Chapter 7 on January 14, 2013 (the "Petition Date"), at which time Trustee was appointed interim trustee.

2. On January 24, 2013, Debtor filed its *Statement of Financial Affairs, Schedules "A" through "J" and related bankruptcy documents* [Doc. No. 9] under penalty of perjury (altogether, the "Sworn "Schedules"").

3. On February 6, 2013, Trustee filed his *Application to Appoint Attorney for*

Trustee [Doc. No. 16] and an *Order* [Doc. No. 17] was entered by the Court on February 7, 2013, appointing Arnall Golden Gregory LLP as attorneys for Trustee.

4. Trustee conducted and concluded the meeting of creditors, pursuant to 11 U.S.C. § 341(a) on February 13, 2013 and became the permanent trustee.

5. On *Schedule "B" - Personal Property* of the Sworn Schedules, Debtor listed its ownership interest in all personal property of the business located at 400 Colony Square, Suite 700, 1201 Peachtree Street, NE, Atlanta 30361-6319, including but not limited to, all business furniture and equipment of the business and the 2008 GMAC Arcadia, VIN: 771940073552002 (altogether, the "Business Assets") The Business Assets are unencumbered.

6. Contemporaneously with the filing of this Motion, Trustee is filing his *Application to Employ Auctioneer* seeking authority for the estate to employ Auction Management Corporation ("AMC") as its auctioneer for a buyer's premium of ten percent (10%) and a five percent (5%) commission of the gross sale price, plus reimbursement by the Estate for out-of-pocket expenses in the amount of FIVE THOUSAND NINE HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$5,927.00). No commission on the sale or reimbursement of expenses will be paid by the Estate to AMC until further application to the Court and order approving same.

7. Debtor has turned over the Business Assets and the title certificate to Trustee.

8. Trustee seeks authority from the Court to sell the Business Assets "as is" and "where is," free and clear of any potential liens, with valid and enforceable lien(s) attaching to the proceeds of sale, pursuant to 11 U.S.C. §363(b) and (f). **The auction will take place**

on April 17 and April 18, 2013, subject to Bankruptcy Court approval of the Motion.

9. Trustee proposes to sell the Business Assets by public auction to the highest and best bidder, conducted by AMC duly appointed auctioneer in this case. Trustee believes that the proposed sale is in the best interests of the Estate and its creditors as the Business Assets are not in use and will only decline in value through the passage of time.

10. The proposed sale of the Business Assets, is one not in the ordinary course of business, as provided by 11 U.S.C. §363(b). The sale will be free and clear of any liens, which are to attach to the sale proceeds since applicable non-bankruptcy law such as a state receivership proceeding under Georgia law would permit such sale free and clear of such interest. Additionally, the sale will be in excess of the aggregate value of all known liens against the Business Assets (there being none). Therefore, Trustee proposes to sell the Business Assets free and clear of liens as provided by 11 U.S.C. § 363(b) and (f).

WHEREFORE, Trustee prays that the Court enter an order granting his Motion and for such other and further relief as is just and proper.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

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CERTIFICATE OF SERVICE

This is to certify that I have mailed a copy of the *Motion to Sell Property of the Estate Free and Clear of Liens* by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

Office of the United States Trustee
362 Richard B. Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303

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Scott K. Schwartz
Chief Auctioneer
Auction Management Corporation
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Atlanta, Georgia 30339

This 1st day of March, 2013.

/s/ Neil C. Gordon
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