

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

In re: Sybill B. Montesani) Case No.: 09-81311-JAC-7
SSN: XXX-XX-3997)
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)
)
Debtor.) Chapter 7

**MOTION FOR AUTHORITY TO SELL ASSETS FREE
AND CLEAR OF LIENS AND NOTICE OF SALE**

COMES NOW Tazewell T. Shepard, Trustee of the above-captioned Bankruptcy Estate, and gives notice pursuant to Bankruptcy Rules 2002 and 6004 of his intent to sell the property described below free and clear of liens under 11 U.S.C. § 363(f) and, pursuant to Bankruptcy Rule 6004(c), moves this Honorable Court for an order authorizing him to sell said property. As grounds for said motion, the Trustee states as follows:

1. The undersigned was appointed as Trustee in the above-styled case, is duly qualified and is now serving.

2. The Trustee has reported that a portion of the Chapter 7 Estate consists of the debtor's fee simple interest in certain real property located at 10923 Hwy 207, Anderson, Alabama 35610.

3. Said property is subject to the following interest:

a. Lienholder: Regions Bank
Address: 2050 Office Parkway Circle
Hoover, AL 35244

Nature of Lien: Mortgage
Approx. Payoff Amount: \$21,000.00

4. In the opinion of the Trustee, the Bankruptcy Estate has an equity in said property and it will be for the benefit of the Estate to sell said property pursuant to Title 11 U.S.C. § 363(f) free and clear of the above-listed interest, with said interest to transfer and attach to the proceeds from the sale of said property.

5. Sale of said property will be with the consent of the above-listed lienholder of record pursuant to Title 11 U.S.C. § 363(f)(2).

6. In the absence of consent by said lienholder, sale of the subject property will be at a price greater than the payoff amount pursuant to Title 11 U.S.C. § 363(f)(3).

7. Said sale is to be conducted as a public auction with the following terms and conditions of sale:

a. The purchaser will make a down payment immediately upon completion of the auction equal to 5% of the total purchase price. The remaining balance of the purchase price shall be made payable in certified funds to "Tazewell T. Shepard, Trustee" and tendered at closing, to occur within ten (10) days of the auction date.

b. If for any reason purchaser fails to make full payment in accordance with the terms above, the purchaser will be liable for the unpaid balance still due and owing, plus interest in the amount of twelve percent (12%) per annum from the date of the auction and reasonable attorney's fees and expenses for collection as a result of said default.

c. The Trustee will pay for the costs of preparing a Trustee's Deed. The Trustee will also pay any previous years' *ad valorem* taxes owed on the property. Purchaser shall be responsible for any and all other closing costs, including all of the current year's *ad valorem* taxes for the property.

d. The proceeds from the sale will be distributed as follows:

(1) Payment of all closing costs and expenses of sale for which the Estate is responsible.

(2) Satisfy the mortgage of Regions Bank.

(3) The remaining proceeds will be distributed to the Trustee. Said funds shall be made payable to "Tazewell T. Shepard, Trustee".

e. The Trustee will execute and provide Purchaser with a Trustee's Deed. This deed will fully convey the Bankruptcy Estate's interest in the subject property, free and clear of the above-listed lien. The property is being sold "as is" with no warranties or guarantees whatsoever as to title or condition.

f. To the best of the Trustee's knowledge, there are no other entities or individuals with claims against the subject property other than the lienholder listed above. However, the Trustee has not obtained or requested a search of the title to the subject property. The property is being sold subject to any other liens or encumbrances of record not addressed herein, including any restrictive covenants, easements and/or right of ways.

g. The Closing Agent, if any, will serve as the Trustee's Designated Agent for the purpose of closing this sale and distributing the proceeds in compliance with this Notice and any Order to be issued by the Court.

8. The sale of said property is to be conducted at a closing to occur within ten (10) days after the auction date, and is to be held at the offices of SPARKMAN, SHEPARD &

MORRIS, P.C., Suite 1411, 303 Williams Avenue, Huntsville, Alabama 35801, unless designated otherwise.

9. This motion will be heard on March 23rd, 2010, at 9:00 a.m. at the US Post Office & Courthouse, 210 Seminary St., Florence, Alabama. Any objection to the sale and/or higher offers shall be filed with the U.S. Bankruptcy Court on or before five (5) days before the hearing date, and served upon the undersigned. Any objection should state specifically in writing why the sale should not be consummated. Any higher offer must be on the same terms and conditions [other than purchase price] provided herein.

WHEREFORE, the Trustee respectfully requests that the Court enter an order

A. Authorizing a sale of the subject property free and clear of liens under 11 U.S.C. § 363(f), in accordance with the terms and conditions stated herein; and

B. For such other and further relief as the Court deems just and appropriate.

Respectfully submitted this 17th day of February, 2010.

/s/ Kevin M. Morris

Tazewell T. Shepard

Kevin M. Morris

Attorneys to Trustee in Bankruptcy

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CERTIFICATE OF SERVICE

This is to certify that I have served the foregoing document upon the above-listed lienholders and those parties listed on the Clerk's certified matrix by electronic service through the Court's CM/ECF system and/or by placing a copy of the same in the U.S. Mail, postage prepaid, this the 17th day of February, 2010.

/s/ Kevin M. Morris

Kevin M. Morris