

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

CHAPTER 11

HELEN E.A. TUDOR,
HELEN REALTY CORP.,
THE CHAPMAN HOUSE MUSEUM INC.,

CASE NO.: 20-40068
CASE NO.: 20-40069
CASE NO.: 20-40070

Debtors.

*Jointly Administered under
Case No. 20-40068*

**HELEN TUDOR'S MOTION TO SELL PERSONAL PROPERTY FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS
PURSUANT TO 11 U.S.C. SECTION 363(b), (f), AND (m)**

Helen E.A. Tudor ("Debtor"), as Debtor-In-Possession, pursuant to 11 U.S.C. Sections 363(b),(f), and (m), files this Motion to sell personal property free and clear of all liens, encumbrances, and interests. In support of this Motion, the Debtor states as follows:

Background

1. The Debtor and the Related Debtors filed these now jointly administered cases on February 19, 2020.
2. The Debtor owns certain personal property that she desires to sell (the "Personal Property"). The description of the Personal Property is as seen on the contract attached hereto as Exhibit "A."
3. The Debtor is a semi-retired woman who lives in Carrabelle, Florida. For the past ten years, she has worked at The Chapman House Museum, Inc. in an effort to renovate the historic building and open a museum to the public.
4. The Debtor has decided it is in the best interests of her estate and her creditors in these jointly administered cases to sell the Personal Property described in the

attached Agreement to Purchase Furnishings (“Agreement”) and attachments thereto, both of which are attached as Exhibit “A.”

5. The Debtor previously filed a motion to sell other personal property to a different buyer, but that buyer terminated the contract on the last day of the due diligence period, so the Debtor withdrew the prior sale motion.

6. The proposed buyer is JP Ferguson Properties, LLC, a Florida Limited Liability Company (“Buyer”). The proposed purchase price is \$65,000.00.

7. With Court approval, this sale will take place simultaneously to the same Buyer with the sale of certain real property owned by Related Debtor The Chapman House Museum, Inc. (“Chapman Sale”). The instant sale is in fact contingent upon the Buyer closing on the Chapman Sale. A separate motion will be filed with respect to that property.

8. The Chapman Sale will allow the Debtor’s lone secured creditor, Sarah Melvin, to be paid in full. The purchase price will also allow the Debtor and Related Debtors to litigate disputed claims, if necessary, and pay at minimum a partial dividend to unsecured creditors. In addition, because the Debtor and Related Debtors The Chapman House Museum, Inc. and Helen Realty Corp. have common creditors, this sale in conjunction with the Chapman Sale will benefit each of the estates in these three jointly administered cases.

9. Sarah Melvin (“Melvin”) is a judgment lien creditor of the Debtor pursuant to a settlement reached prepetition with the Debtor and the Related Debtors (Helen Tudor & Helen Realty Corp.). Melvin holds a claim in the amount of \$420,515.02, which the Debtor would pay out of the sale proceeds upon consummation of the sale. However, Related Debtor The Chapman House Museum, Inc. reserves its rights to object to any

Section 506 fees, interest, and costs that may be asserted by Melvin, in addition to any rights to set aside the judgment lien as a preference.

Relief Requested

10. The Debtor requests the entry of an order pursuant to Section 363 of the Bankruptcy Code approving the sale of the Personal Property to the Buyer, free and clear of all liens, claims, encumbrances and interests.

11. The Debtor, subject to this Court's approval, has accepted the offer from the Buyer as set forth above in the total amount of \$65,000.00. The offer by Buyer is the highest viable offer presented to the estate at this time, and one which the Debtor believes is fair. The proposed closing date is August 14, 2020.

12. As is required, the Debtor will file a Report and Notice of Intent to Sell under Negative Notice per Local Rule 6004-1 (C)(1) once the Court sets a hearing.

13. In the event that the current purchaser withdraws its offer prior during the due diligence period, or otherwise fails to consummate the sale transaction, the Debtor shall be authorized to accept any back-up offers during the pendency of this sale prior to closing and shall notify the Court of such. Acceptance of any back-up offer is in the sole discretion of the Debtor and is subject to Court approval.

14. All fees, closing costs, settlement costs, and taxes including county taxes, recording, transfer, and tax stamps, if any are owed, will be paid at closing or as otherwise set forth in the contract for sale.

Basis for Relief

15. The Debtor seeks authority to sell the Personal Property free and clear of all liens, claims, encumbrances and interests.

16. Pursuant to Section 363(b) of the bankruptcy code, the Debtor- In-Possession, after notice and hearing, may use, sell, or lease property of the estate other than in the ordinary course of business. The Court should approve the sale if the Debtor-In-Possession can demonstrate a sound business justification for the sale and if the sale process is fair, open, and reasonable. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *see also In re Sarah's Tent, LLC*, 396 B.R. 571, 573 (Bankr. S.D. Fla. 2008). Further, Bankruptcy Rule 6004(f) contemplates sales outside of ordinary course of business made by public auction.

17. Accordingly, the Debtor submits that the sale of the Personal Property pursuant to the above-described private sale is reasonable under Section 363(b) of the Bankruptcy Code and should be approved.

18. Pursuant to Section 363(f) of the Bankruptcy Code, the Debtor-In-Possession pay sell property free and clear of any interest in such property in an entity other than the estate if (1) permitted under applicable non-bankruptcy law; (2) the party asserting such interest consents; (3) the interest is a lien and the purchase price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is the subject of a bona fide dispute; or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. *See In re Smart World Techs., LLC*, 423 F.3d 166, 169 n.3 (2d Cir. 2005) (“Section 363 permits sales of assets free and clear of claims and interests . . . It thus allows purchasers . . . to acquire assets [from a debtor] without any accompanying liabilities.”); *see also In re MMHAuto. Group, LLC*, 385 B.R. 347, 367 (Bankr. S.D. Fla. 2008).

19. If the Chapman Sale is approved, then Melvin's claim will be paid in full out of the proceeds of that sale. If that occurs, then there would be no known liens, claims, or encumbrances on the Personal Property being sold by the Debtor.

20. For that reason, the sale as proposed satisfies Section 363(f)(3) because Melvin's interest in the Personal Property is a lien and the lien will be satisfied through the Chapman Sale.

21. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a Debtor notwithstanding that the sale conducted under Section 363(b) and (f) was later reversed or modified on appeal.

22. The Sale should be found to have been in good faith if the Debtor can demonstrate the transaction occurred at arms'-length and without fraud or collusion. *See Kabro Assocs. of West Islips, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997).

23. The Buyer is not an insider, nor is the Buyer otherwise related to the Debtor. In addition, the sale price is fair and reasonable. Accordingly, the Debtor respectfully requests that the Court find that the Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code.

24. The Debtor, in the exercise of her business judgment, has concluded that the sale as described above, presents the best option for maximizing the value of the assets involved for the benefit of the Debtor's estate and the creditors.

25. Additionally, the Debtor requests that any order granting this Motion provide that the stay period under Rule 6004(h) and 6006(d), and any other applicable stay

periods, be waived, such that the stay requirement of Rule 6004(h) is lifted immediately upon the execution of this Order.

WHEREFORE, the Debtor, Helen E.A. Tudor, respectfully requests that the Court enter an order approving the sale of the Personal Property as described above pursuant to Section 363 of the Bankruptcy Code, and granting any other relief the Court deems just and proper.

Dated: June 10, 2020

Respectfully submitted,

Bruner Wright, P.A.
Counsel for Debtors-In-Possession
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CERTIFICATE OF SERVICE

I, Byron Wright III, hereby certify that a true and accurate copy of the above document was served on the following in the manner stated below:

Served by the Court via Notice of Electronic Filing (NEF): I have confirmed that the foregoing document was served by the Court via NEF on June 10, 2020 to the following persons at the email addresses noted herein:

Russell B. Buchanan on behalf of Creditor Sarah Melvin
rbuchanan@bakerdonelson.com,
asberry@bakerdonelson.com;lterry@bakerdonelson.com

Charles F. Edwards on behalf of U.S. Trustee United States Trustee
charles.edwards@usdoj.gov

Parama Liberman on behalf of Creditor Ogle Law, LLC
pkliberman@oglelawfirm.com

David K. Minacci on behalf of Creditor PeopleSouth Bank
davidm@stslaw.com

Kelly Ann O'Keefe on behalf of Attorney Stearns Weaver Miller Weissler Alhadeff
& Sitterson, P.A.
kokeefe@stearnsweaver.com

David Rand Softness on behalf of Creditor Warshaw Burstein
david@softnesslaw.com

United States Trustee
USTPRegion21.TL.ECF@usdoj.gov

Dated: June 10, 2020

/s/ Byron Wright III
Byron Wright III

EXHIBIT A

DocuSign Envelope ID: BF6215CE-4FDF-47D1-8BA1-3231E4F4532E

AGREEMENT TO PURCHASE FURNISHINGS

SELLER: Dr. Helen E.A. Tudor

BUYER: J. P. Ferguson Properties LLC

BUYER agrees to purchase from SELLER all furniture, light fixtures and furnishings currently onsite in Chapman House buildings with the exception of excluded items listed below.

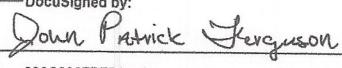
Purchase Price will be Sixty-five Thousand Dollars (\$65,000).

Purchase Date will be on or before August 14, 2020.

This agreement is contingent on Buyer purchasing the real estate at 82 6th Street, Apalachicola, FL 32320.

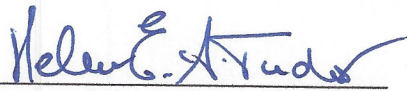
EXCLUDED ITEMS:

- Seller's personal items & office supplies.
- 2 butcher block tables, tops, supports & lamps in office.
- Glass-front media cabinet in photo studio by office.
- Hanging basket in ladies half-bath.
- Antique desk in NE upstairs room.
- Painting over fireplace mantel in NE upstairs room.
- Chinese bench in in SW upstairs room.
- Western ceramic stoneware pot in downstairs hall.
- Small desk in Cottage.
- Bedspread & 2 pillows in Cottage.
- Renter personal property in Carriage House apartment.
- Renter washer/dryer in Carriage House apartment.
- Draper pink bird artwork 2 canvases in Carriage House staircase.
- Large TV in Carriage House downstairs room.

DocuSigned by:

 296C606FBFB048A...
 BUYER

6/7/2020

 DATE



 SELLER

6/8/2020

 DATE