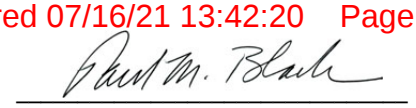
SIGNED: July 16th, 2021
THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.



Paul M. Black
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

PANTHERA ENTERPRISES, LLC,
Debtor

BK No. 2:19-bk-00787
Chapter 7

CORRECTED ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER APPROVING THE SALE OF THE DEBTOR'S REAL PROPERTY AND NOVATING CERTAIN GOVERNMENT CONTRACTS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363
And
ORDER GRANTING MOTION TO COMPROMISE/SETTLE ADVERSARY PROCEEDING AND RESOLVE PENDING OBJECTIONS TO TRUSTEE'S MOTION TO SELL REAL PROPERTY BY SMI, LLC, TR&L, LLC AND AZADIAN GROUP, LLC

On June 22, 2021, came Aaron C. Amore, Trustee, with a *Motion for An Order Approving the Sale of the Debtor's Real Property and Novating Certain Government Contracts Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. § 363* (ECF 304) ("Motion to Sell") and a *Motion to Compromise/Settle Adversary Proceeding and Resolve Pending Objections to Trustee's Motion to Sell Real Property by SMI, LLC, TR&L, LLC and Azadian*

Group, LLC (ECF 352) pursuant to 11 U.S.C. §§ 105, 541, 704, and Fed. R. Bankr. P. 2002, and 9019 ("Motion to Compromise"). The motions were noticed and set for hearing before the Court on the 22nd day of June 2021. *This order corrects the omission of paragraph no. 13 hereinbelow.*

Multiple objections were filed to the Motion to Sell, and a mediation was held before the Honorable Keith L. Phillips prior to hearing. All objections were resolved at mediation except for the objection filed by Rennick C. Williams, Betty P. Williams and Robert Williams (hereafter collectively, the "Williams") to both the Motion to Sell and the Motion to Compromise.

The Court has considered the evidence presented at hearing, the arguments of counsel, the pleadings filed, and the record in this case, and based thereon, makes the following findings of fact and conclusions of law.

1. The Debtor's case was originally filed as a Chapter 11 case which was converted to a Chapter 7 proceeding on July 21, 2020. Upon conversion Aaron C. Amore (hereafter "Trustee") was appointed as Chapter 7 Trustee.

2. Panthera Training, LLC (hereafter "Panthera Training") operates a training facility on the property owned by the Debtor under a long-term lease agreement. Panthera Training has been operating on the premises for an extended period of time and the lease provides for substantial cashflow.

3. On March 29, 2021, the Trustee filed his Motion to Sell pursuant to 11 U.S.C 363(b)(1), proposing to sell to Panthera Training the Debtor's real property for approximately $6.7 million based upon various sums Training agreed to pay at closing, some of which are additional sums Panthera Training agreed to pay to resolve the objections resolved at mediation.

4. The unresolved objection of the Williams involves a "right of first refusal" contained in the original deed and conveyance to the Debtor, along with a claimed right to compensation if the property is sold to a third party.

5. The issue before the Court is whether the provisions in the deed numbered 7 and 8 are covenants running with the land and binding on the Chapter 7 Trustee and subsequent purchasers or are they personal covenants taken in the form of an executory contract that was rejected by the Chapter 7 Trustee by operation of 11 U.S.C. § 365(b)(1) 60 days after the conversion of the bankruptcy case.

6. The preamble of the deed indicates all provisions of the deed that follow are covenants that run with the land, but that is not the end of the inquiry. In *McElroy Coal v. Dobbs,* 853 SE 2d 620 (2020), the West Virginia Supreme Court of Appeals observed that "rights of first refusal are presumed to be personal" and when the court confronts a right of first refusal servitude the court begins by assuming the benefit is personal, i.e. "that it is not transferrable and does not run with the land."

7. The Williams presented one witness at trial to rebut the presumption, Robert Williams, the son of Rennick and Betty Williams, who testified he was involved in the negotiations leading up to the closing of the family transaction with the Debtor. Mr. Williams explained why the right of first refusal was contained in the deed but had no adequate explanation why the right of first refusal was limited in its applicability to his parents and their surviving children. Other provisions in the deed's covenants section, such as convenant 4, refer to certain rights reserved to the Grantors, their successors in interest and assigns. The deed covenants numbered 7 and 8 contain no such language. Notwithstanding the language in the preamble, the Court finds that the right of first refusal is a personal right and this finding has not been rebutted to the Court's satisfaction.

8. The Court further finds that the provisions numbered 7 and 8 in the deed are executory contracts that were not assumed by the Chapter 7 Trustee and are deemed rejected by operation of law.

9. The Court further finds that there were unperformed obligations on both sides of the right of first refusal that if they were not performed would create a material breach that would excuse the other's performance. The Court refers to *In re Kellstrom Industries, Inc.*, 236 B.R. 833 (200), a Delaware case to illustrate the point.

10. The Court further observes that no party objected to the Trustee's request that Panthera Training be found to be a good faith purchaser

under the contract for sale and the Court so finds. The Court notes that Panthera Training was actively involved in the mediation and worked to resolve the objections in this case, all with the assistance of Judge Phillips. It has acted openly and diligently before the Court to move this sale forward in an expeditious manner.

11. The Court also finds that this motion has been pending since March 20, 2021. The Williams have not taken any action to make an equal or better offer knowing of the pending motion. The sole action was to object to the sale. Also, in the original conveyance deed, the Williams expressly subordinated their right of first refusal to the WVEDA's deed of trust, which all agree would be foreclosed out if the Court grants the pending motion for relief from stay filed by the WVEDA. The consequences of the Debtor's primary asset being foreclosed out would have a detrimental consequences to the entire creditor body which will have a potential recovery from the sums to be paid to the bankruptcy estate by Panthera Training.

12. Based on all of these factors the Court finds that the Williams' objection to the Motion to Sell and to the Motion to Compromise should be overruled and the Motion to Sell should be granted approving the proposed sale.

13. The Court specifically finds that it did not consider nor rule on covenants 1, 2, 3, 4, 5, 6, 9 or 10 and they are not affected by this Court's order.

Accordingly, it is

ORDERED and **ADJUDGED** that the objection filed by Rennick C. Williams, Betty P. Williams and Robert Williams to the Motion to Sell and to the Motion to Compromise is hereby **OVERRULED**, and it is

ORDERED and **ADJUDGED** that the Motion to Sell is hereby **GRANTED**, and it is

ORDERED and **ADJUDGED** that the Motion to Compromise is hereby **GRANTED**, and it is.

ORDERED and **ADJUDGED** that Panthera Training is deemed to be a good faith purchaser pursuant to 11 U.S.C. 363(m).

The Court shall retain jurisdiction to hear any disputes or issues related to the proposed sale and the stay shall remain in place pending hearing on the motion for relief from stay filed by WVEDA continued by this Court until July 22, 2021.

The Clerk is directed to send copies of this Order to Counsel for the Chapter 7 Trustee, Panthera Training LLC, West Virginia Economic Development Authority, West Virginia Paving, Inc., TR&L, LLC and SMI, LLC, the Williams, the Debtor, and any other party that has requested to receive notice in this case.

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