



Entered on Docket
September 06, 2007

Hon. Mike K. Nakagawa
United States Bankruptcy Judge

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*Attorneys for MICHAEL W. CARMEL,
Ch. 11 Trustee for the Estate of Thomas A. Hantges*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:
THOMAS A. HANTGES,

Debtor.

Case No.: 07-13163-LBR
Chapter 11
DATE: August 23, 2007
TIME: 9:30 a.m.

ORDER DENYING IN PART AND GRANTING IN PART MOTION FOR ORDER (A) AUTHORIZING THE SALE OF THE REAL PROPERTY LOCATED AT 4484 SOUTH PECOS ROAD, LAS VEGAS, NEVADA AND CERTAIN PERSONAL PROPERTY SPECIFIED IN EXHIBIT "7" TO THE CARMEL DECLARATION; (B) APPROVING CERTAIN BIDDING PROCEDURES TO OBTAIN THE HIGHEST CASH BID; (C) REQUIRING SALE PROCEEDS TO BE MAINTAINED IN ESCROW OR OTHER SEGREGATED ACCOUNT PENDING DETERMINATION OF OWNERSHIP; AND (D) ATTACHING LIENS AND INTERESTS TO THE SALE PROCEEDS

1 *The Motion For Order Pursuant To Sections 105 And 363 Of The Bankruptcy Code (A)*
2 *Authorizing The Sale Of The Real Property Located At 4484 South Pecos Road, Las Vegas,*
3 *Nevada And Certain Personal Property Specified In Exhibit “7” To The Carmel Declaration;*
4 *(B) Approving Certain Bidding Procedures To Obtain The Highest Cash Bid; (C) Requiring*
5 *Sale Proceeds To Be Maintained In Escrow Or Other Segregated Account Pending*
6 *Determination Of Ownership; (D) Attaching Liens And Interests To The Sale Proceeds; And*
7 *Supporting Memorandum Of Points And Authorities (“Motion”)* filed on July 31, 2007 by
8 Michael W. Carmel, the Chapter 11 Trustee (the “Trustee”) for the Estate of Thomas A.
9 Hantges (“Debtor”), came on for hearing before the Honorable Linda B. Riegle, United States
10 Bankruptcy Judge, on August 23, 2007.¹ The Trustee appeared by and through his counsel,
11 Robbin L. Itkin, of the law firm of Steptoe & Johnson LLP; and other appearances were as duly
12 noted on the record.

13 Having reviewed and considered the Motion; the Declarations of Michael Carmel
14 (“Carmel Declaration”) and Perry White (“White Declaration”) filed in support of the Motion
15 and all exhibits thereon; the joinder in support of the Motion filed by Ford Elsaesser, the
16 Chapter 11 Trustee for the estate of Joseph D. Milanowski (“Milanowski Estate”); the objection
17 to the Motion filed by GE Commercial Finance Business Property Corporation (“GE”) and the
18 joinder to GE’s objection filed by Dr. Lucius Blanchard (collectively, the “Objection”); and
19 having heard the arguments of counsel presented at the hearing; the Court

20 **HEREBY FINDS** that:

21 A. appropriate notice of the hearing on the Motion and a reasonable opportunity to
22 object or be heard with respect to the Motion and the relief requested therein has been afforded
23 to all interested persons and entities as required by Bankruptcy Code 102, Bankruptcy Rules
24 2002 and 6004 and Local Rule 9014(b), and no further notice is required.

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27 ¹ All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 B. the Debtor's estate is the sole shareholder of USA Development, Inc. ("USA
2 Development"), a general partner in, and the managing partner of, Pecos Professional Park
3 Limited Partnership (the "Partnership");

4 C. the Partnership LPA (attached as Exhibit "1" to the Carmel Declaration)
5 provides, among other things, that USA Development and, thus, by extension, the Debtor as the
6 sole shareholder of USA Development, has "control of the Partnership and the authority and
7 responsibility to manage, represent and bind the Partnership;"

8 D. the LPA provides, among other things, that the purpose of the Partnership is to
9 "sell the Property or portions thereof; and to engage in such other activities as are incidental or
10 related to the foregoing"; and

11 E. pursuant to Sections 1106 and 1108 of the Bankruptcy Code the Trustee is
12 empowered with the rights of the Debtor with respect to all assets of the Debtor's estate; this
13 includes the right to operate the Debtor's businesses and to sell assets of the Debtor in the
14 ordinary course of business pursuant to Section 363 of the Bankruptcy Code.

15 Based upon the foregoing findings and upon such other findings as placed upon the
16 record at the hearing on the Motion, and good and sufficient cause appearing therefor;

17 **IT IS HEREBY ORDERED** that:

18 1. As stated within this Order, the Trustee's Motion is DENIED in part without
19 prejudice and GRANTED in part.

20 2. In accordance with the findings above, the Trustee is authorized to operate USA
21 Development as a general partner and managing partner of the Partnership, which, pursuant to
22 the LPA, includes the authority to sell that certain real property located at 4484 South Pecos
23 Road, Las Vegas, Nevada and the personal property owned by the Partnership (the "Property").

24 3. The Trustee's Motion is hereby DENIED insofar as it requests this Court to
25 exercise jurisdiction over the Property and approve the sale of the property as an asset of the
26 estate pursuant to section 363 of the Bankruptcy Code.

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1 4. The Trustee's Motion is hereby GRANTED insofar as it requests authority for
2 the Trustee to operate the Debtor's businesses, which includes the sale of the Property in the
3 ordinary course of business pursuant to the LPA; and the Property may be sold without notice, a
4 hearing and/or Court approval under the Bankruptcy Code.

5 5. The terms and provisions of this Order shall be binding in all respects upon the
6 Debtor, all creditors and interest holders of the Property, and all interested parties and their
7 respective successors and assigns, including, but not limited to, any creditor asserting a lien on
8 or interests in the Property.

9 6. Nothing in this Order shall be deemed to be an exercise of jurisdiction by this
10 Court over the Property itself and the request to sell the Property under 11 U.S.C. § 363 is
11 DENIED; provided, however, that nothing in this Order shall be construed to limit the Trustee's
12 ability to operate the Debtor's businesses in the ordinary course of business pursuant to 11
13 U.S.C. § 363.

14 7. Nothing in this Order shall prohibit the Trustee and/or any other party from
15 seeking a determination by this Court through an adversary proceeding of (a) the ownership
16 rights in the proceeds generated from the sale of the Property; and (b) the amount of reasonable
17 attorneys fees and costs recoverable by GE Commercial Finance Business Property
18 Corporation.

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21 **Prepared and Respectfully Submitted By:**

22 By: /s/ Robbin L. Itkin
23 Robbin L. Itkin
24 STEPTOE & JOHNSON LLP
25 2121 Avenue of the Stars, Suite 2800
26 Los Angeles, California 90067

27 *Attorneys for Michael W. Carmel,
Chapter 11 Trustee for the Estate of Thomas A. Hantges*

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APPROVED:

OFFICE OF THE UNITED STATES TRUSTEE

By: /s/ August B. Landis
August B. Landis, Esq.

APPROVED:

KOLESAR & LEATHAM, CHTD.

By: /s/ Nile Leatham
Nile Leatham, Esq.
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Attorney for GE Commercial Finance – 1st Trust Deed Holder on Property

APPROVED:

KEHOE & ASSOCIATES

By: /s/ Ty Kehoe
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Attorney for Dr. Lucius Blanchard

APPROVED:

GORDON & SILVER LTD.

By: /s/ Greg E. Garman
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Attorney for Lisa M. Poulin, Chapter 11 Trustee for USA Investment Partners

APPROVED:

COX SMITH MATTHEWS INCORPORATED

By: /s/ Deborah D. Williamson
Deborah D. Williamson, Esq.
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Attorney for Ford Elsaesser, Chapter 11 Trustee for Joseph D. Milanowski Estate

APPROVED:

LEWIS AND ROCA LLP

By: /s/ Rob Charles
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Las Vegas, NV 89169

Attorney for Geoffrey L. Berman, Trustee for USACM Liquidating Trust, Successor in Interest to USA Commercial Mortgage Company

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APPROVED:

**ORRICK, HERRINGTON &
SUTCLIFFE LLP**

By: /s/ Jeffery D. Hermann
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Los Angeles, CA 90017-5855

*Attorney for Michael Tucker, Administrator
for USA Capital Diversified Trust Deed
Fund, LLC*

1 **LOCAL RULE 9021 CERTIFICATION**

2 In accordance with LR 9021, the undersigned certifies:

3 The court has waived the requirement of approval under LR 9021.

4 No parties appeared or filed written objections, and there is no trustee appointed
5 in the case.

6 [✓] I have delivered a copy of this proposed order to the Office of the United States
7 Trustee and any parties who filed papers in response to the Motion or appeared at the hearing
8 noted above, and each has:

9 [✓] approved the form of this order; and/or

10 waived the right to review the order; and/or

11 failed to file and serve papers in accordance with LR 9021(b); and

12 the following have disapproved the form of the order:

13 Respectfully submitted,

14 **STEPTOE & JOHNSON LLP**

15 By: /s/ Robbin L. Itkin

16 Robbin L. Itkin
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18 Los Angeles, California 90067

19 *Attorneys for Michael W. Carmel, Chapter*
20 *11 Trustee for the Thomas A. Hantges*
21 *Estate*

22 ###