

APN # 1318-10-417-037

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1483 Highway 395 N, Suite B

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Order authorizing sale of real property free and clear of liens and encumbrances and payment of sale commission

(Title on Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2 (Additional recording fee applies).

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Entered on Docket
October 20, 2016

Bruce T. Beesley
Honorable Bruce T. Beesley
United States Bankruptcy Judge



E-Lodged 10/19/16

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

15 IN RE:
16 JAMES E. CHAPON and KAREN R.
17 CHAPON, aka KAREN R.
18 HANNAFIOUS,
19 Debtors.

CASE NO. BK-N-14-51789-BTB
CHAPTER 7

**ORDER AUTHORIZING SALE OF
REAL PROPERTY FREE AND CLEAR
OF LIENS AND ENCUMBRANCES
AND PAYMENT OF SALES
COMMISSION
(626 DON DRIVE, ZEPHYR COVE,
NEVADA)**

Hearing Date: October 18, 2016
Hearing Time: 2:00 p.m.

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21 The matter came before the Court on the motion by Chapter 7 trustee, Angelique
22 Lamberti Clark ("Trustee Clark" or "Clark"), for an order authorizing the sale of 626 Don
23 Drive, Zephyr Cove, Nevada, ("Don Drive" or the "Property"), APN 1318-10-417-037, free
24 and clear of liens and encumbrances, for \$425,000 cash ("Sale Motion"). DE 189. The
25 Motion also requests approval for payment of a 6% commission. Trustee Clark was present
26 and represented by Jeffrey Hartman. No other counsel appearances were made and no
27 objections to the Sale Motion were filed with the Court. The Court considered the Sale
28 Motion together with the Declaration of Angelique Lamberti Clark In Support of the

I certify that this is a true copy:
Attest: *C. Young* 10/21/16
Deputy Clerk, U.S. Bankruptcy Court

1 Motion. **DE 191**. In addition, the Court takes judicial notice of the papers and pleadings on
2 file in this case and in the related case of In re Karen Hannafious, case no. BK-N-09-50676-
3 GWZ. In lieu of written findings of fact and conclusions of law, the Court stated its
4 findings of fact and conclusions of law on the record as permitted by F.R.Civ.P. 52, made
5 applicable to this proceeding by F.R.Bankr.P. 9014(c). In addition, the Court makes the
6 following specific findings of fact and conclusions of law:

7 1. Notice of hearing on this Motion was proper, having been provided pursuant to an
8 Order Shortening Time. **DE 194 and 196**.

9 2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is
10 a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).

11 3. This case was filed as a chapter 11 on October 24, 2014 (“Petition Date”).

12 4. The case (the “Chapon case”) was converted to chapter 7 on January 26, 2015
13 (“Conversion Date”). Trustee Clark was appointed to administer the assets of the estate and
14 is the representative of the estate by reason of § 323.

15 5. Prior to 2014, Karen Chapon, under the name Karen Hannafious, filed her first
16 bankruptcy petition as a chapter 13 case on November 10, 2008, case no. 08-52164-GWZ
17 (“Case No. 1”). Case No. 1 was dismissed on December 8, 2008. No chapter 13 plan was
18 filed by Hannafious and no discharge was entered.

19 6. On March 16, 2009, Hannafious filed her second bankruptcy petition as a chapter
20 13, case no. 09-50676-GWZ (“Case No. 2”) and on March 31, 2009, she filed her chapter 13
21 plan. On August 20, 2009, Hannafious voluntarily converted her chapter 13 case to one
22 under chapter 7.

23 7. Trustee Clark was appointed to administer the estate in Case No. 2.

24 8. Hannafious received a discharge on April 26, 2013. On July 23, 2014, Case No.
25 2 was closed as a no asset case.

26 9. On October 24, 2014, Karen Chapon, together with her husband James Chapon,
27 filed their voluntary chapter 11 petition, case no. 14-51789-BTB (the “2014 case”).

28 ///

1 10. On December 12, 2014, the United States Trustee (“UST”) filed a Motion To
2 Reopen Case No. 2 and on December 22, 2014, the Court entered its Order Reopening Case
3 No. 2.

4 11. On December 16, 2014, the UST filed a Motion To Convert the 2014 case to a
5 chapter 7. On January 26, 2015, the Court entered an Order Granting Motion To Convert
6 the 2014 case to chapter 7.

7 12. Trustee Clark was appointed to administer the chapter 7 estate of James and
8 Karen Chapon.

9 13. In Case No. 2, Hannafious represented that she resided in Douglas County,
10 Nevada. Schedule A disclosed that she owned two parcels of real estate at Stateline,
11 Nevada. Hannafious represented in Schedule I that she was single and that she had no
12 spouse or former spouse. Schedule B filed in Case No. 2 listed no interest in any
13 partnership, corporation or limited liability company. Hannafious misrepresented her
14 marital status in Case No. 2. Hannafious also failed to disclose her interest in a Costa Rica
15 partnership or her interest in \$170,000 in proceeds from the sale of that interest.

16 14. After Case No. 2 was converted to chapter 7, Hannafious eventually received a
17 discharge.

18 15. In the 2014 case, James Chapon and Karen Chapon are identified as husband
19 and wife residing in Douglas County, Nevada. Schedule A in the 2014 case identified three
20 parcels of real property located at Stateline and Zephyr Cove, Nevada: 626 Don Drive, 626
21 Canyon Drive and 460 Quaking Aspen Lane.

22 16. Schedule C in the 2104 case identified the Don Drive Property as the
23 homesteaded residence of the Chapons.

24 17. The § 341(a) meeting of creditors in the 2014 case was held on November 17,
25 2014. During the meeting, under oath, Karen Chapon testified that in 2009, she received
26 \$170,000 from the sale of a property interest in Costa Rica. She testified that she had been
27 in some type of partnership with individuals in Tamarindo, Costa Rica. She testified that the
28 partnership owned a condominium in Costa Rica. Karen Chapon testified that her partners

1 purchased her interest in the partnership and her net proceeds from the transactions totaled
2 \$170,000. Karen Chapon also testified that the \$170,000 sat in escrow for two years while
3 she tried to figure out where to put the money.

4 18. Karen Chapon testified that she had owned the interest in the Costa Rica
5 condominium for more than ten years. In Case No. 2, Karen Chapon failed to disclose her
6 interest in the Costa Rica partnership which owned the condominium in Tamarindo in that
7 country and she failed to disclose her interest in the \$170,000 which resulted from the sale
8 of her partnership interest.

9 19. Karen Chapon testified that she and her husband James Chapon utilized all of
10 the \$170,000 from the sale of the interest in the partnership in Costa Rica to make
11 improvements on Don Drive.

12 20. Title to Don Drive was acquired in January 2013 by James Chapon as his sole
13 and separate property.

14 a. On January 17, 2013, Brian Healy deeded Don Drive to James Chapon.

15 b. On that same date, Karen Chapon deeded her interest in Don Drive to James
16 Chapon as his sole and separate property ("Transfer").

17 c. On that same date, Brian Healy as beneficiary recorded a deed of trust ("Healy
18 Deed of Trust") against Don Drive to secure repayment of \$155,000.

19 d. On February 1, 2013, James Chapon deeded Don Drive back to Brian Healy.

20 e. On February 13, 2013, Brian Healy reconveyed the Healy Deed of Trust.

21 f. On October 29, 2013, Karen Chapon deeded her interest, such as it was, to James
22 Chapon.

23 g. On October 29, 2013, Healy, in his capacity as trustee successor trustee for the
24 Testamentary Trust of Brian C. Healy, deeded his interest in Don Drive to James
25 Chapon.

26 h. On October 29, 2013, Healy, in his capacity as trustee successor trustee for the
27 Testamentary Trust of Brian C. Healy and as beneficiary, recorded a deed of trust
28 against Don Drive to secure repayment of \$155,000.

1 21. The property interest in Costa Rica was an undisclosed asset in Case No. 2.
2 When Case No. 2 was reopened, the \$170,000 which had been transferred by Karen Chapon
3 into the Don Drive Property was nothing more than a transmutation of the \$170,000 cash
4 into a real property interest.

5 22. On February 3, 2105, Clark, in her capacity as Trustee in the Hannafious case,
6 filed an adversary proceeding against James Chapon and Karen Chapon for Fraud,
7 Avoidance of Fraudulent Transfer and for Declaratory Relief to Subject Property of the
8 Estate to Constructive Trust. Adv. No 15-05008. The claims included a request for the
9 imposition of a constructive trust on the Don Drive Property for the benefit of the
10 Hannafious estate. **Adv. DE 1.**

11 23. On January 18, 2015, the United States Trustee (“UST”) filed her objection to
12 the Chapons’ claim of homestead exemption (“UST Objection”). **DE 35.**

13 24. On January 22, 2015, Trustee Clark recorded a Notice of Bankruptcy Filing in
14 the recorder’s office in Douglas County, specifically identifying Don Drive, APN 1318-10-
15 417-037, as a property affected by the filing of the 2014 case. The Notice was recorded as
16 document no. 2015-855961.

17 25. On February 12, 2015, the Trustee Clark, in the Chapon case, filed her Objection
18 to Claim Of Homestead Exemption. **DE 58.**

19 26. On March 5, 2015, the Court entered an Order sustaining the UST’s Objection.
20 **DE 66.**

21 27. Unknown to Trustee Clark, in December 2015, James and Karen Chapon
22 entered into a new loan agreement pursuant to which they borrowed \$180,000 from Michael
23 Guidara and Pamela Guidara as trustees of the Michael Guidara and Pamela Guidara Family
24 Trust dated January 29, 2015 (“Guidara”). To secure repayment of the \$180,000, James
25 Chapon and Karen Chapon granted a security interest in the form of a deed of trust against
26 Don Drive. The deed of trust in favor of Guidara was recorded in Douglas County on
27 December 22, 2015 as document no. 2015-874366. As part of the transaction, Brian Healy,
28 the prior existing holder of a first deed of trust encumbering the Don Drive Property, agreed

1 to carry back a note in the amount of \$40,000 secured by a subordinated second deed of
2 trust.

3 28. In or about May 2016, Trustee Clark learned of the December 2015 lending
4 transaction. Trustee Clark contacted Newmark Investment and Loan, Inc., the loan broker
5 for the Guidara loan, and Monument Title, the title company which closed the transaction,
6 and advised them of the Chapon estate's ownership of Don Drive, the Notice of Bankruptcy
7 Filing, and the title insurance issues created by the failure to recognize the Notice of
8 Bankruptcy Filing.¹ Both Newmark Investment and Loan, Inc. and Monument Title have
9 been cooperative with Trustee Clark in attempting to resolve these problems.

10 29. Trustee Clark has received an Offer to purchase the Don Drive Property for
11 \$425,000. The purchasers are Karen Chapon's parents, Houston and Kathleen Hannafious.
12 A copy of the Offer is attached to the Clark Declaration as **Exhibit A**. The Trustee
13 submitted a Counter Offer indicating that the transaction is subject to overbid and Court
14 approval, escrow is to close within 10 days after approval and that the purchasers are to
15 order an appraisal and obtain loan approval. Clark Declaration, **Exhibit B**.

16 30. The Trustee estimates that, after payment of secured debt of approximately
17 \$220,000 and closing costs of approximately \$50,000, the estate will net approximately
18 \$155,000.

19 31. On August 4, 2016, the Trustee obtained an Order employing Ferrari-Lund and
20 Rick Lund as real estate agent to assist her in marketing the Property. **DE 188**. The
21 proposed sale transaction contemplates a sales commission of 6%.

22 32. Sales of property are governed by § 363 and F.R.Bankr.P. 6004. Sales, other
23 than in the ordinary course of business, may only be approved after notice and a hearing.
24 § 363(b). Sales free and clear of liens pursuant to § 363(f) may be approved only if at least
25 one of five conditions is satisfied:

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27

28 ¹ In her investigation, Trustee Clark learned that Karen Chapon had submitted to the
lender a fraudulently prepared Discharge of Debtor to which she had affixed Trustee Clark's
typed signature. Clark Declaration, **Exhibit C**.

- 1 (1) if applicable nonbankruptcy law permits sale of such property free and clear of
such interest;
- 2 (2) if such entity consents;
- 3 (3) if such interest is a lien and the price at which such property is to be sold is
4 greater than the aggregate value of all liens on such property;
- 5 (4) if such interest is in bona fide dispute, or
- 6 (5) if such entity could be compelled, in a legal or equitable proceeding, to accept a
7 money satisfaction of such interest.

8 33. Here, Trustee Clark will be paying all of the lienholders from close of escrow;
9 accordingly, § 363(f)(3) is satisfied.

10 34. [U]se, sale or lease of estate property must be based upon a debtor's sound
11 business judgment. The business judgment rule is a presumption that in making a business
12 decision the directors of a corporation acted on an informed basis, in good faith and in the
13 honest belief that the action was in the best interests of the company. In connection with
14 decisions related to the use of leases to maximize the value of the estate, courts show
15 deference to a debtor's sound business decisions. *In re Station Casinos, Inc.*, 2010 Bankr.
16 LEXIS 5672, *15-16 (Bankr. D. Nev. July 14, 2010)(internal citations omitted). These
17 same principles apply to trustees appointed to administer bankruptcy estates.

18 35. The Trustee requests authority to pay a portion of the closing costs as is
19 customary in Douglas County, real property taxes prorated to close of escrow, and the
20 beneficiary demands of secured creditors. The Trustee is also requesting approval for
21 payment of a sales commission in the amount of 6%.

22 36. The Trustee has also requested that the Order approving this proposed sale
23 provide for a waiver of operation of the 14 day stay as permitted by F.R.Bankr.P. 6004(h).

24 37. At the hearing, the Court was advised of a possible overbid. Thereupon, the
25 Court called for anyone interested in making an overbid to come forward.

26 38. Mr. Steve Ryckebosch came forward and offered \$430,000 cash for the
27 Property. When asked, Mr. Ryckebosch represented to the Court that he has the cash
28 necessary to deposit into escrow and can close as soon as the Court Order is entered.

1 39. Neither Karen Chapon, nor her parents Houston and Kathleen Hannafious were
2 present to make an overbid of more than \$430,000.

3 Based upon the foregoing and good cause appearing,

4 **IT IS ORDERED** that the Trustee's Motion be, and the same hereby is,
5 **GRANTED**; and

6 **IT IS FURTHER ORDERED** that the Trustee is authorized to consummate a sale
7 of 626 Don Drive, Zephyr Cove, Nevada to Steve Ryckebosch, or assigns, for \$430,000 and
8 that the sale be free and clear of liens and encumbrances, with the secured claims attaching
9 to the proceeds of sale and in accordance with the priority of record; and

10 **IT IS FURTHER ORDERED** that the Trustee is authorized to pay from escrow
11 customary closing costs and claims of record in Douglas County, i.e., real property taxes
12 (prorated) and secured claims of record; and

13 **IT IS FURTHER ORDERED** that the Trustee is authorized to pay from escrow the
14 sales commission of 6% to Richard Lund of Ferrari-Lund Real Estate; and

15 **IT IS FURTHER ORDERED** that the net proceeds, after payment of secured
16 claims, costs of sale and sales commission, be distributed to Trustee Clark to be held
17 pending further order of the Court; and

18 **IT IS FURTHER AND FINALLY ORDERED** that the 14 day stay of
19 F.R.Bankr.P. 6004(h) is waived such that the escrow may close as soon as possible after
20 entry of this Order on the docket.

21 Submitted by:

22 **HARTMAN & HARTMAN**

23

24 /S/ Jeffrey L. Hartman
25 Jeffrey L. Hartman, Esq.
26 Attorney for Angelique Lamberti Clark,
Trustee

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ALTERNATIVE METHOD Re: RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

The court has waived the requirement set forth in LR 9021(b)(1).

No party appeared at the hearing or filed an objection to the paper.

I have delivered a copy of the proposed order to all counsel who appeared at the hearing, any trustee appointed in this case and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond as indicated below.

Debtor's Counsel:

Prepared / Approved the form of this order

Waived the right to review the order and/or

Appeared at the hearing, waived the right to review the order

Matter unopposed, did not appear at the hearing, waived the right to review the order

Disapproved the form of this order

Did not respond to the paper

U.S. Trustee:

Approved the form of this order

Disapproved the form of this order

Waived the right to review the order and/or

Did not respond to the paper

Did not appear at the hearing or object to the paper

I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

Submitted by:

HARTMAN & HARTMAN

/S/ Jeffrey L. Hartman
Jeffrey L. Hartman