

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 5, 2023 at 10:30 a.m.

1. [22-21000-E-7](#)
[RLL-4](#)

ROBYN JOHNSON
Douglas Jacobs

**MOTION TO SELL AND MOTION
FOR COMPENSATION FOR B & A
CHICO ASSOCIATES, INC.,
BROKER(S)
12-7-22 [96]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2022. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 3080 Thorntree Drive, Unit #15, Chico, California ("Property").

The proposed purchaser of the Property is Janice Lindquist, and the terms of the sale are:

- A. Purchase Price: \$239,900.00
- B. Deposit: \$3,000.00 to be increased to \$8,950.00 upon court approval of the sale
- C. Condition of Property: Sold as-is with no representations or warranties
- D. Broker's fees: Six (6) percent commission - three (3) percent to Parkway (Seller's Brokerage) and three (3) percent to Keller Williams (Buyer's Brokerage)

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court.

Trustee proposes an overbid procedures. The essential terms of the procedure include:

- 1. The first initial overbid shall be in the minimum amount of \$241,000.00 and subsequent overbids shall be in minimum increments of \$1,000.00.
- 2. Persons wishing to overbid must provide a cashier's check payable to Trustee in the minimum amount of \$11,950.00 before they make an overbid at the hearing.

At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will pay in full the secured claim of Randall Arnett, all related property taxes, sale costs including commission, and should net remaining proceeds of approximately \$23,356.63 for the benefit of the bankruptcy estate. Supplemental Declaration, Dckt. 115.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$14,394.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Insert Stated Grounds.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Geoffrey Richards, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Janice Lindquist or nominee (“Buyer”), the Property commonly known as 3080 Thorntree Drive, Unit #15, Chico, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$239,900.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 100, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- F. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 7 Trustee’s broker, Parkway, and shared with a cooperating buyer’s broker, if any, in the amount of three (3) percent.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

FINAL RULINGS

2. [21-23786-E-7](#)

RAUL/JULIE RODRIQUEZ
Timothy Walsh

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
11-28-22 [57]

Final Ruling: No appearance at the January 5, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 29 and 30, 2022. The court computes that 36 and 37 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$32.00 due on November 14, 2022.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.