

IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BY NOVEMBER 24, 2009 AT 4:00 PM. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PARTIES INCLUDED ON THE MASTER SERVICE LIST FILED WITH THIS COURT; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent:

Background

1. On December 1, 2008 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. PPC, together with its debtor and non-debtor subsidiaries (collectively, "Pilgrim's Pride"), has one of the best brand names in the chicken industry. It is one of the largest producers of chicken in the United States and the second-largest producer in Mexico. Pilgrim's Pride has operations throughout the continental United States, Puerto Rico, and Mexico. Formed in 1946 as a retail feed store partnership between Lonnie A. "Bo" Pilgrim and his brother, Aubrey E. Pilgrim, PPC has been a publicly traded company since 1986.

4. Through vertical integration, Pilgrim's Pride manages the breeding, hatching and growing of chickens. Pilgrim's Pride also manages the processing, preparation, packaging, sale and distribution of its product lines, which Pilgrim's Pride believes has made it one of the highest quality, lowest-cost producers of chicken in North America. In the continental United States, Pilgrim's Pride produces both prepared chicken products and fresh chicken products. In Mexico and Puerto Rico, it produces exclusively fresh chicken products. Pilgrim's Pride's products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, foodservice distributors and restaurants.

Jurisdiction and Venue

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, the Debtors seek authorization to sell the following real property owned by PPC: 2.905 acres in Dalton, Georgia, with the street address of 615 Railroad Street, including (if any) buildings located thereon (the "Property"). The Property is further described in the Purchase Agreement attached hereto as **Exhibit A** (the "Purchase Agreement").

7. The Debtors also seek permission to reimburse the Buyer for his actual expenses for the survey and appraisal of the Property up to \$15,000, but subject to proof of actual expenses incurred, if the Buyer is outbid and the Debtors do not sell the Property to the Buyer. In exchange for such reimbursement, the Buyer has agreed that he will share the survey and appraisal with the Debtors and any prevailing bidder.

Background Regarding the Property and Terms of the Proposed Sale

8. PPC proposes to sell the Property free and clear of all liens, claims and encumbrances to Guy Yates (the "Buyer") through a private sale for a total purchase price of \$118,000.00, which is approximately \$40,620 per acre. There are no contracts or agreements that will be assumed and assigned as part of this transaction.

9. The agreement between PPC and the Buyer regarding the proposed sale has been documented in the Purchase Agreement, attached hereto as **Exhibit A**. This Purchase Agreement with the Buyer does not include a broker's commission.

10. The Buyer has agreed to pay the costs of a survey and an appraisal of the Property. The Purchase Agreement provides, subject to Court approval, that if the Court approves a sale to another person or entity based on submission of a higher or better offer for the Property, the Debtors will reimburse the Buyer for the actual cost of the survey and appraisal of the Property up to \$15,000 and subject to the Buyer providing proof of the actual cost. In exchange for such reimbursement, the Buyer has agreed to share the survey and appraisal with the Debtors and any prevailing bidder.

11. The Property is not currently being used by the Debtors and is not necessary for the Debtors' reorganization.

12. The Property previously was used as a truck shop. The Property has not been used since April 3, 2009. The Property was not being marketed for sale by the Debtor. The Debtor received an unsolicited offer from the Buyer. The Debtors have now listed the Property with Cash McWhorter at Colliers International (the "Broker") to draw higher or better offers. If the Broker brings the Debtors a higher or better offer, the Debtors seek permission to pay the Broker a 6% commission.

13. The Debtors believe that any higher or better offer must exceed the Buyer's offer by \$15,000 plus the amount of the Broker's commission to be paid, if any.

Sale of the Property Pursuant to the Terms of the Purchase Agreement Is an Appropriate Exercise of Sound Business Judgment and Should Be Approved

14. Section 363(b)(1) of the Bankruptcy Code governs the sale of assets of a debtor outside the ordinary course of business. Specifically, that section provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” In determining whether to authorize the sale of property outside the ordinary course of business, courts require a debtor “to show that a sound business purpose justifies such actions.” *See, e.g., In re Cont'l Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale). “As long as [the sale] appears to enhance a debtor's estate, court approval of a [Trustee's] decision to [sell] should only be withheld if the [Trustee's] judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code....” *Richmond Leasing Co. v. Capital Bank, N.A.*, 763 F.2d 1303, 1309 (5th Cir. 1985) (quoting *Allied Tech., Inc. v. R.B. Brunemann & Sons*, 25 B.R. 484,495 (Bankr. S.D. Ohio 1982)).

15. In the instant case, the Debtors submit that sound business justification exists, to sell the Property to the Buyer. First, the sale will allow the Debtors to be relieved of property they do not need for an effective reorganization and will allow them immediately to realize additional funds for their estates, thereby increasing the pool of assets available for creditor distribution. Second, the Debtors believe that the Buyer's offer is a reasonable offer and that it is the highest and best offer available for the Property after good-faith negotiations between the Debtors and the Buyer.

16. Nevertheless, the Debtors will list the Property with the Broker and intend to subject the Buyer's offer to higher or better offers. The Debtors believe that any higher or better offer must exceed the Buyer's offer by at least \$15,000, to offset the cost of the survey and appraisal costs that the Debtors have agreed (subject to Court approval) to reimburse the Buyer if the Buyer is outbid for the Property, *plus* any commission due the Broker as a result of bringing a higher or better offer.

17. The Debtors submit there is ample authority for approval of the sale under section 363 of the Bankruptcy Code.

An Auction of the Property Is Not Required

18. In accordance with Bankruptcy Rule 6004(f)(1), asset sales outside of the ordinary course of business may be by private or public sale. FED. R. BANKR. P. 6004(f)(1). A debtor has broad discretion in determining the manner in which its assets are sold. *Berg v. Scanlon (In re Alisa P'ship)*, 15 B.R. 802, 802 (Bankr. D. Del. 1981) (“[T]he manner of [a] sale is within the discretion of the trustee . . .”); *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (noting that a trustee has “ample discretion to administer the estate, including authority to conduct public or private sales of estate property”) (internal quotations and citations omitted). As long as a debtor maximizes the return to its estate, a court should defer to a debtor's business judgment. *Id.* at 532 (recognizing that although a trustee's business judgment enjoys great judicial deference, a duty is imposed on the trustee to maximize the value obtained from a sale); *In re Nepsco, Inc.*, 36 B.R. 25, 26 (Bankr. D. Me. 1983) (“Clearly, the thrust of th[e] statutory scheme [governing 363 sales] is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, i.e., the creditors of the estate.”). Accordingly, if a debtor concludes that conducting a private sale, as opposed to a public auction, is in the best

interest of the estate, the debtor should be permitted to do so. *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect sales of estate property, “[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.”).

19. The value of the Property is relatively low in relation to the Debtors’ business and other assets. Therefore, the Debtor believes that the delay and costs associated with an auction process would reduce any benefit to be derived through a public sale of Property and believe that such costs are not warranted or necessary in this instance. The Debtors submit that a private sale of the Property is the best way to maximize the value of the Property.

20. Nonetheless, the Debtors propose to solicit higher or better offers for the Property by directing a broker to list the Property on the multiple-listing service and to make the following notation in the listing: “This Property is under contract for \$118,000, but the contract is subject to higher or better offers. If you would like to make a higher or better offer, you must submit such offer without contingencies and in writing to Cash McWhorter at Colliers International, via facsimile at 214.692.7600 or via electronic mail at cash.mcwhorter@colliers.com on or before November 24, 2009.” The Property will be listed for a minimum of 19 days.

21. The Debtors submit that a private sale of the Property under these terms is in the best interests of the Debtors’ estates and should be approved.

Sale of the Property Free and Clear of Liens, Claims and Encumbrances Is Appropriate

22. The Debtors further submit that it is appropriate that the Property be sold free and clear of liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, or interests to attach to the sale proceeds thereof. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

23. To facilitate the sale of the Property, the Debtors seek authorization to sell such Property free and clear of any and all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the net proceeds of such sale with the same rights and priorities therein. Because section 363(f) is stated in the disjunctive, when selling property of the estate it is only necessary to meet one of the five conditions of that section. 11 U.S.C. § 363(f); *see Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (“[Section 363(f)] is written in the disjunctive, not the conjunctive. Therefore, if any of the five conditions of § 363(f) are met, the Trustee has the authority to conduct the sale free and clear of all liens.”).

24. As of the date hereof, other than the liens of the postpetition lenders and statutory property tax liens, the Debtors are not aware of any liens or interests held by any party in respect of the Debtors’ rights to the Property. The proposed sale is conditioned on consent of the postpetition lenders, and the Debtors believe they have paid all taxes due on the Property. To the extent any property taxes are due and not paid, the Debtors will pay such amounts at the closing

of the Sale. The Debtors and the Buyer have agreed to prorate the 2009 property taxes through the closing of the sale of the Property.

25. The Debtors submit that the Court should authorize the sale of the Property free and clear of any and all liens, claims and encumbrances, with any of the same to be transferred and attached to the net proceeds of the sale, with the same validity and priority that such liens, claims and encumbrances had against the rights to the Property. Thus, the sale of the Property free and clear of liens, claims and encumbrances will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code.

Good Faith Purchaser

26. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Section 363(m) provides,

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

27. Although the Bankruptcy Code does not define "good faith purchaser," the United States Court of Appeals for the Fifth Circuit has recognized that the phrase encompasses one who purchases in "good faith," "for value," and "without notice of adverse claims." *Hardage v. Herring Nat'l Bank*, 837 F.2d 1319, 1321 (5th Cir. 1988). The terms and conditions of the sale of the Property to the Buyer were negotiated by the Debtors at arms'-length and in good faith. Accordingly, the Debtors request that the Court determine that the Buyer acted in good faith and

are entitled to the protections afforded to good faith purchasers under section 363(m) of the Bankruptcy Code.

28. Additionally, to successfully implement the foregoing, the Debtors seek a waiver of the ten-day stay under Bankruptcy Rule 6004(h).

Notice

29. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the statutory committees appoint in these chapter 11 cases; (iii) counsel to the Debtors' pre-petition secured lenders; (iv) counsel to the Agent to the Debtors' post-petition lenders; (v) the Buyer and their counsel (if any); (vi) any applicable taxing authorities; and (vii) all parties on the Master Service List filed with this Court (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

No Previous Request

30. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: November 6, 2009
Fort Worth, Texas

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