

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

In re:	§	
	§	Case No. 20-10846
THE ROMAN CATHOLIC CHURCH	§	
OF THE ARCHDIOCESE OF NEW	§	Section “A”
ORLEANS,	§	
	§	Chapter 11
Debtor.¹	§	
	§	

DEBTOR’S MOTION FOR AUTHORITY TO SELL 1941 DAUPHINE STREET, FREE AND CLEAR OF ALL CLAIMS, LIENS, INTERESTS, AND ENCUMBRANCES PURSUANT TO §§ 363(b) AND 363(f) OF THE BANKRUPTCY CODE

A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 19, 2024, AT 1:30 P.M. AT THE UNITED STATES BANKRUPTCY COURT, 500 POYDRAS ST., COURTROOM B-709, NEW ORLEANS, LOUISIANA 70130. PARTIES IN INTEREST MAY PARTICIPATE IN THE HEARING (I) IN PERSON; (II) BY TELEPHONE ONLY (DIAL IN: 504.517.1385, ACCESS CODE: 129611); OR (III) BY TELEPHONE USING THE DIAL-IN NUMBER AND VIDEO USING [HTTPS://GOTOMEET.ME/JUDGEGRABILL](https://gotomeet.me/judgegrabill) (MEETING CODE: “JUDGEGRABILL”). IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PLEADING, YOU MUST RESPOND IN WRITING. UNLESS DIRECTED OTHERWISE BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT NO LATER THAN SEVEN (7) DAYS BEFORE THE HEARING DATE. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

¹ The last four digits of the Debtor’s federal tax identification number are 8966. The Debtor’s principal place of business is located at 7887 Walmsley Ave., New Orleans, LA 70125.

NOW INTO COURT, through undersigned counsel, comes The Roman Catholic Church of the Archdiocese of New Orleans, the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Archdiocese**”), who moves for entry of an order, substantially in the form attached as **Exhibit A** (the “**Proposed Order**”), approving the Agreement to Purchase and Sell, attached to the Proposed Order as **Exhibit 1** (the “**Purchase Agreement**”). In support of this motion (this “**Motion**”), the Debtor submits the declarations of S. Parkerson McEnery (the “**McEnery Declaration**”) and Fr. Patrick R. Carr (the “**Carr Declaration**”), attached hereto as **Exhibit B** and **Exhibit C**, respectively, and incorporated herein by reference for all purposes. The Debtor respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are §§ 105(a), 363(b), and 363(f) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Part X of the Procedures for Complex Chapter 11 Cases Filed in the United States Bankruptcy Court for the Eastern District of Louisiana (the “**Complex Case Procedures**”).

Procedural Background

4. On May 1, 2020 (the “**Petition Date**”), the Archdiocese filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (this “**Chapter 11 Case**”).
5. The Archdiocese remains in possession of its property and is managing its business as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

6. The Office of the United States Trustee (the “**UST**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) on May 20, 2020 [ECF No. 94], which Committee was reconstituted on June 10, 2020 [ECF No. 151], October 8, 2020 [ECF No. 478], June 7, 2022 [ECF No. 1575], June 21, 2022 [ECF No. 1618], and again on February 13, 2023 [ECF No. 2081]. The Official Committee of Unsecured Commercial Creditors (the “**Commercial Committee**”) was appointed by the UST on March 5, 2021. [ECF Nos. 772 & 792].

Factual Background

A. The Broker Retention Order and the Motion to Amend.

7. On September 21, 2023, the Court entered an *Order* [ECF No. 2496] (the “**Broker Retention Order**”), authorizing the Debtor to retain TMC Realty, LLC d/b/a The McEnergy Company (“**TMC**”) as its real estate broker to list seven immovable properties for sale:

- i. 400 N. Rampart Street, New Orleans, LA 70112 (also known as 1043 Conti Street, New Orleans, LA 70112);
- ii. 1941 Dauphine Street, New Orleans, LA 70116;
- iii. 2908 S. Carrollton Avenue, New Orleans, LA 70118;
- iv. 3003-3009 S. Carrollton Avenue, New Orleans, LA 70118;
- v. 3017-3019 S. Carrollton Avenue, New Orleans, LA 70118;
- vi. 3200 Canal Street, New Orleans, LA 70119; and
- vii. 1032 and 1042 S. Rampart Street, New Orleans, LA 70113 (also known as 1032 and 1042 Loyola Avenue, New Orleans, LA 70113).

8. The sales of 400 N. Rampart Street, 3017 S. Carrollton Avenue, and 3003-3009 S. Carrollton Avenue closed on December 21, 2023 [ECF No. 2768], July 19, 2024 [ECF No. 3186], and July 23, 2024 [ECF No. 3187], respectively.

9. On August 26, 2024, the Debtor filed its *Motion to Amend Order Authorizing the Employment of TMC Realty, LLC d/b/a The McEnergy Company as Real Estate Broker for the Debtor* [ECF No. 3338] (the “**Motion to Amend**”), seeking to: (a) extend for a period of twelve (12) months the listing agreements for the four properties that had not yet been sold; and (b) list one additional property with TMC for a period of twelve (12) months.

10. By *Order* dated September 12, 2024 [ECF No. 3374], the Court granted the Motion to Amend and amended the Broker Retention Order as follows:

- a. extended for a period of twelve (12) months (or until September 26, 2025) the listing agreements for the four properties that had not yet been sold:
 - i. 1941 Dauphine Street, New Orleans, LA 70116;
 - ii. 2908 S. Carrollton Avenue, New Orleans, LA 70118;
 - iii. 3200 Canal Street, New Orleans, LA 70119; and
 - iv. 1032 and 1042 S. Rampart Street, New Orleans, LA 70113 (also known as 1032 and 1042 Loyola Avenue, New Orleans, LA 70113); and
- b. expanded the scope of TMC’s retention as real estate broker to include the listing of one additional property—69033 Riverbend Drive, Covington, LA 70433—for a period of twelve (12) months.

11. The foregoing five properties remain listed by TMC, subject to a provision in each listing agreement stating that the agreement “may terminate earlier in accordance with the terms of a confirmed plan of reorganization in the Chapter 11 Case.” *See* [ECF No. 3374, pp. 1, 6].

B. TMC’s Marketing of 1941 Dauphine Street.

12. Located on the corner of Touro and Dauphine Streets in the Marigny, 1941 Dauphine Street is a gated site that features a 12,600-square-foot building and twelve interior parking spaces. The current zoning permits a multitude of uses, including multi-family redevelopment of condominiums.

13. The Debtor, in consultation with TMC, listed 1941 Dauphine Street for sale at the price of \$1,950,000. The list price was established after consulting with S. Parkerson McEnery, the commercial real estate broker leading the engagement on behalf of TMC. Mr. McEnery has a proven record of selling commercial real estate in the Greater New Orleans area for over two decades. Prior to advising the Debtor regarding the list price, Mr. McEnery inspected the property and consulted with other real estate professionals on his team who are familiar with the micro and macro real estate conditions present within the Greater New Orleans area.

14. On or about November 8, 2023, TMC began marketing 1941 Dauphine Street for sale. TMC listed the property in the LACDB and CREXI databases; launched a marketing website (<https://www.mceneryco.com/property/marigny-development-deal-parking/>) that features an offering memorandum, photographs, and additional information; and sent an email blast to TMC's extensive list of contacts.

C. Offer Activity for 1941 Dauphine Street.

15. On November 10, 2023, a local developer submitted an offer to purchase 1941 Dauphine Street for the price of \$1,600,000. Upon the advice of TMC, the Debtor countered at the price of \$1,850,000. The developer accepted the increased price, and the parties executed a purchase agreement with an effective date of December 18, 2023, a due diligence deadline of February 1, 2024, and the right to continue marketing the property until closing.

16. In the meantime, three other potential buyers submitted offers, all of which were below the \$1,850,000 contract price. TMC provided each of these parties with an opportunity to raise their offers, but they declined to do so. A timeline of these offers is set forth below.

- November 30, 2023: \$1,700,000
- January 5, 2024: \$1,700,000

- January 15, 2024, \$1,550,000

17. On January 30, 2024, two days before the due diligence deadline, the developer cancelled the purchase agreement due to an inability to obtain financing and complete other due diligence items.

18. About five weeks later, on March 6, 2024, another potential buyer submitted an offer to purchase 1941 Dauphine Street for \$1,000,000, contingent upon the buyer's ability to obtain financing. Upon the advice of TMC, the Debtor rejected this offer.

19. In light of the developer's cancellation in late January 2024 and the lack of serious offer activity thereafter, TMC advised the Debtor that the market would not support a sale near the \$1,950,000 list price. As a result, on March 13, 2024, the Debtor reduced the list price from \$1,950,000 to \$1,750,000.

20. After the price reduction, TMC attempted to reengage the potential buyers who had previously submitted offers for 1941 Dauphine Street. In May 2024, the potential buyer who had offered \$1,700,000 on November 30, 2023 expressed interest in purchasing the property for \$1,500,000. Despite diligent efforts, TMC was unable to harvest a contract with this buyer.

21. Following several months of inactivity, TMC advised the Debtor to consider another price reduction. On September 23, 2024, upon TMC's recommendation, the Debtor reduced the list price from \$1,750,000 to \$1,450,000.

22. A week later, on September 29, 2024, a nonprofit submitted a proposal to acquire 1941 Dauphine Street through a lease-purchase agreement, under which the nonprofit would lease the property with the option to purchase it after a specified period of time. Pursuant to the proposal, the nonprofit would convert the property into a co-working and business development space and use the proceeds derived from that enterprise to fund the eventual purchase. On October 10, 2024,

the nonprofit informed TMC that it would take approximately 6-9 months to determine whether the proposal was financially feasible.

23. In the meantime, on October 3, 2024, the Debtor received two additional offers for the purchase of 1941 Dauphine Street. Cambronne Real Estate, LLC (the “**Purchaser**”) offered to purchase the property for the price of \$1,005,000, and the potential buyer who had offered \$1,550,000 on January 15, 2024 submitted a new offer for \$1,100,000. At the Debtor’s instruction, TMC invited these two potential buyers to present their best and final offers. In response, the Purchaser increased its offer to \$1,100,000, while the other potential buyer reduced its offer to \$800,000. Upon the advice of TMC and after consulting with the Committees, the Debtor accepted the Purchaser’s final offer.

D. Purchase Agreement for 1941 Dauphine Street.

24. As reflected in the Purchase Agreement (attached to the Proposed Order as Exhibit 1), the Purchaser has agreed to purchase 1941 Dauphine Street on the following terms:

- Effective Date: October 23, 2024
- Purchase Price: \$1,100,000
- Deposit: \$50,000 (fully non-refundable, unless the Purchaser submits timely Title Objections that the Debtor elects not to cure)
- Deadline to Submit Deposit: October 28, 2024 (three (3) business days after the Effective Date of the Purchase Agreement)
- Deadline to Submit Title Objections: November 7, 2024 (fifteen (15) calendar days after the Effective Date of the Purchase Agreement)
- Deadline to Respond to Title Objections: Fifteen (15) calendar days after receipt of Title Objections
- Deadline to File Motion: November 28, 2024
- Closing Deadline: December 31, 2024

- Superior Offer Provision: On or about November 8, 2023, TMC publicly listed 1941 Dauphine Street for sale by launching a webpage that features photographs, an offering memorandum, and hyperlinks to the databases in which the property is listed. The property will remain listed in the foregoing manner until the Act of Sale passes. If, on or before the day of the passing of the Act of Sale, the Debtor receives a higher or better offer, as determined in the reasonable discretion of the Debtor, from an arms-length, good faith offeror, to purchase the property, the Purchaser has a right to match said offer within five (5) business days of the Debtor providing to the Purchaser a written copy of said offer. If the Purchaser does not match said offer, as determined in the reasonable discretion of the Debtor, to purchase the property, the Debtor has the right to terminate the Purchase Agreement by providing written notice to the Purchaser.
- Break-Up Fee and Expense Reimbursement: If the Court enters an order that becomes final and non-appealable approving a sale of the property to a party other than the Purchaser (an “**Alternate Transaction**”), the Debtor shall pay to the Purchaser a cash break-up fee and expense reimbursement (the “**Break-Up Fee and Expense Reimbursement**”) in the amount of \$50,000.
- Commission: Pursuant to the listing agreement for 1941 Dauphine Street, TMC will receive a real estate commission equal to 5.00% of the purchase price (the “**Commission**”), which shall be due and payable upon the closing of the sale. [ECF No. 2496, p. 11].

25. The Purchaser is not an “insider” as that term is defined in § 101 of the Bankruptcy Code and is a disinterested third-party purchaser. Additionally, the Purchaser has not discussed or entered into any agreements with management, insiders, or key employees regarding compensation or future employment.

26. It is the view of the Debtor, in consultation with its professionals, including TMC, that the Purchase Agreement reflects the highest and best value that can be obtained for 1941 Dauphine Street in this market.

27. Between November 16, 2023 and October 8, 2024, TMC representatives had at least fifteen calls with counsel for the Debtor and the Committees,² and counsel exchanged

² Those calls were conducted on November 20, 2023, December 11, 2023, December 21, 2023, January 8, 2024, January 23, 2024, January 29, 2024, April 11, 2024, May 15, 2024, May 30, 2024, June 14, 2024, June 24, 2024, July 15, 2024, August 26, 2024, September 23, 2024, and October 8, 2024.

numerous correspondences regarding offer activity for the listed properties. In addition, Debtor's counsel provided counsel for the Committees with a draft of the Purchase Agreement and this Motion.

Relief Requested

28. By this Motion, the Debtor seeks entry of the Proposed Order, under § 363 of the Bankruptcy Code, that: (A) grants the Debtor authority to sell 1941 Dauphine Street to the Purchaser in accordance with the Purchase Agreement; (B) provides that such sale shall be free and clear of all claims, liens, interests, and encumbrances, with such claims, liens, interests, and encumbrances to be referred to the proceeds of such sale in their lawful rank and priority; and (C) determines that the Purchaser is entitled to the protections of § 363(m) of the Bankruptcy Code.

Authority for Relief

A. The Proposed Sale Is Fair and Consistent with the Debtor's Reasonable Business Judgment.

29. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

30. In determining whether to authorize a sale of property outside of the ordinary course of business, bankruptcy courts in the Fifth Circuit and elsewhere have required a sound business justification of the debtor-in-possession. *See, e.g., Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the

property outside the ordinary course of business.”); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.”).

31. “Once the Debtor articulates a valid business justification, “[t]he business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Kabuto Ariz. Props., LLC*, No. 09-11282, 2009 Bankr. LEXIS 4961, *66 (Bankr. D. Ariz. Dec. 9, 2009) (quoting *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995) (internal citations omitted)); *see also In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[A] presumption of reasonableness attaches to a debtor’s management decisions.”). The paramount goal in any proposed sale of property of the estate is to maximize value for the estate. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998).

32. In light of explosive interest rates and construction costs for redevelopment in today’s market, as well as the market response to the listing, the Debtor believes that a sale to the Purchaser as contemplated by the Purchase Agreement constitutes the highest and best value that can be obtained for 1941 Dauphine Street. The Debtor, therefore, has a sound business justification for consummating the proposed sale because it will allow the Debtor to maximize the value of the property for the estate.

B. The Proposed Private Sale Is Appropriate Under Bankruptcy Rule 6004.

33. Bankruptcy Rule 6004(f) permits a debtor to conduct a private sale pursuant to § 363 of the Bankruptcy Code. Fed. R. Bankr. P. 6004(f)(1). *See In re Cypresswood Land Partners*,

I, 409 B.R. 396, 436 (Bankr. S.D. Tex. 2009) (“There is no prohibition against a private sale or against a sale to insiders; and there is no requirement that the sale be by public auction.”) (quoting *In re Woodscape LP*, 134 B.R. 165, 174 (Bankr. D. Md. 1991)). A debtor has broad discretion to determine the manner in which its assets are sold. *See In re Alisa P’ship*, 15 B.R. 802, 802 (Bankr. D. Del. 1981). Accordingly, a debtor may conduct a private sale if a good business reason exists. *See In re Condere Corp.*, 228 B.R. 615, 629 (Bankr. S.D. Miss. 1998); *see also In re Weatherly Oil & Gas Co.*, No. 19-31087 (Bankr. S.D. Tex. Mar. 26, 2018).

34. In *In re 160 Royal Palm, LLC*, 600 B.R. 119 (S.D. Fla. 2019), the United States District Court for the Southern District of Florida found that a bankruptcy court did not abuse its discretion in allowing the debtor to withdraw auction procedures and proceed with a private sale. The court explained that a debtor has “broad discretion to determine the appropriate procedures for marketing and selling” estate property. *Id.* at 126. Thus, a court should defer to the debtor’s business judgment “unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment.” *Id.*

35. Here, the proposed private sale to the Purchaser is appropriate in light of the facts and circumstances of this case. TMC has thoroughly marketed 1941 Dauphine Street for more than one year—since November 8, 2023—through, among other means, the use of two commercial listing databases, the maintenance of a marketing website, and email outreach to contacts in TMC’s extensive network. Additionally, pursuant to the superior offer provision in the Purchase Agreement, TMC will continue to market the property until the sale closes.

36. As detailed in the McEnery and Carr Declarations, TMC has opined, and the Debtor agrees, that a sale to the Purchaser as contemplated by the Purchase Agreement constitutes the highest and best value that can be obtained for 1941 Dauphine Street in this market. The Debtor,

therefore, believes that the proposed private sale is in the best interest of the Debtor, its estate, and all parties in interest and is consistent with the Debtor's reasonable business judgment.

C. The Proposed Break-Up Fee and Expense Reimbursement Is Fair and Reasonable.

37. As discussed above, the Purchase Agreement provides for the payment of a Break-Up Fee and Expense Reimbursement in the amount of \$50,000 should the Court enter a final and non-appealable order approving an Alternate Transaction.

38. The Purchase Agreement provides that the Break-Up Fee and Expense Reimbursement shall be allowed as an administrative priority expense of the estate under Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code and a cost of sale of the Alternate Transaction and shall be payable from the cash proceeds of the Alternate Transaction. Furthermore, the Debtor's obligation to pay the Break-Up Fee and Expense Reimbursement shall survive termination of the Purchase Agreement.

39. In general, a "break-up fee" is an incentive payment to an unsuccessful bidder who placed the estate property in a sales configuration mode to attract other bidders to the auction." *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992). Specifically, there are

three questions for courts to consider in assessing [such] break-up fees: (1) is the relationship of the parties who negotiated the breakup fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage, bidding; (3) is the amount of the fee unreasonable relative to the proposed purchase price?

Id. at 657; *see also In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 465 (Bankr. S.D.N.Y. 2014).

40. The Debtor believes that the Break-Up Fee and Expense Reimbursement is fair and reasonable to compensate the Purchaser for the time, fees, and expenses dedicated to the contemplated transaction and the value added by the Purchaser in (i) establishing a bid standard or

minimum for superior offers, (ii) placing the property in a sales configuration mode attracting other parties to submit superior offers, and (iii) for serving, by its name and its expressed interest, as a catalyst for other potential or actual superior offers. The Purchaser is an unrelated third party, so there is no self-dealing or manipulation. Additionally, the Break-Up Fee and Expense Reimbursement encourages bidding, as it was necessary to induce the Purchaser to agree to the inclusion of a superior offer provision in the Purchase Agreement, which allows for continued marketing until the sale closes. Finally, the Debtor submits that the proposed amount of \$50,000 is reasonable, as it represents approximately 4.5% of the proposed purchase price.

D. The Court May Approve the Sale Free and Clear of Any Claims, Liens, Interests, and Encumbrances.

41. There are no known claims, liens, interests, or encumbrances on 1941 Dauphine Street. Section 363(f) of the Bankruptcy Code authorizes a sale of a debtor's assets free and clear of claims, liens, interests, and encumbrances 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).

42. A debtor need only satisfy one of the requirements set forth in § 363(f) to justify approval of a sale free and clear of liens and interests. *Mich. Empl. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n. 24 (6th Cir. 1991) (“[T]he language

of section 363(f) is in the disjunctive and the sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met.”); *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 Bankr. LEXIS 4333, *7 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of §363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions contained in §363(f) are satisfied.”).

43. Further, a court may authorize the sale of a debtor’s assets free and clear of any interest in the property pursuant to § 105 of the Bankruptcy Code, even if § 363(f) does not apply. *See In re Trans World Airlines, Inc.*, No. 01-0056, 2001 Bankr. LEXIS 723, *9 (Bankr. D. Del. Mar. 27, 2001) (“[B]ankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f).”); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of any interest] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”). In evaluating such a sale, a court must balance the need for flexibility with the affected creditor’s concern for adequate protection. *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 715 (Bankr. W.D. Tex. 1989).

44. Out of an abundance of caution, the Debtor requests that the sale of 1941 Dauphine Street be free and clear of any claims, liens, interests, or encumbrances that may exist. The Debtor submits that any claim, lien, interest, or encumbrance that exists on 1941 Dauphine Street will be adequately protected by attachment to the net proceeds of the sale in the same priority that existed prior to the sale, subject to any claims and defenses that the Debtor may possess with respect thereto.

45. Accordingly, the Debtor requests that the sale be free and clear of all claims, liens, interests, and encumbrances, with such claims, liens, interests, and encumbrances attaching to the proceeds of the sale in their lawful rank and priority.

E. The Purchaser Is Entitled to the Protections of § 363(m) of the Bankruptcy Code.

46. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

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).

47. This section protects a purchaser of assets sold under § 363 from the risk of losing its interest in the purchased assets if the order authorizing the sale is reversed on appeal.

48. Here, the Purchaser is in good faith as the term is used in § 363(m) and, as such, is entitled to protections of 11 U.S.C. § 363(m). The sale of 1941 Dauphine Street has been proposed in good faith and will be consummated in good faith such that the transaction represents an agreement providing for the exchange of good and equivalent consideration. Further, the sale is the product of arm's-length negotiations between the Debtor and the Purchaser, which resulted, in the aggregate, in fair terms for the Purchase Agreement. Accordingly, the Court should grant the Purchaser the protections of a good-faith purchaser under § 363(m).

WHEREFORE, the Debtor respectfully requests: (A) entry of an order in substantially the same form as the Proposed Order; and (B) such other relief as the Court deems just and appropriate.

Dated: November 27, 2024

Respectfully submitted,

/s/ Samantha A. Oppenheim

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**ATTORNEYS FOR
THE ROMAN CATHOLIC CHURCH OF
THE ARCHDIOCESE OF NEW ORLEANS**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion is being served (a) on November 27, 2024 by electronic case filing for those parties receiving notice via the Court's Electronic Case Filing system; (b) by email or First Class U.S. Mail, postage prepaid, on all other parties requiring service under the Court's *Ex Parte Order Authorizing the Debtor to Limit Notice and Establishing Notice Procedures* [ECF No. 22], to be sent by Donlin Recano & Company, Inc. ("DRC"); and (c) by email on counsel for the Purchaser, Robert Bergeron, at bob@crescenttitle.com. DRC shall file a certificate of service to that effect once service is complete.

/s/ Samantha A. Oppenheim

Samantha A. Oppenheim