

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
R.J. RAAB CONSTRUCTION, INC., ) CASE NO. 05-61129 JPK  
 ) Chapter 11  
Debtor. )

ORDER FOR HEARING

On May 11, 2007, the debtor, by counsel, filed a Motion to Allow Sale of Property Free and Clear of Liens. This motion seeks authority to sell property commonly described as 4068 West 82<sup>nd</sup> Court, Merrillville, Indiana. The motion further states that Ticor Title has requested the filing of the motion "in that (apparently in the opinion of Ticor Title) the Order Confirming Plan and Confirmed Plan paragraph 6.9 and 9.4 . . . is insufficient to allow the closing on the real estate to occur without a Court Order authorizing the sale and payment of all lien claims".

The debtor's plan, filed on July 25, 2005, was confirmed by order of the Court entered on January 19, 2006. Paragraph 6.9 of Article VI of the plan, as approved by the confirmation order, provides in pertinent part that upon confirmation, "the reorganized debtor shall be re-vested with all its assets . . . and shall be entitled to manage its affairs without further order of this Court". Paragraph 9.4 of Article IX of the plan, again as approved by the order of confirmation, states:

9.4 Security Interest and Liens. Except as provided in Article III of the Plan, following entry of the Confirmation Order and the same becoming a Final Order, the Real Estate dealt with by this Plan shall be free and clear of all liens, claims and interests of the Debtor's creditors, except those specifically provided for in the Plan.

Article III of the plan, as pertinent to the subject real estate, provides for the allowed secured claim of Sand Ridge Bank with respect to the subject real estate by providing for a payment arrangement with respect to that creditor's indebtedness and retention of that creditor's lien. This section specifically provides that the payment arrangement shall continue until February

2019, or until the real property is sold, in which event the lien is to be satisfied in full.

The combination of the foregoing establishes that all liens on the subject property existing as of the date of confirmation of the debtor's Chapter 11 plan no longer attach to the subject real estate – with the exception of that of Sand Ridge Bank and of the Treasurer of Lake County for real property taxes. The plan also provides for re-vesting of the real estate in the debtor, without Court oversight. These provisions of the plan do nothing more than mirror the provisions of 11 U.S.C. § 1141(b) and (c). As a result of the re-vesting of the property in the debtor, the provisions of 11 U.S.C. § 363 – which require Court authorization for sale of property of a bankruptcy estate – do not apply at all, as the subject property is no longer property of a bankruptcy estate subject to that provision.

And then along comes Ticor Title, which according to the debtor has seen fit to construe the Court's confirmation order, the debtor's confirmed plan, and applicable provisions of the Bankruptcy Code to require a sale of the subject property to be conducted pursuant to the requirements of 11 U.S.C. § 363. It has increasingly come to the Court's attention over the last several years that title insurers, including Ticor Title, require debtors in bankruptcy cases to incur expenses, attorneys' fees and delay in order to seek orders from this Court which are unnecessary in order to conclude a sale of real property, and are unnecessary in order to clear title to property sold either during the pendency of a bankruptcy case or after. This Court is not in the business of issuing "comfort" orders for the benefit of title insurers who are not well-versed in the law.

11 U.S.C. § 1142(b) provides that the "court may direct . . . any other necessary party to execute or deliver . . . any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, necessary for the consummation of the plan". As the chosen title insurer in the contemplated sales transaction, Ticor Title must of necessity issue a title insurance policy in order for the sale to be completed, an "act . . . that is necessary

for the consummation of the plan", in view of the fact that this plan has not been substantially consummated.

IT IS ORDERED that a hearing will be held with respect to the foregoing Application on **June 11, 2007, at 11:00 A.M.**

IT IS FURTHER ORDERED that a representative of Tigor Title shall appear at the hearing to advise the Court as to its position as to why the Court should not undertake appropriate action with respect to Tigor Title's unjustified interference with the implementation of an order entered by this Court and with applicable provisions of law which preclude interference with that order.

Dated at Hammond, Indiana on May 24, 2007.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

US Trustee

Dan Rohaley, Tigor Title, 11055 Broadway, Suite A, Crown Point, IN 46307

Tigor Title, c/o CT Corporation System, 251 East Ohio Street, Suite 1100, Indianapolis, IN 46204

Tigor Insurance Services, Inc., Attn: Mark O. Davey, President, 10301 Deerwood Park Blvd., Jacksonville, FL 32256