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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DIMITRIOS N. NIKOLULIS) CASE NO. 11-10638
DEBORAH A. NIKOLULIS)
)
Debtors)

DECISION AND ORDER DENYING MOTION TO SELL CERTAIN REAL ESTATE

At Fort Wayne, Indiana, on October 6, 2011.

The debtor's motion to sell certain real estate at action free and clear of interests and to establish bid procedures is DENIED, without prejudice, because the motion fails to comply with N.D. Ind. L.B.R. B-9013-1(a), which requires that "[e]very application, motion, or other request for an order from the court . . . shall be filed separately, except that requests for alternative relief may be filed together." The present filing does not seek alternative relief. See, In re Fort Wayne Foundry Corp., 2009 WL 2524493, 2009 Bankr. LEXIS 2153 (Bankr. N.D. Ind. 2009). Instead, it seeks two separate things: first, authorization to sell property free and clear of liens, and second, approval of bidding procedures associated with the sale. Counsel even provided two completely separate orders along with the motion, each addressing a different aspect of the relief sought.

To the extent the motion seeks approval of bid procedures, there do not seem to be any terms and conditions for the sale which would not automatically be subsumed in any auction. For example, there are no proposals for bid protection or minimum overbids that may give one bidder an advantage over others, potentially depressing competition and the return to the estate. It is only when a potential buyer demands those types of unusual things that court approval of such a separate (and otherwise potentially collusive) agreement is needed. The procedures outlined in this motion have

none of those characteristics. Save for the lienholder's opportunity to credit bid, see, 11 U.S.C. § 363(k), it is a plain vanilla auction, selling property to the highest bidder for cash: What else would one expect at an auction? Given this, the court would have been inclined to grant the motion and just allow the auction to proceed, without further ado, provided that all creditors and parties in interest were given at least twenty-one days notice of the time and place of sale. See, Fed. R. Bankr. P. Rule 2002(a)(2), (c). But, that is not what creditors and parties in interest were told was going to happen. In noticing the motion, counsel told everyone that if the court approved the motion to sell, it would then hold a separate hearing, on additional notice, to consider approving the bid procedures. Given the expectations that have been created by that notice, the court cannot simply authorize the sale and then do nothing more. In light of what the debtor proposes to do, the most efficient and productive course of action is to deny the motion, without prejudice, and let counsel begin again.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court