

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|----------------------------|---|-------------------------------------|
| In re: | : | Case No. 18-22878-GLT |
| | : | Chapter 13 |
| RONALD F. ALLER and | : | |
| JOAN L. ALLER, | : | |
| | : | |
| <i>Debtors.</i> | : | Related to Dkt. Nos. 80, 91, and 95 |
| | : | |

Lauren M. Lamb, Esq.
Steidl & Steinberg
Pittsburgh, PA
Attorney for the Debtors

Owen W. Katz, Esq.
Office of the Chapter 13 Trustee
Pittsburgh, PA
Attorney for Ronda Winnecour

MEMORANDUM OPINION

The concept of “no harm, no foul” often compels the Court to allow corrections to non-prejudicial errors, but the inattention that causes these mistakes, particularly when they become routine, cannot be so easily excused. On May 18, 2022, the Court approved the sale of real property owned by Ronald F. and Joan L. Aller (“Debtors”) and located in Hookstown, Pennsylvania for \$380,000 (the “Sale Order”).¹ At the expedited hearing on the sale motion,² so scheduled to accommodate the proposed buyers’ request to close no later than June 24, 2022,³ the Debtors’ counsel represented that “to the best of [her] knowledge” all contingencies were satisfied.⁴ Apparently, counsel’s knowledge was lacking as the Debtors now seek to alter the *Sale Order* to add a \$5,700 sellers’ assist and increase the home warranty cost by \$241 based on a negotiated resolution of a home inspection contingency that remained outstanding (“Motion to

¹ *Order Confirming Chapter 13 Sale of Property Free and Divested on Liens*, Dkt. No. 91.

² *Motion to Sell Real Estate Free and Divested of Liens*, Dkt. No. 80.

³ *Certificate of Necessity of Request for Expedited Hearing*, Dkt. No. 81 at 2.

⁴ *Audio Recording of May 18, 2022 Hearing* at 11:09:02-11:09:10 a.m.

Amend”).⁵ The Court once again scheduled an expedited hearing and heard the *Motion to Amend* on June 29, 2022. For the reasons set forth below, the Court will grant the *Motion to Amend* subject to certain conditions that will be resolved through show cause proceedings.

I. JURISDICTION

This Court has authority to exercise jurisdiction over the subject matter and the parties under 28 U.S.C. §§ 157(a), 1334, and the Order of Reference entered by the United States District Court for the Western District of Pennsylvania on October 16, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(N).

II. DISCUSSION

From the outset, the Court notes that the six-paragraph *Motion to Amend* merely requests the entry of an amended sale order without suggesting a standard the Court should apply to such relief. Frankly, it is clear that Debtors simply want the Court to rubber stamp their amended order, no questions asked. The *Motion to Amend* neither contemplates re-noticing the sale nor a hearing, but the Court presumes — and the *Motion to Amend* does not bother to spell out — that they believe that Bankruptcy Rules⁶ 2002(a)(2) and 6004 are not implicated because the sellers’ assist will be paid from the Debtors’ exempt net proceeds.

To be clear, the *Motion to Amend* describes a materially different transaction than the one the Court approved after notice and a hearing. Through contrivance, the sale price remains unchanged, but the sellers’ assist allows the buyer to pay less. As a practical matter, structuring a transaction in this manner amplifies administrative costs—like transfer taxes and brokers’

⁵ *Motion to Amend Order of Court Confirming Chapter 13 Sale of Property Free and Divested Liens*, Dkt. No. 95 at ¶¶ 4-6.

⁶ Unless expressly stated otherwise, all references to “Bankruptcy Code” or to specific sections shall be to the Bankruptcy Reform Act of 1978, as thereafter amended, 11 U.S.C. § 101, *et seq.* All references to “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure.

commissions—by artificially inflating the sale price without a clear benefit to the estate or creditors. Of critical concern, however, is that the buyer’s bid, which was subject to higher and better offers, was overstated when the property was advertised and exposed for sale. Consequently, the notice of sale misrepresented the necessary overbid to the detriment of the sale process.⁷ Simply put, a post-approval sellers’ assist is not a technical amendment but a different sale.⁸

That said, any prejudice stemming from the lack of appropriate notice will be borne solely by the Debtors. The sale of the property, which the Debtors hold as tenants by the entirety, will fully pay both mortgages, all administrative expenses and costs of sale, and their joint debts before leaving them with exempt proceeds exceeding \$100,000.⁹ Under these circumstances, neither the estate nor creditors would have benefitted from a higher or better sale price. Nor are they damaged by the increased transactional costs. Accordingly, the Court will not require the sale to be re-noticed in accordance with Bankruptcy Rules 2002(a)(2) and 6004 to account for the sellers’ assist.

But even if the relief requested is not tantamount to a new sale, the *Sale Order* is a final order. As a result, the *Motion to Amend* is essentially seeking relief under Fed. R. Civ. P. 60(b) (“Rule 60(b)”).¹⁰ Upsetting the finality of a decision is “an extraordinary remedy,” it “should

⁷ The Court requires a seller’s assist to be disclosed in the sale notice and prospective bidders must be apprised of the “net” sale price as the baseline bid from which competing overbids may be made.

⁸ Perhaps the big picture lesson here is that contingencies should generally be resolved prior to the sale hearing. In fact, counsel should confirm the status of any contingencies and be prepared for a frank discussion. The Court is not in the habit of approving speculative transactions, and it is a waste of resources when a sale cannot close as approved.

⁹ *Schedule C: The Property You Claim as Exempt*, Dkt. No. 1 at 19.

¹⁰ Fed. R. Civ. P. 60 is made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024. Rule 60(a) is not germane because it applies only to clerical errors. See Fed. R. Civ. P. 60(a).

only be granted sparingly.”¹¹ Thus, to prevail under Rule 60(b), the movant must establish at least one of the six enumerated grounds for relief:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.¹²

Clearly, the *Sale Order* is not void or satisfied, and no one contends it was obtained by fraud or misconduct. And since the Debtors were aware of the status of the home inspection contingency and their negotiations with the buyers, there is obviously no “newly discovered evidence” either.

As this Court previously explained in *In re Harms*, “[n]one of the terms used in [Rule] 60(b)(1) are defined, but courts generally look to the Supreme Court of the United States’ decision in *Pioneer Investment Services v. Brunswick Assoc.*^[13] for the meaning of ‘excusable neglect.’”¹⁴ There, the Supreme Court held that “neglect” “encompasses both simple, faultless

¹¹ See *Butko v. Ciccozzi (In re Butko)*, 624 B.R. 338, 366 (Bankr. W.D. Pa. 2021); *U.S. Tr. v. Harms (In re Harms)*, 612 B.R. 288, 295 (Bankr. W.D. Pa. 2020); *Deeters v. Wells Fargo Bank, N.A. (In re Deeters)*, No. 15-70570-JAD, 2017 WL 4990449, at *2 (Bankr. W.D. Pa. Oct. 27, 2017); *In re Matters Involving Prof'l Conduct of Mazzei*, No. MISC. 14-00205-GLT, 2014 WL 4385746, at *3 (Bankr. W.D. Pa. Sept. 4, 2014).

¹² Fed. R. Civ. P. 60(b), made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024.

¹³ *Pioneer Investment Services v. Brunswick Assoc.*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) (interpreting “excusable neglect” for purposes of Fed. R. Bankr. P. 9006(b)).

¹⁴ *In re Harms*, 612 B.R. at 295 (citing *Doe v. 9197-5904 Quebec, Inc.*, 727 F. App'x 737, 739 (3d Cir. 2018), and *George Harms Const. Co. v. Chao*, 371 F.3d 156, 163 (3d Cir. 2004)).

omissions to act and, more commonly, omissions caused by carelessness.”¹⁵ At its core, the Supreme Court concluded that whether neglect is “excusable” is “an equitable [determination], taking account of all relevant circumstances surrounding the party’s omission.”¹⁶ To guide the inquiry, courts employ the so-called *Pioneer* factors, including: (1) “the danger of prejudice;” (2) “the length of the delay and its potential impact on judicial proceedings;” (3) “the reason for the delay, including whether it was within the reasonable control of the movant;” and (4) “whether the movant acted in good faith.”¹⁷

The *Motion to Amend* does not acknowledge, with the benefit of hindsight, that an inspection contingency remained outstanding or attempt to justify counsel’s ignorance of the ongoing sale negotiations. Nor does it confess that negotiations had begun prior to the sale hearing and was an open issue at that time.¹⁸ At the hearing, counsel conceded that these issues could have and should have been raised prior to entry of the *Sale Order*, but insisted her office was left in the dark by the broker. Thus, the driving consideration behind the *Motion to Amend* is the perceived lack of prejudice to the estate or creditors. And to be sure, it is ultimately the prevailing one. Yet while there is cause to amend the *Sale Order* under Rule 60(b)(1), there is potential for prejudice.

As explained by the Debtors’ counsel, attorneys at her firm have spent approximately 6.5 hours seeking the modification of the *Sale Order*. Based on the disclosures filed pursuant to Bankruptcy Rule 2016(b), the firm’s billing rates for attorneys range from \$250 to \$350 per hour.¹⁹ As a result, the estate may now be saddled with an unexpected administrative

¹⁵ Pioneer, 507 U.S. at 388, 113 S.Ct. 1489.

¹⁶ Id. at 395, 113 S.Ct. 1489.

¹⁷ Id. See Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007).

¹⁸ The addendum to the sale agreement was signed by the Debtors 3-days prior to the sale hearing. See *Exhibit A*, Dkt. No. 95-1.

¹⁹ *Disclosure of Compensation of Attorney for Debtor(s)*, Dkt. No. 1 at 58.

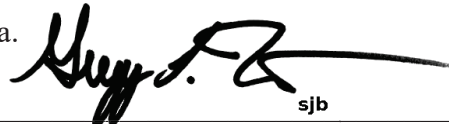
expense between \$1,625 and \$2,275. Because such allowed expenses are entitled to priority treatment under the Bankruptcy Code,²⁰ payment from current plan funding could conceivably reduce the dividend to general unsecured creditors.²¹ Thus, granting the *Motion to Amend* will yield a small, but quantifiable, financial prejudice to the general unsecured creditors.

To avoid unwarranted prejudice, the Court must shift the resulting burden to the responsible party. Right now, the Debtors' counsel has pointed the finger at their broker, suggesting that she allegedly failed to warn counsel of the outstanding contingency despite counsel's reasonable efforts to stay informed. Further proceedings will be required to determine if that is true or whether blame is appropriately laid elsewhere. In the interim, the Court will require that \$2,617 of the sellers' broker's commission be withheld at the closing, pending the resolution of an order to show cause.

III. CONCLUSION

In light of the foregoing, the Court will grant the *Motion to Amend* subject to the above-described holdback and order the sellers' broker to show cause why the Court should not shift the financial prejudice resulting from the *Motion to Amend* to her based on her failure to timely disclose the unsatisfied contingency. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052. The Court will issue a separate order consistent with this opinion.

ENTERED at Pittsburgh, Pennsylvania.

A handwritten signature in black ink, appearing to read "Gregory L. Taddonio", with a stylized flourish extending to the right. Below the signature, the letters "sjb" are printed.

GREGORY L. TADDONIO
UNITED STATES BANKRUPTCY JUDGE

Dated: July 1, 2022

Case administrator to mail to:
Debtors

²⁰ See 11 U.S.C. § 503(b)(2).

²¹ See Chapter 13 Plan Dated July 18, 2018, Dkt. No. 5.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|--------------------------|
| IN RE |) | |
| |) | |
| Ronald F. Aller |) | Case No. 18-22878 GLT |
| Joan L. Aller, |) | Chapter 13 |
| <i>Debtors</i> |) | Docket No. |
| |) | |
| Ronald F. Aller |) | |
| Joan L. Aller |) | |
| <i>Movants</i> |) | |
| |) | |
| Vs. |) | |
| |) | |
| American Express, Capital One Bank, |) | Related to Docket No. 95 |
| Duquesne Light Company, Merrick Bank, |) | |
| Internal Revenue Service, National Hospital |) | |
| Collections, PRA Receivables Management, |) | |
| Portfolio Recovery, SYNCB/Lane Gallery, |) | |
| Sharon Regional Health, TD Bank/Target, |) | |
| Wells Fargo Dealer Services, Wakefield & |) | |
| Associates, Bank of America, Comenity |) | |
| Capital/Boscovs, Eastern Revenue Inc., |) | |
| Nationwide Credit, One Main Financial, |) | |
| Penn-Ohio Associates in Anesthesiology, |) | |
| SYNCB/Lowes, Specialty Orthopedics, |) | |
| The Home Depot, Wells Fargo Bank NA, |) | |
| Brighton Radiology, Credit Corp Solutions, |) | |
| Hermitage Neurology, Ocwen Loan |) | |
| Servicing, PNC Bank, PA Dept. of Revenue, |) | |
| SYNCB/JCP, SYNCB/Walmart, Sunrise |) | |
| Credit Services, and Ronda J. Winnecour, |) | |
| Chapter 13 Trustee |) | |

**AMENDED ORDER CONFIRMING CHAPTER 13 SALE OF PROPERTY
FREE AND DIVESTED OF LIENS**

AND NOW, this 1st day of July, 2022, on consideration of the Debtors' Motion for Sale of Property Free and Divested of Liens to Ryan Eric Mullins and Michelle Lynne Mullins for \$380,000.00 minus \$5700.00 seller assist after the hearing held on June 29, 2022, the Court finds:

(1) That service of the Notice of Hearing and Order setting hearing on said

Motion for private sale of real property free and divested of liens of the above-named Respondents, were affected on the following secured creditors whose liens are recited in said Motion for sale, viz:

| <u>DATE OF SERVICE</u> | <u>NAME OF LIENOR AND SECURITY</u> |
|------------------------|--|
| April 29, 2022 | Ronda J. Winnecour, Trustee Suite 3250, USX Tower 600 Grant Street Pittsburgh, PA 15219 |
| April 29, 2022 | One Main Financial PO Box 3251 Evansville, IN 47731-3251 |
| April 29, 2022 | PHH Mortgage Corporation Bankruptcy Dept. PO Box 24605 West Palm Beach, FL 33416-4605 |
| April 29, 2022 | Mario Hanyon, Esquire Brock & Scott, PLLC 302 Fellowship Road, Suite 130 Mount Laurel, NJ 08054 |

(2) That sufficient general notice of said hearing and sale, together with the confirmation hearing thereon, was given to the creditors and parties in interest by the moving party as shown by the certificate of serviced duly filed and that the named parties were duly served with the Motion.

(3) That said sale hearing was duly advertised in the Beaver County Times on May 6, 2022 and in the Beaver County Legal Journal on May 7, 2022, as shown by the Proof of Publications that are to be duly filed. EASI filed on April 29, 2022.

(4) That at the sale hearing the highest/best offer received was that of the above Buyer and no objections to the sale were made which would result in cancellation of said sale.

(5) That the price of \$380,000.00 minus \$5700.00 seller assist, subject to a mortgage contingency, offered by Ryan Eric Mullins and Michelle Lynne Mullins was a full and fair price for the property in question.

(6) That the Sellers' real estate agent is Jan Livingston at Berkshire Hathaway. in this case.

(7) That the Buyers have acted in good faith with respect to the within sale in accordance with In re Abbotts Dairies of Pennsylvania, Inc., 788 F2d.143 (*3d Cir. 1986).

Now therefore,

IT IS ORDERED, ADJUDGED AND DECREED, that the sale of the real property described as 105 Tate Road Hookstown, PA 15050 in Beaver County is hereby **CONFIRMED** to Ryan Eric Mullins and Michelle Lynne Mullins for \$380,000.00 minus \$5,700.00 seller assist free and divested of the above recited liens and claims, and, that the Movants are authorized to make, execute and deliver to the Buyers above named the necessary deed and/or other documents required to transfer title to the property purchased upon compliance with the terms of sale;

IT IS FURTHER ORDERED, that the above recited liens and claims, be, and they hereby, are, transferred to the proceeds of sale, if and to the extent they may be determined to be valid liens against the sold property, that the within decreed sale shall be free, clear and divested of said liens and claims;

FURTHER ORDERED, that the following expenses/costs shall immediately be paid at the time of closing. ***Failure of the closing agent to timely make and forward the disbursements required by this Order will subject the closing agent to monetary sanctions***, including among other things, a fine or the imposition of damages, after notice and hearing, for failure to comply with the above terms of this Order. Except as to the distribution specifically authorized herein, all remaining funds shall be held by Counsel for Movant pending further Order of this Court after notice and hearing.


- (1) PHH Mortgage will be paid in full to subject to a proper payoff quote at the time of closing or any sale short of full payoff will be subject to PHH Mortgage final approval. Closing is required within 30 days of the payoff quote date or a new payoff is required within 30 days of closing;
- (2) One Main Financial will be paid in full to subject to a proper payoff quote at the time of closing or any sale short of full payoff will be subject to One Main Financial final approval. Closing is required within 30 days of the payoff quote date or a new payoff is required within 30 days of closing;
- (3) Delinquent real estate taxes, if any;
- (4) Current real estate taxes and municipal claims, pro-rated to the date of closing;

- (5) The realtor commission in the amount of **\$8,783.00** is payable to Sellers' agent Jan Livingston and Berkshire Hathaway, 1071 Third Street, Beaver, Pa 15009; **The remaining \$2,617.00 shall be paid to Ronda J. Winnecour, the chapter 13 trustee, and held in escrow pending further order of the Court.**
- (6) The realtor commission in the amount of \$11,400.00 is payable to Buyer's agent Kelli Robbins and Berkshire Hathaway, 1797 N. Highland Road, Pittsburgh, Pa 15241;
- (7) \$840.00 cost of home warranty;
- (8) Normal closing costs including title search, legal fees, revenue stamps, and any other normal and necessary closing costs;
- (9) The court filing fee in the amount of \$181.00 payable to Steidl & Steinberg, P.C., 707 Grant Street, Gulf Tower, Suite 2830, Pittsburgh, Pa 15219;
- (10) The costs of local newspaper advertising in the amount of \$295.74 payable to Steidl & Steinberg, P.C. 707 Grant Street, Gulf Tower-Suite 2830, Pittsburgh, PA 15219;
- (11) The costs of legal journal advertising in the amount of \$131.25 payable to Steidl & Steinberg, P.C. 707 Grant Street, Gulf Tower-Suite 2830, Pittsburgh, PA 15219;
- (12) The Court-approved attorney fees in the amount of \$5,110.07 payable to Steidl & Steinberg, P.C. 707 Grant Street, Gulf Tower-Suite 2830, Pittsburgh, PA 15219;
- (13) Chapter 13 Trustee "percentage fees" in the amount of \$380.76 payable to "Ronda J. Winnecour, Ch. 13 Trustee, P. O. Box 2587, Pittsburgh, PA 15230";
- (14) \$17,942.73 shall be carved out of the net proceeds before payment of the Debtors' exemption with such sum to be paid to Ronda J. Winnecour, and mailed to PO Box 2587, Pittsburgh, Pa 15230, with a copy of this Order, to be held in escrow pending further Order of Court. While in escrow, the funds shall be held for the benefit of allowed joint unsecured creditors irrespective of any future dismissal of the case; and
- (15) Debtors will retain all net proceeds pursuant to their claimed exemption under 522(b)(3)(B).
- (16) Normal closing costs including title search, legal fees, revenue stamps, and any other normal and necessary closing costs;

FURTHER ORDERED that:

- (1) ***Within seven (7) days of the date of this Order***, the Movants/Plaintiffs shall serve a copy of the within *Order* on each Respondents/Defendants (i.e., each party against whom relief is sought) and its attorney of record, if any, upon any attorney or party who answered the motion or appeared at the hearing, the attorney of the Debtors, the Closing Agent, the Purchasers, and the attorney for the Purchasers, if any, and file a certificate of service.
- (2) ***Closing shall occur within thirty (30) days of this Order.***

- (3) ***Within seven (7) days following closing***, the Movants/Plaintiffs shall file a ***Report of Sale*** which shall include a copy of the HUD-1 or other Settlement Statement; and,
- (4) This *Sale Confirmation Order* survives any dismissal or conversion of the within case.
- (5) Notwithstanding any provision in the agreement to the contrary, any dispute arising out of the agreement shall be resolved in the bankruptcy court.

A handwritten signature in black ink, appearing to read "Gregory L. Taddonio", with a stylized flourish extending to the right. Below the signature, the letters "sjb" are printed in a small, sans-serif font.

Honorable Gregory L. Taddonio
United States Bankruptcy Judge