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Book- 0466 Page- 0137

APN# 07-380-21,07-395-12,07-395-04

Recording Requested by:

Name Stewart Title Co.

Address P.O. Box 150214

City/State/Zip Ely, NV 89315

Order Authorizing Sale of Real Property

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2.
(Additional recording fee applies)

This cover page must be typed or printed.



Entered on Docket
November 01, 2007


Hon. Gregg W. Zive
United States Bankruptcy Judge

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HARTMAN & HARTMAN
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E-Lodged 10/30/07

I certify that this is a true copy:

Attest: 
Deputy Clerk, Bankruptcy Court

Attorney for Marianne Eardley, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:

CASE NO. BK-N-06-50037-GWZ

COOPER & SONS, INC.,

CHAPTER 7

Debtor.

**ORDER AUTHORIZING THE SALE
OF REAL PROPERTY FREE AND
CLEAR OF LIENS AND
ENCUMBRANCES AND PAYMENT
OF SALE COMMISSION**

Hearing Date: 10/16/07
Hearing Time: 10:00 a.m.

The matter came before the court on the Motion of Marianne Eardley, chapter 7 trustee ("Trustee") for an order authorizing the sale of three parcels of real property free and clear of liens and encumbrances for \$41,600 and for authority to pay a real estate sale commission to The Commercial Group in the amount of \$4,160 ("Motion"). The Trustee, appearing telephonically from Elko, Nevada, was represented by Jeffrey L. Hartman. Also appearing in the courtroom were Sue Trimmer for Dan Cooper, and Mark Wray for Jack Cooper, Shane Cooper and Titan Constructors, Inc. The record also will reflect that the offeror, Mr. Tackett, was present in the courtroom. Steven Arnot made a telephonic



1 purchase Parcel 1 at the same price per acre as Parcels 2 and 3.

2 8. On June 18, 2007, the court entered an Order Approving Ex Parte Application Of
3 Trustee For Order Approving Employment Of Real Estate Agent. DE 55. Ken Hienbaugh
4 of The Commercial Group in Ely, Nevada ("Broker") was employed by the Trustee to sell
5 estate property. Subject to court approval, the Broker is to receive a commission of 10% of
6 the sale price.

7 9. Sales of property, other than in the ordinary course of business, are governed by
8 11 U.S.C. § 363(b) and F.R.Bankr.P. 6004. The trustee is entitled to exercise her business
9 judgment in determining whether to accept an offer and to present that offer to the court for
10 consideration.

11 10. The court may approve a transaction outside the ordinary course of business if
12 the trustee can articulate a business justification for the transaction. *In re Ernst Home*
13 *Center, Inc.*, 209 B.R. 974, (Bankr. W.D. Wash. 1997); *In re Walter*, 83 B.R. 14, 20 (9th Cir.
14 BAP 1988), citing with approval *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th
15 Cir. 1986). The standard to be applied by a bankruptcy court in approving a disposition of
16 assets over objection is that the proposed sale should be in the best interest of the estate. *In*
17 *re Telesphere Communications, Inc.*, 179 B.R. 544 (Bankr.N.D.Ill. 1994). The best interests
18 of the estate standard is met if the sale is for a fair and reasonable price and in good faith. *In*
19 *re Apex Oil Co.*, 92 B.R. 847, 866 (E.D. Mo. 1988).

20 11. With respect to Parcel 1, the Trustee may not sell that parcel unless she obtains
21 consent from Dan Cooper or unless she commences an adversary proceeding and is
22 successful in quieting title.

23 12. Tackett agreed to purchase parcels 2 and 3 if the court determines that it cannot
24 approve a sale of parcel 1 at this time. The sale price for parcels 2 and 3 would total \$35,625
25 and the commission would be \$3,562.50.

26 13. As is customary in sale hearings of this nature, the court invited persons in the
27 courtroom interested in presenting overbids to come forward and be heard. Thereupon, Mr.
28 Arnot, counsel for Arthur H. Berg ("Berg"), informed the court that his client intended to bid



1 for the property and that Berg is prepared to close on the same terms and conditions as
2 Tackett. Mr. Tackett came forward to bid.

3 14. The court established overbid increments of \$1,650 and called for bids.

4 15. Bidding concluded at \$59,750 with Tackett being the highest bidder. Berg
5 indicated his desire to be in a backup position at \$58,100.

6 16. Until resolution of the title issue on Parcel 1, the Trustee may only convey title
7 to Parcels 2 and 3. Total acreage for all three parcels is 16.64 acres. Parcels 2 and 3 total
8 14.25 acres, or .8564 of the total acreage. Accordingly, the sale price for Parcels 2 and 3 is
9 \$51,168.

10 17. At close of escrow, a 10% sale commission would be \$5,116.80. Good cause
11 appearing,

12 **IT IS ORDERED** that the Trustee's Motion be, and the same hereby is, granted in
13 part and denied in part.

14 **IT IS FURTHER ORDERED** that Parcels 2 and 3 be sold to B.G. Tackett for a sale
15 price of \$51,168 with escrow to close 11 days following entry of this Order on the docket.

16 **IT IS FURTHER ORDERED** that closing costs will be divided as is customary in
17 Eureka County and taxes will be prorated to close of escrow.

18 **IT IS FURTHER ORDERED** that, at close of escrow, The Commercial Group
19 shall be paid a commission of \$5,116.80.

20 **IT IS FURTHER ORDERED** that, in the event Tackett fails to close escrow in
21 accordance with the terms of this Order, his earnest money deposit of \$4,000 shall be
22 forfeited and Berg shall then have ten days to purchase Parcels 2 and 3 for \$49,756.84 and a
23 commission of 10% of that amount would be paid to The Commercial Group.

24 **IT IS FURTHER ORDERED** that, in the event the estate obtains title to Parcel 1,
25 Tackett shall have a right of first refusal to purchase that parcel for \$8,582, subject to further
26 notice and a hearing.

27 **IT IS FINALLY ORDERED** that the Trustee is authorized to execute such
28 documentation as is required to close the sale of Parcels 2 and 3.

1 appearance for Arthur H. Berg, a potentially interested purchaser.

2 The court has carefully considered the Motion, together with the Trustee's
3 Declaration in support thereof, as well as the presentation of Trustee's counsel. The court
4 also has considered the supporting Declaration of Jack Cooper as well as the Objection of
5 Dan Cooper and Dan Cooper's supporting Declaration. As permitted by F.R.Bankr.P. 7052,
6 which incorporates and makes applicable to this proceeding F.R.Civ.P. 52, the court stated
7 its findings of fact and conclusions of law on the record and in lieu of written findings of fact
8 and conclusions of law. In addition, the court makes the following specific findings and
9 conclusions:

10 1. Hearing on the Motion was proper and in accordance with applicable rules. In
11 addition, no party in interest raised inadequate notice as an issue with the court.

12 2. This case was filed on January 31, 2006 and the Trustee was appointed to
13 administer the assets of the estate.

14 3. The Trustee has identified three parcels of land which she contends are property
15 of the estate under §541. The legal description for the three parcels is attached as Exhibit A.

16 4. Parcel 1 as described in Exhibit A is approximately 2.39 acres in size, title to
17 which is vested in the name of William Cooper & Sons, Inc. Parcels 2 and 3, combined,
18 total 14.25 acres and title to both of those parcels is vested in the name of Cooper & Sons,
19 Inc.

20 5. Although there is no dispute that there has never been a Nevada corporation
21 known as William Cooper & Sons, Inc., Dan Cooper contends that he is the legitimate
22 owner of Parcel 1.

23 6. The Trustee received an offer to purchase the three parcels of land in Eureka from
24 B.G. Tackett ("Tackett") for \$41,600 cash, or \$2,500 per acre.

25 7. The Trustee made a counteroffer to Tackett to include an earnest money deposit
26 of \$4,000. Under the accepted offer, closing costs will be divided as is customary in Eureka
27 County and taxes will be prorated to close of escrow. Tackett's offer provides that, if the
28 Trustee is unable to deliver title to Parcel 1 at this time, he will have first right of refusal to

1 Submitted by:

2 **HARTMAN & HARTMAN**

3 /s/ Jeffrey L. Hartman

4 Jeffrey L. Hartman, Esq.

5 Attorney for Marianne Eardley, Trustee

6 Approved / Disapproved

7 see attached for signature
8 Sue Trimmer, Esq. for Dan
9 Cooper

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1 Submitted by:

2 **HARTMAN & HARTMAN**

3 /s/ Jeffrey L. Hartman

4 Jeffrey L. Hartman, Esq.

5 Attorney for Marianne Eardley, Trustee

6 Approved / Disapproved

7 *Sue Trimmer*
8 Sue Trimmer, Esq. for Dan
9 Cooper

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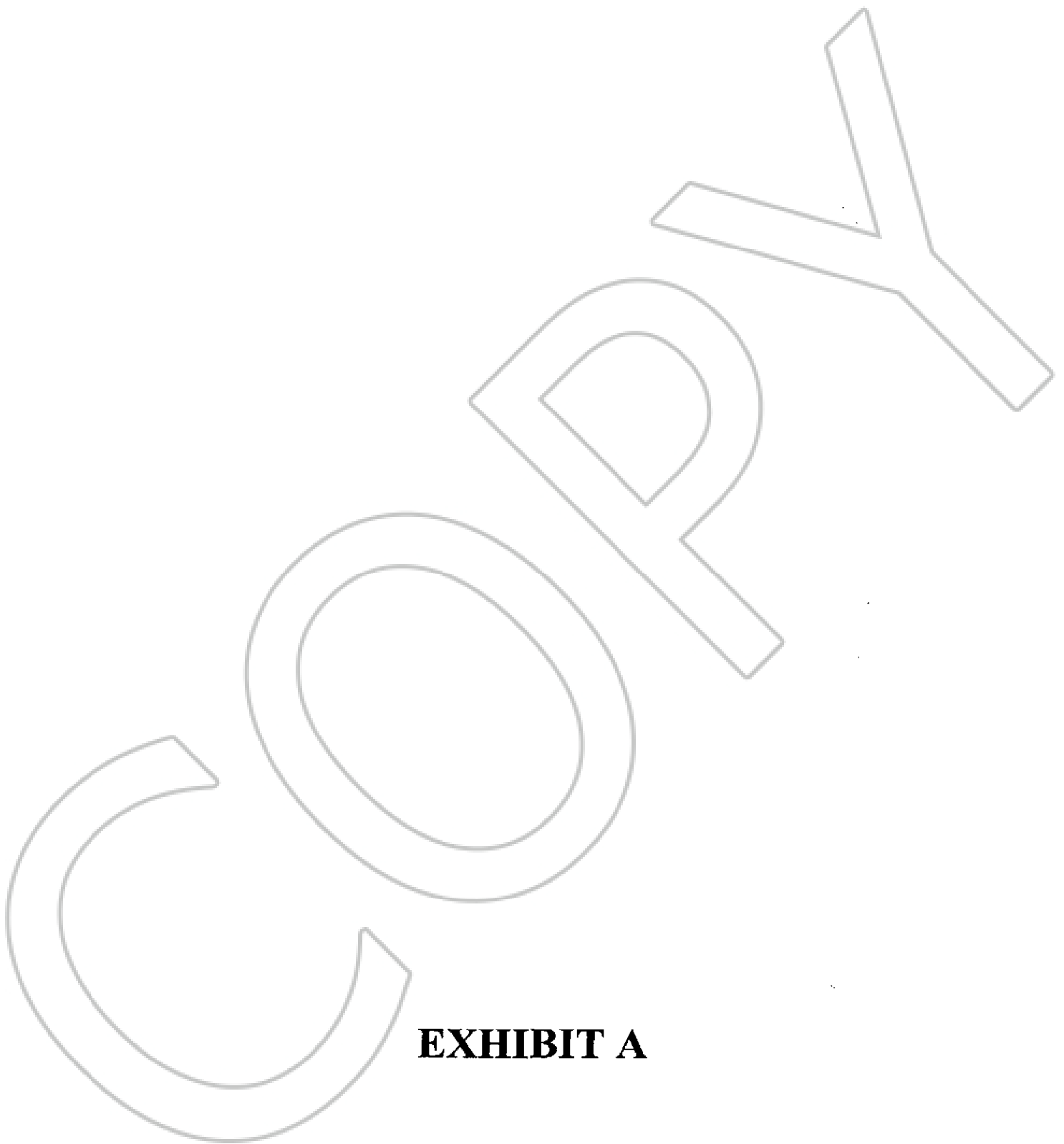


EXHIBIT A



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EXHIBIT "A"

LEGAL DESCRIPTION

ESCROW NO.: 07272456

The land referred to herein is situated in the
State of Nevada, County of EUREKA
City of described as follows:

PARCEL 1:

Parcel D, of Lot 2, of Parcel B, as shown on that certain
Parcel Map for E.A. & L. C. Rasmussen, filed in the office of
the County Recorder of Eureka County, State of Nevada, on
January 17, 1989, as File No. 126181, being a portion of the
E1/2 of Section 17, Township 20 North, Range 53 East, M.D.B.&M.

EXCEPTING THEREFROM all of the oil and gas, in and under said
land, reserved by the United States of America, in Patent
recorded April 15, 1966, in Book 10, Page 331, Official
Records, Eureka County, Nevada.

PARCEL 2:

Lot 1 of Parcel B as shown on that certain Parcel Map for
Devil's Gate Corp., filed in the office of the County Recorder
of Eureka County, State of Nevada, on October 8, 1981, as File
No. 82269, being a portion of the E1/2 of Section 17, Township
20 North, Range 53 East, M.D.B.&M.

EXCEPTING THEREFROM all of the oil and gas, in and under said
land, reserved by the United States of America, in Patent
recorded April 15, 1966, in Book 10, Page 331, Official
Records, Eureka County, Nevada.