

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE CHRISTIAN BROTHERS' INSTITUTE, *et al.*,
Reorganized Debtors.

Chapter 11

Case No. 11-22820 (RDD)

(jointly administered)

ORDER APPROVING TRUSTEE'S AND REORGANIZED DEBTORS' JOINT (I) MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE SALE OF REAL AND PERSONAL PROPERTY LOCATED AT 125 KINGS HIGHWAY SOUTH, TOWN OF IRONDEQUOIT, COUNTY OF MONROE, STATE OF NEW YORK FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES AND (II) APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING PAYMENT OF SALES COMMISSION TO CALIBER COMMERCIAL BROKERAGE, LLC UPON CLOSING

Upon the *Trustee's and Reorganized Debtors' Joint (I) Motion for Entry of an Order Authorizing the Sale of Real and Personal Property Located at 125 Kings Highway South, Town of Irondequoit, County of Monroe, State of New York Free and Clear of Liens, Claims, and Encumbrances and (II) Application for Entry of an Order Authorizing and Approving Payment of Sales Commission to Caliber Commercial Brokerage, LLC Upon Closing* (the "Motion") [Docket No. 660];¹ and upon the *Declaration in Opposition to Trustee's and Reorganized Debtors' Joint Motion for Entry of an Order Authorizing the Sale of Real Property Located at 125 King's Highway South, Town of Irondequoit, County of Monroe, State of New York* (the "Opposition") filed by Discovery Charter School ("DCS") [Docket No. 673], which was the only objection to the Motion; and upon the *Response of B. Thomas Golisano to the Declaration in Opposition to Trustee's and Reorganized Debtors' Joint Motion for Entry of an Order Authorizing the Sale of Real Property Located at 125 King's Highway South, Town of*

¹ Capitalized terms not defined herein shall have the meanings and definitions ascribed to them in the Motion.

Irondequoit, County of Monroe, State of New York filed by B. Thomas Golisano (“Golisano”) [Docket No. 676]; and upon the *Response of Bishop Kearney High School of Rochester, New York to the Declaration of Discovery Charter School in Opposition to Debtors' Motion to Authorize the Sale of 125 Kings Highway South, Irondequoit, New York* filed by Bishop Kearney High School (“BKHS”) [Docket No. 677]; and upon the findings of fact and conclusions of law herein; and this Court having determined that the sale of the Property pursuant to the terms of the Sale Agreement is in the best interests of the Trust, the beneficiaries of the Trust, and the Reorganized Debtors; and it further appearing that due and sufficient notice of the Motion and an opportunity for a hearing has been given under the circumstances; and it appearing that no other or further notice is necessary; and upon record of the hearing held before this Court on March 4, 2014 (the “Hearing”), at which time all parties in interest were afforded an opportunity to be heard on the relief requested in the Motion and the Court made certain findings of fact and conclusions of law; and upon all of the pleadings filed with the Court and the record of the Hearing made by the Movants, DCS, Golisano and BKHS and other parties in interest before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND CONCLUDED THAT:²

A. This Court has jurisdiction to approve the sale of the Property pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and Section 18.1 of the Plan. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Approval of the sale of the Property is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief requested herein are

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate.

sections 105(a) and 363(b), (f), and (m) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

C. The Plan, including Sections 9.2.5(a) and 18.11, contemplates the sale of the Property.

D. Due and sufficient notice of the proposed sale of the Property, the terms of the Sale Agreement and the Hearing have been provided as described in the Motion, and such notice constitutes due and proper notice for purposes of sections 102(1) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, and no other or further notice of the sale, the Sale Agreement or of the entry of this Order is required.

E. The sale of the Property pursuant to the Sale Agreement, or pursuant to any right of first refusal exercised by BKHS, is appropriate under the circumstances and authorized under Bankruptcy Rule 6004 and Sections 9.2.5 and 18.1 of the Plan.

F. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons and entities, including: (a) taxing authorities, (a) the U.S. Trustee, (b) the Bank, (c) DCS, and (d) all parties that are entitled to notice of the Motion in these Cases.

G. The proposed sale is in the best interests of the Trust, the beneficiaries of the Trust, and the Reorganized Debtors. The Movants have an adequate business justification to sell the Property.

H. The Buyer or BKHS, as the case may be, requires that the Property be sold to him or it free and clear of all liens, claims, encumbrances, and other interests of any kind or nature, whether absolute, accrued, contingent or otherwise and whether due or to become due and whether or not asserted, known or unknown, currently existing or hereafter arising

(including prepetition and postpetition liabilities and obligations of the Debtors) and however arising, except as specifically provided in the Sale Agreement (all such liens, claims, encumbrances and other interests are being referred to herein as “Claims”). The Buyer would not agree to enter into the Sale Agreement, thus adversely affecting the Reorganized Debtors and the Trust, if the sale of the Property were not free and clear of all Claims. The sale of the Property is conditioned on entry of an order approving the sale to the Buyer (and assignment by Buyer to BKHS) or to BKHS, as the case may be.

I. No person (as defined in section 101(41) of the Bankruptcy Code) or entity has asserted a Claim against the Property, except as otherwise set forth in the Motion.

J. The sale of the Property pursuant to the Sale Agreement (including a sale to BKHS upon its exercise of any right of first refusal) (a) shall be a legal, valid, and effective transfer of certain property of the Reorganized Debtors and (b) shall vest in the purchaser of the Property all right, title, and interest of the Reorganized Debtors in and to the Property, free and clear of all Claims, under sections 105 and 363(f) of the Bankruptcy Code.

K. All of the actions taken by the Buyer, the Movants, BKHS, and their respective officers, directors, employees, counsel and other professionals in connection with the Sale Agreement (including any exercise by BKHS of any right of first refusal) and the Motion have been taken in good faith.

L. For the reasons stated by the Court at the Hearing, the right, if any, of DCS to assert a right of first refusal to purchase the Property is in bona fide dispute. The Property may be sold free and clear of any interest that DCS may assert in such Property pursuant to section 363(f)(4) of the Bankruptcy Code.

M. Caliber's agreed Commission and expenses hereunder is reasonable and necessary under 11 U.S.C. § 330.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:**

1. The Motion is GRANTED.
2. The Opposition is overruled.
3. Upon the closing of the sale of the Property, Caliber is granted allowance of its Commission in an amount of 2.5% of the purchase price plus expenses allowed pursuant to the Listing Sale Agreement, without further application to this Court, and such Commission shall be an allowed expense of the Trust and the Reorganized Debtors to be paid at the closing of the sale of the Property from the proceeds thereof.
4. Upon the closing of the sale of the Property, the Reorganized Debtors shall be and hereby are authorized to direct the escrow agent and/or the Trustee (if all of the proceeds of the sale are paid to the Trustee instead of an escrow agent) to pay the Bank all undisputed amounts due to the Bank pursuant to the Loan Documents in respect of its allowed secured claim; provided, however, that the Court will adjudicate any dispute regarding the amount due to the Bank pursuant to the Loan Documents.
5. Provided the receipt of the sale proceeds have been verified, immediately upon closing of the sale of the Property, the Reorganized Debtors or the escrow agent, as the case may be, shall pay the net proceeds of the sale to the Trust.
6. Within thirty (30) days after the closing of the sale of the Property, the Reorganized Debtors shall submit a statement (a "Fee Statement") of the reasonable fees and expenses incurred by the Reorganized Debtors' attorneys (including prior to the Effective Date)

in connection with the sale of the Property. The Trustee shall be authorized to pay the reasonable professional fees and expenses requested by the Reorganized Debtors pursuant to a timely Fee Statement. This Court will adjudicate any dispute between the Trustee and the Reorganized Debtors regarding such Fee Statement.

7. The terms and conditions of the Sale Agreement are hereby approved in all respects and the sale of the Property pursuant to the Sale Agreement is hereby authorized under sections 363(b) and (f) of the Bankruptcy Code. The right, if any, that DCS asserts to exercise a right of first refusal is subject to a bona fide dispute as described in section 363(f)(4) of the Bankruptcy Code.

8. Any sale of the Property pursuant to the Sale Agreement or the right of first refusal exercised by BKHS (a) is a legal, valid, and effective transfer of real and personal property of the Reorganized Debtors and (b) shall vest in any purchaser thereof all right, title, and interest to such Property, free and clear of all Claims, under sections 105 and 363 of the Bankruptcy Code, with such Claims to attach to the proceeds of the sale of the Property in the order and priority, and subject to the same defenses and enforceability, that any such Claims may have had when attached to the Property. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, title to all of the Property is hereby transferred to the Buyer or BKHS, as the case may be, upon consummation of the sale pursuant to the Sale Agreement or any right of first refusal exercised by BKHS, free and clear of all Claims; provided, however, that any and all Claims, if any, that any party may hold against the Property shall, and shall be deemed to, attach to the proceeds of the sale as provided herein.

9. By the issuance of this Order, the Movants are authorized to execute and deliver, and empowered to fully perform under, consummate and implement, the Sale

Agreement, including pursuant to any right of first refusal exercised by BKHS, and to take all further reasonable actions for the purpose of assigning, transferring, granting, conveying, and conferring the Property to the Buyer or BKHS, as the case may be, pursuant to the terms of the Sale Agreement, or any right of first refusal exercised by BKHS.

10. The Movants are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

11. In accordance with Section 18.11 of the Plan and Paragraph 13 of the Confirmation Order, pursuant to Section 1146(a) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer pursuant to the Sale Agreement or any right of first refusal exercised by BKHS shall be in furtherance of, or in connection with the Plan, and shall not be subject to any stamp tax or other similar tax, to the fullest extent permitted by such Section.

12. All persons and entities holding Claims of any kind and nature with respect to the Property, the Trust or the Reorganized Debtors are hereby barred from asserting such Claims against the Buyer, or BKHS as the case may be, as the purchaser of the Property.

13. Subject to the other provisions of this Order, the Reorganized Debtors' rights, if any, to surcharge the proceeds of the Property pursuant to section 506(c) of the Bankruptcy Code are expressly waived.

14. This Order shall be binding upon the Reorganized Debtors, the Trust, the Trustee, the beneficiaries of the Trust, and their respective successors and assigns and any trustee that may be appointed in these Cases, and any affected third parties, all persons and entities asserting any Claims against or interests in the Reorganized Debtors' estates, the Trust, or the Property and all other persons and entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of

deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons or entities who may be required by operation of law or by the duties of their office or contract to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report to or insure title or state of title in or to the Property.

15. This Court retains jurisdiction to enforce and implement the respective terms and provisions of the Sale Agreement (including any right of first refusal exercised by BKHS with respect thereto), all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) resolve any disputes arising under or related to the Sale Agreement (including any right of first refusal exercised by BKHS with respect thereto), except as otherwise provided therein and (b) interpret, implement, and enforce the provisions of this Order.

16. Buyer or BKHS, as the case may be, are good faith purchasers of the Property and entitled to all rights, remedies and protections of section 363 of the Bankruptcy Code.

17. The Court having found sufficient cause, as provided by Bankruptcy Rule 6004(h) this Order shall be effective and enforceable immediately upon entry.

Dated: White Plains, New York
March 6, 2014

/s/Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE