



SO ORDERED.

SIGNED this 08 day of November, 2004.


LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE: §
§
SCHLOTZSKY'S, INC., et al. § **CHAPTER 11**
§
§ **Case No. 04-54504 (lmc)**
Debtors. § **Jointly Administered**

ORDER: (A) SCHEDULING HEARING AND PRESCRIBING FORM AND MANNER OF NOTICE THEREOF TO CONSIDER MOTION OF SCHLOTZSKY'S REAL ESTATE, INC., SCHLOTZSKY'S, INC. AND RELATED DEBTORS FOR ORDER AUTHORIZING THE SALE OF CERTAIN SURPLUS PARCELS OF REAL PROPERTY; (B) APPROVING BID PROTECTIONS AND PROCEDURES IN CONNECTION WITH THE PROPOSED SALE; AND (C) GRANTING RELATED RELIEF

Upon the Motion ("Motion") of Schlotzsky's, Inc. ("SI"), Schlotzsky's Real Estate, Inc. ("Schlotzsky's Real Estate"), and DFW Restaurant Transfer Corp. ("DFW"), each a debtor and debtor-in-possession (collectively, the "Debtors"), pursuant to sections 105 and 363 of Title 11 of the United States Code, (1) authorizing and approving bid protections and procedures in

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connection with the proposed sale of certain surplus parcels of real property described in the Motion (the “Surplus Real Property”); (2) authorizing and approving the sale of the Surplus Real Property; (3) scheduling hearings and approving notice procedures, including scheduling a hearing to consider approval of bid protections and procedures (“Bid Procedures Hearing”); and (4) granting related relief; and upon the record of the Bid Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Debtors may solicit higher and better offers for the sale of the Surplus Real Property in accordance with the Auction Procedures annexed hereto as Exhibit A, which are hereby approved in their entirety. Exhibit B identifies the offers that have been accepted by the Debtors, subject to higher and better offers. The Debtors shall use their reasonable best efforts to obtain higher and better offers subject to the terms and provisions of the Purchase Agreement; and it is further

ORDERED that, with respect to the Break-Up Fee, the relief requested in the Motion is granted; and it is further

ORDERED that a hearing (the “Sale Hearing”) shall be held before the Honorable Leif M. Clark, United States Bankruptcy Judge for the Western District of Texas, on **November 17, 2004 at 9:30 A.M.**, or as soon thereafter as counsel can be heard, at the Homer Thornberry Building, 903 San Jacinto Blvd., Suite 322, Austin, Texas to consider entry of an order approving the sale of the Surplus Real Property (“Sale Order”); and it is further

ORDERED that objections, if any, to the relief requested in the Motion shall (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, (c) set forth the names of the objector, the nature and amount of any claim or

interest alleged by such objector against the Debtors' estates or properties, (d) state with particularity the legal and factual basis of such objection, and (e) be filed with the Clerk of the Bankruptcy Court with a copy thereof served upon Haynes and Boone, LLP, counsel to the Debtors, 600 Congress Avenue, Suite 1300, Austin, Texas 78701, Attn: Sarah Foster, such that all objections are received and filed no later than 4:00 p.m., CDT, on November 15, 2004; and it is further

ORDERED that the Debtors shall, no later than November 9, 2004, serve a copy of this Order by first-class mail on (a) the twenty (20) largest unsecured creditors of each Debtor; (b) all of the pre-petition lenders with liens on the Surplus Real Property; (c) the United States Trustee; (d) counsel to the Purchasers; (e) all applicable federal, state and local taxing authorities; (f) the District Director of the Internal Revenue Service; (g) any other party, which, to the best of the Debtors' knowledge as of the Petition Date, asserts a lien, mortgage, or security interest in the Surplus Real Property, (h) any entity which has expressed an interest in purchasing the Surplus Real Property or that the Debtors believe may have an interest in the Surplus Real Property; and (i) any entity entering a notice of appearance in these cases and shall be posted on www.hilcorealestate.com and at www.haynesboone.com/schlotzskys; and it is further

ORDERED that notwithstanding the language in the Auction Procedures, GE Capital Franchise Finance Corporation ("GE") shall have final decision-making authority as to bids submitted that are equal to or less than GE's secured claims on the Raleigh, North Carolina location that is included in the Surplus Real Property. However, GE shall accept the highest and best bid at the auction.

ORDERED that notice of the Motion and the Sale Hearing as provided for herein is hereby deemed good and sufficient notice under the circumstances; and it is further

ORDERED that the Sale Hearing may be adjourned from time to time without further notice to creditors or other parties-in-interest other than by an announcement of the adjourned date at such hearing.

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EXHIBIT A

SCHLOTZSKY'S, INC., ET AL.

PROPOSED AUCTION PROCEDURES

The following procedures (the "Auction Procedures") shall govern the prospective sale ("Sale") of the Surplus Real Property of Schlotzsky's Real Estate, Inc. ("Schlotzsky's Real Estate") and/or Schlotzsky's, Inc. ("SI") and/or DFW Restaurant Transfer Corp ("DFW") to be sold pursuant to the Sale Agreements in the form attached to the Motion of Schlotzsky's Real Estate, Inc. and for the consideration identified in the DEBTORS' MOTION FOR ORDERS: (A)(I) APPROVING BID PROTECTIONS AND PROCEDURES IN CONNECTION WITH THE PROPOSED SALE OF CERTAIN SURPLUS PARCELS OF REAL PROPERTY, AND (II) SCHEDULING A HEARING TO CONSIDER APPROVAL OF SUCH SALE AND PRESCRIBING THE FORM AND MANNER OF NOTICE WITH RESPECT THERETO; AND (B) AUTHORIZING AND APPROVING THE SALE OF SUCH REAL PROPERTY, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND GRANTING RELATED RELIEF are available for review at www.haynesboone.com/schlotzskys. These Auction Procedures have been approved by and authorized by order dated November 6, 2004 (the "Bid Procedures Order") of the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Bankruptcy Court"). The Debtors will seek entry of an order authorizing and approving the sale of the Surplus Real Property to a qualified bidder that the Debtors, in the exercise of their sole business judgment, determine has made the highest and best offer to purchase the Surplus Real Property.

1. Form and Content of Overbids.

All Bids must satisfy the following requirements:

- A. A separate bid must be made for each parcel of the Surplus Real Property.
- B. The purchase price of any initial bid by any third party must include consideration of at least the value of the consideration being offered by Purchaser, plus additional consideration of not less than the greater of 3% of the consideration offered by Purchaser plus \$10,000 (an "Initial Minimum Overbid").
- C. All subsequent bids (together with the Initial Minimum Overbid, each an "Overbid") submitted at the Auction (as defined and described in subparagraph "3" below), including any by Purchaser, must include additional consideration of at least \$10,000 over the previous Overbid and meet the Minimum Initial Overbid requirement.
- D. Overbids shall not be conditioned on the outcome of any remaining or unperformed due diligence by the bidder. Overbids shall not be subject to any financing contingencies. The Debtors will not be required to assume any payment risk whatsoever (acceptable methods of payment include letters of credit, cash escrow, or wire transfers).

E. Prior to the Auction described in subparagraph “3” below, and by no later than the date set forth in subsection viii below, Overbids (other than those by Purchaser) shall be accompanied by a cash deposit in the amount of 10% of the Overbid (the “Deposit”). The Deposit and any interest thereon shall be applied to the purchase price if depositor is the successful purchaser and returned to any depositor, fifteen (15) days after the Closing Date. In the event the successful bidder fails to consummate the sale (other than by reason of a material breach by the Debtors or non-entry of the Sale Order), the Debtors shall retain the Deposit and any interest earned thereon. Notwithstanding anything contained herein to the contrary, the Debtors are under no obligation to earn interest on the Deposit.

F. Overbids shall be in writing in the form of the Sale Agreement, marked thereon to show any and all proposed changes thereto. The terms of any Overbids must be substantially the same as those contained in the Sale Agreement (except to the extent such changes are more favorable to the Debtors).

G. Bidders must agree to maintain the confidentiality of (and not to use for its or any other person’s benefit) any information or material regarding the Debtors, the Surplus Real Property or the Debtors’ business.

H. Overbids (other than those by Purchaser) shall be accompanied by appropriate evidence, reasonably satisfactory to the Debtors, or if a dispute arises, to the Court, of the bidder’s financial ability to conclude a transaction on or prior to the Closing Date contained in the Purchase Agreement (the “Financials”). Financials may be (a) personal financial statements completed within the last six (6) months, (b) tax returns for the past two (2) tax years, or (3) a current bank statement reflecting sufficient funds to close the purchase.

2. Time for Submission of Overbids.

Overbids for any parcel of Surplus Real Property, together with the Financials, shall be delivered so as to be received by Schlotzsky's Real Estate, Inc., 203 Colorado Street, Suite 800, Austin, Texas 78701, Attn: Legal Department, Facsimile Number 512-236-3740, with a copy to Haynes and Boone, LLP, 600 Congress Avenue, Suite 1300, Austin, Texas 78701, Attn: Sarah Foster counsel for the Debtors, no later than noon (Austin, Texas time) on November 12, 2004, and no other Overbid shall be considered after such time without leave of the Court; provided, however, that qualified bidders that submit timely Overbids and Purchaser shall be permitted to make subsequent Overbids at the Auction described in subparagraph “3” below.

3. The Auction.

The Debtors shall determine whether any Initial Minimum Overbids have been received. If at least one Initial Minimum Overbid has been received, an auction (the “Auction”) will be conducted on November 16, 2004 at the offices of Haynes and Boone, LLP, 600 Congress Avenue, Suite 1300, Austin, Texas 78701. Only Purchaser and any bidder that has timely submitted an Initial Minimum Overbid in conformity with paragraph “1” above shall be entitled to participate in the Auction. At the commencement of the Auction of each parcel, the Debtors

shall announce the highest and best Overbid and invite those parties entitled to participate in the Auction to submit higher and better bids. The Auction shall be in the format of an open “outcry” auction with all parties that are entitled to participate being permitted to hear the oral Overbids (and see any changes proposed to the Purchase Agreement). At the Auction, the Debtors shall determine (i) the final highest and best offer for each parcel of the Surplus Real Property (the “Accepted Offer”), which shall be submitted for approval to the Court at the Sale Hearing and (ii) the next highest and best offer for each parcel of the Surplus Real Property, if any (the “Alternative Offer”). The Debtors reserve the right to determine, in their sole discretion, which offer is the highest and best offer and to reject, any time prior to entry of an order approving the sale, any offer which is deemed to be inadequate, or not in conformity with these terms and conditions, or contrary to the best interest of the estates.

4. Selection of Successful Bidder.

The Accepted Offer and the Alternative Offer shall remain open and irrevocable until the sale of the Surplus Real Property is fully consummated. If the offeror of the Accepted Offer is not ready, willing and able to consummate the purchase of the Surplus Real Property pursuant to the Accepted Offer on or before the Closing, the Debtors’ acceptance of such offer shall be automatically revoked without penalty of any kind whatsoever to the Debtors. The offeror of the Accepted Offer shall forfeit its Deposit and the Debtors shall reserve its right to seek any additional damages permitted under law against such offeror, and the Alternative Offer shall become the Accepted Offer. The Debtors shall reserve the right, in their sole discretion, to modify or impose such other terms and conditions regarding offers up to and including the conclusion of the Auction, as may be determined in the best interests of their estates, creditors and other parties-in-interest. The bidders whose offer becomes an Accepted Offer or Alternative Offer shall increase their deposits within two business days following the Auction so that the deposits equal 10% of the Accepted Offer or Alternative Offer.

5. Bankruptcy Court Approval of the Successful Bidder.

The sale of the Surplus Real Property is subject to Court approval. The Sale Hearing will be held before the Honorable Leif M. Clark, United States Bankruptcy Judge for the Western District of Texas, on November 17, 2004 at 9:30 A.M., or as soon thereafter as counsel can be heard, at the United States Courthouse, 615 E. Houston St. Room 383, P.O. Box 1439, San Antonio, Texas 78295-1439, to consider entry of the Sale Order. The Court shall retain jurisdiction to determine all matters arising out of or relating to the making of an objection or a higher and better bid, and each person or entity by making such an objection or bid shall subject itself to the jurisdiction of the Court with respect to all matters arising out of such objection or bid and all matters related thereto.

6. Business Judgment of the Debtors.

The Debtors reserve the right to modify or impose such other terms and conditions regarding offers up to and including the conclusion of the Auction, as may be determined to be in the best interests of their estates, creditors, and other parties in interest (subject to the terms of the Purchase Agreement).

EXHIBIT B

<u>LOCATION</u>	<u>BIDDER</u>	<u>AMOUNT OF BID</u>	<u>LENDER</u>	<u>DEBT</u>
180 S. Belcher Largo, FL	Dionis Malo 193 Old Oak Circle Palm Harbor, FL 34683	\$575,000	CIT	\$343,167.00
572 Commons Woodbury, MN	Daniel M. Rohricht 7455 Currell Boulevard #107 Woodbury, MN 55125	\$1,050,000	F&M Bank	\$888,111
3225 Capital Blvd. Raleigh, NC	Atlanta Check Cashers, Inc. 1000 Hurricane Shoals Road Building D, Suite 100 Lawrenceville, GA 30043	\$950,000	GE Capital	\$891,969
1401 Riverstone* Pkwy Canton, GA 1015 Bullsboro Dr.* Newman, GA	Panda Express, Inc. 1683 Walnut Grove Avenue Suite 201 Rosemead, CA 91770	\$1,901,000	Regions Bank	\$1,532,081
Austin (Four Points) 7409 RR 620 Austin, TX	Cummings – Baccus Interests, LLC 9606 North Mopac, Suite 125 Austin, TX 78759	\$1,400,000	State Bank	\$459,298
2065 Baseline Gilbert, AZ	Thomas Knobbe and Richard Garcia 7520 East Camelback Road Scottsdale, AZ 85251	\$550,000	State Bank	-----

* These two properties will be sold as a single parcel.