

NOT FOR PUBLICATION

CSD 1001A [11/15/04]

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Attorney for Leslie T. Gladstone, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In Re

EBRAHIM KAYMADAR (SSN -8495),

Debtor.

LODGED

BANKRUPTCY NO. 03-00094-B7

Date of Hearing: June 7, 2005

Time of Hearing: 2:00 p.m.

Name of Judge: Peter W. Bowie

ORDER AFTER HEARING ON TRUSTEE'S MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS AND INTERESTS

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered (3) through (5) with exhibits, if any, for a total of (5) pages, is granted. Notice of Lodgment Docket Entry No. 98

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DATED: **June 24, 2005**

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

LAW OFFICE OF WILLIAM P. FENNELL

Judge, United States Bankruptcy Court

By: /s/William P. Fennell
Attorney for Leslie T. Gladstone, Chapter 7 Trustee

The hearing on Leslie T. Gladstone, Trustee's ("Trustee"), Motion for Order Authorizing Sale of Real Property Free and Clear of Liens and Interests ("Motion") came on for regular hearing on June 7, 2005 at 2:00 p.m. the matter was continued from May 16, 2005, at 10:30 a.m., in Department Four, of the United States Bankruptcy Court, Southern District of California, before the Honorable Peter W. Bowie, Bankruptcy Judge Presiding. On June 7, 2005 appearances were made as follows: William P. Fennell, Esq., of the Law Office of William P. Fennell on behalf of the Trustee, who was also present in the Court; Alex Lareybi, Esq., of Lareybi & Associates on behalf of Debtor, Ebrahim Kaymadar ("Debtor"), Khodadad Sharif, Esq., of Fine & Sharif on behalf of Ashraf Madani wife of the Debtor, both counsel were accompanied by their respective clients. After reviewing the pleadings filed and hearing argument for and against the Motion, the Court took the matter under submission and on June 15, 2005 rendered a written decision, and good cause appearing thereon;

IT IS HEREBY ORDERED THAT:

1. The Trustee is Motion is granted;
2. The Trustee is authorized to sell residential real property located at 7614 Palmilla Drive #56, San Diego, California, San Diego County Assessor's Parcel Number 347-400-04-56, the legal description as set forth in Exhibit "A" ("Property") attached hereto and incorporated herein, to Edward B. Shapiro and Olga N. Shapiro ("Buyers") for a purchase price of \$470,000.00;
3. The Property sale is authorized and made pursuant to the Residential Purchase Agreement and Joint Escrow Instructions and Counteroffer thereto, copies of which were attached to the Declaration of Leslie T. Gladstone, on file herein in support of the motion and is incorporated by reference;
4. Trustee is authorized to sell all the estate's right, title, and interest in the Property "as is" "where is" without a warranty expressed or implied, Trustee is authorized to sign a quit claim deed and other documents necessary to complete the sale to the Buyers;
5. The sale of the Property is made pursuant to 11 U.S.C. §363(b) and (f) free and clear of liens and encumbrances with regard to the following liens and encumbrances in the total amount of \$502,721.87:

<u>CREDITOR NAME</u>	<u>AMOUNT OWED</u>
Long Beach Mortgage Co. ("Long Beach")	\$375,473.00
San Diego County Tax Assessor (estimated)	\$2,248.87
Debtor's Homestead ("Homestead")	\$125,000.00
Total	\$502,721.87

6. The sale is authorized pursuant to 11 U.S.C. § 363(f)(4) as there is a bonafide dispute as to the lien of Long Beach Mortgage Co. (\$375,473.00), as secured by a recording on or about July 26, 2004, the Long Beach lien shall attach to the net sale proceeds to be paid over to the Trustee by escrow, that lien will have the same force, effect, and validity, and in the same priority, and amount as this creditor has in the Property, these funds to be held by the Trustee pending further order of the court;

7. The sale is authorized pursuant to 11 U.S.C. § 363(f)(4) as there is a bonafide dispute as to the homestead exemption of Debtor, his rights and interests shall attach to the net sale proceeds, paid over to the Trustee by escrow, that alleged exemption shall have the same force, effect, and validity, and in the same priority, and same amount as this party has in the Property, these funds to be held by the Trustee pending further order of the court;

8. Escrow shall pay the following in the following amounts:

a) Taxes assessed by the San Diego County Tax Assessor in the approximate amount of \$2,248.47 plus the pro rata amount of current year real property tax up to the date of closing; and

9. Escrow is authorized to pay, as an 11 U.S.C. § 506(c) surcharge, Brokers' commissions to (1) P.M. D'Acri Realty (\$5,875.00), (2) Century 21 Award (\$5,875.00) and (3) Prudential California Realty (\$11,750.00) as well as title and escrow(\$3,422.00), Homeowners Association Dues (\$687.70) and Trustee's expense in the approximate amount of \$265.00, as provided for in Seller's Estimated Net Proceeds as of approximately May 16, 2005.

EXHIBIT "A"
(LEGAL DESCRIPTION)

A CONDOMINIUM COMPRISED OF:

INTEREST 1:

AN UNDIVIDED ONE-THIRTY-SIXTH (1/36TH) INTEREST IN AND TO LOT 4 OF LAS PALMAS II, MAP NO. 11268, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JUNE 28, 1985.

EXCEPTING THEREFROM LIVING UNITS U-29 THROUGH U-64, AS SHOWN ON THAT CERTAIN CONDOMINIUM PLAN ENTITLED "LAS PALMAS II, PHASE IV", RECORDED MAY 5, 1986 AS FILE NO. 86-175762 AND AMENDED BY DOCUMENT RECORDED JULY 9, 1986 AS FILE NO. 86-283355, BOTH OF OFFICIAL RECORDS AND DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS, RECORDED OCTOBER 18, 1985 AS FILE NO. 85-389209 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY.

ALSO EXCEPTING THEREFROM THE EXCLUSIVE RIGHT TO USE ALL PATIOS AND BALCONIES, AS SHOWN ON SAID CONDOMINIUM PLAN.

INTEREST 2:

UNIT 56, AS SHOWN ON THAT CERTAIN CONDOMINIUM PLAN REFERRED TO IN INTEREST 1 ABOVE.

INTEREST 3:

THE EXCLUSIVE RIGHT TO USE THE CORRESPONDINGLY NUMBERED RESTRICTED COMMON AREA PATIO AND/OR BALCONY APPURTENANT TO INTEREST 2, AS SET FORTH ON THAT CERTAIN CONDOMINIUM PLAN REFERRED TO IN INTEREST 1 ABOVE.

INTEREST 4:

A NONEXCLUSIVE EASEMENT FOR INGRESS, EGRESS, AND RECREATIONAL USE, ON, OVER AND UNDER THE COMMON AREA OF LOTS 1, 2 AND 3, RESPECTIVELY, OF LAS PALMAS II, ACCORDING TO MAP THEREOF NO. 11268, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON JUNE 28, 1985, WHICH EASEMENT IS APPURTENANT TO INTERESTS 1, 2 AND 3 DESCRIBED ABOVE. THIS EASEMENT SHALL BECOME EFFECTIVE UPON RECORDATION OF A DECLARATION OF ANNEXATION DECLARING LOTS 1, 2 AND 3, RESPECTIVELY, TO BE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREAFTER MADE OR A SEPARATE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS WHICH REQUIRES THE OWNERS OF CONDOMINIUMS LOCATED ON LOTS 1, 2, AND 3, RESPECTIVELY, TO BE MEMBERS OF THE ASSOCIATION, ALL AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREAFTER MADE. THE COMMON AREA PLAN COVERING LOTS 1, 2 AND 3, RESPECTIVELY, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, EXCEPTING THEREFROM ANY RESIDENTIAL BUILDINGS THEREON AND ANY PORTION THEREOF WHICH MAY BE DESIGNATED AS RESTRICTED COMMON AREAS.

INTEREST 5:

A NON-EXCLUSIVE ON AND OVER THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS LOT 5 OF LAS PALMAS II, ACCORDING TO MAP THEREOF NO. 11268, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, ON JUNE 28, 1985, FOR ACCESS, USE, OCCUPANCY, ENJOYMENT, INGRESS AND EGRESS OF THE AMENITIES LOCATED THEREON, SUBJECT TO THE TERMS AND PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREINAFTER MADE. THIS EASEMENT IS APPURTENANT TO INTERESTS 1 AND 2 DESCRIBED ABOVE. THIS EASEMENT SHALL BECOME EFFECTIVE AS TO LOT 5 AT SUCH TIME AS IT IS CONVEYED OF RECORD TO THE ASSOCIATION. LOT 5 DESCRIBED HEREIN IS FOR THE USE OF OWNERS OF CONDOMINIUMS WHICH ARE SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS TO WHICH REFERENCE IS HEREINAFTER MADE, AND IS NOT FOR THE USE OF THE GENERAL PUBLIC.