

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION**

In re:  
GREENFIELD SILVER, INC.  
f/k/a Lunt Silversmiths, Inc.

Debtor

Chapter 11  
Case No. 09-32228-HJB

**GREENFIELD SILVER, INC.'S MOTION FOR ORDER APPROVING PRIVATE SALE  
OF THE DEBTOR'S PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS  
AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(b) and (f)**

Now comes the debtor-in-possession, Greenfield Silver, Inc. f/k/a Lunt Silversmiths, Inc. (the "Debtor"), in the above Chapter 11 case, and hereby moves, pursuant to Bankruptcy Code §§363(b) and (f), and Bankruptcy Rule 6004(c) for authority to sell the estate's interest in the portion of common area referred to as the "Baseball Fields" that is dedicated to the 298 Federal Street Commercial Condominium, and S&W Realty Corporation ("Realty"), a non-debtor, and the Debtor having joint interests in the same, located at 298 Federal Street, Greenfield, Massachusetts free and clear of all liens, claims, mortgages, security interests, charges, encumbrances, and other interests, to the City of Greenfield, Massachusetts (the "Buyer") or its nominee for the total sum of \$660,000.00. The matters set forth herein constitute core proceedings pursuant to 28 U.S.C. § 157(b)(2)(N). In support of this Motion, the Debtor respectfully states as follows:

**History of Case and**

**Disclosure Pursuant to Local Rule 6004-1 (c)(1)(F)**

1. On December 18, 2009, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code with this Court in order to orderly liquidate its assets.

2. The Debtor ceased operations prior to the Chapter 11 filing date.

3. On the day the Debtor filed with this Court its Voluntary Petition and accompanying documents, it also filed an application to employ counsel, an emergency motion for use of cash collateral, an emergency motion to use bank accounts, a motion for approval of general notice procedure and a motion to sell substantially all of its personal property.

4. During its Chapter 11 case, the Debtor has liquidated nearly all of its assets through public and private sales authorized by this Court.

5. With court approval, the Debtor sold a majority of its personal property, including certain inventory, finished goods, work in process, raw materials, spec samples, tools, molds, intellectual property, customer, supplier and sales records, UPC numbers and good will to Reed and Barton Corporation for a total of \$552,016.62 after adjustments.

6. As a condition of the sale to Reed and Barton Corporation, the Debtor was required apply for a name change with the Secretary of the Commonwealth of Massachusetts and requested leave of this Court to change the caption of the case to reflect its new name Greenfield Silver, Inc. which was approved.

7. The proceeds of the sale to Reed and Barton Corporation were utilized to partially satisfy a loan with a balance of \$1,430,000, as of the petition date, owed to the Debtor's only secured creditor, Greenfield Commercial Credit.

8. With court approval, the Debtor next arranged for the employment of the court-approved auctioneer who conducted a public auction on the Debtor's premises to sell items not

purchased by Reed and Barton Corporation, including machinery, equipment, office furnishings, production materials, miscellaneous silver flatware and giftware inventory. This auction included live internet bidding. The auctioneer collected \$247,177.25 from the sale. After payment of the associated costs and expenses of the auction, the proceeds were utilized to partially pay down the debt to Greenfield Commercial Credit, the Debtor's secured lender. Greenfield Commercial Credit collected the remainder of the balance due to it with the proceeds of a sale of a vacation home owned by James H. Lunt, the majority stockholder of the Debtor and guarantor of the loan.

9. After the public auction sale, a number of personal property items remained, including various outdated non-saleable equipment, machinery and fixtures. In addition, Unit B was not in broom clean condition, as certain areas were filled with various cardboard, scrap and paper.

10. A computer system remained after the public auction. With Court approval, the Debtor sold the computer system, through a Court-approved professional, and after associated costs and expenses received \$2,700. Sterling silver tea sets also remained after the public auction. With approval of this Court, the Debtor employed a public auctioneer who sold the tea sets. After payment of associated costs and expenses, the Debtor received \$2,244.47. The proceeds were utilized for maintenance of the Debtor's real estate and payment of a Court-approved professional.

11. In anticipation of selling Unit B, the Debtor employed JW Green Company, Inc. ("JW") to clean Unit B by removing all steel, machines and loose debris. JW performed these services for no monetary payment, but rather the value of the steel. JW hired a subcontractor to utilize a jackhammer to remove heavy machinery which included a steam press and two drop

hammers. James H. Lunt personally paid \$3,000 for these services, as the estate had no available funds.

12. The Debtor required assistance preparing its income taxes for the years 2008 and all other years during the administration of the Chapter 11 case. The Debtor filed an application to employ Greenberg, Rosenblatt, Kull & Bitsoli, P.C. as the Debtor's accountant. This firm was familiar the Debtor because the Debtor had employed the firm prepetition as its accountant. The U.S. Trustee's Office objected to the employment of this accounting firm, as it believed that this accounting firm may not be "disinterested" as the term is defined in 11 U.S.C. § 101(14)(A). The Court denied the Debtor's Motion to employ Greenberg, Rosenblatt, Kull & Bitsoli, P.C.

13. The Debtor filed an application to hire Kirkland Albrecht & Fredrickson as accountant, which was approved by this Court. Later, the Debtor filed a motion to expand the scope of Kirkland Albrecht & Fredrickson's employment, as the accounting firm learned after a review of the previous tax returns, that the Debtor is part of a consolidated tax return filed by Rogers, Lunt and Bowlen ("RLB"), the Debtor's parent company. Under current law, the Debtor must continue to be included on the consolidated tax return filed by RLB. (See Regulation § 1.1502-75). Therefore, the accounting firm requested to expand the scope of employment to include accounting/bookkeeping procedures or adjustments for the Debtor for the years 2008, 2009, 2010 and any subsequent tax years during the pendency of this case, including but not limited to the following: (i) Reconcile and verify amounts on the trial balance to subsidiary ledgers, if applicable; (ii) Reconcile and verify amounts receivable/payable for Related Entities; (iii) Substantiate amounts due from stockholder of Debtor and due to stockholder of Debtor recorded on the books of the Debtor; (iv) Determine any accounts receivable that may need to be written off as a bad debts; (v) Evaluate LIFO inventory layers and adjust to market value, if

necessary; (vi) Investigate all old accounts with balances on the trial balance and write off if necessary; (vii) Reconcile property and equipment and depreciation and adjust for assets sold or no longer in service; (viii) Determine any asset sales and whether properly recorded by accountants of Debtor; and (ix) Investigate IRS claim for income taxes related to tax years 2007 and 2008 against Debtor. To date, the accounting firm has filed all requisite tax returns and otherwise performed as required.

### **The Real Estate**

14. The Debtor's last remaining asset is real estate known as Unit B of the 298 Federal Street Commercial Condominium, which includes a 60% undivided interest in the common area ("Unit B") created by a Master Deed recorded in the Franklin County Registry of Deeds in Book 3812, Page 4, as amended (the "Condominium"). Unit B consists of office spaces and a manufacturing facility which the Debtor used in the operation of its business. Unit B was conveyed to the Debtor by deed dated July 31, 2001, recorded in the Franklin County Registry of Deeds in Book 3894, Page 34.

15. The Condominium consists of one other unit, Unit A, which is owned by Realty, a non-debtor corporation organized under the laws of Massachusetts ("Unit A"). Unit A is retail commercial space. Unit A owns a 40% undivided interest in the common area of the Condominium. Unit A was conveyed to Realty by deed dated July 16, 2001 and recorded in the Franklin County Registry of Deeds Book 3812, Page 40. Pre-petition, the Debtor leased Unit A from Realty. During this Chapter 11 case, the Debtor rejected the lease.

16. The Baseball Fields are comprised of a portion of the common area, approximately 6.62 acres of vacant land, that have been utilized by the City of Greenfield's little league program since 1958.

17. The two units of the Condominium, Unit A and Unit B, and common area are hereinafter collectively referred to as the "Premises."

18. Unit B is an asset of the Bankruptcy estate, while Unit A is not an asset of the estate.

19. The Debtor, with Court approval, employed a real estate broker to attempt to lease Unit B to a third party to generate income during the administration of this case, to no avail.

20. By this Motion, the Debtor is requesting an order authorizing it to sell the Baseball Fields free and clear of all claims, liens, mortgages, security interests, charges, encumbrances, and other interests of record under § 363(f) of the Bankruptcy Code.<sup>1</sup> The Debtor seeks to sell its interest in the Baseball Fields in conjunction with Unit A's interest in them in order to realize the highest potential value for the estate. However, Unit A's proportional interest in the Baseball Fields will be sold subject to all claims, liens, mortgages, security interests, charges, encumbrances, and other interests of record.

21. The Debtor believes that the estate will attain the highest value if the Baseballs Fields are sold separately from Units A and B of the Condominium, as the entire Premises have been marketed for sale by a reputable commercial real estate broker for nearly a year with no offers.

22. Further, the Buyer expressed interest in purchasing the entire Premises in 2010 shortly after the Debtor filed its Chapter 11 case, but was concerned about a title issue<sup>2</sup> and that the Premises may be environmentally contaminated.

---

<sup>1</sup> The Debtor seeks to sell the Baseball Fields via this Motion, as opposed to as part of a Chapter 11 plan. As the City of Greenfield will take Unit B, less the Baseball Fields, in a tax foreclosure, for all intents and purposes the Baseball Fields are the last remaining asset of the Debtor. Therefore, this Motion provides a practical and abbreviated equivalent of the adequate information required in a disclosure statement to a chapter 11 plan pursuant to Local Rule 6004-1.

<sup>2</sup> A portion of the Premises was believed to be untitled. On November 30, 2012, this Court issued an order that Realty and the Debtor acquired the untitled portion of the Premises by adverse possession in Adversary Proceeding

23. The Debtor and Realty engaged in extensive negotiations with the Buyer and ultimately entered into an agreement granting the Buyer the option to purchase the Premises (“OTP”) that presented an opportunity to determine the extent of any environmental contamination on the Premises, while providing the Debtor with a fund that it utilized to pay costs and expenses to maintain and insure the Premises.

24. The Debtor entered into extensive negotiations with Realty and ultimately they entered into an Agency Agreement (the “Agency Agreement”) that grants the Debtor the right to control the negotiations and sale of the Premises to the Buyer and obligated the Debtor to resolve title issues relating to the Premises.

25. In this Chapter 11 case, an official creditors committee has been appointed (the “Committee”). The Committee alleged that the Debtor had claims against Realty and James H. Lunt (“Lunt”).<sup>3</sup> Realty and Lunt alleged to have claims against the Debtor, including without limitation, administrative priority claims and general unsecured claims previously filed with the Clerk of this Court. As such, an unresolved controversy existed between the Debtor and Realty as to the validity and extent of their respective claims. After extensive negotiations, to resolve these various claims, Lunt, the Debtor and Realty entered into an agreement for compromise and releases of claims (the “Agreement for Compromise and Releases”), approved by the Committee, which released the various claims against one another and compromised the allocation of the proceeds from the potential sale of the Premises: the Debtor is entitled to 62% of the net proceeds, while Realty is entitled to 38% of the net proceeds.

---

No. 12-03012. Later the Debtor learned that the supposed untitled land in fact had good title and as a result the Debtor settled a claim for malpractice against the title examiner for the amount of legal fees and costs incurred to pursue the adverse possession claim.

<sup>3</sup> James H. Lunt is the sole shareholder of Realty and a majority shareholder, officer and director of the Debtor.

26. This Court approved the OTP, Agency Agreement and Agreement for Compromise and Releases on January 20, 2011.

27. The Buyer performed under the OTP by paying the Debtor a fee, which enabled the non-operating entity to maintain the Premises. The Buyer also hired a professional to conduct Phase I and II site assessments to determine the extent of environmental contamination to the Premises.

28. The Buyer and Debtor obtained commercial real estate appraisals as required under the OTP. The Baseball Fields have an appraised value of \$660,000, the purchase price.

29. The Debtor performed under the Agency Agreement by resolving title issues believed to affect both Units A and B. The Debtor, on behalf of itself and as agent for Realty, filed an adversary proceeding against T. Morey & Son to acquire title by adverse possession to a portion of the Premises known as the T. Morey parcel. The cloud on the title was believed to have emanated from an unrecorded deed dating back several decades. To compile evidence in pursuit of this action, the Debtor, through counsel and a court-approved professional, conducted research including at the Greenfield Library, Tax Collector, Assessor's Office, and Clerk's Office, the Franklin County Registry of Deeds and the Registry of Probate, the Greenfield Recorder, the Secretary of the Commonwealth of Massachusetts and New Jersey, and the worldwide web. On November 30, 2012, this Court issued a judgment granting the relief requested confirming that the Debtor and Realty acquired their respective portions of the clouded title to the Premises by adverse possession. Later the Debtor learned that the Premises had good title and the adversary proceeding to acquire title by adverse possession and the costs and expenses associated therewith were unnecessary as the title was clean. The Debtor, through counsel, negotiated a settlement

with the title examiner's malpractice insurance carrier for the full amount of the costs and expenses incurred by the Debtor.

30. The Debtor has performed under the Agency Agreement by utilizing the fees provided by the Buyer under the OTP to maintain and preserve the Premises for the estate, and by engaging in significant negotiations for the sale of the Premises to the Buyer.

31. On December 31, 2012, the Debtor and Realty entered into a purchase and sale agreement for the sale of the entire Premises to the Buyer. Although the Debtor and Realty were ready and able to perform, that sale was not consummated by the Buyer. The Debtor retained the Buyer's \$75,000 deposit.

32. Thereafter, the Debtor canceled its lease with the City of Greenfield's little league and issued no trespass notices to prohibit unauthorized use.

33. Although the sale of the entire Premises fell through, the Buyer remained interested in purchasing at least the portion of the Premises that the Debtor believes are not contaminated, the Baseball Fields, for continued use by the City of Greenfield's little league program.

34. The DEP has established a deadline of June 15, 2014 to submit a Tier Classification or Response Action Outcome Statement Report with respect to Unit B. The Debtor has filed an Application to Employ O'Reilly, Talbot and Okun ("OTO") to perform this work for an amount of \$5,400.

**Sale of Property of the Estate with Non-Debtor's Property**

35. The Debtor has entered into a new purchase and sale agreement with the Buyer for only the Baseball Fields (the "Agreement"), a copy of which is attached as Exhibit A and incorporated herein. The material terms are as follows:

- a. Purchase Price: The purchase price for the Premises is \$660,000.00 (the "Purchase Price");
- b. Deposit: The Buyer's previous deposit of \$75,000.00 (the "Deposit") will be applied to reduce the purchase price only in the event that the Buyer purchases the Baseball Fields. The Deposit will be debited against Realty's sale proceeds, not the Debtor's;
- c. Real Estate Taxes: Real estate taxes and assessments on the Baseball Fields will be prorated. The total amount of real estate taxes on the Baseball Fields as of June 1, 2014 is \$175,106.71. The Debtor will pay 62% and Realty will pay 38%. All past due real estate taxes on the Baseball Fields will be paid at the Closing; and
- d. Closing Date: The Closing will occur within 10 days following the later of this Court's or City Council's approval.
- e. Conditions:
  - (i) The Premises must be conveyed to Buyer by good, clear record and marketable title, free from all encumbrances, but subject only to liens to secure payment of real estate taxes and any exceptions which are approved or deemed approved by Buyer in accordance with the Agreement. The Buyer has until May 1, 2014 to give written notice of disapproval or conditional approval of any matter relating to title;

(ii) The Debtor agrees to assist the Buyer in obtaining a tax foreclosure on Unit B to satisfy its outstanding tax indebtedness;

(iii) The Seller will finance and conduct an environmental site assessment of the Baseball Fields and provide a written report no later than May 16, 2014 (an application has been filed to employ O'Reilly, Talbot and Okun to perform these services for \$2,700, to be paid from the closing proceeds);

(iv) The Debtor will remove the no trespass order presently maintained and allow the little league to conduct recreational activities on the Baseball Fields;

(v) The Debtor has submitted a subdivision plan with the City of Greenfield which does not require approval by the City's Planning Board. The Buyer will cooperate with the Debtor obtaining the necessary signatures from the Planning Board members for recording the subdivision plan.

f. Costs and Expenses: The costs and expenses of the closing include but are not limited to and shall be borne as follows:

(i) Costs and expenses related to recording fees, title policies and surveys shall be paid by Buyer;

(ii) Seller shall pay all transfer taxes payable in connection with the recordation of the Deeds; and

(iii) Each party shall pay for its own attorneys' fees.

36. Sale Proceeds. Realty shall receive 38% of the net proceeds as set forth in the Agreement for Compromise and Releases, approved by this Court on January 20, 2011, less \$75,000 for the reduction in purchase price. (See Bankruptcy Doc. Nos. 126 and 129).

37. The Buyer has no connection with the Debtor or Realty, and is not an insider, as that term is defined in 11 U.S.C. § 101(14). The Debtor believes that the Buyer is a good faith Buyer as that term is used in 11 U.S.C. §363(m).

38. The Premises are not encumbered by any mortgages, but are subject to the following:

a. A portion of the common area is subject to a tax taking by the City of Greenfield for \$133.29 dated May 19, 2009; and

b. A possible right of way in favor of others crossing common area in a north/south direction from Norwood Street to Kenwood Street as shown on Greenfield Assessors Map 95, Parcel 1.

39. The Debtor believes that a sale of the Baseball Fields by private sale is in the best interest of the estate. Unit B of the Premises has environmental contamination that emanated from the manufacturing facility and is attributable to the Debtor and its predecessors, not Realty. The Debtor believes that auction bidders will bid significantly less than the Buyer given the risk of liability for third party claims related to migration of the contamination to abutters. By allowing the City of Greenfield to take Unit B in a tax foreclosure, the estate will be freed of its burden of the significant real estate tax debt as well as the costs and expenses associated with maintenance, insurance, and heating. This sale will create a meaningful recovery for the estate.

40. As set forth in the notice of intended sale served contemporaneously herewith, the Debtor will solicit any offers for the Premises in an amount of \$693,000.00 or more, which are

accompanied by a deposit of at least \$33,000.00, on the same terms and conditions as the offer made by the Buyer.

**Claims and Distributions**

41. From the Baseball Fields sale proceeds, the following approximate distributions are expected to be made:

Gross Proceeds	\$660,000.00
Debtor's Gross Proceeds (62% per Agency Agreement)	\$409,200
62% of Baseball Field taxes to 6/1/14; \$14.25 per diem	<u>108,566.16</u>
	300,633.84
62% of tax stamps	<u>1,865.95</u>
	298,767.89
62% of Site Assessment Costs to OTO for Baseball Fields	<u>1,674.00</u>
<b>Debtor's Net Proceeds</b>	<b><u>297,093.89</u></b>
Realty's Gross Proceeds (38% per Agency Agreement)	250,800.00
Debit for Deposit	<u>75,000.00</u>
	175,800.00
38% of Baseball Field taxes to 6/1/14; 14.25 per diem	<u>66,540.55</u>
	109,259.45
38% of tax stamps	<u>1,143.00</u>
	108,116.45
38% of Site Assessment Costs to OTO for Baseball Fields	<u>1,026.00</u>
<b>Realty's Net Proceeds</b>	<b><u>107,090.45</u></b>

42. In anticipation of the sale and distribution to creditors through a chapter 11 plan, the Debtor requested from this Court and established a deadline for filing proof of claims in the Bankruptcy Court of June 30, 2010.

43. The Claims Register indicates that the total claims filed in this case are \$2,019,791.97. Claim No. 46 in the amount of \$929,957.61 filed by James H. Lunt and Claim No. 47 filed by S&W Realty Corp. in the amount of \$262,255.43 have each been released by virtue of the Agreement for Compromise and Releases. See para. 25. Therefore, the remaining

claims are \$827,578.93. (Of this amount, \$42,131.70 is listed as secured debt and \$153,820.97 is listed as priority debt.) The Debtor reserves the right to object to claims that are untimely or unsubstantiated claims.

44. The anticipated and approximated administrative claims for professional services in this case are as follows: \$10,000 due to the commercial real estate appraiser; \$2,000 due to the real estate broker for expenses related to marketing Unit B for lease; an ongoing accounting services and for legal services performed since the filing in late 2009.

45. The total administrative expenses currently exceed the Net Sale Proceeds to the Debtor. The Debtor anticipates that from the administrative expenses there will be a carve-out to enable a distribution to creditors.

46. The Net Proceeds to the Debtor will be held in escrow until such time a plan is approved by creditors and confirmed by the Court.

**Local Rules 6004-1(c)(1)(C) and (5)(A)**

47. This Motion and the Notice of Sale attached as Exhibit B will be served by the court-approved notice procedure<sup>4</sup> upon the Debtor, U.S. Trustee, creditors holding liens, Gordon Quinn, Esquire (counsel for the City of Greenfield), Donald Allison, Esquire as counsel for James H. Lunt and S&W Realty Corp., all parties that have filed notices of appearance, Gary Weiner, Esquire (counsel to the Creditors Committee) and all creditors.

48. The Motion and Notice will also be served upon various local real estate brokers and investors, including R.J. Greeley Co., Inc., McMillan and Son, Inc., D.H. Jones, Fitzgerald & Co., Marcus and Millichap Real Estate Investment Services, and Infinity Real Estate Group, Inc. The Debtor has no knowledge of any other potential purchasers of the Baseball Fields that should receive notice of the proposed sale.

---

<sup>4</sup> This Court approved a special notice procedure by order dated December 21, 2009.

WHEREFORE, the Debtor respectfully prays:

1. That this Court authorize the Debtor's motion for sale of Baseball Fields to the City of Greenfield, or its nominee, free and clear of all claims, liens, mortgages, security interests, charges, encumbrances, and other interests of record, including tax liens, pursuant to the provisions of this Motion under § 363(b) and (f), together with Unit A's interest in the Baseball Fields subject to all claims, liens, mortgages, security interests, charges, encumbrances, and other interests of record;
2. That all encumbrances shall attach to the Debtor's proceeds of the sale, to the extent that they are valid and perfected, in the same priority as they are entitled to under applicable law;
3. That the Debtor be authorized to execute all documents necessary to complete the sale;
4. That the Debtor be authorized to make payments sale proceeds as described above; and
5. For such further relief as this Court deems just and proper.

Dated this 7th day of May, 2014.

SHATZ, SCHWARTZ AND FENTIN, P.C.

By: /s/ Edward V. Sabella

Edward V. Sabella, Esquire  
esabella@ssfpc.com  
L. Alexandra Hogan, Esquire  
lahogan@ssfpc.com  
BBO #672561  
1441 Main Street – Suite 1100  
Springfield, MA 01103  
Telephone - (413) 737-1131  
Facsimile - (413) 736-0375  
For the Debtor