

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: UNITED FURNITURE  
INDUSTRIES, INC., et al.<sup>1</sup>**

**CASE NO. 22-13422-SDM  
CHAPTER 11**

**BNA BANK'S LIMITED RESPONSE AND CONDITIONAL OBJECTION  
TO CHAPTER 11 TRUSTEE'S NOTICE OF (I) SALE OF REAL PROPERTY,  
(II) DESIGNATION OF STALKING HORSE PURCHASER, (III) BID PROCEDURES,  
DATES AND TIMELINE FOR AUCTION, AND (IV) SALE HEARING TO APPROVE  
SALE, PAYMENT OF REAL ESTATE COMMISSION AND RELATED RELIEF**

BNA Bank ("BNA" or "Bank") files this limited response and conditional objection to the NOTICE OF (I) SALE OF REAL PROPERTY, (II) DESIGNATION OF STALKING HORSE PURCHASER, (III) BID PROCEDURES, DATES AND TIMELINE FOR AUCTION, AND (IV) SALE HEARING TO APPROVE SALE, PAYMENT OF REAL ESTATE COMMISSION AND RELATED RELIEF ("Sale Motion") [Dkt. #612] filed by Derek Henderson, Chapter 11 Trustee ("Trustee") for and on behalf of each of the bankruptcy estates of the debtors (collectively referred to as "Debtors"), and in support thereof would show as follows, to-wit:

1. This Court has jurisdiction over the subject matter herein and the parties hereto pursuant to 28 U.S.C. § 1334, 11 U.S.C. §§ 105, 363, 541, along with other related statutes and rules. This is a core proceeding as defined by 28 U.S.C. §§ 157(b)(2)(N) and (O).

**I. Indebtedness Owed to BNA Bank By UFI**

2. On October 9, 2013, one of the Debtors, Furniture Wood, Inc. ("Furniture Wood" or ("Debtor")), executed a variable rate Promissory Note in the amount of \$1,425,000.00 payable

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<sup>1</sup> These jointly administered Debtors, and the last four digits of their federal tax identification number, are as follows: United Furniture Industries, Inc. (2576); United Furniture Industries NC, LLC (9015); United Furniture Industries CA, Inc. (9966); FW Acquisition, LLC (2133); Furniture Wood, Inc. (9186); United Wood Products, Inc. (1061); Associated Bunk Bed Company (0569); UFI Royal Development, LLC (8143); UFI Exporter, Inc. (6518); UFI Transportation, LLC (9471); and LS Logistics, LLC (7004).

to BNA requiring 143 regular monthly payments of \$12,136.00, beginning November 9, 2013 with one (1) final payment, plus any and all accrued interest and unpaid principal, due on October 9, 2025 ("Note"). A copy of the Note is attached to and incorporated by reference as Exhibit "1" to BNA BANK'S LIMITED RESPONSE TO ENTRY OF FINAL ORDER GRANTING DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING AND APPROVING SALE OF ASSETS PURSUANT TO THE CONSULTING AND MARKETING AGREEMENT FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND GRANTING RELATED RELIEF ("BNA's Response") [Dkt. #409].

3. To secure the indebtedness due BNA pursuant to the Note, Furniture Wood granted the Bank a first valid and perfected lien encumbering real property and improvements thereon located at 210 East Sweet Potato Street, Vardaman, Calhoun County, Mississippi ("Real Property") as more fully described in the deed of trust attached to and incorporated by reference as Exhibit "2" ("Deed of Trust") to BNA's Response.

4. To further secure the indebtedness due the Bank, Furniture Wood executed a Commercial Security Agreement granting BNA a first valid and perfected lien encumbering:

"All furniture, equipment and fixtures including but not limited to the Furniture, Fixtures and Equipment listed on attachment (Schedule A); whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and accounts proceeds) to be located in Furniture Wood, Inc. Plant at 210 East Sweet Potato St., Calhoun Co., MS. 38878."

A copy of the Security Agreement, including "Schedule A," is attached to and incorporated by reference as Exhibit "3" ("Security Agreement") to BNA's Response.

5. To perfect its security interests in, inter alia, Furniture Wood's "...furniture, equipment and fixtures..." ("FF&E"), BNA filed its UCC-1 Financing Statement (#20131168706A) ("UCC") with the Mississippi Secretary of State on October 22, 2013. To

continue its lien priority position, BNA subsequently filed its UCC Financing Statement Amendment of its 2013 UCC on February 7, 2012 (#20120621505B) ("Continuation"). A copy of the Bank's UCC and Continuation are attached to and incorporated by reference as Collective Exhibit "4" to BNA's Response.

## II. Case History

6. An involuntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, was filed against UFI on December 30, 2022 ("Involuntary Petition Date"). UFI's case was converted to a voluntary case under Chapter 11 by bench ruling on January 18, 2023 ("Commencement Date"), and by order later entered January 27, 2023 [Dkt. #106] ("Order for Relief"), which order also directed the U.S. Trustee to appoint a Chapter 11 Trustee. Responsively, Derek Henderson was appointed Chapter 11 Trustee ("Trustee") for the UFI Chapter 11 case on January 23, 2023, and an order approving his appointment was entered in the UFI Chapter 11 case on January 25, 2023 [Dkt. #101]. Additionally, the Trustee was appointed on February 13, 2023, in all remaining cases and subsequent orders approving his appointment were entered on February 14, 2023. As of the date of entry of Order for Relief in the UFI Chapter 11 case, the aggregate indebtedness due BNA pursuant to the Note was \$413,661.81. As of July 24, 2023, the outstanding indebtedness due BNA was \$484,070.73 which includes attorneys' fees, expenses, and costs allowed by U.S.C. § 506(b) and surcharges as contemplated by 11 U.S.C. § 506(c) totaling \$19,397.72 through June 30, 2023 and other sums due under the Note. Interest, as well as fees, expenses, costs and surcharges contemplated by 11 U.S.C. § 506(b) and (c) will continue to accrue through distribution of proceeds derived from the sale of Real Properties outlined herein.

### III. Present Sale Motion

7. On May 19, 2023, this Court entered its ORDER (A) ESTABLISHING BIDDING PROCEDURES RELATING TO SALES OF REAL PROPERTY; (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER PROPOSED SALES; (C) APPROVING PROPOSED SALES; AND (D) GRANTING RELATED RELIEF which charted a course of procedures and timeline related to the sale of substantially all of the Debtors' real properties located in the State of Mississippi and North Carolina ("Bid Procedures Order") [Dkt. #568]. As part and parcel to the Bid Procedures Order, the Trustee is afforded certain rights and authority including that of noticing the sale of substantially all of the Debtors' real properties to a designated stalking horse purchaser who is to be afforded certain bid protections. Consistent with that authority, the Trustee filed with this Court his NOTICE OF (I) SALE OF REAL PROPERTY, (II) DESIGNATION OF STALKING HORSE PURCHASER, (III) BID PROCEDURES, DATES AND TIMELINE FOR AUCTION, AND (IV) SALE HEARING TO APPROVE SALE, PAYMENT OF REAL ESTATE COMMISSION AND RELATED RELIEF ("Notice of Sale") [Dkt. #612] on June 20, 2023 designating Phoenix Acquisition, LLC ("Phoenix") as a "stalking horse" bidder with an offer to purchase fifteen (15) parcels of the Debtors' real properties located in the States of Mississippi and North Carolina ("Sale Properties")<sup>2</sup> for \$65,000,000.00. Notwithstanding that designation, the Bid Procedures Order grants the Trustee the latitude, at his discretion, to concurrently solicit bids for the sale and

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<sup>2</sup> The Sale Properties include 1) 315 & 325 Kettering Road, High Point, NC; 2) 3301 Adams Farm Road, Tupelo, MS; 3) 389 Highway 6 East, Nettleton, MS; 4) 30440 Highway 41, Nettleton, MS; 5) 431 Highway 41 East, Okolona, MS; 6) 5380 Highway 145 South, Verona, MS; 7) 61312 Highway 278 East, Amory, MS; 8) 60063 Puckett Drive, Amory, MS; 9) 60006 Industrial Drive, Amory, MS; 10) 212 108<sup>th</sup> Street, Amory, MS; 11) 8 acre parcel, Nettleton, MS; 12) 431 E. Monroe Ave., Okolona, MS; 13) 0 Laster Road, Okolona, MS; 14) 210 East Sweet Potato St., Vardaman, MS; 15) 100 United Furniture Drive, Lexington, NC; 16) 3761 Old Glenola Road, Trinity, NC; and 17) 401 W. Hanes Mill Road, Winston Salem, NC.

purchase of all or particular properties comprising the Sale Properties to culminate with an auction on July 25, 2023 if bids due July 14, 2023 warrant it. By Notice dated July 24, 2023 [Dkt. #714], the Trustee cancelled the tentative auction as allowed by the Bid Procedures. As such, Phoenix is the presumptive "Successful Bidder" as defined by the Bid Procedures and the sale process outlined by same advances to a critical August 1, 2023 sale hearing.

### III. Present Notice of Sale

8. BNA commends the Trustee and his professionals for their efforts advancing the liquidation of the Sale Properties and generally supports their sale subject to certain clarifications and conditions set forth herein.

9. Section 363(f), Title 11 of the United States Code addresses a trustee's authority to sell estate properties free and clear of liens and provides, in pertinent part, as follows, to-wit:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interests in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(Emphasis added)

BNA does not consent to the sale of the Real Properties securing its pre-petition claims as outlined herein or release of its deeds of trust evidencing its first, valid and perfected liens encumbering same unless and until it is paid in full from any prospective sales proceeds, including but not limited to, all principal, interest and fees, expenses, costs and surcharges contemplated by 11 U.S.C. § 506, as well as the Loan Documents and any sums contemplated by

the Bid Procedures up to the distribution of proceeds derived from any closing of the sale of the Real Properties ("BNA's Payoff").

10. Although the Bid Procedures Order and Bid Procedures are replete with procedures and protocols to be followed regarding the sale of the Sale Properties, it is unclear how and when BNA's Payoff will be paid to the Bank. The Purchase and Sale Agreement ("Agreement") attached to the Sale Notice as Exhibit "B" provides that the Purchaser will pay the Trustee the purchase price or sales proceeds at closing by wire transfer, adjusted by "customer pro-rations." However, the Sale Notice and its attendant exhibits do not specifically require payment of BNA's Payoff by a closing agent or the Trustee within a quantified period of time from a closing that is to take place no later than August 31, 2023. Any order approving the sale(s) contemplated by the Sale Notice should specifically provide a deadline for the Bank to receive BNA's Payoff or quantify a period for which funding and payment is to occur. Until receipt of BNA's Payoff in good and sufficient funds, the Bank is not required to release its consensual liens evidenced by the Deeds of Trust described herein.

11. Employing 11 U.S.C. § 506(c) which allows a trustee to "...recover from property securing an allowed secured claim to reasonable, necessary costs and expenses of preserving or disposing of such property...", the Trustee has assessed Wells Fargo, the Belford Trust, Bank of New Albany and BNA ("Secured Creditors") for, inter alia, the costs incurred by the Debtors' estates for security, utilities, lawn maintenance, pest control, certain maintenance and other costs related to the Sale Properties. Those expenses are not insignificant. Specifically, the Trustee has surcharged BNA the sum of \$19,397.72 through June 30, 2023 which will continue to accrue through the closing of the sale of the Sale Properties ("BNA's Surcharges"). The Trustee anticipates filing with this Court in the near future a motion seeking entry of an order approving

the surcharges against the Secured Creditors ("Surcharge Motion"). A prospective Surcharge Motion may result in a shift of other Secured Creditors' surcharges to BNA which in turn may alter the aggregate amount necessary to clear the Bank's 363(f) threshold or, other words, the amount of sales proceeds necessary to fund BNA's Payoff. For every dollar of surcharges asserted against BNA, its payoff increases proportionately and thus, if BNA's "surcharge liability" is not quantified with finality, the BNA Payoff cannot be accurately quantified. In turn, the sale of the Sale Properties cannot close or otherwise be concluded without such quantification of the exact amount needed to satisfy BNA's Payoff at the time of distribution of such proceeds. Although a perceived option, any closing which escrows monies for distribution to BNA at a later date until issues related to surcharges are finally resolved prejudices BNA's position and the Bank's objects to a fragmented closing along these lines. Moreover, if an attempt is made to escrow the portion of sales proceeds due BNA, the Bank's liens will, by law, remain attached to all sales proceeds until time of distribution to BNA in order to ensure that BNA receives all interest, fees, costs, expenses and surcharges, which continue to accrue through the time of distribution of BNA's Payoff. Thus, BNA respectfully requests that the Court hear and determine at the August 1, 2023 Sale Hearing any and all outstanding issues arising from or related to the Trustee's 506(c) surcharges.

Alternatively, should the Court be inclined to approve the Sale to Phoenix Capital contemplated by the Sale Notice following the attendant hearing on August 1, 2023, any order approving same should expressly provide that the Bank shall be paid BNA's Payoff in full before the Bank is required to release the referenced Deed of Trust and before its lien encumbering the entire sales proceeds is deemed released. As a practical matter, the surcharges cannot, in any circumstances, impair the right for the Bank to be paid BNA's Payoff pursuant to the directives

of Section 363(c), Title 11 of the United States Code. As such, any order approving the sale should authorize and direct the Trustee to immediately pay BNA's Payoff to the Bank by wire transfer as of the date of closing without the need for further notice or hearing.

12. In the event the sales contemplated by the Sale Notice and Agreement do not close on or before the "Outside Date" as defined by the Agreement, any order approving the sales contemplated by the Sale Notice should provide that BNA may motion this Court on an expedited basis for relief from the automatic stay and for abandonment of the Real Properties from the Debtors' respective estates to be expeditiously heard after limited notice acceptable to the Court and at its earliest convenience.

13. For other good and sufficient reasons to be assigned at a hearing regarding this matter. BNA reserves the right to amend this pleading up to and including any final hearing regarding the Sale Motion.

WHEREFORE, BNA respectfully files this response and conditional objection and requests that any order approving the sale or sales contemplated by the Sale Notice provide the Bank the relief and clarifications outlined herein. BNA prays for such other good and sufficient relief as this Court may deem just.

THIS, the 31st day of July, 2023.

Respectfully submitted,

BNA BANK

/s/ D. Andrew Phillips

D. ANDREW PHILLIPS (MSB #8509)

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served electronically on all parties who has consented to electronic notice in addition to the following parties:

Derek A. Henderson  
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*Chapter 11 Trustee*

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*U.S. Trustee*

This, the 31st day of July, 2023.

/s/ D. Andrew Phillips