

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-003495-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

Peter Hurwitz

Plaintiff(s)

vs.

Grocerkey, Inc., a Delaware corporation

Defendant(s)

**ORDER APPROVING SALE OF CERTAIN ASSETS FREE AND CLEAR OF CLAIMS,
LIENS AND ENCUMBRANCES AND OTHER RELATED RELIEF**

THIS CAUSE came before the Court for a hearing on April 18, 2024 at 9:00 a.m. (the “**Hearing**”) upon the Assignee’s Motion (I) to Approve the Sale of Certain Assets Free and Clear of claims, liens and encumbrances, and (II) for Other Related Relief (the “**Sale Motion**”)(Docket No. 33)^[1] and the Notice of Filing of Asset Purchase Agreement (the “**APA**”)(Docket No. 50) between Wynshop Inc. (“**Purchaser**”) and by Peter Hurwitz (the “**Assignee**” or “**Seller**”), solely as the Assignee for the benefit of creditors of the Assignors listed above, and not individually, by and through his undersigned counsel, and pursuant to Florida Statutes §§ 727.102, 727.108(1), 727.109(1), (7), and (15), and 727.111(4).

The Court, having reviewed the Sale Motion and the record in the case, having found that the Acquired Assets were sufficiently marketed for sale by the Assignee, having found that sufficient notice of the Sale Motion, the original Notice of Hearing, and the Amended Notice of Hearing rescheduling the hearing on the Sale Motion from April 15, 2024 to April 18, 2018, has been provided to all creditors of the Assignor and parties in interest as required pursuant to Fla. Stat. §727.111 (Docket Nos. 35 and 43), which notice included posting the Sale Motion, exhibits, and the Notices of Hearing to the Assignors’ website, and noting that no opposition was filed by

any interested party as of the objection deadline of April 15, 2024, and based on the Court's finding that the Purchase Price (defined below) represents the best and highest offer for the Acquired Assets, and that good cause exists for granting the relief sought in the Sale Motion, and with the Court otherwise being duly advised in the premises, and good cause exists to grant the relief sought in the Sale Motion as set forth below. Accordingly, it is **ORDERED**:

1. The Motion is **GRANTED**. The APA (Docket No. 50), exhibits and schedules thereto and all ancillary documents, and all terms and conditions thereof, are authorized and approved in all respects.
2. The Assignee is authorized, empowered, and directed to take any and all actions necessary or appropriate to: (a) consummate the sale of the Acquired Assets in accordance with the terms and conditions of the APA, including Disclosure Schedule 2.1 (the "**Transaction**"), (b) close the Transaction, and (c) execute and deliver, perform under, consummate, implement, and fully close the APA, together with additional instruments and documents that the Purchaser or Assignee may deem reasonably necessary or desirable to implement the APA and the Transaction, all without further order of this Court.
3. The purchase price to be received by Seller for the Acquired Assets and the Assumed Liabilities shall be an amount equal to cash of two hundred and fifty thousand dollars \$250,000 and any amounts paid by Purchaser to satisfy any cure amounts for an Assigned Contract (collectively, the "**Purchase Price**").
4. The assets of the Assignors set forth on Disclosure Schedule 2.2 of the APA and set forth below are not part of the Transaction and are expressly excluded from the Acquired Assets, and shall remain the property of the Assignors or the Assignee after the Closing (Collectively the "**Excluded Assets**"):
 - a. all cash and cash equivalents which are (i) equal to or less than, but not in excess of, the Cash Purchase Price, or (ii) not included in Disclosure Schedule 2.1 of the APA;

- b. the corporate charter, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books and other documents relating to the organization and existence of GrocerKey as a limited liability company;
- c. any Books and Records that do not relate to the Acquired Assets or the Assumed Liabilities or that Seller is, in its good faith determination, required by law to retain, provided that Purchaser shall have the right, to make copies of any such Books and Records to the extent they are related to Acquired Assets or Assumed Liabilities;
- d. all of the GrocerKey's bank accounts and lockboxes;
- e. all rights of Assignee and Assignors under this Agreement or any of the Transaction Documents;
- f. all insurance policies, except to the extent constituting an Assigned Contract;
- g. Excluded Contracts;
- h. all insurance claims, insurance premium refunds, and proceeds to the extent related to any Excluded Asset;
- i. Any Causes of Action that accrued against, relate to, or arise from GrocerKey, the Assignee, or any of the Acquired Assets prior to Closing;
- j. Claims against any third party under Fla. Stat. 726.101, et seq.
- k. all membership interests and all other equity interests of or relating to the GrocerKey.
- l. all inventory, which as used herein shall mean, any and all of GrocerKey's (i) owned, finished or partially finished, products manufactured or to be distributed by or on GrocerKey's behalf, and (ii) any and all other owned inventory, and any finished goods returned by any of GrocerKey's customers, whether returned before or after the Closing Date, in each case ((i) or (ii)), wherever located, including all finished goods, works in process, raw materials, and all other materials and supplies to be used or consumed by or on behalf of Debtor in the production of finished goods or the operation of the Business;
- m. all investment property, instruments, chattel paper, and real estate;
- n. all rights to net operating losses, tax refunds, credits, or similar tax benefits for all periods ended on or prior to the Closing Date;
- o. all accounts, customer accounts, account receivables, and rights to payment; and
- p. all Causes of Action that do not relate or concern to the Acquired Assets or the Assumed Contracts.

5. This Order shall be binding in all respects upon the Assignee, Assignors, Assignment estate

and all of its creditors and stakeholders, holders of any claim (known or unknown) against the Assignors and the Assignment Estate, holders of liens against, in or on all or any portion of the Acquired Assets, the Purchaser, and all successors and assigns of the foregoing, including, without limitation, any trustee, if any, subsequently appointed in any chapter 7 or 11 bankruptcy case that may be filed by the Assignors.

6. The Acquired Assets constitute assets of the Assignment Estate, and the Assignee is authorized to sell and transfer the Acquired Assets to the Purchaser, free and clear of all claims, liens and encumbrances, and as more fully set forth in the APA, which the Court finds to be in the best interests of the Assignment Estate. This Order is and shall be sufficient evidence of the transfer of title to the Acquired Assets and no further documentation of title is necessary; however, the Assignee is authorized to execute further documents to transfer title to the Acquired Assets as reasonably requested by the Purchaser pursuant to the APA.
7. Adequate notice was provided of the Sale Motion, the original Notice of Hearing, the Amended Notice of Hearing, and the Transaction pursuant to Fla. Stat. §727.111 (Docket Nos. 35 and 43). Additional notice was provided to creditors and all parties in interest through the publication on the Assignors' website of all relevant documents and pleadings. No further notice is necessary or required.
8. The Transaction does not cause there to be, and there is not: (a) a consolidation, merger, or de facto merger of the Purchaser, on the one hand, with or into the Assignors, Assignee, or Assignment Estate, on the other hand, or vice versa; (b) a substantial continuity between the Purchaser, on the one hand, and the Assignors, Assignee, or Assignment Estate, on the other hand; (c) a common identity between the Purchaser, on the one hand, and the Assignors, Assignee, or Assignment Estate, on the other hand; or (d) a mere continuation of the Assignors, Assignee, or Assignment Estate, on the one hand, with the Purchaser, on the other hand.
9. Except as otherwise expressly provided herein or in the APA, none of the Purchaser or its

respective affiliates or assigns, shall have any liability or responsibility for any liability or other obligation of the Assignors arising under or related to the Acquired Assets prior to the closing of the Transaction (the “**Closing**”). Without limiting the generality of the foregoing, and except as otherwise specifically provided herein, to the maximum extent allowed by law, none of the Purchaser or its affiliates and/or assigns, shall be liable for any claims against the Assignors or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character including, but not limited to, any such liability that may be imposed by statute (e.g., under so-called “bulk sale” laws) or any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the date of entry of this Order, now existing or hereafter arising, whether fixed or contingent, with respect to the Assignors or any obligations of the Assignors arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing, provided, however, that nothing herein shall excuse the Purchaser from its obligations under this Order and the APA or obligations arising from the Acquired Assets after the Closing.

10. If any person or entity that has filed financing statements, mortgages, mechanic’s liens, lis pendens, or other documents or agreements evidencing liens, claims, interests or encumbrances in the Acquired Assets shall not have delivered to the Assignee prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens which the person or entity has with respect to the Acquired Assets, then, following the Closing Date, (a) the Assignee is authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens in the Acquired Assets

of any kind or nature whatsoever.

11. To the greatest extent available under applicable law and except as otherwise provided herein, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Assignee with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals related to the Acquired Assets (to the extent that such licenses, permits, registrations and government authorizations and approvals constitute Acquired Assets) are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date.
12. Except as otherwise provided herein or otherwise provided in the APA, all of the Assignee's right, title, and interest in and to the Acquired Assets to be acquired by the Purchaser **AS-IS, WHERE-IS** under the APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser free and clear of all liens, claims, or encumbrances. Upon the occurrence of the Closing and except as otherwise provided herein, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Purchaser under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchaser.
13. This Order: (a) is and shall be effective as a determination that, on the Closing Date, all liens, claims, or encumbrances existing against the Purchased Assets before the Closing Date, have been unconditionally released, discharged and terminated (with such liens, claims, or encumbrances to attach to the proceeds of the Sale), and that the conveyance of the Purchased Assets has been effected; and (b) is and shall be binding upon and govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, registrars of deed, registrars of patent, trademark or other intellectual property, local, state and federal regulatory boards, administrative agencies, governmental

departments (other than as set forth in paragraph 17 below), secretaries of federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their offices, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets.

14. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the Transaction.
15. The terms and provisions of this Order, shall be binding in all respects upon the Assignee, Assignors, its estate, and its creditors, the Purchaser and any affiliates or assignees, and their successors or affected third parties, and all parties asserting any liens, claims, or encumbrances in the Assignors' estates or the Acquired Assets to be sold to the Purchaser pursuant to this Order. The APA and the Transaction contemplated thereby and hereby, shall be enforceable by specific performance against and shall be binding upon and not subject to rejection or avoidance by the Assignee or Assignors.
16. All persons or entities, presently or on or after the Closing Date with access to or in possession or control of some or all of the Acquired Assets are directed to provide access to and surrender possession of the Acquired Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.
17. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Assignee and the Purchaser are free to close under the APA at any time, subject to the terms of the APA.
18. This Order and the rights and obligations set forth herein shall survive any dismissal of the Assignment Case, and this Court shall retain jurisdiction as set forth below.

19. The Transaction, the APA and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Assignors' estate.
20. The failure specifically to include any particular provisions of the APA or the Transaction in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Transaction be authorized and approved in its entirety. However, to the extent that this Order and the APA conflict, this Order shall control.
21. Time is of the essence in closing the APA and the Transaction contemplated thereby.
22. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, in a writing signed by such parties, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Assignment Estate. The Assignee is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the APA. Nothing contained in any order entered in this case or in any subsequent or related proceeding in any court subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA or the terms of this Order. To the extent of any such conflict or derogation, the terms of this Order shall govern.
23. The Closing of the APA shall take place no later than five (5) days after the Court's entry of this Order.
24. The Court retains exclusive jurisdiction to:
 1. interpret, implement, and enforce the APA, all related documents, any amendments thereto, and this Order,
 2. adjudicate any disputes arising from or relating to the APA or any other matters pertaining to

the Transaction,

3. decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Assumed Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Acquired Assets free and clear of all liens, claims, or encumbrances,
4. protect the Purchaser and Acquired Assets against any liens, claims, or encumbrances as provided herein including, without limitation, to enjoin the commencement or continuation of any action seeking to impose successor liability or bulk sale liability,
5. enter Orders in aid or furtherance of the transactions contemplated by the APA or to ensure the peaceful use and enjoyment of the Assumed Contracts or the Acquired Assets by the Purchaser,
6. compel delivery of all Acquired Assets to the Purchaser
7. adjudicate any and all disputes concerning alleged pre-Closing interests in and to the Acquired Assets including without limitation the extent, validity, enforceability, priority, and nature of any and all such alleged Interests;
8. adjudicate any and all disputes relating to the Assignee's right, title, or interest in the Acquired Assets and the proceeds thereof,
9. re-open the Assignment Case to determine any of the foregoing; provided, however, in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Transaction or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter; and
10. hear, determine and adjudicate any claims asserted against the Assignee, Assignors, their estates or the Purchaser seeking administrative expenses status.

^[1] All terms not defined herein shall have the meaning ascribed in the Sale Motion and in the APA.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 23rd day of April, 2024.


2024-003495-CA-01 04-23-2024 9:10 PM

2024-003495-CA-01 04-23-2024 9:10 PM

Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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