

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE  
*Electronically Filed*

THE HUNTINGTON NATIONAL BANK, AS  
TRUSTEE,

PLAINTIFF

v.

SAINT CATHARINE COLLEGE, INC., et al.,

DEFENDANT.

Civil Action No. 3:16-cv-00465-DJH

**ORDER (I) SCHEDULING AN AUCTION AND HEARING TO CONSIDER  
APPROVAL OF THE SALE OF SAINT CATHARINE COLLEGE, INC.'S REAL  
PROPERTY, (II) APPROVING NOTICE OF THE DATES, TIMES, AND PLACES FOR  
AN AUCTION AND FOR HEARING ON APPROVAL OF SALE OF REAL PROPERTY,  
AND (III) GRANTING OTHER RELATED RELIEF INCLUDING THE RETENTION  
OF THE AUCTIONEER**

LS Associates, LLC, solely in its capacity as court-appointed receiver (the “Receiver”) for defendant Saint Catharine College, Inc. (“Saint Catharine”), having requested by motion (the “Motion”) orders (A)(I) scheduling an auction (the “Auction”) and a hearing (the “Auction Sale Hearing”) to consider approval of (a) the auction sale (the “Auction Sale”) of all of Saint Catharine’s remaining real property (collectively, the “Real Property”), and (b) other related relief; (II) approving the proposed notice of the respective dates, times, and places for the Auction and for the Auction Sale Hearing set forth on **Exhibit 1** to the Motion (the “Auction Sale Notice”); and (III) approving the agreement retaining Keen-Summit Capital Partners, LLC and CBRE, Inc. (“CBRE”) as auctioneer of the Real Property (the relief requested in such items (A)(I), (II), and (III) is collectively referred to herein as the “Initial Relief”); and (B)(I) authorizing and approving the proposed form of asset purchase agreement attached to the Motion as **Exhibit 2** (the “Auction APA”) to be used by a purchaser of the Real Property; (II)

authorizing the Auction Sale of the Real Property free and clear of all Liens and all Liabilities, other than Permitted Liens and Assumed Liabilities; and (III) authorizing the Receiver to consummate all transactions related to the above; and it appearing that, under the circumstances, good, sufficient, and timely notice of the relief sought and granted in this Order having been given, and good and sufficient cause existing to approve the Initial Relief; and it further appearing that no other or further notice of the relief provided for herein need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby FOUND AND DETERMINED THAT:

A. The Receiver has also demonstrated a compelling and sound business justification for authorization to conduct the Auction. However, the Auction Sale remains subject to final approval by this Court. Entry of this Order is in the best interests of Saint Catharine and its estate, its creditors, and interest holders and all other parties in interest herein.

B. The Auction Sale Notice, substantially in the form attached to the Motion as **Exhibit 1**, provides due, adequate, and timely notice of the Auction and the Auction Sale, and the other transactions contemplated in the Auction APA and the Motion (collectively, the “Transactions”), and all relevant deadlines.

C. The scope of the notice of the Motion, the Auction, the Auction Sale, the Auction Sale Hearing, and all the other Transactions proposed to be provided by the Receiver in the Motion constitutes due, sufficient, and adequate notice to all parties-in-interest of the Auction, the Auction Sale, and all the other Transactions, and all relevant objection deadlines. Such proposed notice of the Motion, the Auction, the Auction Sale, the Auction Sale Hearing, and all the other Transactions is appropriate and reasonably calculated to provide all interested parties with timely and proper notice and an opportunity to be heard, and no other or further notice

thereof is required.

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Initial Relief is GRANTED as set forth herein.
2. All formal and informal objections to the Initial Relief that have not been withdrawn, waived or settled are overruled.
3. The Receiver is authorized to retain Keen-Summit Capital Partners LLC and CBRE, Inc. (collectively, "Auctioneers") pursuant to the Auction Contract attached to the Motion as **Exhibit 3** and to conduct the Auction.
4. The Auction Sale Notice attached to the Motion as **Exhibit 1** is approved in all respects. The Receiver is authorized and directed to serve the Auction Sale Notice on (i) all parties that have expressed an interest or contacted CBRE or the Receiver regarding the Real Property; (ii) all known creditors of Saint Catharine (to the extent contact information is available to the Receiver); (iii) all counterparties to contracts and/or leases affected by the Auction Sale; and (iv) certain other courtesy notice parties, in the discretion of the Receiver. The Receiver shall file a certificate of service of the Auction Sale Notice as reasonably promptly following service as is practical. Such service shall be deemed due, timely, good, and sufficient notice of the entry of this Order, the Auction, the Motion, the Auction Sale Hearing, and all of the Transactions, and all proceedings to be held thereon and all relevant deadlines.
5. The Receiver is authorized and shall publish an abbreviated version of the Auction Sale Notice prior to the Auction in an appropriate publication or publications or via electronic mail to potential bidders or on the internet, to be determined by the Receiver in consultation with Huntington and CBRE, if the Receiver determines that such publication is in

the best interest of Saint Catharine's estate. Such publication will include, at minimum, the *Louisville Courier-Journal* and *The Springfield Sun*.

6. The Auction Procedures attached as **Exhibit 4** to the Motion are approved.

7. The form of the Auction APA attached as **Exhibit 2** to the Motion is approved and shall be substantially the form of any such agreement utilized in connection with the Auction Sale of the Real Property and all other Transactions in connection therewith. To the extent the Receiver determines to sell the Bypass Property (as defined in the Auction Procedures) separately from the Campus Property (as defined in the Auction Procedures), he may utilize a different form of purchase agreement for the Bypass Property, which the Court shall consider for approval at the Auction Sale Hearing.

8. The Auction Sale shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, its agents, or its estate, except to the extent expressly set forth in the Auction APA with any purchaser at the Auction.

9. If more than one Qualifying Bid is received before the Bid Deadline of November 27, 2018, the Auction will be conducted at **Saint Catharine College (Emily W. Hundley Library) 2735 Bardstown Road, Springboro, Kentucky 40061, commencing at 10:00 a.m. (prevailing local time) on November 30, 2018** (the "Auction Date").

10. The Receiver is authorized to file with this Court and serve a supplement (the "Supplement"), no later than three (3) business days following completion of the Auction, that will inform this Court of the results of the Auction, the High Bid(s), and the Second Highest Bid(s). The Supplement will identify, among other things, (a) the High Bidder(s), (b) the consideration to be paid by the High Bidder(s), and (c) any executory contracts and unexpired

leases to be assumed and assigned to the purchaser in connection with the Auction Sale. In addition, the Receiver will attach to the Supplement, as exhibits, (a) any revised proposed order approving the Auction Sale and (b) copies of the asset purchase agreement(s) entered into by the Receiver and the High Bidder(s).

11. The Receiver may with the agreement of Huntington, impose customary terms and conditions on the Auction process if in its reasonable judgment (after consultation with Huntington) such modifications would be in the best interest of Saint Catharine's estate and promote an open and fair sale process, so long as such modifications and/or additional terms are consistent with the provisions of the Auction APA.

12. All bids submitted at the Auction shall remain open and irrevocable until the Auction Sale Hearing; provided, however, that the High Bid(s) and the Second Highest Bid(s) shall be deemed to remain open and irrevocable until the actual closing of the transaction that is the subject of such bid. Acceptance of a bid shall, in all respects, be subject to entry of an order by this Court that, among other things, authorizes the Receiver to consummate a sale to the High Bidder(s). Following the Auction Sale Hearing, if the High Bidder(s) fails to consummate an approved sale because of a breach or failure to perform on its part, the next highest bid, as disclosed at the Auction (if any), shall be deemed to be the High Bidder(s), and the Receiver shall be authorized, but not required, to consummate the Auction Sale with the bidder submitting such bid (i) without the need for further notice or order of this Court and (ii) without prejudice to the Receiver's right to seek all available damages from the defaulting bidder.

13. The Auction Sale Hearing shall be conducted before the Honorable David J. Hale, United States District Court Judge, at the United States District Court for the Western District of Kentucky, Louisville Division, 601 West Broadway, Louisville, KY 40202, on **Friday, December 7, 2018 at 10:00 a.m. (prevailing Eastern Time)** (the "Auction Sale Hearing Date").

The Receiver shall seek entry of an order at the Auction Sale Hearing approving and authorizing the Auction Sale with the High Bidder(s) on terms and conditions substantially consistent with the Auction APA. The Auction Sale Hearing may be adjourned or rescheduled without notice other than by announcement of the adjourned date at the Auction Sale Hearing.

14. Any purchaser approved at the Auction Sale Hearing will have no responsibility for, and the assets will be sold free and clear of, any successor liability, including the following: To the greatest extent allowable by applicable law, the purchaser shall not be deemed, as a result of any action taken in connection with the Auction APA, the consummation of the transactions contemplated by the Auction APA, or the transfer or operation of the acquired assets, to (a) be a legal successor, or otherwise be deemed a successor to the Receiver or Saint Catharine (other than, for the purchaser, with respect to any obligations as an assignee under the assigned agreements arising after the closing); (b) have, *de facto* or otherwise, merged with or into Saint Catharine; or (c) be an alter ego or mere continuation or substantial continuation of Saint Catharine including, without limitation, within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq.), the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act (29 U.S.C. § 151, et seq.), environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating

substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, any liabilities, debts or obligations of or required to be paid by the Receiver for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Receiver's liability under such law, rule or regulation or doctrine. Other than as expressly set forth in the Auction APA, the Purchaser shall not have any responsibility for (a) any liability or other obligation of the Receiver or Saint Catharine related to the Real Property or (b) any remaining claims against the Receiver or Saint Catharine or any of its predecessors or affiliates. To the greatest extent allowed by applicable law, the Purchaser shall have no liability whatsoever with respect to Saint Catharine's (or their predecessors' or affiliates') business or operations or any of the Receiver's (or their predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental, successor or transferee liability, **de facto** merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including 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 purchased assets prior to the closing.

15. Objections to the relief requested in the Motion not granted herein, including approval of the Auction Sale must: (a) be made in writing and filed on the docket in the above-captioned action no later than five (5) business days prior to the Auction Sale Hearing Date (the "Objection Deadline"); (b) state the basis of such objection with specificity, (c) comply with the

Local Rules of this Court; and (d) be served upon counsel to the Receiver and counsel to Huntington, so as to be actually received on or before 5:00 p.m. (prevailing Eastern time) on the Objection Deadline, provided, however, that any objections solely in regard to the conduct of the Auction may be filed no later than one (1) calendar day prior to the Auction Sale Hearing Date, so as to be actually received on or before 12:00 p.m. (prevailing Eastern time), which objections must otherwise comply with the foregoing requirements.

16. Nothing in this Order shall be deemed a waiver of any rights, claims and remedies the Receiver or Huntington may have against Runchero Corporation, Inc. and/or the guarantor, Kevin Runner with respect to the Purchaser Agreement (including any modifications thereof) and the Cure Agreement (including any modifications thereof).

17. Notwithstanding the possible applicability of any rule, statute, or common law to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable.

18. All time periods set forth in this Order shall be calculated in accordance with Rule 6(a) of the Federal Rules of Civil Procedure.

19. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in this action, the terms of this Order shall govern.

20. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the terms and conditions of the Auction APA and this Order.



**IT IS SO ORDERED.**

October 18, 2018

**TENDERED BY:**

*/s/ Brian H. Meldrum*

---

Brian H. Meldrum  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 W. Main Street, Suite 400  
Louisville, KY 40202  
Telephone: (502) 242-9111  
Email: [bmeldrum@kaplanjohnsonlaw.com](mailto:bmeldrum@kaplanjohnsonlaw.com)

COUNSEL FOR RECEIVER

13325636v1

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court for the District of Kentucky.

**David J. Hale, Judge  
United States District Court**