

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

In the Matter of:

**STEPHEN EDWARD DAILEY  
KAREN DENISE DAILEY  
AKA KAREN CHAMBLISS**

DEBTOR.

Inst # 1994-31201

}  
10/13/1994-31201 CASE NO. 94-03048-RCF-7  
01:31 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 HCD 28.50

**ORDER DIRECTING SERVICE AND NOTICE OF MOTION FOR AUTHORITY  
TO SELL PROPERTY OF THE ESTATE BY PRIVATE SALE FREE AND CLEAR  
OF ALL LIENS AND OTHER INTEREST; AND SETTING DATE, TIME  
AND PLACE OF HEARING AND TIME WITHIN WHICH ANSWERS  
AND OBJECTIONS MAY BE FILED AND SERVED**

The Trustee has filed a motion for authority to sell property of the estate other than in the ordinary course of business by private sale free and clear of liens and other interests. It presently appears that it will not be necessary to determine the validity, priority or extent of such liens to the property proposed for sale by adversary proceeding under Bankruptcy Rule 7001(2).

1. The Trustee or his attorney is directed to serve copy of said motion and of this Order on each of the entities named or identified in the motion as having liens on or interests in the property proposed for sale. Such service shall be made and certified to the Clerk under and in accordance with Bankruptcy Rule 7004. Each of the entities so served is **ORDERED** to file an answer to the Trustee's motion on or before **September 21, 1994**, and to serve a copy on the Trustee or his attorney. If any such party fails to answer, the Court may authorize the Trustee to proceed with the proposed sale.

2. The Clerk is directed to give and certify notice by mail to the Debtor's attorney, the Trustee, Trustee's attorney, all parties requesting notice, and all creditors and indenture trustees, as required by Bankruptcy Rule 2002(a)(2), by mailing copies of the motion and this Order to the persons and entities there required.

3. Pursuant to Bankruptcy Rule 6004(b), written objections to the proposed sale, in order to be considered, shall be filed with the Clerk and Served on the Trustee or his attorney on or before **September 21, 1994**. The address of the Clerk's office where objections must be filed is:

Clerk, U. S. Bankruptcy Court  
Robert S. Vance Federal Building  
1800 - 5th Avenue North - Room 120  
Birmingham, Alabama 35203

The name and address of the Trustee or his attorney upon whom copies of objections must be served is:

Max C. Pope  
P. O. Box 370991  
Birmingham, AL 35237

Any such objection must be advocated by the objecting party in person or through an attorney at the hearing scheduled in this matter. The failure to file, serve and advocate an objection to the proposed sale in the manner here required shall constitute a waiver of objection.

4. The Trustee's motion will be heard in **Courtroom Number 1 of the Robert S. Vance Federal Building, 1800 5th Avenue North, Birmingham, Alabama, on September 26, 1994, at 1:30 p.m.** Written objections will be heard at that time.

IT IS SO ORDERED this the 31<sup>st</sup> day of August, 1994.



CLIFFORD FULFORD  
United States Bankruptcy Judge

xc: Debtor(s)  
S. Phillip Bahakel, Attorney for Debtor(s)  
Max C. Pope, Trustee  
All Scheduled Creditors And/Or Their Attorneys Filing Claims  
Bankruptcy Administrator  
Courtroom Deputy

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

In Re:

STEPHEN E. DAILEY and  
KAREN D. DAILEY

Debtor(s).

Bankruptcy Case No. 94-03048-RCF-7

(Chapter 7 Case)

FILED

AUG 25 1994

Clerk, U.S. Bankruptcy Court  
Northern District of Alabama

NOTICE OF INTENT TO SELL AND  
MOTION TO SELL FREE AND CLEAR OF  
LIENS, INTEREST, OR OTHER ENCUMBRANCES

Comes now the Trustee, Max C. Pope, by and through his attorney, and gives notice pursuant to Federal Bankruptcy Rules of Procedure 2002 and 6004 of intent to sell the property described below free and clear of certain liens, interests, and/or other encumbrances pursuant to Title 11 United States Code Section 363(f) as described below, and moves this Court for an order authorizing the Trustee to sell said property and as grounds for said motion states the following:

1. Max C. Pope is duly appointed Trustee in the above-styled case.
2. The Trustee proposes to sell a parcel of real property as described in Exhibit "A" of Exhibit "1" both are hereby incorporated by reference and a mobile home situated thereon hereinafter (collectively referred to as "property").
3. The Trustee proposes to sell, by private sale, the property for a total price of Fifty-Five Thousand and no/100 Dollars (\$55,000.00) to Connie Mack Smith and Carolyn J. Smith under the terms and conditions as set out in Exhibit "1". The sale shall take place ten (10) days after the Order approving such sale is entered by the Court.
4. The real property is subject to two (2) mortgages. The first mortgage is to Hoyt E. Henderson and wife, A. Lavada

Henderson in the approximate amount of Twenty-Eight Thousand and no/100 Dollars (\$28,000.00). The second mortgage is to Charles G. Kessler in the approximate amount of One Thousand and no/100 Dollars (\$1,000.00).

5. The property is subject to the following liens:

<u>Creditor</u>	<u>Amount</u>
a. Oxford Finance Companies (mobile home)	\$16,000.00
b. Associates Financial Services of Florida, Inc. (mobile home)	\$ 2,709.07
c. Associates Financial Services of Alabama, Inc.	\$ 3,878.16
d. Brookwood Medical Center	\$ 2,287.05
e. Brookwood Medical Center	\$ 7,645.01
f. Brookwood Medical Center	\$ 9,863.73
g. Shelby County Health Care	\$ 815.98
h. Norwood Clinic, Inc.	\$ 693.00
i. McRae's, Inc.	\$ 517.35
j. Parisian Services, Inc.	\$ <u>876.74</u>
TOTAL	\$45,286.09

6. The Debtors have agreed to claim only Six Thousand and no/100 Dollars (\$6,000.00) as their homestead exemption.

7. The first two mortgages as described above will be paid in full by the proceeds of this sale. Their mortgages shall attach to the proceeds of this sale.

8. The judgment creditors and the Debtors have agreed to accept Twenty Thousand Dollars and no/100 Dollars (\$20,000.00) from the proceeds of this sale to be shared pro rata as consideration for releasing their liens or interests in the property as set out below:

a. Oxford Finance Companies	\$ 9,473.80
b. Associates Financial Services of Florida, Inc.	\$ 1,604.08
c. Associates Financial Services of Alabama, Inc.	\$ 2,296.31
d. Brookwood Medical Center	\$ 1,354.19
e. Brookwood Medical Center (see below/paragraph no. 9)	\$ 0.00

f.	Brookwood Medical Center (see below/paragraph no. 9)	\$	0.00
g.	Shelby County Health Care	\$	483.15
h.	Norwood Clinic, Inc.	\$	410.33
i.	McRae's, Inc.	\$	306.33
j.	Parisian Services, Inc.	\$	519.13
k.	Stephen and Karen Dailey (Debtors)	\$	<u>3,552.68</u>
	TOTAL		\$20,000.00

9. Brookwood Medical Center through their attorney of record has agreed that the two (2) judgment liens totalling \$17,508.74 (listed in paragraph number 5(e) and (f)) appear to be preferences filed within the ninety (90) days prior to the Debtors filing this bankruptcy and not enforceable liens against the Trustee.

10. This should leave approximately Six Thousand and no/100 Dollars (\$6,000.00) for the bankruptcy estate.

11. IF YOU CLAIM A LIEN ON OR INTEREST IN, ANY OF THE PROPERTY AND IT IS NOT SET FORTH HEREIN ABOVE YOU SHOULD IMMEDIATELY MAKE SUCH LIEN OR INTEREST KNOWN TO THE TRUSTEE AND THE COURT. THIS PROPOSED SALE MAY EFFECT YOUR RIGHTS UNDER 11 U.S.C. SECTION 363.

12. There is equity in the property to be sold in this sale based on the liens and interest set forth above and the purchase price.

WHEREFORE, upon the above stated premises the Trustee moves this Court to:

A. Pursuant to Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, Order the date, time and place of the hearing on this Notice and Motion to sell property of the estate and the time within which objections to said Notice and Motion shall be filed and served upon the Trustee;

B. At such hearing, approve and confirm the Trustee's

proposed sale and authorize the Trustee to sell and convey the estate's interest in the Property to the Purchaser by private sale, free and clear of liens and other interest on the terms and conditions as herein set forth or as the Court shall find just and proper;

C. Pursuant to Rule 6004(f)(2) of the Federal Rules of Bankruptcy Procedure, authorize the Trustee to execute any instruments necessary or ordered by the Court to effectuate the transfer of the Assets to the Purchaser;

D. Order that the liens and interests of the parties named herein to attach to the net proceeds and enter an order allowing the Trustee to pay the lienholders as set out above.

E. Order that if there is a dispute among the lienholders or Trustee on the Property as to the validity, amount, or priority of any such lien or claim, such sale is approved and confirmed on the basis requested, and the Trustee is directed to hold the net proceeds, subject to payment upon proper application for professional fees and other administrative expenses and to bring an adversary proceeding to resolve said disputes; and

F. Grant such further, additional or other relief as may be necessary to effectuate the sale of the assets.

DATED: This the 25<sup>th</sup> day of August, 1994.



Max C. Pope, Jr.  
Attorney for Trustee  
P. O. Box 370991  
Birmingham, Alabama 35237  
(205) 327-5566

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Notice of Intent to Sell and Motion to Sell Free and Clear of Liens, Interest, or other Encumbrances has this 25<sup>th</sup> day of August, 1994, been mailed via U.S. Mail, postage-prepaid to the following addresses:

Phillip S. Bahakel  
2166 Hwy. 31 south  
P. O. Box 88  
Pelham, Alabama 35124

Bankruptcy Administrator  
1800 5th Avenue North  
Room 120  
Birmingham, Alabama 35203

A. J. Beck, Attorney for  
Brookwood Medical Center  
Gordon, Silberman, Wiggins  
& Childs  
1400 SouthTrust Tower  
420 20th Street North  
Birmingham, Alabama 35203-3204

Attorney for Associates  
Financial Services of Alabama,  
Inc.  
P. O. Box 2189  
Montgomery, Alabama 36102-2189

Ramsey, Dismuke & Eggleston  
Attorneys for Associates  
Financial Services of Florida,  
Inc.  
P. O. Box 201207  
Arlington, Texas 76006-2107  
Attention: Linda Inderbrock

Ramsay, Dismuke & Eggleston  
2005 East Lamar Boulevard  
Suite 100  
Arlington, Texas 76006-7301

Ms. Linda Burke  
Oxford Financial Services  
7300 Old York Road  
Philadelphia, PA 19126-1884

Richard Breibart  
Attorney for McRae's, Inc.  
2700 Highway 280 South  
Suite 155-E  
Birmingham, Alabama 35223

Associates Financial Services  
Co. of Florida, Inc.  
P. O. Box 1280  
Panama City, Florida 32402

Sirote Permutt  
Attorneys for Shelby County  
Health Care Authorities and  
Norwood Clinic  
2222 Arlington Avenue  
P. O. Box 55727  
Birmingham, Alabama 35255-5727

Najjar, Denaburg, P.C.  
Attorneys for Parisian  
Services, Inc.  
2125 Morris Avenue  
Birmingham, Alabama 35203

Corey B. Moore  
Attorney for Hoyt E. Henderson  
3058 Independence Drive  
P. O. Box 530985  
Birmingham, Alabama 35253



Max G. Pope, Jr.

Birmingham, Alabama June 21 1994

The Undersigned Purchaser(s) Connie Mack Smith and Carolyn J. Smith hereby agree to purchase and the Undersigned Seller(s) Max C. Pope as Trustee hereby agree to sell the following described real estate, together with all improvements, shrubbery, plantings, fixtures and appurtenances, situated in the City of Sterrett County of Shelby Alabama, on the terms stated below:

Address \_\_\_\_\_ and legally described as lot \_\_\_\_\_ Block See Legal Described On Exhibit "A" Attached Hereto Survey \_\_\_\_\_ Map Book \_\_\_\_\_ Page \_\_\_\_\_

- 1. THE PURCHASE PRICE: shall be \$ 55,000.00 payable as follows:  
 Earnest Money, receipt of which is hereby acknowledged by the Agent ..... \$ 500.00  
 Cash on closing this sale ..... \$ 54,500.00

The seller is the trustee of the bankruptcy case of Steve E. Dailey and Karen D. Dailey and this contract is subject to the approval ("Court Approval") of the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, in case number 94-03048-RCF-7.

Purchasers will pay closing cost including the cost of title insurance.

Purchasers will pay property taxes.

2. ~~INSURANCE~~ Said property is sold and is to be conveyed subject to any mineral and mining rights not owned by the undersigned Seller and subject to present zoning classification, agriculture and not located in a flood plain.

3. PRORATIONS & HAZARD INSURANCE: The taxes, as determined on the date of closing, insurance and accrued interest on the mortgages, if any, are to be prorated between the Seller and Purchaser as of the date of delivery of the deed, and any existing advance escrow deposits shall be credited to the Seller. The Seller will keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered. if any presently exist. m p

4. CLOSING & POSSESSION DATES: The sale shall be closed and the deed delivered on or before 10 days from court approval except the Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. Possession is to be given on delivery of the deed, if the property is then vacant; otherwise possession shall be delivered 5 days days after delivery of the deed.

5. CONVEYANCE: The Seller agrees to convey said property to the Purchaser by Survivorship warranty deed free of all encumbrances, except as hereinabove set out and Seller and Purchaser agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds.

6. THE COMMISSION PAYABLE TO THE AGENT IN THIS SALE IS NOT SET BY THE BIRMINGHAM AREA BOARD OF REALTORS<sup>®</sup>, INC., BUT IS NEGOTIABLE BETWEEN THE SELLER AND THE AGENT, and in this contract, the Seller agrees to pay N/A as Agent, a sales commission in the amount of N/A of the total purchase price for negotiating this sale.

7. CONDITION OF PROPERTY: Seller agrees to deliver the heating, cooling, plumbing and electrical systems and any built-in appliances in operable condition at the time of closing. It shall be the responsibility of the Purchaser, at Purchaser's expense, to satisfy himself that all conditions of this contract are satisfied before closing. After closing, all conditions of the property, as well as any aforementioned items and systems, are the responsibility of the Purchaser. **THE AGENT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE CONDITION OF SUBJECT PROPERTY.**

8. SELLER WARRANTS that he has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements, or alterations to said premises that have not been satisfactorily made. The Seller warrants that there is no unpaid indebtedness on the subject property except as described in this contract. These warranties shall survive the delivery of the above deed.

9. EARNEST MONEY & PURCHASER'S DEFAULT: The Seller hereby authorizes Max C. Pope, as Trustee to hold the earnest money in trust for the Seller pending the fulfillment of this contract. In the event the Purchaser fails to carry out and perform the terms of this agreement the earnest money shall be forfeited as liquidated damages at the option of the Seller, provided the Seller agrees to the cancellation of this contract. Said earnest money so forfeited shall be divided equally between the Seller and his Agent.

10. ADDITIONAL PROVISIONS set forth on the reverse side, initialed by all parties, are hereby made a part of this contract and this contract states the entire agreement between the parties and merges in this agreement all statements, representations, and covenants heretofore made, and any agreements not incorporated herein are void and of no force and effect.

\_\_\_\_\_  
PURCHASER - Connie Mack Smith (SEAL)

\_\_\_\_\_  
PURCHASER - Carolyn J. Smith (SEAL)

\_\_\_\_\_  
SELLER - Max C. Pope, as Trustee (SEAL)

\_\_\_\_\_  
SELLER (SEAL)

WITNESS TO SELLER'S SIGNATURES: Receipt is hereby acknowledged of the earnest money as hereinabove set forth  C

FIRM \_\_\_\_\_  
By: \_\_\_\_\_

EXHIBIT "1"



Hoyt E. Henderson & Lavada Henderson

to:

Steve E. Dailey & Karen D. Dailey

EXHIBIT "A"

Begin at the NE corner of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of section 30, township 18 S, Range 2 East, thence run on an azimuth of 246 degrees 40 mins. 500.0 feet; thence turn an azimuth of 214 degrees 57 mins. 45.44 feet to the point of intersection of the SW R.O.W. of central of Georgia Railroad and the Southerly boundary of Pumpkin Swamp Road, said point being the point of beginning, thence turn an azimuth of 245 degrees 43 mins. along the said Southerly boundary of Pumpkin Swamp Road 321.4 feet; thence turn an azimuth of 241 degrees 03mins. 195.8 feet along said boundary; thence turn an azimuth of 235 degrees 22 mins. along said boundary 83.7 feet to the North line of A. B. Turner Property; thence turn an azimuth of 88 degrees 58 mins. along the said North line 181.67 feet to the N.E. corner of A.B. Turner Property; thence turn an azimuth of 178 degrees 37mins. along the East line of A. B. Turner Property 564.75 feet to an existing iron pipe; thence turn an azimuth of 88 degrees 58 mins along the Northern boundary of an old road 572.0 feet to the SW corner of S. M. Goodwin Property; thence turn an azimuth of 19 degrees 42 mins. along the Westerly line of said S. M. Goodwin Property 496.7 feet to the South Westerly R.O.W. of Central of Georgia R.R.; thence turn an azimuth of 311 degrees 43 mins. along the said South Westerly R.O.W. of said Central of Georgia R.R. 539.8 feet to the point of beginning, said Parcel contains 11.29 acres more or less.

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009 MCD 28.50