

**ROBB EVANS OF
ROBB EVANS & ASSOCIATES LLC
Receiver of I Works, Inc., et al. and
the Assets of Jeremy Johnson**

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**Federal Trade Commission v. Jeremy Johnson, I Works, Inc., et al.
CASE No. 2:10-CV-02203-MMD-GWF**

Notice of Filing of Emergency Motion for Order:

- (1) Approving and Confirming Sale of 2988 Kings Court Lane, Washington , Utah and Sale and Overbid Procedures and for Related Relief; and**
- (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors;**

Filed February 13, 2014

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**ROBB EVANS OF ROBB EVANS &
11 ASSOCIATES LLC**

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

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15 FEDERAL TRADE COMMISSION,
16 Plaintiff,
17 v.
18 JEREMY JOHNSON, etc., et al.,
19 Defendants.

Case No. 2:10-CV-02203-MMD-GWF

**NOTICE OF FILING OF EMERGENCY
MOTION FOR ORDER: (1) APPROVING
AND CONFIRMING SALE OF 2988
KINGS COURT LANE, WASHINGTON,
UTAH AND SALE AND OVERBID
PROCEDURES AND FOR RELATED
RELIEF; AND (2) GRANTING RELIEF
FROM LOCAL RULE 66-5 PERTAINING
TO NOTICE TO CREDITORS**

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23 PLEASE TAKE NOTICE that Robb Evans of Robb Evans & Associates LLC
24 (“Receiver”), the Receiver pursuant to the Court’s Preliminary Injunction Order issued
25 February 10, 2011, has filed with the Court his Emergency Motion for Order: (1) Approving and
26 Confirming Sale of 2988 Kings Court Lane, Washington, Utah and Sale and Overbid Procedures
27 and for Related Relief; and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to
28 Creditors ("Emergency Motion"). Pursuant to the Emergency Motion, the Receiver moves the

1 Court for an order authorizing the Receiver to sell the single family residence located at 2988
2 Kings Court Lane, Washington, Utah on the terms and conditions more fully described below and
3 for related relief on an emergency basis for the reasons detailed below. The Receiver specifically
4 seeks the following relief:

5 1. An order approving the Receiver's proposed sale and overbid procedures for the
6 sale of the single family residence located at 2988 Kings Court Lane, Washington, Utah ("Kings
7 Court Property") and authorizing and confirming the sale of the Kings Court Property on an "as
8 is" basis more fully described in the sale contract documents by private sale either (a) for a
9 purchase price of \$265,000, all cash and without any financing contingency, to Deborah Mertons
10 ("Proposed Buyer") pursuant to the Real Estate Purchase Contract dated as of December 9, 2013
11 together with related Addendum No. 1, Addendum No. 2, Multiple Offer Disclosure, Seller's
12 Notice to Buyers of Multiple Offers and Letter from James Fales (broker) to Buyer dated
13 November 26, 2013, Addendum No. 3, the "As-Is" Purchase and Additional Terms provisions
14 (collectively the "Proposed Purchase Agreement"), a true and correct copy of which Proposed
15 Purchase Agreement is attached as Exhibit 3 to the Declaration of M. Val Miller filed concurrently
16 herewith in support of the Motion, or (b) to such higher qualified overbidder who hereafter
17 submits the highest qualified overbid at a subsequent overbid session to be conducted under the
18 terms and conditions more fully set forth herein and approved by the Court, which sale the
19 Receiver requests be approved and confirmed without further notice, hearing or order. The
20 overbid procedures, terms and conditions for which the Receiver seeks approval include the
21 following:

22 A. The overbid session shall be conducted within 30 days of the date of entry of the
23 order granting the Motion. The overbid session will be conducted at the offices of Kirch & Todd
24 Real Estate, 43 South 100 East, Suite 200, St. George, Utah 84770;

25 B. The Receiver will cause to be published a notice of the proposed sale of the Kings
26 Court Property to a qualified bidder at the overbid session to be conducted under paragraph 1.A.
27 above, which notice shall state the date, time and place of the overbid session, the requirement for
28 pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the

1 property, as described below ("Overbid Notice"). The Receiver will cause the Overbid Notice to
2 be published in The Spectrum newspaper one time at least ten days prior to the scheduled overbid
3 session date. The Spectrum is a daily newspaper of general circulation that covers Southern Utah
4 and specifically Washington where the Kings Court Property is located.

5 C. Any person wishing to overbid at the overbid session shall be required to pre-
6 qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid session
7 by delivering to the Receiver's office located at 6037 S. Ft. Apache Road, Suite 130, Las Vegas,
8 Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid together with
9 (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in
10 the Receiver's sole opinion and judgment, the prospective overbidder's ability to complete and
11 close a purchase of the Kings Court Property through sufficient funds or credit facilities within 20
12 days of the date of the overbid session, and (c) a cashier's check in the sum of \$5,000 payable to I
13 Works Inc. Receivership QSF, which cashier's check shall become non-refundable upon
14 acceptance of the overbidder's overbid at the conclusion of the overbid session.

15 D. Overbidders bidding at the overbid session will be deemed to have completed all
16 inspections of the Kings Court Property and will be deemed to have waived and/or removed all
17 contingencies in favor of the buyer under the Proposed Purchase Agreement, including without
18 limitation any contingency pertaining to inspection of title, and will be required to complete a cash
19 purchase of the Kings Court Property and close escrow for the purchase of the Kings Court
20 Property within 20 days of the date of the overbid session. The successful overbidder will be
21 required to execute a purchase agreement for the Kings Court Property substantially in the form of
22 the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after
23 conclusion of the overbid session.

24 E. The initial overbid shall be in the amount of \$291,500 (an amount that is \$26,500,
25 or 10%, higher than the purchase price under the Proposed Purchase Agreement), and all
26 subsequent overbids shall be in an amount at least \$10,000 higher than the preceding bid.

27 F. Pursuant to the Proposed Purchase Agreement and the Receiver's listing agreement
28 with James Fales of Todd & Kirch Real Estate ("Broker"), a sales commission in the amount of

1 6% of the purchase price paid for the Kings Court Property by the Proposed Buyer, or if a higher
2 overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid
3 from the proceeds of sale of the Kings Court Property at close of escrow and shall be paid to the
4 Broker as listing agent under the listing agreement, or if buyer is represented by a cooperating
5 broker, shall be divided and paid equally to the Broker as the listing agent and the buyer's
6 cooperating broker, under the terms of the listing agreement.

7 G. The sale of the Kings Court Property by private sale to the Proposed Buyer under
8 the Proposed Purchase Agreement, or to the person who submits the highest qualified overbid at
9 the overbid session to be conducted pursuant to the foregoing procedures, will be deemed
10 confirmed by Order on the Motion without further notice or hearing and without the necessity of
11 any subsequent motion for confirmation of the sale;

12 2. In connection with the proposed sale of the Kings Court Property, the Receiver
13 further seeks the following relief:

14 A. An order authorizing the Receiver to execute all documents and instruments
15 necessary or convenient to complete, implement, effectuate and close the sale of the Kings Court
16 Property to the purchaser, including but not limited to the deed conveying title to the Kings Court
17 Property;

18 B. An order authorizing the Receiver to permit and/or cause to be paid from the
19 proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be
20 paid under the terms of the Proposed Purchase Agreement by the seller from the proceeds of sale,
21 all commissions provided for in the Proposed Purchase Agreement, the Receiver's listing
22 agreement for the property attached as Exhibit 2 to the Declaration of M. Val Miller in support
23 hereof and the Motion, and all real property tax liens and prorated real property taxes due up to the
24 date of closing; and

25 3. An order deeming notice of the Motion to be sufficient under Local Civil Rule 66-5
26 based on the service of a notice of the filing of the Motion and the Motion on all parties and the
27 affected lienholders, and service of a notice of the filing of the Motion on all known non-consumer
28 creditors of the estate, and on all known taxing authorities with a potential claim in the

1 receivership estate concurrent with the filing of the Motion with the Court, but not on the tens of
2 thousands of potential consumer creditors.

3 **EMERGENCY RELIEF**

4 The Kings Court Property was acquired by the receivership estate when the receivership
5 estate was the successful bidder at a foreclosure sale on Receivership Defendant Elite Debit, Inc.'s
6 first deed of trust encumbering that property. At the time of Elite Debit, Inc.'s foreclosure, there
7 was a lien recorded against the Kings Court Property in favor of the Internal Revenue Service
8 ("IRS") for delinquent taxes owed by Loyd Johnston. Under applicable law, the IRS has an
9 opportunity to redeem the property from foreclosure sale for 120 days after the sale (through
10 February 11, 2014). The Receiver accordingly waited to seek approval of the proposed sale
11 pending determination as to whether the IRS would exercise its right of redemption, which it did
12 not.

13 The Proposed Buyer under the Proposed Purchase Agreement has identified the Kings
14 Court Property as the "downleg" of the Proposed Buyer's 1031 exchange. Although the Receiver
15 has expressly stated in the Proposed Purchase Agreement that the Receiver is not responsible in
16 any way for or a participant in the 1031 exchange by the Proposed Buyer, the Receiver
17 nevertheless understands that the Proposed Buyer needs to close the sale of the Kings Court
18 Property by no later than April 14, 2014 in order to timely complete the 1031 exchange. The
19 Proposed Purchase Agreement provides for the sale to be subject to overbidding, which requires
20 the Receiver to have approximately 30 days after the entry of the sale order to organize and
21 publish notice of the overbidding session and close escrow for the sale after completion of the
22 overbidding session. Given the time between the earliest date the Receiver could file the Motion
23 after expiration of the redemption period (February 12, 2014) and the deadline to close to the
24 Proposed Buyer in order to timely complete the 1031 exchange (April 14, 2014), there is
25 insufficient time to have the Motion submitted on regular notice, to resolve any objections, to have
26 the order entered if the sale is approved, to conduct the overbid session and to close escrow in time
27 to meet the Proposed Buyer's closing deadline.

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1 Further good cause exists for the Motion to be determined on an emergency basis in that
2 the proposed sale is very favorable but still contemplates the conduct of an overbid session noticed
3 to the public before the final sale is confirmed and closed. The overbid session provides further
4 protection to any interested party to ensure the value of this asset is maximized.

5 The Motion is made pursuant to 28 U.S.C. § 2001(b) and Local Civil Rules 7-5, 66-5 and
6 66-10 and other applicable law and is based upon the notice of motion and motion, the
7 accompanying memorandum of points and authorities and the Declaration of M. Val Miller filed
8 in support hereof, this separate notice of filing of the Motion, any reply, the pleadings, records and
9 files of this Court in this matter of which the Receiver requests the Court take judicial notice, and
10 upon all other pleadings, documentary evidence and argument as may be presented to the Court by
11 the Receiver.

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13 Dated: February 13, 2014

Respectfully submitted,

RANDOLPH L. HOWARD
KOLESAR & LEATHAM, CHTD.

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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19 By: /s/ Gary Owen Caris

Gary Owen Caris
Lesley Anne Hawes

20
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