

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

**In re:**

**MICHAEL D. VICK,** ) **Case No. 08-50775-FJS**  
 ) **Chapter 11**  
**Debtor.** )  
 )  
\_\_\_\_\_ )

**DEBTOR'S MOTION PURSUANT TO §327 OF THE BANKRUPTCY  
CODE FOR AN ORDER AUTHORIZING THE RETENTION OF  
FUNARI REALTY LLC AS REAL ESTATE BROKER IN CONNECTION  
WITH THE DEBTOR'S DARLINGTON RUN PROPERTY LOCATED IN GEORGIA**

Michael D. Vick, the debtor and debtor-in-possession (the "Debtor") moves the United States Bankruptcy Court for the Eastern District of Virginia, Newport News Division (the "Bankruptcy Court") for entry of an order pursuant to §327 of the Bankruptcy Code authorizing the retention of Funari Realty, LLC ("Funari Realty") as the Debtor's real estate broker in connection with the sale of the Debtor's real property located at 2927 Darlington Run, Duluth, Georgia. In support of the motion, the Debtor respectfully states as follows:

Peter R. Ginsberg, Esq.  
Mark S. Lichtenstein, Esq.  
CROWELL & MORING LLP  
153 East 53<sup>rd</sup> Street, 31<sup>st</sup> Floor  
New York, New York 10022  
(212) 223-4000 - Telephone  
(212) 223-4134 - Facsimile  
Counsel for the Debtor

Peter K. Campsen, Esq. (VSB No. 18133)  
Dennis T. Lewandowski, Esq. (VSB No. 22232)  
Kaufman & Canoles, P.C.  
150 W. Main Street, Suite 2100  
Norfolk, VA 23510  
(757) 624-3000 – Telephone  
(757) 624-3169 – Facsimile  
Counsel for the Debtor

**JURISDICTION**

1. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §1409.
3. The statutory basis for the relief requested herein is §327 of the Bankruptcy Code.

**BACKGROUND**

4. On July 7, 2008 (the "Petition Date"), the Debtor filed a Chapter 11 petition with this Court.
5. On July 15, 2008, the office of the United States Trustee formed a creditors' committee.
6. The Debtor is an individual and a resident of Hampton, Virginia. The Debtor is currently serving a 23 month prison sentence at the United States Penitentiary at Leavenworth, Kansas, and is expected to be released in 2009. Upon his release, the Debtor will return to his home in Hampton, Virginia and will seek to rebuild his life and professional football career.

**THE PROPERTY**

7. The Debtor is the owner of a certain parcel of real estate in the State of Georgia, which is located at 2927 Darlington Run, Duluth, Georgia (the "Property").
8. The Debtor believes that there is substantial equity in the Property which could be used to fund the ongoing expenses of this Chapter 11 case, as well as payments to creditors.
9. Indeed, prior to the Petition Date, the Debtor retained the services of Water Realty Group to market and sell the Property at a price of approximately \$4,500,000.

10. The Property is currently encumbered by a first mortgage in the approximate amount of \$2,850,000.<sup>1</sup>

11. Accordingly, the sale of the Property would provide the Debtor's estate with the opportunity to generate revenues for the benefit of the estate and its creditors.

**THE COURT SHOULD AUTHORIZE THE DEBTOR TO  
RETAIN FUNARI REALTY AS ITS REAL ESTATE BROKER**

12. The Debtor seeks Court approval to retain Funari Realty as its real estate broker for the purpose of marketing and assisting in the sale of the Property.

13. The real estate broker and agents at Funari Realty are licensed by the State of Georgia and are familiar with the real estate market in Duluth, Georgia is where the Property is located. Moreover, as set forth in the Declaration of Anthony B. Funari, a copy of which is annexed hereto as **Exhibit A**, Funari Realty is a disinterested person within the meaning of §101 of the Bankruptcy Code.

14. Additionally, the particular real estate agents at Funari Realty who were formerly affiliated with Waters Realty Group formed the Funari Group earlier this year and, as set forth in more detail in the accompanying declaration of Anthony B. Funari, the listing of the Property was transferred from Waters Realty Group to the Funari Group. Accordingly, the real estate agents at Funari Realty have specific experience in connection with the Property and have already made substantial efforts in marketing the Property. In fact, Funari Realty is currently in active negotiations with a potential purchaser for the Property.

---

<sup>1</sup> Within the 90 day preference period, multiple judgment liens were recorded against the Property, which the Debtor believes are avoidable as preferences under §547 of the Bankruptcy Code. The Debtor is in the process of commencing adversary proceedings against the holders of such judgment liens.

15. In connection with the retention of Funari Realty, the Debtor seeks authority to enter into an exclusive seller listing agreement with Funari Realty in connection with the Property in the form annexed hereto as **Exhibit B** (the 'Agreement'). Under the proposed Agreement, Funari Realty would be entitled to a 4% commission on the sale of the Property upon entry of a Court order authorizing the sale and closing.<sup>2</sup> The Debtor submits that such fee arrangement is reasonable, and is, in fact, less than the 5% fee arrangement contained in the Debtor's pre-petition brokerage agreement with Waters Realty Group.

16. Finally, by way of clarification, the instant motion does not seek Court authority to approve the sale of the Property at this time; the Debtor is merely seeking authority to retain a real estate broker. Any sale of the Property would be subject to the filing of a motion pursuant to §363 of the Bankruptcy Code or a plan of reorganization, which must be approved by the Bankruptcy Court before any sale may be consummated. Accordingly, the Debtor respectfully requests authority pursuant to §327 of the Bankruptcy Code to retain Funari Realty and enter into the Agreement.

---

<sup>2</sup> Under the Debtor's proposed Agreement with Funari Realty, any cooperating broker would be entitled to half of this 4% commission from Funari Realty.

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) authorizing the Debtor to retain Funari Realty as its real estate broker with respect to the Property pursuant to §327 of the Bankruptcy Code; (ii) authorizing the Debtor to enter into the Agreement annexed hereto as Exhibit B in connection with the Property; and (iii) granting the Debtor such other and further relief as is just and proper.

August 18, 2008

Respectfully submitted,  
CROWELL & MORING LLP  
Peter R. Ginsberg, Esq.  
Mark Lichtenstein, Esq.  
153 East 53<sup>rd</sup> Street, 31<sup>st</sup> Floor  
New York, New York 10022  
Telephone: (212) 223-4000  
Facsimile: (212) 223-4134  
Attorneys for Debtor

-and-

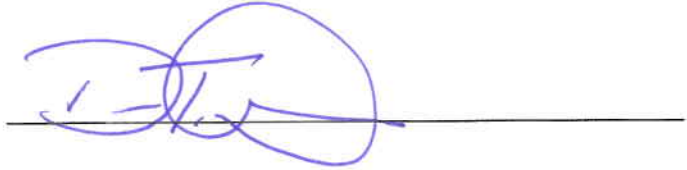
KAUFMAN & CANOLES, a  
Professional corporation

By: /s/ [Signature]

Paul K. Campsen, Esq. (VSB No. 18133)  
Dennis T. Lewandowski (VSB No. 22232)  
150 West Main Street, Suit 2100  
Norfolk, VA 23510  
Telephone: (757) 624-3000  
Facsimile: (757) 624-3169  
Attorneys for Debtor

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Debtor's Motion Pursuant To §327 Of The Bankruptcy Code For An Order Authorizing The Retention Of Funari Realty LLC As Real Estate Broker In Connection With The Debtor's Darlington Run Property Located In Georgia was mailed first-class, postage prepaid U.S. Mail, this 18<sup>th</sup> day of August, 2008, to the parties on Schedule 1 and to all creditors and parties-in-interest who are included in the Bankruptcy Court's ECF e-mail notification system.



13932803

**SCHEDULE 1**

Official Committee of Unsecured Creditors  
c/o Ross C. Reaves, Esq.  
John D. McIntyre, Esq.  
Laura C. Pyle, Esq.  
Willcox & Savage, P.C.  
One Commercial Place, Suite 1800  
Norfolk, VA 23510

Kenneth N. Whitehurst, III, Esq.  
Office of the U. S. Trustee  
200 Granby Street, 625 Federal Building  
Norfolk, VA 23510

Aron P. M. Tady  
Smith Gambrell & Russell  
1230 Peachtree Street, Suite 3100  
Atlanta, GA 30309

Alliant CPA Group LLC  
1395 South Marietta Parkway  
Building 500, Suite 210  
Marietta, GA 30067

Al Otto  
White Horse Advisors, LLC  
6151 Powers Ferry Rd., Suite 400  
Atlanta, GA 30339

American Express  
P.O. Box 650448  
Dallas, TX 75265-0448

Arthur Washington  
2527 Camp Creek Parkway  
College Park, GA 30337

Atlanta Falcons  
c/o Phyllis B. Sumner, Esq.  
Sarah R. Borders, Esq.  
King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, GA 30309

Atlanta Falcons  
Rich McKay  
440 Falcon Parkway  
Flowery Branch, GA 30542

Atlantic Gas Light  
Virginia Natural Gas  
Attn: Fan B. Woodard  
P. O. Box 4569  
Atlanta, GA 30302-4569

Atlantic Wine & Package LLC  
3906 Roswell Road  
Atlanta, GA 30342

AT&T  
P. O. Box 105503  
Atlanta, GA 30348-5503

Baker & Daniels  
202 S. Michigan Street, Suite 1400  
South Bend, IN 46601

Bank of America NA  
c/o Hilary B. Bonial, Esq.  
Tyler Jones, Esq.  
Brice Vander Linden & Wernick, P.C.  
9441 LBJ Freeway, Suite 350  
Dallas, TX 75243

National Football League  
c/o Douglas M. Foley, Esq.  
Daniel F. Blanks, Esq.  
McGuire Woods LLP  
9000 World Trade Center  
101 West Main Street  
Norfolk, Virginia 23510

National Football League  
c/o Gregg H. Levy, Esq.  
Michael St. Patrick Baxter, Esq.  
Dennis B. Auerbach, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Avenue NW  
Washington, DC 20004

National Football League  
c/o Susan Power Johnston, Esq.  
Covington & Burling LLP  
620 Eighth Avenue  
New York, NY 10018

Divine Seven, LLC  
dba Payless Car Rental  
2527 Camp Creek Parkway  
College Park, GA 30337

1<sup>st</sup> Source Bank  
c/o Patrick D. Murphy, Esq.  
Boveri Murphy Rice & Laude LLP  
400 Plaza Building  
210 South Michigan Street  
South Bend, IN 46601

Gerald Frank Jenkins  
45 NW Old Vermont Place  
Atlanta, GA 30328

Internal Revenue Service  
c/o Greg D. Stefan, Esq.  
Assistant US Attorney  
101 West Main Street, Suite 800  
Norfolk, VA 23510

Internal Revenue Service  
P. O. Box 21126  
Philadelphia, PA 19114

Taxing Authority Consulting Services, P.C.  
c/o Mark Ames, Esq.  
2812 Emerywood Parkway, Suite 220  
Richmond, VA 23294

Joel Enterprises, Inc.  
19 Roslyn Hill Drive  
Richmond, VA 23229

Joel Enterprises  
c/o Benjamin C. Ackerly, Esq.  
Hill B Weelford Jr., Esq.  
HUNTON & WILLIAMS  
Riverfront Plaza East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074

Joel Enterprises Inc.  
c/o Arthur E. Schmalz, Esq.  
Linda Lemmon Najjoun, Esq.  
HUNTON & WILLIAMS LLP  
1751 Pinnacle Drive, Suite 1700  
McLean, VA 22102

Joel Enterprises, Inc.  
c/o Warren David Harless, Esq.  
Michael W. Smith, Esq.  
Jennifer LeMore, Esq.  
CHRISTIAN & BARTON, L.L.P.  
909 East Main Street, Suite 1200  
Richmond, VA 23219-3095

Lawrence H. Woodward, Esq.  
SHUTTLEWORTH RULOFF SWAIN, PC  
Southport Centre  
4525 South Boulevard, Suite 300  
Virginia Beach, VA 23452-1137

Office of US Attorney  
Robert J. Dole US Courthouse  
Suite 360, 500 State Avenue  
Kansas City, KS 66101

Old Point National Bank  
Attn: Al Smith, Special Assets Manager  
P. O. Box 3392  
Hampton, VA 23663

Radtke Sports Inc.  
3346 Trickum Road, Suite 103  
Woodstock, GA 30188

Radtke Sports, Inc.  
c/o P. Darrell Kimbrell, Esq.  
KIMBRELL & BURGAR LLC  
75 Fourteenth Street NE, Suite 2120  
Atlanta, GA 30309

Royal Bank of Canada  
c/o Lisa P. Sumner, Esq.  
Poyner & Spruill LLP  
P. O. Box 10096  
Raleigh, NC 27605

Royal Bank of Canada  
c/o Peter G. Zemanian, Esq.  
Zemanian Law Group  
150 Boush Street, Suite 600  
Norfolk, VA 23510

Stephen R. Gross  
HLB Gross Collin PC  
2625 Cumberland Parkway, Suite 400  
Atlanta, GA 30339

Isle of Wight County  
Treasurer's Office  
P.O. Box 79  
Isle of Wight, VA 23397

Tinsley Bacon Tinsley LLC  
3600 Mansell Road, Suite 300  
Alpharetta, GA 30022

Wachovia Bank N.A.  
c/o John T. Vian, Esq.  
Smith Gambrell & Russell  
1230 Peachtree Street NE, Suite 3100  
Atlanta, GA 30309-3592

Georgia Department of Revenue  
P. O. Box 161108  
Atlanta, GA 30321-1108

US Bankcorp Manifest  
Funding Services  
1450 Channel Parkway  
Marshall, MN 56238

08/18/08

1383402\1