

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Case No. 8:19-CV-886-T-33SPF

Plaintiff,

v.

OASIS INTERNATIONAL GROUP,
LIMITED; *et al.*,

Defendants;

and

MAINSTREAM FUND SERVICES, INC.;;
et al.,

Relief Defendants.

THE RECEIVER'S UNOPPOSED MOTION
TO APPROVE SALE OF PERSONAL PROPERTY VIA AUCTION
(LUXURY VEHICLES)

Burton W. Wiand, as receiver over the assets of the above-captioned defendants and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) moves the Court to approve the sale of luxury automobile vehicles, free and clear of any and all liens, encumbrances, and claims. As explained below, the Receiver believes the proposed sale(s) are commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves for relief from the requirements of 28 U.S.C. §§ 2001 and 2004 in connection with the sales.

BACKGROUND

At the request of the Commodity Futures Trading Commission (“**CFTC**”), the Court appointed the Receiver on April 15, 2019 and directed him, in relevant part, to “[t]ake exclusive custody, control, and possession of the Receivership Estate,” which includes “all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants.” (Doc. 7 at p. 14, ¶ 32 & p. 15, ¶ 30.b)

The Court also directed the Receiver to develop a plan for the liquidation of Receivership assets (Doc. 44 ¶¶ 51, 52), which the Receiver filed on June 7, 2019 (Doc. 103) (the “**Liquidation Plan**”). That same day, the Receiver moved the Court to approve (1) the Liquidation Plan, (2) a Memorandum of Understanding (the “**MOU**”) between the Receiver and the United States Marshals Service (“**USMS**”), and (3) a Consent Forfeiture Agreement (the “**Consent**”) between the Receiver and the Department of Justice (“**DOJ**”). (Doc. 105) The Court granted the Receiver’s motion and approved the attached documents on June 13, 2019. (Doc. 112) On July 11, 2019, the Court entered a Consolidated Receivership Order (Doc. 177) (the “**Consolidated Order**”), which combined and superseded two prior orders (Docs. 7 & 44) and is now the operative document governing the Receiver’s activities.

The Court’s Preauthorization to Sell Personal Property

In the Consolidated Order, the Court authorized the Receiver to sell personal property (as opposed to real property) without obtaining leave of Court:

The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

(Doc. 177 ¶ 38) In the Liquidation Plan, however, the Receiver stated that he would only exercise that authority in connection with items valued individually at \$10,000 or less.¹ Because the value of the proposed vehicle sales will exceed \$10,000, the Receiver seeks Court approval of the transactions, as a matter of prudence and transparency. Further, because the vehicles are subject to administrative forfeiture proceedings and each vehicle is being forfeited on a rolling basis, the Receiver brings this motion for wholesale approval of the sale of the vehicles, rather than in piecemeal fashion as each vehicle becomes forfeited and ready for liquidation.

The Seizure and Proposed Sale of Vehicles

On or about April 18, 2019 and in relation to this matter, the United States Department of Justice, Federal Bureau of Investigation, seized a total of 8 luxury automobile vehicles from the Defendants and/or Relief Defendants. The vehicles seized, their approximate value, whether or not they are subject to liens, and their current status, is as follows:

No.	Vehicle	Approximate Value	Lien	Current Status
1.	2015 Ferrari California T (VIN: ZFF77XJA3F0208054)	\$174,300	No	Forfeited
2.	2018 Porsche 911 Targa (VIN: WP0BB2A99JS134720)	\$113,375	Yes	Awaiting Forfeiture
3.	2017 Maserati Ghibli S Q4 (VIN: ZAM57RTS8H1217171)	\$60,800	Yes	Forfeited
4.	2018 Land Rover Range Rover Velar (VIN: SALYL2RV3JA717260)	\$57,825	No	Forfeited
5.	2016 Mercedes-Benz GLE 400 (VIN: 4JGDA5GB5GA622371)	\$37,000	No	Forfeited

¹ For items valued above that amount, the Receiver stated that he intended to seek Court approval pursuant to 28 U.S.C. § 2004 (“**Section 2004**”), which provides: “Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.” As described in the Liquidation Plan, 28 U.S.C. § 2001 (“**Section 2001**”) applies to public and private sales of real property and contemplates appraisals, notice by publication, and (potentially) a hearing. For the reasons discussed below, the Receiver does not believe compliance with Section 2001 is necessary with respect to the proposed sale, which should instead proceed under the Consolidated Order.

No.	Vehicle	Approximate Value	Lien	Current Status
6.	2015 Land Rover Range Rover Evoque (VIN: SALVR2BG5FH025349)	\$25,100	Yes	Abandoned ²
7.	2015 Mercedes-Benz SLK350 (VIN: WDDPK5HA8FF099097)	\$28,050	Yes	Forfeited
8.	2018 Mercedes-Benz SL450R (VIN: WDDJK6GAOJF050546)	\$65,825	Yes	Abandoned ²

The MOU between the Receiver and the United States Marshals Service “governs the sale of Forfeited Receivership Assets by the Receiver, the safekeeping and distribution of the sale proceeds, and any necessary recordkeeping.” (See MOU (Doc. 105-2), at ¶ III). On July 30, 2019, the Receiver entered into a Consent to Forfeiture, in which he agreed to the administrative forfeiture of the vehicles to the United States, pursuant to the MOU. Pursuant to the MOU, the Marshals Service is directed to “transfer the Forfeited Receivership Assets to the Receiver upon receipt of a non-appealable forfeiture order or other order authorizing the sale of the Forfeited Receivership Assets and acceptance of the Liquidation Plan.” (MOU at IV B.) The MOU states that the Receiver “has sole discretion to decide the logistics of the sale of the Forfeited Receivership Assets, on the terms and in the manner the Receiver deems most beneficial to the Receivership Estate and with due regard to the realization of the true and proper value of such property.” (MOU at IV C.) Once a receivership asset is liquidated, the Receiver is directed to

² The Department of Justice, with approval of the Receiver, has abandoned the 2018 Mercedes-Benz SL 450R and 2015 Land Rover Range Rover Evoque to lenders because the vehicles had no positive equity due to lender liens.

transfer the proceeds, less certain expenses,³ to the Marshals Service for deposit in the Department of Justice Asset Forfeiture Fund. (MOU at IV E)⁴

As of the filing of this Motion and as reflected above, the following five vehicles have been administratively forfeited to the United States: (1) 2017 Maserati Ghibli; (2) 2018 Land Rover Range Rover Velar; (3) 2015 Mercedes-Benz SLK 350; (4) 2016 Mercedes-Benz GLE 400; (5) 2015 Ferrari California T. (*See* Declarations of Administrative Forfeiture, attached as Exhibit “1”) Notice of the administrative civil forfeiture actions were sent to all known parties who may have a legal or possessory interests in the vehicles, and notice of the forfeiture actions was posted on an official government internet site for at least 30-consecutive days. No claims were pursued which would otherwise require cessation of the forfeiture actions.

As a result of the forfeitures, the five vehicles described above are now ready to be liquidated by the Receiver under the terms of the MOU and Liquidation Plan.⁵ The Receiver understands that the Department of Justice is continuing to perform due-diligence on the 2018 Porsche 911 Targa, which is expected to be forfeited in the near future; however, a precise timetable for this forfeiture is unknown. To avoid the piecemeal practice of moving this Court for approval of sale for each and every vehicle as they become forfeited, the Receiver moves for

³ “From the proceeds of the sale of the Forfeited Receivership Assets, the Receiver may only deduct direct expenses necessary to safeguard, maintain, advertise, and sell the Forfeited Receivership Assets, such as closing costs, publication costs, and broker fees or commissions (“Asset Expenses”). The Receiver will submit all other costs and fees to the CFTC and the United States District Court supervising the Receiver in accordance with the procedures set forth in the Receivership Orders.” (MOU, ¶ IV D.)

⁴ The MOU contemplates that funds from the liquidation of forfeited receivership assets will be eventually remitted back to the Receivership Estate. (*See e.g.*, MOU, ¶ VI)

⁵ To the extent the Receiver determines the lien amount on a vehicle exceeds the expected sale range less costs, he will abandon that vehicle to the appropriate lienholder.

the Court's wholesale approval of the sale of the vehicles through the below auction process, which the Receiver believes is commercially reasonable and in the best interest of the Receivership.

Proposed Public Auction Sale of the Vehicles

The vehicles are currently being stored by the U.S. Marshals Service at Orlando Auto Auction ("OAA"), a commercial facility the government has an agreement with to store and sell vehicles. The Receiver has sought solicitations from several public and private (dealer only) auction houses, as well as dealerships (consignment) to obtain bids for the sale of the vehicles. The Receiver received various bids, with seller's or consignment fees ranging from 1% to 10% of the gross sale price of the vehicle. The Receiver has negotiated with OAA to charge a 1.5% seller's fee. This seller's fee is lower than almost all other bids received, and the Marshals Service has had favorable dealings using OAA to sell other forfeited property. OAA holds auctions on a weekly basis, and they regularly advertise their sales and inventory. If a vehicle fails to sell during one of the weekly auctions, OAA has agreed to roll-over the sale to the next week's auction at no charge to the Receivership.

Based on the competitive seller's fee offered by OAA (and to avoid the costs of transporting the vehicles to another vendor), the Receiver believes that selling the vehicles through OAA is the most efficient and cost-effective option for sale of the vehicles and will result in the highest net-recovery for the Receivership.⁶ In order to avoid unreasonably-low sale

⁶ While sale of the vehicles on consignment through a consumer-facing dealership may result in higher gross sale amounts, the Receiver reasonably believes that the higher consignment fees charged by dealerships, as well as transportation costs would, on a net basis, mitigate any higher gross sale price.

prices, OAA allows the Receiver to set “reserve” prices for the vehicles, below which they may not be sold.

Given the foregoing efforts and the existence of a ready and able method of sale, the Receiver believes that completing the sale of forfeited vehicles through auction, and as described below, without obtaining any appraisals, publishing a formal legal notice, or holding a hearing, is commercially reasonable and will obtain the largest possible recovery for the Receivership Estate.

ARGUMENT

I. The Court has broad power over this Receivership, and the sale of the vehicles through auction is in the Receivership Estate’s best interest.

The Court’s power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is

especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Given these principles, the Court should approve the proposed sale for two reasons. First, the Court has already preauthorized the sale through the Consolidated Order, and the nature of the sale does not implicate the concerns raised by the Liquidation Plan or the need to employ the additional procedures contemplated by Section 2001. Second, the sales via auction provide significant savings (and thus, a net benefit) to the Receivership through the reduced seller's fees offered by OAA and the avoidance of transport fees to a different vendor. The proposed sales via auction are commercial reasonable because the process ensures competitive market prices for the vehicles are obtained and that the vehicles are sold in a quick and efficient manner.

II. The requirements of 28 U.S.C. §§ 2001 and 2004 should be waived.

Pursuant to 28 U.S.C. § 2004, personal property sold under a federal court order should be sold in accordance with 28 U.S.C. § 2001, which governs the sale of real property, *unless a court orders otherwise*. 28 U.S.C. § 2001 imposes relatively onerous and costly procedures, including a hearing with notice to "all interested parties ... by publication or otherwise as the court directs;" court appointment of three independent appraisers to value the property; and publication of the sale terms in at least one newspaper. *See* 28 U.S.C. § 2001(b). Thus, "*unless the Court orders otherwise*" pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which newspaper a notice of proposed sale be published prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should "order otherwise" in this instance with regard to (i) the need for

any appraisals for any of the vehicles; and (ii) the publication in newspapers of notice of any sale. The Court's authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership estate.

The Receiver believes he is in a position to adequately evaluate the value of the vehicles, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the Receivership estate. Indeed, compliance with the statutory requirements could partially offset the expected net sale proceeds of some or all of the vehicles. Given the ready availability of automobile valuation tools such as Kelley Blue Book, NADA, etc., the Receiver does not believe that a separate appraisal process (and its attendant costs) will result in a marginal benefit to the Receivership estate. The Receiver believes that he has accurately valued the vehicles and can set "reserve" floor prices to avoid prices which are lower than $\frac{2}{3}$ of the appraised value per 28 USC § 2001. Additionally, because the vehicles being sold have already been subject to administrative forfeiture proceedings which contain their own notice provisions, the Receiver does not believe that the additional notice and hearing requirements of 28 USC § 2001(b) are necessary.

The waivers requested by the Receiver routinely occur in enforcement actions and receiverships, including those in this district. *See FTC et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale procedures of 28 U.S.C. § 2001); *SEC v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale

proceeds). Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived here.

III. To the extent that liens attach to any of the vehicles, the Receiver requests an order allowing him to sell the vehicles free and clear of any such liens or encumbrances.

As noted above, certain of the vehicles have liens in amounts which may constitute a significant portion of the expected sale price of the vehicles. In lieu of contesting the administrative forfeitures, the lienholders filed petitions for remission. In the ordinary course, their petitions, if granted by the Federal Bureau of Investigation, would be paid from the sale proceeds from the vehicles. In this case, the Receiver has agreed to use the proceeds of any sale to pay applicable lien holders in appropriate amounts. However, because buyers of automobiles at auction expect that vehicles will be sold without any liens or encumbrances, the Receiver requests an Order from the Court allowing him to sell the vehicles free and clear of all liens, claims and encumbrances. Additionally, the Receiver requests that the Court's Order direct any applicable state motor vehicle regulatory agency to issue title for the vehicles upon the purchaser providing sufficient proof of sale.⁷

The relief sought in this motion falls squarely within the Court's powers and is in the best interests of the Receivership and the vehicles' creditors. The relief is also consistent with precedent, which establishes that a court of equity—like this one in these proceedings—may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g.,*

⁷ The Receiver understands that the administrative forfeiture proceedings vest title to the vehicles in the United States, free and clear of any liens, claims and encumbrances. However, in an abundance of caution, the Receiver seeks an order from this Court confirming that the vehicles are to be sold free and clear of encumbrances. Additionally, the Receiver understands that upon sale, the Marshals Service will typically issue a GFA Form SF-97 (Certificate to Obtain Title to a Vehicle). However, given that the Receiver is conducting the vehicle sales, the Marshals Service will not be issuing SF-97 forms in this instance.

Miners' Bank of Wilkes-Barre v. Acker, 66 F.2d 850, 853 (3d Cir. 1933); *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, a court has this authority because when a court of competent jurisdiction takes possession of property through its officers—like this Court has done with the vehicles in connection with the Receivership—it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931).

Importantly, the Receiver is not asking the Court to extinguish, overrule, or otherwise impair any creditor's claim. He is only asking the Court to order that the vehicles to be sold are free and clear of liens, claims and encumbrances, and then allow the Receiver to use the proceeds of the sales to satisfy the liens, to the extent applicable.

CONCLUSION

The Receiver moves the Court for entry of an order (in substantially the form of the proposed order attached as Exhibit 2) to sell the vehicles, free and clear of all claims, liens, and encumbrances and to waive the valuation, notice and hearing requirements of 28 U.S.C. §§ 2001 and 2004.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the CFTC as well as counsel for Defendants and Relief Defendants and believes this motion is unopposed. Counsel has sent a copy of this motion prior to filing to Department of Justice per the MOU and is authorized to represent to the Court that the Department of Justice has no objection to the requested relief.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on October 11, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. On this same date, the following non-CM/ECF users were served via email:

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Respectfully submitted,

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