

**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; OASIS MANAGEMENT, LLC;
SATELLITE HOLDINGS COMPANY;
MICHAEL J DACORTA; JOSEPH S.
ANILE, II.; RAYMOND P MONTIE III;
FRANCISCO "FRANK" L. DURAN; and
JOHN J. HAAS,

Defendants;

and

MAINSTREAM FUND SERVICES, INC.;
BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF THE
LION FITNESS, LLC; 444 GULF OF
MEXICO DRIVE, LLC; 4064 FOUNDERS
CLUB DRIVE, LLC; 6922 LACANTERA
CIRCLE, LLC; 13318 LOST KEY PLACE,
LLC; and 4 OAKS LLC,

Relief Defendants.

**THE RECEIVER'S VERIFIED MOTION
TO APPROVE THE PRIVATE SALE OF REAL PROPERTY – SPECIFICALLY,
6922 LACANTERA CIRCLE IN LAKEWOOD RANCH, FLORIDA**

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 6922 Lacantera Circle in Lakewood Ranch, Florida (the “**Property**”) to John Browder and Kathy Chang Browder (the “**Purchasers**”) for \$2,050,000. A copy of the Purchase and Sale Agreement is attached as **Exhibit 1** (the “**PSA**”). As explained below, the Receiver believes the proposed sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate.

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 Procedures Applicable to Sales of Real Property

The Consolidated Order requires the Receiver to obtain Court approval of sales of real (as opposed to personal) property:

Upon further Order of this Court, pursuant to such procedures as many be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates. The parties agree the Receiver can move the Court to waive strict compliance with 28 U.S.C. §§ 2001 and 2004.

Doc. 177 ¶ 40. The procedures applicable to private sales of receivership real estate are set forth in 28 U.S.C. § 2001(b) (“**Section 2001(b)**”):

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b).¹ As noted above and in the Consolidated Order, the Receiver can move the Court to waive strict compliance with these procedures, but as explained below, the Receiver has substantially and materially complied with the statute.

¹ Section 2001(b) governs here because this is a private sale of real property and because 28 U.S.C. §§ 2001(a) and 2004 deal with public auctions and personal property, respectively.

The Civil Forfeiture of the Property

On April 17, 2019, the DOJ, through the United States Attorney's Office for the Middle District of Florida, filed a civil forfeiture action against the Property and several others. *See United States of America v. 13318 Lost Key Place, Lakewood Ranch, Florida et al.*, Case No. 8:19-cv-00908 (M.D. Fla.) (Doc. 1 ¶ 1) (the "**Forfeiture Action**" or "**FA**"). To avoid unnecessary litigation between the Receiver and the government or other interested parties, the Receiver consented to the forfeiture of the Property (among others), which Consent this Court approved. *See Docs. 105, 112.*

On September 4, 2019, the DOJ filed a motion for judgment of forfeiture regarding, in relevant part, the Property (FA Doc. 66), and the court in the Forfeiture Action granted the DOJ's motion on September 5, 2019 (FA Doc. 67) (the "**Forfeiture Order**"). The court recognized claims against the Property, in relevant part, by (1) the Manatee County Tax Collector; (2) Country Club/Edgewater Village Association, Inc.; and (3) Nathan and Heather Perry, who hold a \$1,500,000 interest-only mortgage on the Property. FA Doc. 67 at 2, 4. The court then condemned and forfeited all right, title, and interest in the Property to the United States "for disposition according to law." *Id.* at 3. The court held that "[c]lear title to the [Property] is now vested in the United States of America, subject to the terms of the Consent Forfeiture Agreement between the United States and the Receiver" and the claims described above "(to the extent that there are sufficient proceeds after the payment of expenses related to seizure, maintenance, custody, and disposal of the ... Property)." *Id.* at 4.

The Receiver’s Role under the MOU in Cooperation with the USMS

The USMS and the Receiver executed an MOU, which establishes procedures for the liquidation of the Property (and others at issue in the Forfeiture Action). Doc. 105, Ex. B. According to the MOU, “[t]he 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.” *Id.* § VI.C. The MOU also recognizes that “[a]ll sales of Receivership Assets, including Forfeited Receivership Assets, must comply with the provisions set forth in the Receivership Orders [now, the Consolidated Order].” *Id.* § III. Finally, the MOU authorizes the Receiver to deduct certain “**Asset Expenses**” from the proceeds of the sale, which are defined as “direct expenses necessary to safeguard, maintain, advertise, and sell” the assets, including “closing costs, publication costs, and broker fees or commissions.” *Id.* § IV.D.

At closing, the Receiver and the United States will transfer the Property to the Purchasers, as set forth in the PSA.² After the Receiver sells the Property (or any other forfeited property), the Receiver will deduct any Asset Expenses and transfer the net proceeds to the USMS for deposit in the Department of Justice Asset Forfeiture Fund. *Id.* § IV.E. The Receiver will file petitions for remission with the DOJ, and the sale proceeds will be returned for distribution to defrauded investors through a to-be-established claims

² The United States, by its consent to this motion, and the USMS, by its consent to the PSA, authorize the Receiver to transfer the interest of the United States in the Property to the Purchasers pursuant to a Receiver’s Deed.

process supervised by this Court. As noted above, the Court has already approved the MOU and its contents. *See* Docs. 105, 112.

The Property, the Receiver's Marketing Efforts, and the Proposed Sale

The Property was owned by relief defendant 6922 Lacantera Circle, LLC, and until the Receiver's appointment, defendant Michael DaCorta was the principal of that entity. The Property contains approximately 7,629 square feet, including five bedrooms, six-and-a-half bathrooms, a wine cellar, a game room, theater room, and a pool. Lacantera appears to have been purchased on September 21, 2018 for approximately \$2,125,000. As previously mentioned, Nathan and Heather Perry hold a \$1,500,000 interest-only mortgage on the property. Under pertinent documents and forfeiture law, they are entitled to unpaid interest of \$16,027.44 as of June 17, 2019, with a per diem rate of \$205.48 until the date of payment. They are also entitled to \$2,500 of attorneys' fees. The 2019 tax assessed value of the Property is between \$1,288,321 (school assessed value) and \$1,897,380 (just/market value).

The Receiver's marketing efforts included listing the Property for sale on his website³ and retaining Coldwell Banker to advertise the Property through various means. The list price was \$2,200,000. The marketing efforts generated interest from several potential purchasers, which ultimately resulted in the PSA. While the purchase price is slightly lower than the list price, it is nevertheless at least \$152,520 more than the highest tax assessed value. It represents a semi-net recovery of approximately \$495,000 for the Receivership

³ www.oasisreceivership.com/assets-for-sale/6922-lacantera-circle/

Estate (estimating the amount due the mortgage-holders at approximately \$1,555,000 but not accounting for other closing costs, taxes, assessments, *etc.*).

To further ensure the fairness of the purchase price, the Receiver has obtained three valuations of the Property. First, Sotheby's International Realty estimates a reasonable sale price of \$2,025,000. A copy of that opinion is attached as **Exhibit 2**. Second, SaraSellsSarasota.com, PLLC estimates a sale price of \$1,950,000. A copy of that opinion is attached as **Exhibit 3**. Third, Keller Williams Realty, Inc. estimates a sale price between \$2,000,000 and \$2,050,000. A copy of that opinion is attached as **Exhibit 4**. As demonstrated by these exhibits, the purchase price is fair and reasonable.

Section 2001(b) Publication

To satisfy the publication requirement of Section 2001(b), the Receiver will publish the terms of the sale for one day in the Sarasota Herald Tribune, which is regularly issued and of general circulation in the district where the Property is located. A copy of the notice is attached as **Exhibit 5**.⁴ The Receiver will also publish this motion and the notice on his website – www.oasisreceivership.com. No less than 10 days after publication of the notice, the Receiver will inform the Court whether any potential purchaser submitted a “bona fide offer,” as contemplated by Section 2001(b). Given these circumstances and the existence of ready-and-willing Purchasers, the Receiver believes that approval of the proposed sale pursuant to the Liquidation Plan and Section 2001(b) will obtain the largest possible recovery for the Receivership Estate.

⁴ Publication is currently scheduled for January 24, 2020, which was the earliest available date, according to the paper.

ARGUMENT

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 at least six reasons. First, the Receiver is complying with Section 2001(b). Specifically, he obtained

three valuations of the Property, and the purchase price is equal to or greater than the estimates disclosed in those valuations. *See* Exs. 2-4. Section 2001(b) provides that “[n]o private sale shall be confirmed at a price less than two-thirds of the appraised value” – here, \$1,338,888.88 based on an average of the three highest valuations. The \$2,050,000 purchase price is well above that amount. The Receiver will publish notice of the proposed sale and its terms in the Sarasota Herald Tribune. After the expiration of the 10-day statutory window, the Receiver will advise the Court whether any individual or entity submitted a “bona fide offer” – *i.e.*, an offer 10% higher than the current purchase price. If no one files an objection to this motion or submits a “bona fide offer,” to conserve resources, the Receiver asks that the Court grant the motion without a hearing. *See* Doc. 177 ¶ 40 (“The parties agree the Receiver can move the Court to waive strict compliance with 28 U.S.C. §§ 2001 and 2004.”).

Second, as noted above, the purchase price represents a semi-net recovery of \$495,000 for the ultimate benefit of the Receivership Estate.

Third, the United States and the USMS are the only parties with an interest in the Property under the Forfeiture Order (aside from the forfeiture claimants who will be paid at closing), and both the United States and the USMS consent to the transaction, as evidenced below and in the PSA. The Receiver is not aware of any other encumbrances. Under such circumstances, the Consolidated Order authorizes the Receiver (in conjunction with the United States) to transfer clear title to the Purchasers. *See* Doc. 177 ¶ 40.

Fourth, the existence of ready-and-willing Purchasers will ensure an efficient and cost-effective recovery for the Receivership Estate.

Fifth, sale of the Property will eliminate the Receiver's need to pay for additional, expensive upkeep and carrying costs on a multimillion-dollar waterfront building, including insurance, utilities, security, repairs, and interest costs of \$205.48 per day. The Receiver has spent approximately \$100,000 repairing, maintaining, and safeguarding the Property.⁵ The Receiver will recover those costs as Asset Expenses under the MOU.

Sixth, this is an arms'-length transaction. The Receiver is not aware of any connection between the Purchasers and the Receiver or any other connection between the Purchasers and the defendants or relief defendants.

CONCLUSION

For the reasons discussed above, the transaction is commercially reasonable, fair and equitable, and will ensure a cost-effective recovery for the ultimate benefit of the Receivership Estate. As such, the Receiver requests an order, in substantially the form attached as **Exhibit 6**: (1) approving the transaction and the PSA and (2) ordering that the Receiver may transfer title to the Property by Receiver's Deed to the Purchasers, free and clear of all claims, liens, and encumbrances, including without limitation the interests of the Receiver and the United States.

⁵ When the Receiver took possession of the Property, it was under construction. Among other things, the kitchen and certain bathrooms were not functional. In consultation with a realtor, the Receiver determined to complete the construction to achieve a higher sale price, which cost approximately \$50,000. Another \$25,000 of this amount is attributable to property taxes.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the CFTC and is authorized to represent to the Court that the CFTC has no objection to the requested relief. The United States also has no objection to the requested relief and consents to the sale of the Property and transfer of title to the Purchasers, as reflected below and in the PSA. Relief defendant Mainstream as well as defendants Montie, Haas, and Anile do not oppose the motion. The other entities (except Satellite Holdings, which is associated with defendant Haas) have defaulted.

Counsel for defendant Duran has withdrawn. As such, the Receiver attempted to confer with Duran by email on January 17, 2020 and January 20, 2020. The Receiver also left a voicemail for Duran at the number provided by his former attorney on January 21, 2020, but Duran has not responded to any of these communications. The Receiver will update this certification if Duran conveys his position, but for the reasons discussed above, the Receiver cannot further delay the filing of this motion.

Defendant DaCorta objects to the relief requested in the motion. He claims that the sale price is too low, given the “perfect” condition and features of the Property. *But see supra* fn. 5 & Doc. 195 at 15-18. According to DaCorta, this is because “[r]eal estate agents are generally lazy and use their computers to determine a price without actually seeing and valuing all the additional features unique to a home.” As explained throughout this motion and in the attached exhibits, DaCorta’s objection is without merit. More importantly, DaCorta has no interest in the Property, which has been forfeited to the United States.

As such, the Court should grant this motion over DaCorta's objection, but the Receiver asks the Court to wait until he has complied with the publication requirements in Section 2001(b), as explained above, and filed the requisite notices.

VERIFICATION OF THE RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this motion is true and correct to the best of my knowledge and belief.

s/ Burton W. Wiand
Burton W. Wiand, Court-Appointed Receiver

CONSENT OF THE UNITED STATES

By the signature of its representative to this motion, the United States consents to the Receiver's transfer of the United States' interest in and title to the Property by Receiver's Deed to the Purchasers, as set forth in the PSA and proposed order.

s/ Suzanne C. Nebesky
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on January 21, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I also served the foregoing by mail and email on the following non-CM/ECF participants:

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