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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

v.

ART INTELLECT, INC., a Utah corporation,
d/b/a MASON HILL and VIRTUAL MG,
PATRICK MERRILL BRODY, LAURA A.
ROSER, and GREGORY D. WOOD,

Defendants.

**RECEIVER'S MOTION FOR AN
ORDER (1) TO VACATE
RESIDENCE, (2) TO COMPEL
PRODUCTION OF COMPUTER
PASSWORD, AND (3) TO DIRECT
THE EXECUTION OF A QUIT
CLAIM DEED**

2:11-cv-00357 TC

Judge Tena Campbell

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Art Intellect, Inc.

d/b/a Mason Hill and VirtualMG, by and through counsel of record, moves this Court for an order (1) directing Defendants Laura Roser and Patrick Brody to vacate the residence located at 6492 Canyon Road, Salt Lake City, Utah (the "Residence"), thus enabling the Receiver to take possession of the real property and the personal property located therein, (2) compelling Laura Roser to produce the password to her computer so that the Receiver may access files pertaining to the Receivership Estate without having to pay for forensic computer services to break the

password, and (3) directing Laura Roser to execute a quit claim deed to 340/342 Rogen Street, Lehigh Acres, Florida (the “Rogen Property”) to Art Intellect, Inc., which property was purchased in the name of Art Intellect for \$50,100 in investors’ funds and transferred approximately six weeks later to Laura Roser for \$100. A proposed order is attached as Exhibit A.

The Order Appointing Receiver, Freezing Assets and Other Relief (Docket #5) gives the Receiver “exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated,” of Defendants Art Intellect, Inc., Patrick M. Brody and Laura A. Roser (the “Receivership Defendants”) (Docket #5 at p. 2, ¶1). The Individual Receivership Defendants are further ordered to “answer under oath to the Receiver all questions which the Receiver may put to them...regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the Receivership...,” “to assist the Receiver in fulfilling his duties and obligations” and to “respond promptly and truthfully to all requests for information and documents from the Receiver.” Docket #5 at p. 7-8, ¶¶13, 15.

For these reasons, and the reasons stated in the memorandum filed in support of this motion, the Receiver moves this Court for the order outlined above.

Respectfully submitted this 18th day of July, 2011.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James

Jennifer A. James

Neil A. Kaplan

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above was served via email on this 18th

day of July, 2011 on the following:

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Court-Appointed Receiver

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

v.

ART INTELLECT, INC., a Utah corporation,
d/b/a MASON HILL and VIRTUAL MG,
PATRICK MERRILL BRODY, LAURA A.
ROSER, and GREGORY D. WOOD,

Defendants.

**RECEIVER'S MEMORANDUM IN
SUPPORT OF MOTION FOR AN
ORDER (1) TO VACATE
RESIDENCE, (2) TO COMPEL
PRODUCTION OF COMPUTER
PASSWORD, AND (3) TO DIRECT
THE EXECUTION OF A QUIT
CLAIM DEED**

2:11-cv-00357 TC

Judge Tena Campbell

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Art Intellect, Inc.

d/b/a Mason Hill and VirtualMG, by and through counsel of record, submits this memorandum in support of his motion for an order (1) directing Defendants Laura Roser and Patrick Brody to vacate the residence located at 6492 Canyon Road, Salt Lake City, Utah (the "Residence"), thus enabling the Receiver to take possession of the real property and the personal property located therein, (2) compelling Laura Roser to produce the password to her computer so that the

Receiver may access files pertaining to the Receivership Estate without having to pay for forensic computer services to break the password, and (3) directing Laura Roser to execute a quit claim deed to 340/342 Rogen Street, Lehigh Acres, Florida (the “Rogen Property”) to Art Intellect, Inc., which property was purchased in the name of Art Intellect for \$50,100 in investors’ funds and transferred approximately six weeks later to Laura Roser for \$100.

FACTUAL BACKGROUND

1. On April 18, 2011, this Court issued an Order Appointing Receiver, Freezing Assets and Other Relief (the “Receivership Order”) (Docket #5), which gave the Court “exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated,” of Defendants Art Intellect, Inc., Patrick M. Brody and Laura A. Roser (the “Receivership Defendants”) (Docket #5 at p. 2, ¶1). The Receivership Order also appointed Wayne Klein as Receiver with the power and duty to take “custody, control, and possession of all Receivership Property.” *Id.* 3-4, ¶¶5-8.

2. The Receivership Order specifically authorizes the Receiver to take immediate possession of all real and personal property of the Receivership Defendants. *Id.* at 8-9, ¶¶19-20. The Order further gives the Receiver the authority to “take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property[.]” (*Id.* at 4, ¶ 8(G).) (emphasis added) and to “use the Receivership Property for the benefit of the Receivership Estates[.]” (*Id.* at 4, § 8(D).)

3. One asset of the Receivership Estate in the name of Laura Roser is the Residence, which was home to Brody and Roser. Payments for the mortgage on the Residence were made from the accounts of Art Intellect, Inc. (and therefore from investor funds) and personal property

located in the Residence was purchased with funds from the corporate Receivership Defendants. (See Ex. 9 (Declaration of Scott R. Frost dated April 14, 2011) to Docket #3, at 918.)

4. The Receivership Order also restrained and enjoined the Receivership Defendants from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing or withdrawing such assets.” Docket #5 at p. 2-3, ¶4.

5. Despite this provision, the Receivership Defendants offered the Residence and furniture, computers and other items located in the Residence for sale on the website KSL.com in a number of classified ads with photographs of the property. (See Docket #s 23 and 24.)

6. On May 17, 2011, counsel for the Receivership Defendants represented to the Court at a status conference there had been no sale of assets. Counsel specifically stated that none of the items listed for sale on KSL.com had been sold. (See Docket #43 at p. 13, lines 18-24).

7. The following day, the Receiver and his staff inventoried the Residence and learned that a number of valuable and expensive items had been removed from the Residence, including a grand piano, almost new hot tub, rare books, jewelry, a restored Porsche automobile, Mac computers, an iPhone and iPad. (See Ex. F (Declaration of R. Wayne Klein) to Docket #64, at pp.34-, ¶¶5-7.)

8. The Receivership Order also requires the individual Receivership Defendants to “turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Property. Docket #5 at p. 5, ¶9. The Individual Receivership Defendants are further ordered to “answer under oath to the Receiver all

questions which the Receiver may put to them... regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the Receivership...,” “to assist the Receiver in fulfilling his duties and obligations” and to “respond promptly and truthfully to all requests for information and documents from the Receiver.” Docket #5 at p. 7-8, ¶¶13, 15.

9. Despite these directives, Laura Roser has refused to give the Receiver the password to her computer which was located in the offices of Mason Hill and is now in the possession of the Receiver. At her deposition, Roser asserted her Fifth Amendment privilege against self-incrimination and refused to divulge the password.

10. Five real properties in Florida have been identified by the Receiver as assets of the Receivership estate. Four of the properties are titled in the names of the corporate Receivership Defendants, a fact which enables the Receiver to make arrangements for their preservation and ultimate disposal pursuant to further Court order. The Rogan Property, however, was titled in the name of Art Intellect, Inc. when it was purchased on May 27, 2010, for \$50,100, but title was transferred to Laura Roser on July 7, 2010, when it was sold to her for \$100. The Rogan Property has not been completed and needs approximately \$20,000 worth of work. *See* Ex. F to Docket #63, at pp. 5-6, ¶11.

11. The Rogan Property is subject to two mortgages totaling \$91,000. *Id.* The Receiver is in contact with the lenders on this property to explore ways of resolving the interests of the lenders and the Receivership entities, but his future efforts in this regard will be hindered by the title being in the name of Laura Roser, rather than Art Intellect.

ARGUMENT

I. Brody and Roser should be Ordered to Vacate the Residence so that the Receiver Can Take Possession Pursuant to the Terms of the Receivership Order.

As described above, the Receivership Order clearly and unequivocally gives the Receiver the authority to take possession of the real property of the individual Receivership Defendants.

Here, this is an equitable result because the corporate Receivership Defendants used investor funds to pay the mortgage on the Residence. *See* Ex. 9 to Docket #3 at ¶8. The Receiver is also entitled to possession of the personal property in the Residence under the terms of the Receivership Order. Once he has possession of the personal property and the Residence where that property is located, he can protect its value to the estate by safely preserving it and selling it at the right time and for the right price.

Of major concern to the Receiver are the attempts by the individual Receivership Defendants to dispose of the Residence and the personal property in the Residence in blatant disregard of this Court's Receivership Order and their deception thereafter concerning these attempts to dispose of the assets as well as the actual removal of some of the assets from the Residence. The only way for the real and personal property to be protected for the benefit of the Receivership estate and investors is for the Receiver to take possession and safeguard the value of the assets.

II. Roser Should Be Ordered to Disclose the Computer Password.

The Receivership Order could not state more plainly that the individual Receivership Defendants have the affirmative duty to assist the Receiver by responding promptly and truthfully to the Receiver's request for information needed for administration of the estate. Further, the Receivership Order makes Laura Roser's computer an asset of the Receivership estate and gives the Receiver the right to possession of it. The computer, however, is useless

without the means to access the information in it. The Receiver could engage a computer forensic expert to attempt to gain access to the data without the password, but this would be an unnecessary expense to the Receivership Estate. Ms. Roser should simply turn the password over, but since she has failed to do so, it is appropriate for this Court to specifically order her to reveal the password and spare the Receivership the expense of hiring an expert.

III. Roser Should Be Ordered to Execute a Quitclaim Deed Conveying the Rogen Property to the Receiver.

Under the terms of the Receivership Order, the Rogen Property is an asset of the Receivership Estate whether titled in the name of Art Intellect, Inc. or the personal name of Laura Roser. As such, the Receiver has the authority to preserve and manage it and to dispose of it upon further order of the Court. Since the asset was purchased with Art Intellect funds, and transferred into the name of Laura Roser shortly thereafter without any real consideration, it is appropriate for the Court to order Roser to reconvey the property to Art Intellect. Such a reconveyance would clarify the ownership of the Rogen Property and facilitate the Receiver's ability to negotiate a settlement with lenders concerning the mortgages on the Rogen Property.

Respectfully submitted this 18th day of July, 2011.

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