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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.

**MEMORANDUM IN SUPPORT OF
RECEIVER'S MOTION FOR ORDER
APPROVING SEYBOLD SETTLEMENT
AGREEMENT AND TRANSFER OF
PROPERTY**

Case No. 2:11-cv-00357 TC

Honorable Tena Campbell

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of Art Intellect, Inc. d/b/a Mason Hill and VirtualMG submits this memorandum in support of his motion for approval of a settlement agreement reached between the Receiver and Michael and Laura Seybold ("Seybolds"). A copy of the proposed settlement agreement is attached as Exhibit A to the Motion accompanying this Memorandum.

BACKGROUND

As noted in the Receiver's earlier motion to approve a settlement agreement with the Kenneth J. Hills and Marci Hills Retirement Profit Sharing Plan ("Hills") [Doc. #86, filed July 20, 2011], the Receiver has determined that the Receivership Estate owns five real estate properties in Lee County, Florida. All five of these properties are subject to liens related to loans made to Art Intellect by three lenders. Four of the five properties are the subject of a proposed settlement agreement with the Hills. The remaining property, at 340/342 Rogen Street is the subject of the instant proposed settlement agreement with the Seybolds – lenders on the Rogen Street property.

The property at 340/342 Rogen Street, Lehigh Acres, FL was purchased by Art Intellect on May 27, 2010 for \$50,100.00. It is subject to a \$40,000.00 first mortgage held by Michael Seybold and a second mortgage, in the amount of \$51,000.00, in favor of Hills. Title to this property was transferred by Art Intellect to Laura Roser via quit claim deed on July 7, 2010, when it was sold to her for a reported \$100.00. Construction of this duplex has not been completed; it has approximately \$20,000.00 worth of work remaining to be completed.

Because of the low equity value in this and the other properties, the Receiver has been constrained in the options he might pursue in selling or otherwise recovering value from this and the other properties. The Receiver has asserted claims against the Seybolds, alleging that the amount they are due on their mortgage should be reduced. The Seybolds have provided substantial information to the Receiver about their transactions and the Receiver and Seybolds have engaged in negotiations to resolve their dispute over the amount due to the Seybolds. Those discussions have led to a settlement agreement with the terms described below.

SETTLEMENT AGREEMENT

Under the settlement agreement, the Receiver will release his claims to the Rogen Street property and the Seybolds will pay \$5,000.00 to the Receivership Estate. Specifically,

1. The Receiver will sign a deed in lieu of foreclosure in favor of the Seybolds for the Rogen Street property.

2. The Seybolds will pay to the Receiver \$5,000.00 from the proceeds of the sale of this property. In the event the property is not sold within 60 days, the Seybolds will pay this amount to the Receiver no later than 60 days after the date of approval of this settlement agreement.

3. Both the Receiver and the Seybolds agree to release all claims they might have against each other relating to these matters or any future claims.

4. The terms of this settlement agreement are subject to approval by the Court. If the Court declines to approve this agreement, the agreement will be rescinded.

This settlement agreement requires the Receiver to be able to deliver title to the Seybolds. As noted in the Receiver's motion and memorandum for an order requiring Defendant Roser to vacate her residence [Doc. No's 81 and 82, filed July 18, 2011], Roser caused Art Intellect to transfer title to the Rogen Street property to her on July 7, 2010. In that pending motion, the Receiver is seeking an order from the Court requiring Roser to execute a quit claim deed for this property in favor of the Receiver, so the Receiver can sell or transfer this property. In order to fulfill his obligations under this settlement agreement with the Seybolds, the Receiver needs to obtain Roser's asserted interest in this property or a judicial determination that the transfer to her was invalid.

TERMS OF THE REQUESTED COURT APPROVAL

The Receiver requests that the Court enter an order containing the following provisions:

1. Authorizing the Receiver to sign a deed in lieu of foreclosure for the property at 340/342 Rogen Street;
2. Releasing the Rogen Street property from the coverage of the asset freeze imposed by the Court on April 18, 2011; and
3. Otherwise approving the terms of the proposed settlement agreement and permitting the Receiver to move forward to implement its terms.

ANALYSIS

Paragraph 40 of the Order Appointing Receiver provides: “Upon further Order of this Court, pursuant to such procedures as may 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.”

Initially, it must be remembered that the Court is the one having “exclusive jurisdiction and possession of the assets” of Art Intellect, Brody, and Roser. Order at ¶1. After taking control of those assets, the court appointed Receiver for the Receivership Estate. Order at ¶2. The Court directed the Receiver to “determine the nature, location and value of all property interests” (Order at ¶8A), “take custody, control and possession of all Receivership Property” (Order at ¶8B), “use Receivership Property for the benefit of the Receivership Estates” (Order at ¶8D), “take immediate possession of all real property of the Receivership Defendants” (Order at ¶20), and “take all necessary and reasonable actions to cause the sale or lease of all real property

in the Receivership Estates . . . on terms and in the manner the Receiver deems most beneficial to the Receivership Estate [subject to Court approval]” (Order at ¶39).

While the transfer of property proposed by this settlement agreement is not a sale or lease of the property, it is a disposition that results in additional value for the Receivership Estate. This transfer eliminates \$40,000.00 in liabilities of the Receivership Estate and will result in the payment of \$5,000.00 to the Receivership Estate. The proposed settlement agreement has the added advantage of freeing the Receiver and the Receivership Estate of the need to continue spending time and Receivership monies to protect and maintain this property.

Moreover, this negotiated settlement eliminates the cost of litigating against the Seybolds in an effort to recover value from these properties. On June 8, 2011, the Seybolds filed a lawsuit in Florida seeking to foreclose on their mortgage to this property. While the Receiver believes that he has a valid basis for asserting claims against the Seybolds, the Receiver’s position is not certain and the Court might not have agreed with his legal theory. The avoidance of risk and litigation costs is especially important in light of the current lack of equity in this property. While the amount being recovered is relatively small, that is a result of the actions of Defendants in mortgaging these properties for amounts higher than their value, thus reducing these properties as potential sources of recovery for victims of the Ponzi scheme.

The Securities and Exchange Commission has advised the Receiver that the Commission does not oppose this settlement. The Receiver is not aware of any others who might object to this settlement.

The Court Ordered and authorized the Receiver that “Upon further Order of the Court, pursuant to such procedures as may be required by this Court and additional authority such as 28

U.S. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.” Order ¶40. Pursuant to 28 U.S.C. § 2001, property in possession of the receiver is typically sold “at public sale.” However, section 2001 (b) allows “the court may order the sale of such realty . . . 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.” 28 U.S.C. § 2001(b). This section typically requires as well that appraisals be had and other notice be provided. However, the Court, as discussed herein, can order the private sale or order other relief “if it finds that the best interests of the estate will be conserved thereby.” *Id.*

This case justifies such a finding by the Court. First, this is not a “sale” under the statute, but instead the disposition of the property by a deed in lieu of foreclosure and abandonment. Ultimately, the property is going to the mortgagor. Second, the liens in place on this property are for more than the value of the property.¹ As discussed above, there is insufficient equity to justify spending the Estate’s money to pay for three independent appraisals for the property, or to engage real estate agents and pay commissions. Furthermore, the estate needs to avoid the additional expenses associated with the maintenance of this property. Finally, because the purchase of the property was so recent, the Receiver is confident of the properties’ current value. Moreover, comparisons to comparable properties in the area demonstrate that the price paid and the current value remains similar. In short no formal appraisals, that would cost thousands of dollars, are necessary given the circumstances relating to this property. As such, the Court

¹ The lien currently held by the Hills will be released if the Court approves the separate settlement the Receiver has negotiated with the Hills.

should approve the disposition of this property as contemplated in the proposed settlement agreement since this would best preserve the value of the Estate.

CONCLUSION

The Receiver asks the Court to approve the terms of the proposed settlement agreement with the Seybolds as being in the best interests of the Receivership Estate and enter an order similar to the attached proposed Order.

DATED this 11th day of August, 2011.

CLYDE SNOW & SESSIONS

/s/ Jennifer A. James

Jennifer A. James

Walter A. Romney, Jr.

Attorneys for Court-Appointed

Receiver R. Wayne Klein

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MEMORANDUM IN SUPPORT OF RECEIVER'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT AND TRANSFER OF PROPERTY** was served via the CM/ECF system on this 11th day of August, 2011 on the following:

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