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Court-Appointed Receiver

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

**RECEIVER'S MOTION REQUESTING
ORDER APPROVING SALE OF
TEXAS PROPERTY FREE AND
CLEAR OF INTERESTS AND
MEMORANDUM IN SUPPORT**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of U.S. Ventures LC ("USV"), Winsome Investment Trust ("Winsome"), and all the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway") (collectively, the "Receivership Entities"), , by and through his counsel of record and pursuant to 28 U.S.C. §§ 2001(b) and the *Order Granting Plaintiff's Ex Parte Motion for Statutory Restraining Order, Expedited Discovery*,

Accounting, Order to Show Cause Re Preliminary Injunction and Other Equitable Relief entered by this court in this case, hereby files this “Motion” and respectfully requests that the Court authorize him to sell certain real property of the Receivership Estate, described more fully and defined in the Memorandum in Support as “the Property.”

A proposed “Order” is submitted herewith and attached hereto as **Exhibit A**. This Motion is supported by the Declaration of Receiver R. Wayne Klein (the “Receiver Declaration”), which has been filed concurrently herewith and attached hereto as **Exhibit B**.

MEMORANDUM IN SUPPORT

I.

FACTUAL BACKGROUND

1. On January 24, 2011, the above-captioned case was commenced by the Commodity Futures Trading Commission (the “CFTC”) against Defendants U.S. Ventures LC, (“USV”), Winsome Investment Trust (“Winsome”), Robert J. Andres (“Andres”), and Robert L. Holloway (“Holloway”) (collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an order granting a statutory restraining order and appointing a receiver (the “Receivership Order”).¹ Pursuant to the Receivership Order, the Receiver was appointed, and USV and Winsome, and all Andres’ and Holloway’s assets were placed in the Receiver’s control.²

2. The Court has directed and authorized the Receiver to, among other things:
- “Take exclusive custody, control, and possession of all the funds, property . . . and other assets of . . . the Defendants”³

¹ Docket No. 15 (Receivership Order).

² *See generally, id.*

³ *Id.* at ¶ VI.A.27(c).

- “Preserve, hold and manage all receivership assets”⁴
- “Manage and administer the assets of Defendants by performing all acts incidental thereto that the Receiver deems appropriate”⁵

II.

REAL PROPERTY TO BE SOLD

Texas Property

3. In connection with a settlement with Forres McGraw, which was approved by the Court on December 20, 2016,⁶ the Receiver obtained title to a .51 acre parcel of undeveloped real property located at Lot 364 at The Shores at Richland Chambers Lake in Corsicana, Texas 75109, with tax identification number T0077.03 (the “Property”). The Receiver has listed the Property for sale.⁷

4. The Navarro County Tax Assessor “2017 Year Tax Statement,” a copy of which is attached to the Receiver Declaration as Exhibit 1 (the “Tax Statement”), shows the Property is titled in the name of US Ventures LC & Winsome Investment Trust.⁸

Marketing the Property

5. On or about February 1, 2018, the Receiver caused the Property to be listed for sale through Coldwell Banker Richland Chambers (the “Realtor”). A copy of the Listing Agreement is attached to the Receiver Declaration as Exhibit 2.

6. The Receiver marketed the Property for sale through the Realtor, including by

⁴ *Id.* at ¶ VI.A.27(e).

⁵ *Id.* at ¶ VI.A.27(g).

⁶ Docket No. 451.

⁷ Ex. B, Receiver Declaration ¶ 7.

⁸ *Id.* at ¶ 6.

listing the Property on the Multiple Listing Service.⁹

Court-Appointed Appraisers and Valuation

7. To determine an offering price and comply with his duties, the Receiver obtained the opinion of his Realtor and three court-appointed appraisers.¹⁰

8. On March 12, 2018, the Court entered an *Order* appointing Caleb Jackson (“Jackson”), Matt McCurrin (“McCurrin”), and Judy Hagler (“Hagler”) as appraisers for the Property.¹¹

9. Consequently, Jackson, McCurrin, and Hagler (collectively, the “Appraisers”) provided the Receiver with appraisals of the Property. True and correct copies of the “Jackson Appraisal,” the “McCurrin Appraisal,” and the “Hagler Appraisal” (collectively, the “Appraisals”) are attached to the Receiver Declaration as Exhibits 3, 4, and 5, respectively.¹²

10. Jackson appraised the Property at \$12,000.00.¹³

11. McCurrin appraised the Property at \$8,700.00.¹⁴

12. Hagler appraised the Property at \$12,538.00 and gave an appraised value of \$15,538.00 if a boat slip permit were included with the lot.¹⁵

13. The average appraised value of the Property is \$11,079.33.

⁹ *Id.* at ¶ 8.

¹⁰ *Id.* at ¶ 9.

¹¹ Docket No. 490.

¹² Ex. B, Receiver Declaration ¶ 10.

¹³ *Id.* at Ex. 3 to Klein Declaration (Jackson Appraisal).

¹⁴ *Id.* at Ex. 4 to Klein Declaration (McCurrin Appraisal).

¹⁵ *Id.* at Ex. 5 to Klein Declaration (Hagler Appraisal).

The Purchase Agreement

14. The Receiver has entered into a “Purchase Agreement” to sell the Property. On or about June 6, 2018, the Receiver entered into an agreement on behalf of the Receivership Estate to sell the Property to Mark Curtis Kleweno and Roxanne Gale Kleweno (the “Buyer”) for \$14,199.00, subject to Court approval. The Purchase Agreement includes the sale of the Property and a boat slip permit associated with the Property.¹⁶ A true and correct copy of the Purchase Agreement is attached to the Receiver Declaration as Exhibit 6.¹⁷

15. The Purchase Agreement was negotiated by the Receiver and the Buyer in good faith and at arms’ length.¹⁸

Sale Costs and Net Sale Proceeds

16. The Receiver anticipates paying at the time of the closing of the sale of the Property outstanding Property taxes and the ordinary costs of sale, including market-rate closing costs and a flat rate realtor commission of \$2,000.00. The gross sale proceeds, less the costs of sale, taxes, and commission are referred to herein as the “Net Sale Proceeds.”¹⁹

17. Any other financial interests against the Property (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.²⁰

18. The Receiver will separately account to the Court for the Net Sale Proceeds

¹⁶ *Id.* at ¶ 11.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 12.

¹⁹ *Id.* at ¶ 13.

²⁰ *Id.* at ¶ 14.

pending resolution of any disputes related to interests that may exist against the Property.²¹

Free and Clear Sale

19. The Receiver proposes to sell the Property free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Property or the Net Sale Proceeds.²²

20. To determine interests, if any, against the Property, the Receiver researched the online property records for Navarro County, Texas (the “Online Property Records”). A true and correct copy of the Online Property Records is attached to the Receiver Declaration as Exhibit 7.²³

21. From the Online Property Records and the Tax Statement, the Receiver determined that property taxes for the Property are current, and that there do not appear to be any other liens or interests attached to the Property.

22. Any other financial interests against the Property, other than closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent they exist and without any waiver of the Receiver’s or the Receivership Estate’s right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds.²⁴

23. A copy of this Motion is being served on the relevant taxing authority.²⁵

²¹ *Id.* at ¶ 15.

²² *Id.* at ¶ 16.

²³ *Id.* at ¶¶ 6 and 17.

²⁴ *Id.* at ¶ 19.

²⁵ *Id.* at ¶ 20.

Best Interests

24. The Receiver believes that the sale of the Property as proposed is beneficial for and in the best interests of the Receivership Estate.²⁶

25. The proposed sale will result in cash based on the fair market value of the Property. The purchase price for the Property is 128% of the average appraised value of the Property—which purchase price includes the boat slip permit. The purchase price is 91.4% of the Hagler appraisal that provided a value of the property together with the boat slip permit.²⁷

26. The sale of the Property at this time will also reduce the burden to the Receivership Estate by reducing time spent by the Receiver in managing and marketing the Property, will conclude one of the last remaining items preventing closing of the Receivership Estate, and, more importantly, will maximize the value of the Property by ending tax and maintenance obligations associated with them.²⁸

27. The sale to the Buyer proposed herein is subject to higher and better offers, after publication notice as provided for below.²⁹

Publication Notice

28. Contemporaneously herewith the Receiver is filing his *Motion Seeking Approval of Proposed Method and Form of Publication Notice for Sale of Real Property and Memorandum in Support* (the “Publication Motion”), seeking the Court’s approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).³⁰

²⁶ *Id.* at ¶ 21.

²⁷ *Id.* at ¶ 22.

²⁸ *Id.* at ¶ 23.

²⁹ *Id.* at ¶ 24.

³⁰ *Id.* at ¶ 25.

29. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the sale in newspapers in Salt Lake City, Utah, and Corsicana, Texas, using the method and form of notice approved by the Court.³¹

30. In the event the Receiver receives and accepts a qualifying higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.³²

III.

ARGUMENT

31. Based on the facts above, the Receiver respectfully requests authorization to sell the Property pursuant to the terms of the Purchase Agreement free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds held by the Receiver pending resolution of any disputes related thereto. The sale of the Property as proposed is within the scope of the Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a realization of the true and proper value of the Property.

Sale of the Property as Proposed is Beneficial to the Receivership Estate

32. Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real Property through private sale if such sale is in the "best interests" of the

³¹ *Id.* at ¶ 26.

³² *Id.* at ¶ 27.

Receivership Estate. Sale of the Property as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

33. First, the sale will result in cash for the Receivership Estate based on the fair market value of the Property. Based on the Appraisals, the Property will be sold for 128% of its average appraised value.

34. Second, the sale of the Property at this time as proposed will reduce the burden on the Receivership Estate, maximize the value of the Property, and facilitate termination of the Receivership. The Receiver will no longer have to spend time managing or marketing the Property, and the Receivership Estate will no longer have obligations related to paying taxes on the Property. Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

Request to Sell Property Free and Clear of Interests

35. As discussed above, the Receiver proposes to sell the Property free and clear of any interests, with any such interests attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the Property are given proper notice.

36. The Receiver will serve a copy of the Motion on the relevant taxing authority.³³

Compliance With 28 U.S.C § 2001

37. The Court may require that the proposed sale of real property satisfy 28 U.S.C. § 2001. Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise

³³ *Id.* at ¶ 20.

property of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “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.”³⁴ Here, the Receiver has or will have complied with each of these factors.

38. Specifically, the first factor is met in this case inasmuch as the purchase price for the Property is 128% of the average appraised value, and therefore exceeds the 2/3 requirement.

39. The second factor is met because the Receiver has obtained appraisals from three experienced, third-party appraisers who were appointed by this Court, and the Receiver has provided the Court with the appraisals.

40. The third factor will be met as the Receiver will publish notice of the proposed sale immediately upon the Court’s entry of an Order approving the method and form of such notice as requested in the Publication Motion filed concurrently herewith.

41. The fourth factor also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.³⁵ In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

³⁴ 28 U.S.C. § 2001(b).

³⁵ Receiver Declaration ¶ 24.

CONCLUSION

Accordingly, for the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, thus authorizing the sale of the Property free and clear of interests pursuant to the Purchase Agreements or to a higher and better offeror free and clear of purported interests.

DATED this 15th day of June, 2018.

MANNING CURTIS BRADSHAW
& BEDNAR PLLC

/s/ David C. Castleberry
*Attorneys for R. Wayne Klein, Court-Appointed
Receiver*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S MOTION REQUESTING ORDER APPROVING SALE OF TEXAS PROPERTY FREE AND CLEAR OF INTERESTS AND MEMORANDUM IN SUPPORT** to be served in the method indicated below to the interested parties in this action this 15th day of June, 2018.

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
- VIA ECF

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- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
- VIA ECF

Navarro County Tax Assessor/Collector
PO Box 1070
Corsicana, TX 75151-1070

/s/ David C. Castleberry