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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GINA CHAMPION-CAIN AND ANI
DEVELOPMENT, LLC,

Defendants, and

AMERICAN NATIONAL
INVESTMENTS, INC.,

Relief Defendant.

Case No.: 3:19-cv-1628-LAB-AHG

**ORDER GRANTING JOINT
MOTION FOR APPROVAL OF
SALE OF PERSONAL PROPERTY
INTEREST IN PULLMAN LOFTS
PHASE I, LLC**

[ECF No. 229]

1 **I. BACKGROUND**

2 Before the Court is the Joint Motion for Approval of Sale of Personal Property
3 Interest in Pullman Lofts Phase I, LLC (the “Pullman Lofts Motion”), filed on January
4 29, 2020 by Plaintiff Securities and Exchange Commission (“SEC”), Defendant Gina
5 Champion-Cain, and Krista Freitag, Court-appointed permanent receiver for Defendant
6 ANI Development, LLC and Relief Defendant American National Investments, Inc.
7 (“Receiver”). ECF No. 229.

8 No opposition has been filed to the Pullman Lofts Motion. Additionally, the Court
9 has reviewed the motion along with the Court-ordered Joint Supplement to Clarify the
10 Pullman Lofts Motion (“Supplemental Clarification”) (ECF No. 258) and, being fully
11 advised, finds good cause to **GRANT** the Motion, for the reasons explained in more
12 detail below.

13 **II. DISCUSSION**

14 **A. Proposed Sale of the Membership Interest**

15 The parties to the Pullman Lofts Motion seek to sell receivership entity GCC
16 Pullman Lofts Phase I, LLC’s (“Seller”) 40.5% membership interest in Pullman Lofts
17 Phase I, LLC (“Project Owner”) to Pullman Lofts First Phase LLC (“Buyer”). ECF No.
18 229. Project Owner holds an option to purchase the real property located at 701 Wilson
19 Street, Santa Rosa, California, upon which the Project Owner intends to develop a 72-unit
20 apartment building with retail space on the ground floor (the “Project”). ECF No. 229-1,
21 Krista Freitag Decl. ¶ 3. In the Supplemental Clarification, the Receiver explains that
22 Seller is an entity within the receivership because it is an affiliate of Defendant ANI
23 Development, LLC and a single-member entity whose sole member is Defendant Gina
24 Champion-Cain. ECF No. 258 at 2. The receivership entities also appear to have funded
25 the purchase of Seller’s membership interest in Pullman Lofts Phase I, LLC. *Id.* at 3. The
26 Receiver is thus currently in control of Seller’s membership interest in Project Owner
27 pursuant to this Court’s September 3, 2019 Order appointing the Receiver (the
28 “Appointment Order”) (ECF No. 6).

1 Subject to Court approval, the Receiver and Buyer have agreed on terms of a
2 proposed sale of Seller’s membership interest, plus assignment of Seller’s claim against
3 JB Resources, for a total price of \$495,887.53, to be paid immediately in cash. ECF No.
4 229 at 2. The Membership Interest Purchase and Sale Agreement (“Agreement”) is
5 attached as Exhibit A to the Receiver’s Declaration. *See* ECF No. 229-1 at 6-33.
6 Although the Receiver calculates that the receivership entities invested \$783,273 in the
7 membership interest prior to the Receiver’s appointment, and thus the purchase price
8 represents a loss on the investment, the Receiver nonetheless believes that the proposed
9 purchase price is in the best interest of the receivership entities and “likely is the best,
10 most certain recovery the Receiver can hope to obtain from holding the Membership
11 Interest or attempting to sell the Membership Interest on the open market[.]” ECF No.
12 229 at 4. Specifically, the Receiver explains that she extensively researched the history of
13 the proposed Project to evaluate the prospective value of Seller’s membership interest.
14 ECF No. 229-1 ¶ 5. Through her research, the Receiver learned that development of the
15 Project has languished for many years, and there have been at least 40 extensions of
16 Project Owner’s original Option Term under the Option Agreement signed in December
17 2013. *Id.* ¶ 6. Additionally, the real estate market in Sonoma County is uncertain
18 following a spate of wildfires over the past several years, and at least one prospective
19 lender has characterized the Project as “distressed.” *Id.* ¶¶ 7-8. If the membership interest
20 is not sold, Seller will likely be obligated to make further capital contributions to
21 maintain the interest in the future. *Id.* ¶ 9. Therefore, the Receiver concluded that the
22 proposed sale, notwithstanding the loss on the investment, is fair and reasonable in light
23 of the known data and risks, especially given her charge of preserving value and
24 recovering principal on behalf of the investors. *Id.* ¶¶ 8, 11. The Receiver further testifies
25 that selling the interest at a loss “is consistent with the discounted sale of non-traded,
26 non-distributing membership interests.” *Id.* ¶ 10.

27 “The power of a district court to impose a receivership or grant other forms of
28 ancillary relief does not in the first instance depend on a statutory grant of power from the

1 securities laws. Rather, the authority derives from the inherent power of a court of equity
2 to fashion effective relief.” *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980).
3 Nonetheless, federal statutes do provide some authority and guidance for courts overseeing
4 equity receiverships. In particular, 28 U.S.C. §§ 2001 and 2002 set forth procedural and
5 notice requirements for the sale of real property in the possession of a court-appointed
6 receiver, while § 2004 governs the sale of personal property.

7 On January 22, 2020, the Court issued an Order Establishing Uniform Property Sale
8 Procedures (ECF No. 219), which explained that § 2004 “lends the Court great discretion
9 in directing sales of personalty, requiring such sales to comply with [public sale process
10 requirement of] § 2001 ‘unless the court orders otherwise.’ The notice requirement of §
11 2002 governing realty sales by the receiver does not apply to sales of personalty.” *Id.* at 4.
12 The Court proceeded to waive the requirements of 28 U.S.C. § 2001 with respect to all
13 sales of personal property within the receivership estate, and affirmed that the Receiver is
14 not required to file a noticed motion seeking approval of any such personalty sales. *Id.* at
15 9. However, the Receiver was required to follow standard auction procedures through one
16 or more licensed auctioneers for sales of personal property that were not required to be
17 approved through a noticed motion. *Id.* at 10. Therefore, although a noticed motion is
18 ordinarily not required under the Court’s sale procedures, the parties request that all
19 procedural steps under 28 U.S.C. §§ 2001-2004 be waived in connection with the sale of
20 the membership interest, in the Court’s broad discretion.

21 Here, the parties’ Pullman Lofts Motion thoroughly explains why the proposed sale
22 of Seller’s membership interest is in the best interest of the receivership. The Receiver’s
23 proffered justification for selling the membership interest at a loss for an immediate cash
24 payment representing “a certain return of approximately 63% of . . . the amount invested
25 by the Receivership Entities[,]” given the risks of the investment and possibility of ongoing
26 future financial obligations if the interest is not sold, is consistent with the principle that “a
27 primary purpose of equity receiverships is to promote orderly and efficient administration
28 of the estate by the district court for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034,

1 1038 (9th Cir. 1986). Therefore, because of the nature of the membership interest and the
2 considerations outlined by the Receiver in her Declaration, the Court agrees that the
3 receivership estate would not benefit from requiring the Receiver to hold a public auction
4 to sell the interest. Finding the parties' reasoning persuasive and noting the lack of
5 opposition, the Court **GRANTS** the Pullman Lofts Motion (ECF No. 229).

6 **B. Request to Release Project Owner from the Receivership**

7 As the Court previously noted in its order requiring the parties to clarify the
8 Pullman Lofts Motion, Project Owner Pullman Lofts Phase I, LLC is an enumerated
9 receivership entity in the Appointment Order. *See* ECF No. 253 n.1 (citing ECF No. 6 at
10 5). In the Supplemental Clarification, the Receiver requests that any order approving the
11 sale of Seller's membership interest in Project Owner also include a provision that upon
12 closing of the sale, Pullman Lofts Phase I, LLC be released in its entirety from the
13 receivership since the transfer of Seller's membership interest will leave the receivership
14 entities with no further interest in the project, and remaining subject to the receivership
15 would greatly hamper Project Owner's further development of the project. *See* ECF No.
16 258 at 3. However, that request goes beyond the scope of the undersigned's authority in
17 this matter. Instead, the request will be addressed by Chief Judge Larry A. Burns in
18 accordance with the Court's Order Authorizing Briefing on Release of Pullman Lofts
19 Phase I, LLC. *See* ECF No. 259.

20 **III. CONCLUSION**

21 Based on the foregoing, it is **ORDERED** as follows:

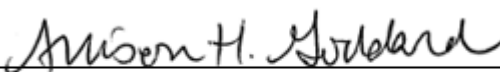
- 22 (1) The sale of Seller GCC Pullman Lofts Phase I, LLC's 40.5% membership interest
23 in Pullman Lofts Phase I, LLC to Buyer Pullman Lofts First Phase LLC (or its
24 designee) pursuant to the Agreement (ECF No. 229-1 at 6-33) for the purchase
25 price of \$495,887.53 is **APPROVED**. The purchase price shall be paid on the
26 closing date to the Receiver in accordance with Sections 2.1 and 2.2 of the
27 Agreement. *See id.* at 7.
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1 (2)The Receiver is authorized to take all steps necessary to complete the sale in
2 accordance with the terms of the Agreement, including executing such
3 documents as may be necessary to close the sale transaction.

4 The parties' request to release Project Owner Pullman Lofts Phase I, LLC from the
5 receivership is **DEFERRED** in accordance with the Court's Order Authorizing Briefing
6 on Release of Pullman Lofts Phase I, LLC. ECF No. 259.

7 **IT IS SO ORDERED.**

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9 Dated: March 6, 2020

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12 Honorable Allison H. Goddard
13 United States Magistrate Judge
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