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12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

19 GINA CHAMPION-CAIN and ANI
20 DEVELOPMENT, LLC,

21 Defendants,

22 AMERICAN NATIONAL
23 INVESTMENTS, INC.,

24 Relief Defendant.
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27
28

Case No. 3:19-cv-01628-LAB-AHG

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF SALE
OF REAL PROPERTY LOCATED
AT 7940 UNIVERSITY AVENUE, #9,
LA MESA**

Date: November 30, 2020

Time: 9:30 a.m.

Courtroom: TBD

Mag. Judge: Hon. Allison H. Goddard

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1 Krista Freitag ("Receiver"), the Court-appointed permanent receiver for
2 Defendant ANI Development, LLC, Relief Defendant American National
3 Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"),
4 submits this Memorandum of Points and Authorities in Support of her concurrently-
5 filed Motion for Approval of Sale of Real Property Located at 7940 University
6 Avenue, #9, La Mesa ("Motion").

7 **I. BACKGROUND FACTS**

8 One of the residential real properties included in the receivership estate is a
9 condominium located at 7940 University Avenue, #9, La Mesa, California 91942
10 ("7940 University Property"). The 7940 University Property is 990 square feet with
11 two bedrooms and one and a half bathrooms. The 7940 University Property was
12 purchased by Receivership Entity 2466 1st Avenue LLC on April 25, 2018 for
13 \$325,000. The property was rented to a former employee of the Receivership
14 Entities, who agreed to move out in July 2020. Freitag Decl., ¶ 2.

15 Upon her appointment, the Receiver and her staff performed an analysis of the
16 value of the 7940 University Property, including a review of automated valuation
17 scores for the property and a survey of the market comparable properties. The
18 Receiver and her staff also consulted with multiple licensed brokers about the value
19 of the property and terms of a potential listing agreement. Ultimately, the Receiver
20 selected Coldwell Banker West ("Broker") and had the 7940 University Property
21 listed for sale at \$340,000 on August 20, 2020. Freitag Decl., ¶ 3.

22 The 7940 University Property was listed and advertised on all major real estate
23 platforms including the MLS, Zillow, Redfin, and Realtor.com. In the week
24 following the listing, there were twenty-three (23) buyer showings with their agents.
25 Three offers were received. Throughout the negotiations, the Receiver, through
26 Broker, sent multiple counter offers to the prospective buyers. The Receiver
27 ultimately finalized an offer from Henry J. Tran and Crystal Q. Tran ("Buyer") in the
28 amount of \$351,000, which, according to the Broker, is the highest sale price in the

1 condominium complex in which the property is located. Through Broker, the
2 prospective purchasers whose offers were not selected have been invited to
3 participate in the overbid/auction process discussed below. Freitag Decl., ¶ 4.

4 The 7940 University Property, along with three other receivership estate assets
5 (including the Bella Pacific Property, which sale is currently pending Court
6 approval), is encumbered by a Deed of Trust in favor of Seattle Funding Group
7 ("SFG"). The outstanding principal balance on the interest only loan is \$1,100,000,
8 and the loan is being paid current. SFG has agreed to extend the maturity date of this
9 loan from December 1, 2020 to March 1, 2021, and a release price of 85% of the
10 sales price, or \$298,350 (27% of the loan balance). Including accrued interest, the
11 total amount paid to SFG at closing is estimated to be in the range of approximately
12 \$302,000 to \$305,000. Assuming the Bella Pacific Property closes first, the principal
13 balance of the loan after the sale of the 7940 University Property is expected to
14 decrease to \$393,650 (\$1,100,000 less \$408,000 less \$298,350). The remaining two
15 receivership assets encumbered by this loan have estimated market values exceeding
16 \$800,000 in the aggregate. Assuming a December closing (after December 10th), the
17 Receiver estimates that a few hundred dollars of property taxes will be credited to
18 seller at closing. The Broker's commission pursuant to the listing agreement is 4% of
19 the sale price, or \$14,040, which amount will be split with Buyer's broker. The costs
20 of sale, including escrow, title and recording fees, are estimated to be approximately
21 \$1,750. While exact amounts will be determined at closing, after the aforementioned
22 amounts are paid out of escrow or otherwise credited to seller, the net sale proceeds
23 for the receivership estate are estimated to be in the range of approximately \$30,000
24 to \$33,000. Freitag Decl., ¶ 5.

25 **II. PROPOSED SALE**

26 The key terms of the proposed Purchase and Sale Agreement and Joint Escrow
27 Instructions, including Addendum thereto ("Agreement"), a copy of which is
28 attached to the Freitag Declaration as Exhibit A, are summarized as follows:

1 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
2 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
3 and 'we generally uphold reasonable procedures instituted by the district court that
4 serve th[e] purpose' of orderly and efficient administration of the receivership for the
5 benefit of creditors."). Accordingly, the Court has broad discretion in the
6 administration of the receivership estate and the disposition of receivership assets.

7 **A. The Court's Authority to Approve Sale**

8 It is widely accepted that a court of equity having custody and control of
9 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
10 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
11 and wide discretion to determine relief in an equity receivership). "The power of sale
12 necessarily follows the power to take possession and control of and to preserve
13 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
14 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
15 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
16 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity
17 orders property in its custody to be sold, the court itself as vendor confirms the title
18 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
19 Receivers § 487 (3d ed. 1992).

20 "A court of equity, under proper circumstances, has the power to order a
21 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
22 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
23 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a
24 federal court is not limited or deprived of any of its equity powers by state statute.
25 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
26 (state statute allowing time to redeem property after a foreclosure sale not applicable
27 in a receivership sale).

28

1 Generally, when a court-appointed receiver is involved, the receiver, as agent
 2 for the court, should conduct the sale of the receivership property. *Blakely Airport*
 3 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
 4 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
 5 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
 6 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
 7 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
 8 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
 9 354, 357 (9th Cir. 1925).

10 **B. 28 U.S.C. § 2001**

11 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real
 12 property under subsection (a) and specific requirements for private sales of real
 13 property under subsection (b). Although both involve significant cost and delay, the
 14 cost and delay of a public sale are significantly less than those for a private sale.
 15 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
 16 ("Section 2001 sets out two possible courses of action: (1) property may be sold in
 17 public sale; or (2) property may be sold in a private sale, provided that three separate
 18 appraisals have been conducted, the terms are published in a circulated newspaper
 19 ten days prior to sale, and the sale price is no less than two-thirds of the valued
 20 price."). Therefore, by proceeding under Section 2001(a), the receivership estate can
 21 avoid the significant costs and delay of (a) the Court having to appoint three
 22 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

23 The requirements of a public sale under Section 2001(a) are that notice of the
 24 sale be published as proscribed by Section 2002 and a public auction be held at the
 25 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
 26 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
 27 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
 28 publication of notice, Section 2002 provides:

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A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

The notice of sale is sufficient if it describes the property and the time, place, and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction of the Receiver, that it has the current ability to consummate the purchase of the [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*, 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

IV. DISCUSSION

The Receiver believes the proposed sale to Buyer pursuant to the Agreement is in the best interests of the receivership estate. The 7940 University Property was listed with a licensed broker and shown to all interested parties. The property was properly marketed, three offers were received, highest and best terms negotiated, and the Agreement signed. The purchase price is fair and reasonable and reflects the market value of the property and is reportedly at the current high end of values for that condominium complex. Freitag Decl., ¶ 6.

1 Moreover, the proposed sale is subject to overbid to further ensure the highest
2 and best price is obtained. The Receiver proposes to conduct a public auction
3 consistent with the requirements of Section 2001(a). Specifically, the Receiver is
4 publishing the following notice of the sale once a week for four weeks in the
5 San Diego Union-Tribune, a newspaper of general circulation in San Diego County:

6 In the action pending in U.S. District Court for the
7 Southern District of California, Case No. 19-CV-01628-
8 LAB-AHG, Securities and Exchange Commission v.
9 Gina Champion-Cain, et al., notice is hereby given that
10 the court-appointed receiver will conduct a public auction
11 for the real property located at 7940 University Avenue,
12 #9 in San Diego County, California. Sale is subject to
13 Court confirmation after the auction is held. Minimum
14 bid price is at least \$356,000. The auction will take place
15 on November 6, 2020, at 2:30 p.m. in front of the
16 entrance to the United States Courthouse,
17 221 W. Broadway, San Diego, California or as otherwise
determined by the Court. To be allowed to participate in
the auction, prospective purchasers must meet certain bid
qualification requirements, including submitting a signed
purchase and sale agreement, an earnest money deposit
of \$5,500, and proof of funds. All bidders must be
qualified by 5:00 p.m. PT on November 2, 2020, by
submitting the required materials to the receiver at
501 West Broadway, Suite 290, San Diego, California,
92101. If interested in qualifying as a bidder, please
contact Geno Rodriguez at (619) 567-7223 or
grodriguez@ethreadvisors.com.

18 In order to conduct an orderly auction and provide sufficient time for the
19 publication of notices discussed above, the Receiver will require bidders to complete
20 the above steps by November 2, 2020 ("Bid Qualification Deadline") and conduct the
21 live public auction on November 6, 2020.

22 Through Broker, the Receiver has informed all interested persons of the
23 opportunity to overbid at the public auction, provided they qualify themselves to bid
24 by the Bid Qualification Deadline by (a) signing a purchase and sale agreement for
25 the properties on the same terms and conditions as Buyer, but with a purchase price
26 of at least \$356,000, (b) providing the Receiver with an earnest money deposit of
27 \$5,500, and (c) providing proof of funds necessary to close the sale transaction in the
28

1 form of a current bank statement, cashier's check delivered to the Receiver, or other
2 evidence deemed sufficient by the Receiver.

3 In the event one or more prospective purchasers qualify themselves to bid, the
4 auction will be conducted by the Receiver as noted above and bids will be allowed in
5 increments of at least \$1,000. The Receiver will then file a notice advising the Court
6 of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
7 confirming the sale. In the event no prospective purchasers qualify themselves to bid
8 by the Bid Qualification Deadline, the Receiver will notify the Court and seek entry
9 of an order approving the sale to Buyer.

10 **V. CONCLUSION**

11 For the reasons discussed above, the Receiver requests (a) approval of the sale
12 of the 7940 University Property to Buyer (or their designee) pursuant to the
13 Agreement attached to the Freitag Declaration as Exhibit A, and (b) authority to take
14 all steps necessary to close the sale, with the net sale proceeds after all third-party
15 payments are made from escrow going to the receivership estate.

16
17 Dated: October 8, 2020

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