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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
INVESTMENTS, INC.,
23
Relief Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF CAMINO
DEGRAZIA PROPERTY**

Date: December 30, 2020
Time: 9:30 a.m.
Courtroom: 3B
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 Camino Degrazia Property ("Motion").

6 **I. BACKGROUND FACTS**

7 One of the residential real properties included in the receivership estate is a
8 condominium located at 7243 Camino Degrazia, San Diego, California, 92111
9 ("Camino Degrazia Property"). The Camino Degrazia Property is 1,046 square feet
10 with two bedrooms and two bathrooms. The Camino Degrazia Property was
11 purchased by Receivership Entity 2466 1st Avenue LLC on April 5, 2019 for
12 \$460,000. Freitag Decl., ¶ 2.

13 Upon her appointment, the Receiver and her staff performed an analysis of the
14 value of the Camino Degrazia Property, including a review of automated valuation
15 scores for the property and a survey of the market comparable properties. The
16 Receiver also consulted with multiple licensed brokers about the value of the
17 property and terms of a potential listing agreement. Ultimately, the Receiver
18 selected Resonate Real Estate ("Broker") and had the Camino Degrazia Property
19 listed for sale at \$510,000. The property was rented to a former employee of the
20 Receivership Entities, who moved out in March 2020. Freitag Decl., ¶ 3.

21 To market the Camino Degrazia Property, Broker listed the property on the
22 local MLS and its website in April 2020. Through the MLS listing, the listing was
23 also syndicated to many consumer websites like Realtor.com, Redfin, Zillow &
24 Trulia. Post COVID-19, in compliance with guidance from the California
25 Association of Realtors, 3D marketing and socially distant property tours were
26 enforced. Due to the lack of buyer interest at higher prices, the list price was reduced
27 periodically until it reached the range of \$450,000 - \$475,000. The broker
28 coordinated dozens of showings and four offers were received. Through Broker, the

1 Receiver negotiated terms with the prospective buyers and the property went into
2 escrow on or around October 12, 2020 with a purchase price of \$450,000 and a
3 \$5,000 credit to the buyer, Dani J. Harelson ("Buyer"). Freitag Decl., ¶ 4.

4 The Camino Degrazia Property, along with two other remaining receivership
5 estate assets,¹ is encumbered by a deed of trust in favor of Seattle Funding Group
6 ("SFG"). The outstanding principal balance on the interest-only loan is \$692,000,
7 and the loan is being paid current. Lender has agreed to extend the maturity date of
8 this loan from December 1, 2020 to March 1, 2021 and a release price of 85% of the
9 sales price or \$382,500, approximately 55% of the loan balance. Assuming the 7940
10 University Property closes first, the principal balance of the loan after the sale of the
11 Camino Degrazia Property is expected to reduce to \$11,150 (\$1,100,000 less
12 \$408,000 less \$298,350 less \$382,500). The remaining receivership asset
13 encumbered by this loan has an estimated market value of \$399,000. Freitag Decl.,
14 ¶ 5.

15 Depending on when the sale closes (assuming a December 2020 closing), the
16 amount required to pay down the loan will likely be in the range of approximately
17 \$382,500 to \$387,500. Depending on when the sale closes (assuming a December
18 2020 closing after December 10th), a small credit for property taxes will be owed to
19 the receivership estate. The Broker's commission pursuant to the listing agreement is
20 4% of the sale price, or \$18,000, which amount will be split with Buyer's broker.
21 The costs of sale, including escrow, title and recording fees are estimated to be
22 approximately \$2,250. Additionally, the Receiver has agreed to give the buyer a
23 credit of \$5,000 towards closing costs. While exact amounts will be determined at
24 closing, after all the aforementioned amounts are paid out of escrow, the net sale
25

26
27 ¹ This loan previously covered a total of four receivership estate assets, but one of
28 the properties – the Bella Pacific property – was sold with Court approval and
\$408,000 of the sale net proceeds were applied to pay down the principal balance
of the loan.

1 proceeds for the receivership estate are estimated to be in the range of approximately
2 \$37,000 to \$42,000. Freitag Decl., ¶ 6.

3 **II. PROPOSED SALE**

4 The key terms of the proposed California Residential Purchase Agreement and
5 Joint Escrow Instructions, including Addendum thereto ("Agreement"), a copy of
6 which is attached to the Freitag Declaration as Exhibit A, are summarized as follows:

7 **Overbid and Court Approval.** The sale is subject to qualified overbids
8 pursuant to the public sale process laid out below and approval by the Court.

9 **Purchase Price.** The purchase price is \$450,000 - before application of a
10 \$5,000 buyer credit - which amount will be financed.

11 **Deposit.** Buyer has deposited \$8,750 into escrow.

12 **Closing Date.** Closing shall occur upon entry of the Court order approving
13 the sale.

14 **III. LEGAL STANDARD**

15 "The power of a district court to impose a receivership or grant other forms of
16 ancillary relief does not in the first instance depend on a statutory grant of power
17 from the securities laws. Rather, the authority derives from the inherent power of a
18 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
19 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
20 and efficient administration of the estate by the district court for the benefit of
21 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
22 of a receiver is authorized by the broad equitable powers of the court, any
23 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
24 953 F.2d 1560, 1569 (11th Cir. 1992).

25 District courts have the broad power of a court of equity to determine the
26 appropriate action in the administration and supervision of an equity receivership.
27 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
28 Circuit explained:

1 A district court's power to supervise an equity
 2 receivership and to determine the appropriate action to be
 3 taken in the administration of the receivership is
 4 extremely broad. The district court has broad powers and
 5 wide discretion to determine the appropriate relief in an
 6 equity receivership. The basis for this broad deference to
 the district court's supervisory role in equity
 receiverships arises out of the fact that most receiverships
 involve multiple parties and complex transactions. A
 district court's decision concerning the supervision of an
 equitable receivership is reviewed for abuse of discretion.

7 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
 8 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
 9 and 'we generally uphold reasonable procedures instituted by the district court that
 10 serve th[e] purpose' of orderly and efficient administration of the receivership for the
 11 benefit of creditors."). Accordingly, the Court has broad discretion in the
 12 administration of the receivership estate and the disposition of receivership assets.

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

14 It is widely accepted that a court of equity having custody and control of
 15 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
 16 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
 17 and wide discretion to determine relief in an equity receivership). "The power of sale
 18 necessarily follows the power to take possession and control of and to preserve
 19 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
 20 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
 21 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
 22 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity
 23 orders property in its custody to be sold, the court itself as vendor confirms the title
 24 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
 25 Receivers § 487 (3d ed. 1992).

26 "A court of equity, under proper circumstances, has the power to order a
 27 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
 28 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing

1 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a
2 federal court is not limited or deprived of any of its equity powers by state statute.
3 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
4 (state statute allowing time to redeem property after a foreclosure sale not applicable
5 in a receivership sale).

6 Generally, when a court-appointed receiver is involved, the receiver, as agent
7 for the court, should conduct the sale of the receivership property. *Blakely Airport*
8 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
9 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
10 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
11 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
12 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
13 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
14 354, 357 (9th Cir. 1925).

15 **B. 28 U.S.C. § 2001**

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

28

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

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

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

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

25 The notice of sale is sufficient if it describes the property and the time, place,
26 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
27 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
28 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).

29 **IV. DISCUSSION**

30 The Receiver believes the proposed sale to Buyer pursuant to the Agreement is
31 in the best interests of the receivership estate. The Camino Degrazia Property was

1 listed on the MLS with a licensed broker and shown to interested parties since April
2 2020. The property was properly marketed, four offers were received, highest and
3 best terms negotiated, and the Agreement signed. The purchase price is fair and
4 reasonable and reflects the market value of the property. Freitag Decl., ¶ 7.

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

10 In the action pending in U.S. District Court for the
11 Southern District of California, Case No. 19-CV-01628-
12 LAB-AHG, Securities and Exchange Commission v.
13 Gina Champion-Cain, et al., notice is hereby given that
14 the court-appointed receiver will conduct a public auction
15 for the real property located at 7243 Camino Degrazia in
16 San Diego County, California. Sale is subject to Court
17 confirmation after the auction is held. Minimum bid
18 price is at least \$455,000. The auction will take place on
19 December 4, 2020, at 1:30 p.m. in front of the entrance to
20 the United States Courthouse, 221 W. Broadway, San
21 Diego, California or as otherwise determined by the
22 Court. To be allowed to participate in the auction,
23 prospective purchasers must meet certain bid
24 qualification requirements, including submitting a signed
25 purchase and sale agreement, an earnest money deposit
26 of \$9,625, and proof of funds. All bidders must be
27 qualified by 5:00 p.m. PT on November 30, 2020, by
28 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.

22 In order to conduct an orderly auction and provide sufficient time for the
23 publication of notices discussed above, the Receiver will require bidders to complete
24 the above steps by November 30, 2020 ("Bid Qualification Deadline") and conduct
25 the live public auction on December 4, 2020.

26 The Receiver will inform all interested persons of the opportunity to overbid at
27 the public auction, provided they qualify themselves to bid by the Bid Qualification
28 Deadline by (a) signing a purchase and sale agreement for the properties on the same

1 terms and conditions as Buyer, but with a purchase price of at least \$455,000,
2 (b) providing the Receiver with an earnest money deposit of \$9,625, and
3 (c) providing proof of funds necessary to close the sale transaction in the form of a
4 current bank statement, cashier's check delivered to the Receiver, or other evidence
5 deemed sufficient by the Receiver.

6 In the event one or more prospective purchasers qualify themselves to bid, the
7 auction will be conducted by the Receiver as noted above and bids will be allowed in
8 increments of at least \$1,000. The Receiver will then file a notice advising the Court
9 of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
10 confirming the sale. Earnest money deposits provided by bidders who are
11 unsuccessful will be promptly returned to them. In the event no prospective
12 purchasers qualify themselves to bid by the Bid Qualification Deadline, the Receiver
13 will notify the Court and seek entry of an order approving the sale to Buyer.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Receiver requests (a) approval of the sale
16 of the Camino Degrazia Property to Buyer (or Buyer's designee) pursuant to the
17 Agreement attached to the Freitag Declaration as Exhibit A, and (b) authority to take
18 all steps necessary to close the sale, with the net sale proceeds after all third-party
19 payments are made from escrow going to the receivership estate.

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Dated: November 10, 2020

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