

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GLOBAL ONLINE DIRECT, INC.,
BRYANT E. BEHRMANN and
LARRY "BUCK" E. HUNTER,

Defendants.

Civil Action No. 1:07-CV-0767-WSD

**MOTION FOR ORDER (i) AUTHORIZING THE SALE OF CERTAIN
REAL PROPERTIES FREE AND CLEAR OF ALL LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES; (ii) AUTHORIZING THE
RECEIVER TO PAY CERTAIN LIENS AND CLAIMS FROM THE SALE
OF THE REAL PROPERTIES; (iii) RELIEVING THE RECEIVER FROM
THE PROVISIONS OF 28 U.S.C. §§ 2001-2002; AND (iv) APPROVING THE
REAL ESTATE BROKER'S COMMISSIONS; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Michael A. Grassmueck (the "Receiver"), the duly appointed receiver for Global Online Direct, Inc. ("Global") and its subsidiaries Global Online Depository, Global Online SPIP, Global Online Auction Stores, Triple Diamond B, Bodaga Bay, Bodaga Bay Trucking, Inc., Catherine Crick Riders, Double B Broadcasting, Inc., The AM Show, Double B MPG, Global Online Direct, U Loan We Pay, and Bargain Hunter, Inc. and their subsidiaries and affiliates and any entities controlled by them (collectively referred to as the "Receivership Entities"),

hereby moves this Court (the "Motion") for authorization to (i) sell certain real properties free and clear of all liens, claims, interests and encumbrances; (ii) pay certain liens and claims from the sale of the real properties; (iii) relieve the Receiver from the provisions of 28 U.S.C. §§ 2001-2002; and (iv) approve the real estate broker's commissions.

I. INTRODUCTION.

By this Motion, the Receiver requests that the Court authorize the sale of certain real properties of the receivership estate (the "Receivership Estate"), which are located at (i) 2208 E. L Avenue, La Grande, Oregon 97850 (the "L Property"), and (ii) 60539 Peach Road, La Grande, Oregon 97850 ("Peach Property"), free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances attaching to the proceeds of sale.

To date, the Receiver has now sold on behalf of the Receivership Estate nine properties, which sale of properties were approved by Court order. The L Property and Peach Property are the tenth and eleventh properties to be sold on behalf of the Receivership Estate, for the benefit of the Global investors and creditors. With regard to the Peach Property, this property was recently clawed-back to the Receivership Estate, in settlement of a fraudulent transfer action filed against the prior owner, Horse Elysian Fields ("HEF"), entitled *Michael A. Grassmueck, Receiver v. Mary C. Hunter, et al.*, Case No. 1:07-CV-2532 (the "Hunter Action"). The Receiver is therefore selling this Peach Property, as a result of HEF transferring title to the Peach Property to the Receivership Estate.

Pursuant to the Application (the "Employment Application") to Employ Property Manager and Real Estate Broker, filed on August 20, 2007, the Receiver previously sought the approval of the listing of the L Property, and any other Receivership Estate properties (collectively, the "Receivership Estate Properties"), which would include properties clawed-back under the Hunter Action, with real

estate broker Mr. Roger Goodman of Century 21 Eagle Cap Realty (the "Broker"). The Broker's employment to market and sell the Receivership Estate Properties was approved by Court Order entered on October 30, 2007 (the "Broker Employment Order").

The Receiver submits this Motion to approve the sale of the L Property and the Peach Property (the "Sale Properties") to the highest offers received for the Sale Properties. The Receiver has obtained multiple offers for the L Property, and has accepted one of the offers, however, that offer is subject to higher bids. For each of the Sale Properties, to the extent that the Receiver obtains a higher offer than the current offer, the Receiver seeks Court approval of sale of the Sale Properties to the highest offer. The Receiver sells the Sale Properties "AS IS," "WHERE IS," and "WITH ALL FAULTS", and the Receiver makes no representations or warranties in respect to the condition of the Sale Properties. Further, the Receiver requests that the Court authorize him to pay from the proceeds of sale of the Sale Properties the valid liens, taxes and any other claims on the Properties, subject to any objections to such liens, taxes or claims by the Receiver.

The Receiver also requests, by this Motion, that the Court waive the provisions of 28 U.S.C. §§ 2001(a) and 2002, which provide for the sale of the Sale Properties pursuant to a foreclosure-type or public auction process. Further, the Receiver seeks waiver of the provisions of 28 U.S.C. § 2001(b) applying to private sales, including requiring certain appraisals, newspaper publications for the private sale, and confirmation of the private sale.

In accordance with the Receiver's business judgment, the waivers of Sections 2001(a) and 2002 are appropriate. The most likely way for the Receiver to realize the highest price for the Sale Properties is through the commercially reasonable and customary method of listing the Sale Properties with a broker and

conducting a private sale. Further, the Receiver believes that listing and selling the Sale Properties through a broker for the highest price offered, is the best method to obtain the highest and best price for the Sale Properties, without having to incur the additional expenses in complying with Section 2001(b).

Finally, the Receiver seeks authority to compensate the Broker in accordance with the listing agreement (the "Broker Agreement") at the applicable sales commission from the proceeds of sale of the Sale Properties. The sales commission amounts are described below and in the Employment Application. The Employment Application was approved pursuant to the Broker Employment Order. The Broker Employment Order also approved the Broker Agreement, and this Motion also seeks approval to pay the Broker his sales commissions in accordance with the Broker Agreement.

II. STATEMENT OF FACTS.

A. The SEC Action and Investigation of Global's Business Operations

On April 25, 2007, the Securities and Exchange Commission ("SEC") commenced an action against the Defendants for violations of various federal securities laws. According to the SEC, the Defendants were involved in the fraudulent offer and sale of approximately \$45 million of unregistered securities, beginning in October 2005. On June 4, 2007, this Court appointed Michael A. Grassmueck as receiver.

B. The Receivership Estate Properties and the Hunter Action

The Receiver previously identified at least twenty separate real properties owned by the Receivership Entities, including the L Property. The Receiver conducted an extensive investigation and analysis in connection with the prospective sale of these properties. On August 20, 2007, the Receiver filed the Employment Application.

In regard to the Peach Property, HEF was the previous owner. The Receiver filed the Hunter Action on October 12, 2007 against, among others, HEF, for fraudulent transfer, unjust enrichment and constructive trust/equitable lien. The Receiver asserted that certain Global investor proceeds were fraudulently transferred to the defendants named in the Hunter Action for the purchase of real properties. The Receiver alleged that the Global investor proceeds were disbursed to the defendants with little or no consideration provided to Global for such proceeds. The Receiver sought as relief in the Hunter Action the recovery of the real properties, including the Peach Property, which were purchased with the Global proceeds.

As settlement of the Hunter Action against HEF, HEF agreed to execute a grant deed of the Peach Property to the Receivership Estate, so that the Peach Property may be sold for the benefit of the Global investors and creditors. The Receivership Estate expects to have the grant deed recorded shortly. As a result of such approval of transfer of title, the Receiver is selling this Peach Property for the benefit of the Global investor and creditors.

C. The Employment Application

Pursuant to the Employment Application, and the Broker Agreement, the Receiver sought and obtained authority to pay the Broker a sales commission from the sale of the Receivership Estate Properties of six percent (6%), if the sales price is less than or equal to \$200,000, and five and a half percent (5.5%) if the sales price is greater than \$200,000. All sales of the Receivership Estate Properties are to be governed by the Receiver's Earnest Money Agreements, subject to Court approval. The Court entered the Broker Employment Order approving the Employment Application on October 30, 2007.

D. The Marketing of the Receivership Estate Properties

Through the Receiver's Broker, the Receiver marketed the Sale Properties, along with other Receivership Estate Properties, by, among other things, listing them with several real estate listing services in Oregon, including "Real Estate Source", "The Real Estate Guide", and the "Home Builders Guide", listed them on the web at "GoodmanMLS", "Century 21. com", and the "Realtor.com", and advertised them in a public newspaper, "The Observer", which is circulated in the area where the Properties are located. The Receiver's Broker also sent flyers to Broker's clients in his efforts to market the Properties.

The Properties were listed and advertised for a period of time, after which the Receiver began receiving offers to purchase the Properties. The Receiver has received multiple offers for the L Property and has accepted an offer for the L Property, subject to higher bids. The Receiver anticipates that higher bids may be received for the L Property, and that the L Property could sell for higher than the current accepted offer by the time of entry of the order approving this Motion.

For the Sale Properties, the accepted offers were derived through arms-length negotiations, and the Receiver believes that the accepted offers, at this time, are the best offers that the Receivership Estate will receive for the Sale Properties. However, the Receiver reserves the right to pursue higher and better offers to the extent received, and seeks as part of the Court's order authority to sell the Sale Properties to the highest bidders.

1. L Property

On or about January 15, 2009, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyer Braseth Properties LLC ("Braseth"), for the sale of the L Property to Braseth. *See* Grassmueck Declaration, Exhibit "A". Braseth agreed to purchase the L Street Property for the amount of

\$105,000, pursuant to a Buyer's Counter Offer document signed by Braseth on January 20, 2009. *See* Grassmueck Declaration, Exhibit "B".

Braseth has paid an earnest money deposit, and will pay the balance of the purchase price following Court approval of the sale of the L Property and at closing of the sale of the L Property. The Earnest Money Agreement also provides at Section 3.2 that Braseth acknowledges that the sale of the L Property may be subject to higher bids. *See* Grassmueck Declaration, Exhibit "A". The Receiver has accepted such offer, but has received other offers for the L Property. The Receiver anticipates selling the Property for a higher bid, by the time of entry of order approving this Motion.

Since the purchase price is less than \$200,000, the Broker would be entitled to a 6% commission from the sale of the L Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 14. The Receiver estimates a net return from the sale of the L Property of \$105,684.89, after payment of the Broker's Commission of \$6,300, closing charges of \$100, and property taxes of \$2,165, and after certain credit to property taxes of \$684.89. *See* Grassmueck Declaration, ¶ 14. But this net return amount may actually be higher by the time of entry order on this Motion, based upon receipt of a higher bid for the L Property.

The Receiver asserts that the purchase price obtained for this L Property is reasonable, based on the Broker's analysis of the values for similar properties located in La Grande, Oregon, and the length of time for which the L Property was marketed. The L Property consists of a 5,216 square foot commercial warehouse building. *See* Grassmueck Declaration, ¶ 15.

Global originally purchased this L property, when it was sold together with an adjoining property, 2206 L Avenue, La Grande, Oregon, for the amount of \$635,000 in October, 2006. Prior to that time, in June, 1997, the L Property itself

was sold for \$120,000. The Receiver asserts that at the time that Global purchased the properties in October, 2006, it grossly overpaid for the L Property and adjoining property, and that the prior sales price for the properties was not reflective of the true value for such properties. *See* Grassmueck Declaration, ¶ 16.

The Receiver notes that the comparative value (comps) for similar properties in La Grande, Oregon are close to the purchase price for the L Property. A property located on 10114 Woodvilla Drive, La Grande Oregon, consisting of a 2,000 square foot commercial building sold for \$100,000 on April 7, 2008, and another nearby building on 1805 Z Avenue, La Grande, Oregon, consisting of a 13,263 square feet commercial building sold for \$165,000 on August 6, 2008. This L Property purchase price of \$105,000 for a 5,000 square feet commercial building falls within the range of prices for a commercial building in this locale. Further, the Receiver's Broker has marketed the L Property for over a year, so the offer was obtained after a long-standing period of marketing the L Property. *See* Grassmueck Declaration, ¶ 17.

1. Peach Property

On or about January 15, 2009, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyer Chad J. Mueller ("Mueller"), for the sale of the Peach Property to Mueller. *See* Grassmueck Declaration, Exhibit "C". Mueller agreed to purchase the Peach Property for the amount of \$340,000, pursuant to a Seller's Counter Offer document signed by Mueller on January 28, 2009. *See* Grassmueck Declaration, Exhibit "D". *See* Grassmueck Declaration, ¶ 18.

Mueller has paid an earnest money deposit, and will pay the balance of the purchase price following Court approval of the sale of the Peach Property and at closing of sale of the Peach Property. The Earnest Money Agreement also provides at Section 3.2 that Mueller acknowledges that the sale of the Peach

Property may be subject to higher bids. *See* Grassmueck Declaration, Exhibit "C". *See* Grassmueck Declaration, ¶ 19.

Since the purchase price is more than \$200,000, the Broker would be entitled to a 5.5% commission from the sale of the Peach Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 20. The Receiver estimates a net return from the sale of the Peach Property of \$313,479.89, after payment of the Broker's Commission of \$18,700, closing charges of \$100, and property taxes of \$8,500, and after certain credit to property taxes of \$779.89. *See* Grassmueck Declaration, ¶ 20.

The Receiver asserts that the purchase price obtained for this Peach Property is reasonable, based on the prior sale price for the Peach Property and the values for similar properties purchased in La Grande, Oregon. The Peach Property consists of a 3 bedroom, 2 bath residence, which residence measures 2,811 square feet and sits on a 37.88 acre lot. *See* Grassmueck Declaration, ¶ 21.

The prior sale price for the Peach Property was \$350,000 as of April 19, 2006, so the value of the Peach Property, based on the current offer, has only slightly declined since 2006. Further, the Receiver notes the comparative value (comps) for similar properties in La Grande, Oregon, which are close to the purchase price for the Peach Property. A property located on 66946 Miller Lane, La Grande, Oregon, consisting of a 1,960 square foot residence, on a 13 acre lot, sold for \$270,000 on August 26, 2008, and another nearby residence on 69491 Summerville Road, La Grande, Oregon, consisting of a 1,560 square foot residence, sitting on a 44.90 acre lot, sold for \$325,000 on January 20, 2009. This Peach Property purchase price of \$350,000 for its square footage and lot size is close in amount with prices for residences, which have similar square footage and lot size in La Grande, Oregon. *See* Grassmueck Declaration, ¶ 22.

E. The Relief Requested

Pursuant to the Application, and the Earnest Money Agreement, the sale of the Sale Properties is subject to Court approval. Thus, pursuant to the Motion, the Receiver seeks Court approval of the sale of the Sale Properties free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances, if any, attaching to the proceeds of sale.

Further, the Receiver requests that the Court authorize him to sell to the highest bidders for the Sale Properties, and to pay from the proceeds of sale, the valid liens, taxes, and any other claims, on the Sale Properties, subject to any objections to such liens, taxes, or claims by the Receiver. Further, the Receiver requests that the Court waive the provisions of 28 U.S.C. §§ 2001-2002, as discussed in Section IV below.

III. THE SALE OF THE SALE PROPERTIES SHOULD BE AUTHORIZED.

A. This Court has Authority to Order the Sale of the Sale Properties.

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

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

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

Based on the information set forth above, this Court has the power to authorize the Receiver to sell the Sale Properties free and clear of all liens, claims, interests, and encumbrances. The Receiver sells such Properties "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver makes no representations or warranties in respect to the condition of these Properties.

Further, in conjunction with its broad equitable power in respect to authorizing the sale, the Receiver requests that the Court authorize him to the extent that higher offers are received, to sell to the highest bidders, and to pay from the proceeds of sale of Sale Properties, the valid liens, taxes, and any other claims,

on the Properties, subject to any objections to such liens, taxes, or claims by the Receiver.

**IV. THE RECEIVER SEEKS COURT APPROVAL OF THE
ADDITIONAL REQUESTS IN CONJUNCTION WITH THE SALE
OF THE SALE PROPERTIES**

The Receiver also requests, by this Motion, that the Court waive the provisions of 28 U.S.C. §§ 2001(a) and 2002, which provide for the sale of the Sale Properties pursuant to a foreclosure-type or public auction process. Further, the Receiver seeks waiver of the provisions of 28 U.S.C. § 2001(b) applying to private sales, including requiring certain appraisals, newspaper publications for the private sale, and confirmation of the private sale. *See* Grassmueck Declaration, ¶ 25.

In accordance with the Receiver's business judgment, the waivers of 28 U.S.C. §§ 2001(a) and 2002 are appropriate and the most likely way for the Receiver to realize the highest price for the sale of the Sale Properties is through the commercially reasonable and customary method of listing the Properties with a broker and conducting a private sale, as opposed to conducting a foreclosure-type sale. Further, the Receiver believes that listing and selling the Properties through a broker for the highest price offered, is the best method to obtain the highest price for the Properties, without having to incur the additional expenses for appraisal, publication, and confirmation, as set forth in Section 2001(b). *See* Grassmueck Declaration, ¶ 26.

The Sale Properties were marketed and advertised in an effort to maximize prices. The Receiver has accepted the best offers for the Sale Properties, subject to higher bids. The accepted offers were derived through arms-length negotiations and the Receiver believes that the accepted offers are the best offers that the Receivership Estate will receive for the Properties. However, the Receiver

reserves the right to pursue higher and better offers to the extent received, and seeks as part of the Court's order authority to sell the Sale Properties to the highest bidders.

The Receiver also seeks authority to compensate the Broker, in accordance with the Broker Agreement at the applicable sales commission, from the proceeds of sale of the Sale Properties, as described above and in the Application, filed on August 20, 2007, and as approved pursuant to Court Order, entered on October 30, 2007. Grassmueck Declaration, ¶ 27.

V. **CONCLUSION.**

WHEREFORE, the Receiver requests that this Court enter an order for authorization to (i) sell the Sale Properties free and clear of all liens, claims, interests and encumbrances; (ii) pay certain liens and claims from the sale of the Sale Properties; (iii) relieve the Receiver from the provisions of 28 U.S.C. §§ 2001-2002; and (iv) approve the Broker's commission.

Dated: March 3, 2009

Respectfully submitted,

/s/ David R. Zaro, Esq.

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