

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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
PROPERTY 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 PROPERTY;
(iii) RELIEVING THE RECEIVER FROM THE PROVISIONS OF 28 U.S.C.
§§ 2001-2002; AND (iv) APPROVING THE REAL ESTATE BROKER'S
COMMISSION; 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 property free and clear of all liens, claims, interests and encumbrances; (ii) pay certain liens and claims from the sale of the real property;

- (iii) relieve the Receiver from the provisions of 28 U.S.C. §§ 2001-2002; and
- (iv) approve the real estate broker's commission.

I. INTRODUCTION.

By this Motion, the Receiver requests that the Court authorize the sale of certain real property of the receivership estate (the "Receivership Estate"), which is located at 1137 N. Cove Street, Union, Oregon 97883 ("Cove Property"), free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances attaching to the proceeds of sale.

With regard to the Cove Property, this property was clawed-back to the Receivership Estate, in settlement of a fraudulent transfer action filed against the prior owner, Shane Weiskircher ("Weiskircher"), 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 Cove Property, as a result of Weiskircher transferring title to the Cove 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 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 Cove Property to the highest offer received for the Property. For the Cove Property, to the extent that the Receiver obtains a higher offer than the current offer, the Receiver seeks Court approval of sale of the Cove Property to the highest offer. The Receiver sells the Cove Property "AS IS," "WHERE IS," and "WITH ALL FAULTS", and the Receiver makes no representations or warranties in respect to the condition of the Cove Property. Further,

the Receiver requests that the Court authorize him to pay from the proceeds of sale of the Cove Property the valid liens, taxes and any other claims on the Property, 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 Cove Property 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 Cove Property is through the commercially reasonable and customary method of listing the Property with a broker and conducting a private sale. Further, the Receiver believes that listing and selling the Cove Property through a broker for the highest price offered, is the best method to obtain the highest and best price for the Property, without having to incur the additional expenses in complying with Section 2001(b).

Finally, the Receiver seeks authority to compensate the Receivership Estate's real estate broker (the "Broker") in accordance with the listing agreement (the "Broker Agreement") at the applicable sales commission from the proceeds of sale of the Cove Property. The sales commission amounts are described below and in the Application to Employ the Broker ("Employment Application"). The Employment Application was approved pursuant to the order approving the Employment Application ("Broker Employment Order"). The Broker Employment Order also approved the Broker Agreement, and this Motion also seeks approval to pay the Broker his sales commission 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 a number of real properties owned by the Receivership Entities, including the Cove 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 Cove Property, Weiskircher was the previous owner. The Receiver filed the Hunter Action on October 12, 2007 against, among others, Weiskircher, 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 Cove Property, which were purchased with the Global proceeds.

As settlement of the Hunter Action against Weiskircher, Weiskircher agreed to execute a grant deed of the Cove Property to the Receivership Estate, so that the Cove Property could be sold for the benefit of the Global investors and creditors. As a result of such approval of transfer of title, the Receiver is selling this Cove 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 (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 Cove Property, 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 Receivership Estate 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, including the Cove Property, after which the Receiver began receiving offers to purchase the Properties. For the Cove Property, the accepted offer was derived through arms-length negotiations, and the Receiver believes that the accepted offer, at this time, is the best offer that the Receivership Estate will receive for the Cove Property. However, the Receiver reserves the right to pursue a higher and better offer to the extent received, and seeks as part of the Court's order authority to sell the Cove Property to the highest bidder.

Cove Property

On or about January 25, 2010, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyers David Hoyt and Bobbi Jo Hoyt ("Hoyts"), for

the sale of the Cove Property to the Hoyts. *See* Grassmueck Declaration, Exhibit "A". The Hoyts agreed to purchase the Cove Property for the amount of \$75,000, pursuant to a Seller's Counter Offer document signed by the Hoyts on January 30, 2010. *See* Grassmueck Declaration, Exhibit "B". *See* Grassmueck Declaration, ¶ 12.

The Hoyts have paid an earnest money deposit, and will pay the balance of the purchase price following Court approval of the sale of the Cove Property and at closing of sale of the Cove Property. The Earnest Money Agreement also provides at Section 3.2 that the Hoyts acknowledge that the sale of the Cove Property may be subject to higher bids. *See* Grassmueck Declaration, Exhibit "A". *See* Grassmueck Declaration, ¶ 13.

Since the purchase price is less than \$200,000, the Broker would be entitled to a 6% commission from the sale of the Cove Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 13. The Receiver estimates a net return from the sale of the Cove Property of \$69,783.43, after payment of the Broker's Commission of \$4,500, property taxes of \$1,017.44, and after certain credit to property taxes of \$300.87. *See* Grassmueck Declaration, ¶ 14.

The Receiver asserts that the purchase price obtained for this Cove Property is reasonable, based on comparable values for similar properties purchased in Union, Oregon, and the length of time the Cove Property was marketed. The Cove Property consists of residential property, which building size measures 1,617 square feet, and sits on a 40,000 square foot lot. *See* Grassmueck Declaration, ¶ 15. The lot is significant in size however is not divisible in Union, Oregon, and contains two (2) other buildings on the lot, which are dilapidated but will nonetheless be included with the sale of the Cove Property. The Cove Property was marketed since February 9, 2009.

The Receiver advises that there was difficulty in finding comps for the Cove Property, as the residential building on the Cove Property is not completely finished in construction, as there is only sheetrock, and no paint, light fixtures, kitchen or bathroom, and is currently not habitable, and also due to the indivisible land and condition of other buildings on the Cove Property. The comps provided below are higher as these

properties are in a finished stage and actually habitable. *See* Grassmueck Declaration, ¶ 16.

The Receiver notes below these comparative value (comps) for residential properties in Union, Oregon, which are in a finished stage and habitable. A property located on 462 S. 4th St., Union, Oregon, consisting of a 1,243 square foot building on a 9,360 square foot lot, sold for \$98,000 on March 25, 2009, another nearby property on 472 S. Gale Ave., Union, Oregon, consisting of a 1,534 square foot building, sitting on a 9,400 square foot lot, sold for \$107,000 on September 25, 2008, and finally, another nearby property on 613 S. Main St., Union, Oregon, consisting of a 1,593 square foot building, sitting on a 12,075 square foot lot, sold for \$114,900 on July 15, 2009.

This Cove Property purchase price of \$75,000 for its building square footage and lot size, and its current unfinished condition of the building and other buildings, plus the indivisible lot, measures favorably relative to the values of other properties in this locale. While the \$75,000 is lower than the comps provided, when viewed in relation to the sale prices of \$98,000, \$107,000, and \$114,900, for the finished and habitable properties, this \$75,000 purchase price is a comparatively reasonable value for the Cove Property. *See* Grassmueck Declaration, ¶ 18. Further, while the lot size is significantly greater than the comparable properties, the indivisible aspect of this lot, plus the condition of the other buildings on this lot considerably reduce the extent of marketability and value for this Cove Property.

E. The Relief Requested

Pursuant to the Application, and the Earnest Money Agreement, the sale of the Cove Property is subject to Court approval. Thus, pursuant to the Motion, the Receiver seeks Court approval of sale of the Cove Property 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 bidder for the Cove Property, and to pay from the proceeds of sale, the valid liens, taxes,

and any other claims, on the Property, 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 COVER PROPERTY SHOULD BE AUTHORIZED.

A. This Court has Authority to Order the Sale of the Cove Property.

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 Cove Property free and clear of all liens, claims, interests, and encumbrances. The Receiver sells such Property "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver makes no representations or warranties in respect to the condition of this Property.

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 bidder, and to pay from the proceeds of sale of the Cove Property, the valid liens, taxes, and any other claims, on the Property, 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 COVE PROPERTY

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 Cove Property 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* Grassmuck Declaration, ¶ 21.

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 Cove Property is through the commercially reasonable and customary method of listing the Property 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 Property through a broker for the highest price offered, is the best

method to obtain the highest price for the Property, without having to incur the additional expenses for appraisal, publication, and confirmation, as set forth in Section 2001(b). *See* Grassmueck Declaration, ¶ 22.

The Cove Property was marketed and advertised in an effort to maximize price. The Receiver has accepted the best offer for the Cove Property, subject to higher bids. The accepted offer was derived through arms-length negotiations and the Receiver believes that the accepted offer is the best offer that the Receivership Estate will receive for the Property. However, the Receiver reserves the right to pursue a higher and better offer to the extent received, and seeks as part of the Court's order authority to sell the Cove Property to the highest bidder.

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 Cove Property, as described above and in the Employment Application, filed on August 20, 2007, and as approved pursuant to the Broker Employment Order, entered on October 30, 2007. Grassmueck Declaration, ¶ 23.

V. CONCLUSION.

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

Dated: February 18, 2010

Respectfully submitted,

/s/ David R. Zaro, Esq.

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