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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 ALEXANDER JAMES TRABULSE,

15 Defendant.

16 and

17 FAHEY FUND, L.P., FAHEY FINANCIAL
18 GROUP, INC., INTERNATIONAL TRADE &
DATA, and ITD TRADING,

19 Relief Defendants.
20
21

Case No. C 07-4975 (WHA)

**MOTION TO APPROVE SALE OF
MOBILE HOMES FREE AND CLEAR OF
LIENS**

[Notice of Motion, Declaration of Geoff
Winkler, and Proposed Order, Filed
Concurrently Herewith]

Date: October 15, 2009

Time: 8:00 a.m.

Place: Courtroom 9, 19th Floor
United States District Court
Northern District of California-
San Francisco Division
450 Golden Gate Avenue
San Francisco, CA 94102

I.

INTRODUCTION

On December 17, 2007, this Court entered the Order Appointing Monitor And Other Ancillary Relief ("Monitor Order"), which authorized the appointment of Michael A. Grassmueck, as corporate monitor (the "Monitor") with regard to the Fahey Fund, L.P.; Fahey Financial Group, Inc.; International Trade & Data; and ITD Trading (collectively, the "Relief Defendants") and Alexander James Trabulse ("Trabulse"). Pursuant to the Monitor Order, the Monitor was empowered and directed to, among other things, conduct such investigation as would be necessary to locate and account for the Relief Defendants' assets, and review the overall operation of the Relief Defendants in accordance with the Monitor Order.

On February 13, 2008, the Court entered an Order implementing certain recommendations of the Monitor, and which also incorporated the terms of the Monitor Order (the "Modified Order"). The Modified Order authorized the Monitor to, among other things, undertake the review and analysis of claims, and determine the allowance of claims, through a claims review process, and *assist in the sale and liquidation of assets*.

In connection with his duties under the Modified Order, the Monitor, by this Motion, seeks approval of the sale of four (4) mobile homes ("Mobile Homes") that are property of the Relief Defendants' estate ("Estate"), free and clear of liens, claims and encumbrances, to proposed buyer, Salel Enterprises, Inc. ("Buyer"), or to the buyer with the highest offer for the purchase of the Mobile Homes.

II.

FACTSA. The SEC Action

On September 26, 2007, the Securities and Exchange Commission ("SEC") commenced an action (the "SEC Action") against the Relief Defendants and Trabulse in this Court, for violations of various federal securities laws. Following the commencement of the SEC Action, Trabulse and the Relief Defendants sought dismissal of the SEC Action, and the SEC sought issuance of a preliminary injunction and other ancillary relief against Trabulse and the Relief Defendants. On

1 December 7, 2007, the Court granted the SEC's request for a preliminary injunction and other
2 ancillary relief, and denied Trabulse's and the Relief Defendants' request for dismissal (the
3 "Injunction Order").

4 B. The Monitor Order

5 Following entry of the Injunction Order, Trabulse and the Relief Defendants entered into a
6 Stipulation for Appointment of Corporate Monitor, which was filed in the SEC Action on
7 December 14, 2007. On December 17, 2007, the Court entered an Order approving the
8 Stipulation, which authorized the appointment of the Monitor and other ancillary relief ("Monitor
9 Order"). Pursuant to the Monitor Order, the Monitor was empowered and directed to, among
10 other things, conduct such investigation as would be necessary to locate and account for the Relief
11 Defendants' assets, and review the overall operation of the Relief Defendants in accordance with
12 the Monitor Order.

13 C. The Modified Order

14 On February 13, 2008, the Court entered an Order implementing certain recommendations
15 of the Monitor, and which also incorporated the terms of the Monitor Order (the "Modified
16 Order"). The Modified Order authorized the Monitor to, among other things, undertake the review
17 and analysis of claims, and determine the allowance of claims, through a claims review process,
18 and *assist in the sale and liquidation of assets*.

19 D. Final Judgment

20 On April 7, 2008, a final judgment was entered (the "Judgment") as to Trabulse and the
21 Relief Defendants.

22 E. The Further Modification to Monitor Order

23 Further, on or about August 7, 2008, an Order was entered which further modified the
24 Modified Order, and incorporated the terms of the Monitor Order and Modified Order. The
25 further Modified Order authorized the Monitor to, among other things, (i) establish certain bank
26 accounts for the purpose of receiving and holding certain proceeds from the sale of assets, (ii)
27 require the turnover of such sale proceeds to the Monitor for deposit in such accounts, and (iii)
28

1 authorize the Monitor to use funds from such accounts to pay expenses associated with
 2 preservation and maintenance of the assets.

3 F. Sale of the Mobile Homes

4 The property of the estate includes 4 mobile homes, which are identified by the following
 5 reference labels: (1) Mobile Home #1 (Space #38, CA decal # AAJ7548, Built Approximately
 6 1959, (2) Mobile Home #2 (Space #40, CA decal # AAN7849, Built Approximately 1959), (3)
 7 Mobile Home #3 (Space #45, CA decal # AAT8217), Built Approximately 1961), and (4) Mobile
 8 Home #4 (Space #59, CA decal # LAD4425), Built Approximately 1978). These Mobile Homes
 9 are currently located at Salel's Mobilehome Park, at 747 Lewelling Blvd., Spc 65, San Leandro,
 10 California. Mobile Home #'s 2 and 3 are unoccupied and have no tenants. Mobile Home #'s 1 and
 11 4 are occupied by tenants, subject to rental agreements with tenants ("Rental Agreements").

12 The Monitor has received an offer to purchase the Mobile Homes from the estate, with an
 13 assignment of the Rental Agreements, for the amount of \$42,000. Prior to receipt of this offer, the
 14 Monitor had ascribed no value to these assets above the cost to market and sell the same.
 15 Accordingly, the Monitor has agreed to sell the Mobile Homes and assign the Rental Agreements
 16 (collectively, the "Mobile Home Assets") to the Buyer, subject to receipt of any higher offers for
 17 the Mobile Home Assets. The Monitor has prepared a Bill of Sale document for transfer of the
 18 Mobile Home Assets to Buyer, which is attached hereto in substantially its final form as Exhibit
 19 "A". The Mobile Home Assets shall be sold on an "as-is" basis, without any representations and
 20 warranties, and free and clear of any liens, claims and encumbrances.

21 III.

22 AUTHORITY TO SELL THE MOBILE HOME ASSETS FREE AND CLEAR

23 It is generally conceded that a court of equity having custody and control of property has
 24 power to order a sale of the same in its discretion. *See, e.g., S.E.C. v. Elliott*, 953 F.2d 1560, 1566
 25 (11th Cir. 1992) (the District Court has broad powers and wide discretion to determine relief in an
 26 equity receivership). "The power of sale necessarily follows the power to take possession and
 27 control of and to preserve property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d
 28 1133, 1144 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)

1 (citing 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed. 1992)(citing
2 *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity orders property in its
3 custody to be sold, the court itself as vendor confirms the title in the purchaser." 2 Ralph Ewing
4 Clark, *Treatise on Law and Practice of Receivers* § 487).

5 "A court of equity, under proper circumstances, has the power to order a receiver to sell
6 property free and clear of all encumbrances." *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850,
7 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* §
8 500 (3rd ed. 1992). To that end, a federal court is not limited or deprived of any of its equity
9 powers by state statute. *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir.
10 1925) (state statute allowing time to redeem property after a foreclosure sale not applicable in a
11 receivership sale).

12 Generally, when a court-appointed receiver is involved (or in this case, a Court appointed
13 monitor empowered with the rights and duties of a receiver), the monitor, as agent for the court,
14 may conduct the sale of the receivership property. *Blakely Airport Joint Venture II v. Federal Sav.
15 and Loan Ins. Corp.*, 678 F. Supp. 154, 156 (N.D. Tex. 1988). The receiver's sale conveys "good"
16 equitable title enforced by an injunction against the owner and against parties to the suit. *See* 2
17 *Ralph Ewing Clark, Treatise on Law and Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491
18 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are vested with
19 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925).

20 Based on the information set forth above, this Court has the power to authorize the
21 Monitor to sell the Mobil Home Assets free and clear of all liens, claims, interests, and
22 encumbrances. To the extent that there are any liens, claims, or encumbrances on the Mobile
23 Home Assets, they would only attach to the sale proceeds.

24 Here, the Monitor initially marketed the Mobile Homes for sale. Initially, the offers were
25 less than the cost of the sale. Recently, the Monitor received an offer of \$42,000 for the purchase
26 of the Mobile Home Assets. The Monitor believes that, at this time, this purchase price closely
27 approximates the fair market value for the Mobile Homes, and is the best price for the Mobile
28 Home Assets. Given the significant age of these Mobile Homes, the declining value of the Mobile

1 Homes, and the fact that only one offer over the past 18 months was received for the Mobile
2 Home Assets, the Monitor believes that the \$42,000 price is fair and reasonable price, and the sale
3 is in the best interest of the estate's investors and creditors.

4 Further, since the Buyer is the manager of the Mobile Home Park in which the Mobile
5 Homes are located, the estate will not have to incur any transportation, storage, or any other
6 related costs in connection with the sale. This will provide tremendous savings to the estate in
7 conserving any costs or expenses to be deducted from the sale.

8 IV.

9 APPROVAL OF ADDITIONAL REQUESTS IN CONJUNCTION WITH THE SALE OF THE
10 MOBILE HOME ASSETS

11 The Monitor also requests that the Court waive the provisions of 28 U.S.C. §§ 2001(a) and
12 2002, which generally call for the Monitor to sell personal property assets such as the Mobile
13 Home Assets pursuant to a foreclosure-type or public auction process. Further, the Monitor seeks
14 waiver of the private sale provisions of 28 U.S.C. § 2001(b), which call for appraisals, newspaper
15 publications, and the Court's confirmation of the private sale.

16 In accordance with the Monitor's business judgment, the waivers of 28 U.S.C. §§ 2001(a)
17 and 2002 are appropriate. The most likely way for the Monitor to realize the highest price for the
18 Mobile Home Assets is through a commercially reasonable private sale, rather than a foreclosure-
19 type sale. Further, the Receiver believes that selling the Mobile Home Assets to the Buyer, or
20 highest offeror, is the best method to obtain the highest price for the Property, without having to
21 incur the additional expenses for appraisal, publication, and confirmation, as set forth in Section
22 2001(b).

23 The Monitor has accepted the best offer for the Mobile Home Assets, subject to a higher
24 offer. The accepted offer was derived through arms-length negotiations and the Monitor believes
25 that the accepted offer is the best offer that the Relief Defendants' Estate will receive for the
26 Mobile Home Assets. The Monitor reserves the right to accept a higher and better offers to the
27 extent received in advance of the Court's entry of an order approving the sale.

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V.

CONCLUSION

WHEREFORE, the Monitor requests that this Court enter an order for authorization (i) to sell and assign the Mobile Home Assets free and clear of all liens, claims, interests and encumbrances; and (ii) to relieve the Monitor from the provisions of 28 U.S.C. §§ 2001-2002.

Dated: September 9, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
YALE K. KIM


By: 
Yale K. Kim
Attorneys for Michael A. Grassmueck,
Monitor

Exhibit "A"

BILL OF SALE, ASSIGNMENT AND ASSUMPTION

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION ("**Bill of Sale**") is made as of September ____, 2009 ("**Effective Date**"), by and between MICHAEL A. GRASSMUECK, as Monitor, appointed pursuant to that Order of the United States District Court, Northern District of California, San Francisco Division ("**District Court**") entered December 17, 2007, whose address is P.O. Box 5248, Portland, Oregon 97208-5248 ("**Seller**"), and SALEL ENTERPRISES, INC., a California corporation, whose address is 1032 Ocho Rios Drive, Danville, California 94526 ("**Buyer**").

W I T N E S S E T H:

For good and valuable consideration, in the amount of Forty-Two Thousand and No Dollars (\$42,000.00) receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Seller hereby transfers, assigns and conveys to Buyer all of the following:

a. All of Seller's right, title and interest in and to those certain four (4) trailers as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "**Property**").

b. All of Seller's right, title and interest in and to the leases (each a "**Lease**" and collectively the "**Leases**") described on Exhibit "B" attached hereto, and all of the rights, interests, benefits and privileges of the lessor thereunder, and all prepaid rents and security and other deposits held by Seller under the Leases and not credited or returned to tenants, but subject to all terms, conditions, reservations and limitations set forth in the Leases.

2. THE PARTIES ARE AWARE THAT THE SELLER MAY SELL THE PROPERTY ONLY AFTER APPROVAL OF THE DISTRICT COURT AS TO THIS SALE AND ITS TERMS. THE PARTIES AGREE THAT THIS SALE IS CONTINGENT UPON RECEIVING SUCH APPROVAL FROM THE DISTRICT COURT PURSUANT TO AN ENTERED ORDER APPROVING SUCH SALE (THE "**COURT APPROVAL**"). IF THIS SALE IS NOT APPROVED BY THE DISTRICT COURT AND THE BUYER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT TO THE DATE OF SAID DISAPPROVAL, THEN THIS SALE SHALL NOT PROCEED AND THE DEPOSIT, IF ANY, SHALL BE RETURNED TO BUYER. SUBJECT TO THE COURT APPROVAL, SELLER SHALL DELIVER THE PROPERTY TO BUYER FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES.

3. Seller and Buyer acknowledge and hereby agree that the property conveyed hereunder is conveyed by Seller and accepted by Buyer AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, IT BEING THE INTENTION OF SELLER AND BUYER EXPRESSLY TO NEGATE AND EXCLUDE

ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE CALIFORNIA UNIFORM COMMERCIAL CODE.

4. The parties acknowledge and hereby agree that Seller may sell the Property to a third party buyer upon receipt by Seller of a higher offer up until and not after the Court Approval.

5. Buyer hereby accepts the assignment of the Leases and agrees to assume and discharge, in accordance with the terms thereof, all of the obligations thereunder arising from events first occurring and payments first accruing from and after the date hereof.

6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

7. Each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any new or confirmatory instruments as may be reasonably required to further effectuate and/or perfect the conveyance, transfer and assignment to Buyer of the Leases.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale, Assignment and Assumption as of the date first above written.

"Seller"

MICHAEL A. GRASSMUECK, as
Monitor

"Buyer"

SALEL ENTERPRISES, INC.,
a California corporation

By: _____
Name: _____
Its: _____

EXHIBIT "A"

PROPERTY

- (1) Mobile Home #1 (Space #38, CA decal # AAJ7548, Built Approximately 1959);
- (2) Mobile Home #2 (Space #40, CA decal # AAN7849, Built Approximately 1959);
- (3) Mobile Home #3 (Space #45, CA decal # AAT8217), Built Approximately 1961); and
- (4) Mobile Home #4 (Space #59, CA decal # LAD4425), Built Approximately 1978).

These Mobile Homes are currently located at Salel's Mobilehome Park, at 747 Lewelling Blvd., Spc 65, San Leandro, California.

EXHIBIT "B"

LEASES