

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

ABC VIATICALS, INC.,
C. KEITH LAMONDA,
and JESSE W. LAMONDA, JR.

Defendants,

and
LAMONDA MANAGEMENT FAMILY
LIMITED PARTNERSHIP,
STRUCTURED LIFE SETTLEMENTS, INC.,
BLUE WATER TRUST,
and DESTINY TRUST,

Relief Defendants

[illegible]

CIVIL ACTION NO.
3-06-CV-2136-P

**RECEIVER'S UNOPPOSED MOTION TO SELL REAL
PROPERTY AT PRIVATE SALE AND TO APPOINT
APPRAISERS AND BRIEF IN SUPPORT**

TO THE HONORABLE JORGE A. SOLIS, UNITED STATES DISTRICT COURT JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”), and files his Unopposed Motion to Sell Real Property at Private Sale and to Appoint Appraisers and in support of such would respectfully show unto the Court as follows:

FACTUAL BACKGROUND

1. On November 17, 2006, the Securities and Exchange Commission initiated these proceedings and requested the appointment of a receiver for the Defendants and Relief Defendants. The Court appointed Michael J. Quilling as Receiver for those parties and he has

continued to serve in that capacity. One of the entities covered by the receivership is Structured Life Settlements, Inc.

2. Subsequent to his appointment, the Receiver has taken constructive control and possession of certain real property in the name of Structured Life Settlements, Inc. located in Gainesville, Georgia with a street address of 3923 Muscadine Trail, Gainesville, Georgia 30506, and a legal description of Dist. 10, LL 154, Lot 2, Muscadine Valley, Hall County, Georgia (the “Property”).

3. Structured Life Settlements, Inc. bought the property on or about August 1, 2005 for \$150,000.00.

4. As part of his duties, and pursuant to 28 USCA §2001(b), the Receiver requests that he be allowed to market and sell the Property¹ **by virtue of a private sale** and that in connection therewith, the Court appoint three disinterested persons to appraise the Property.

ARGUMENTS AND AUTHORITIES

5. The ultimate purpose of a receivership is to provide a vehicle through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership. In this instance, the beneficiaries are the creditors and investors of ABC and its related entities. Allowing the Property to be sold by virtue of a private sale will both further and expedite the process. It will also allow the receivership estate to avoid ongoing liabilities for taxes, insurance, and maintenance.

6. A district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). It is a recognized principle of law that the district

¹ Subject to Court approval to be sought by virtue of a separate Motion. A buyer has already been located but the requirements addressed in this Motion must be satisfied before the sale is brought before the Court.

court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. *SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978). *See SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)(court overseeing a receivership is accorded “wide discretionary power” in light of “the concern for orderly administration”). A primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors. *See SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9th Cir. 1986).

7. To guide courts in this purpose, 28 USCA §2001 governs the sale of real property by order of the court by both public and private sale. Subsection (a) sets out the terms of a public sale and Subsection (b) sets out the procedure for a private sale. Subsection (b) provides as follows:

After a hearing, of which notice to all parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property No private sale shall be confirmed at a price less than two-thirds of the appraisal value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

Taken in its entirety, §2001 provides safeguards to prevent the sale of realty through the use of unfair price or value procedures.

8. The district court has wide discretion in judging whether a receiver's sale is fair in terms and result and serves the best interests of the estate. *Fleet National Bank v. H&D Entertainment, Inc.*, 96 F.3d 532 (1st Cir. 1996) citing *United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7th Cir. 1985) and *United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968). The court has broad discretion in setting the terms of conditions of a sale under 28 USCA §2001. *United States v. Hundwardsen*, 39 F.Supp.2d 1157 (N.D. Iowa 1999), citing *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3rd Cir.) cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968); see *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973). The court must decide whether, based on the record made by the parties, the best interests of the estate will be served by a public or private sale. *Id.* However, §2001(b) "limits the receiver's ability to sell foreclosed property at a private sale for an unfair price" by setting in place appraisal procedures and acceptable price limits. *United States v. Stonehill*, 83 F.3d 1156 (9th Cir. 1996). Section 2001 "contemplates compliance with certain procedures designed to protect the best interest of the estate" *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969).

9. In general, the court has broad discretion to set the terms of a public sale; whereas it must generally follow the procedures in place for a private sale. See *Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969)(federal statute expresses preferential course to be followed in connection with a court authorized sale of *personal property* and district court should not order otherwise except *under extraordinary circumstances*). In cases involving the private sale of realty, the courts have consistently adhered to the procedures outlined in §2001(b). See *United States v. Garcia*, 474 F.2d 1202 (5th Cir. 1973)(court scrupulously adhered to statutory

requirements of §2001 for judicial sale of realty); *U.S. v. "A" Manufacturing Company*, 541 F.2d 504 (5th Cir. 1976)(affirming court confirmation of realty sale for greater price than highest appraisal value). Consequently, broad discretion of the court does not include bypassing the specific procedures set out in §2001(b). To bypass the stringent requirements of §2001(b), the court can order a public sale under §2001(a) and set the terms and conditions as it so desires.

10. Accordingly, the Receiver respectfully requests that upon the final consideration of this matter that he be permitted to retain the services of three disinterested persons to appraise the Property and that he be authorized to market the Property for private sale. After the appraisals are obtained the Receiver will file a motion to actually sell the Property and to publish the proposed sale in the appropriate newspaper.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final hearing and consideration of this matter that the Court authorize him to retain the services of three appraisers and to offer the property for private sale, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself to be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
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By: /s/ Michael J. Quilling.
Michael J. Quilling
State Bar No. 16432300
D. Dee Raibourn, III
State Bar No. 24009495
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State Bar No. 24048770

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

A true and correct copy of this motion has been served on all interested parties through the Court's electronic filing system.

A copy will also be posted on the Receiver's website at www.secreceiver.com.

/s/ Michael J. Quilling
Michael J. Quilling

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