

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

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff,

VS.

Civil Action No.: 3:06-CV-2136-P

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

ECF

Defendants

and

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

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO SELL REAL PROPERTY AT
PRIVATE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS
AND ENCUMBRANCES AND BRIEF IN SUPPORT
(MISSOURI PROPERTY)**

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

COMES NOW, Michael J. Quilling (“Receiver”), and files his Unopposed Motion to Sell Real Property at Private Sale Free and Clear of all Liens, Claims and Encumbrances and Brief in Support (Missouri Property) and in support of such would respectfully show unto the Court as follows:

Background Facts

1. On November 17, 2006 the United States Securities and Exchange Commission (“SEC”) initiated these proceedings and, in connection therewith, sought the appointment of a receiver. On November 17, 2006 the Court issued an Order appointing Michael J. Quilling Receiver as to the corporate Defendants and the Equity Relief Defendants named in the Complaint at that time.

2. On July 12, 2007 the Receiver filed a Motion to Approve Compromise and Settlement Agreement with the LaMondas [Dkt. No. 71] which the Court approved by Order dated July 13, 2007 [Dkt. No. 73].

3. One of the assets covered by the Settlement Agreement is certain real property located in Randolph County, Missouri, having a street address of 1730 Parkwood Drive, Moberly, Missouri 65270 (the “Property”), more particularly described as: Lot 13 of Parkwood Estates 1st Subdivision lot 26, Moberly, Randolph County, Missouri 65270.

4. On October 12, 2007 [Docket No. 95] the Receiver filed his Unopposed Motion to Retain Appraisers and Brief in Support. By Order dated October 12, 2007 [Docket No. 100] the Court authorized the Receiver to begin efforts to sell the Property through a private sale.

5. The Receiver has received an offer from Chad LaMonda, the current tenant of the Property, to purchase the Property for \$110,000.00, which the Receiver has accepted subject to court approval. The written Contract for Sale is the result of substantial arms-length negotiation between the Receiver and the proposed buyer. Pursuant to the Contract for Sale, allowances for real estate commissions and normal closing costs are to be deducted from the gross sale proceeds at closing.

Argument and Authorities

6. 28 U.S.C. § 2001 provides that a Receiver may sell property at private sale if certain conditions are satisfied. First, a sale must be for at least two-thirds of the appraised value as established by three disinterested persons appointed by the Court to appraise the Property. The appointment of those appraisers is the subject of the Receiver's Motion which was filed on October 12, 2007 [Docket No. 95] and granted on October 12, 2007 [Docket No. 100]. Pursuant to that Order, the Receiver engaged the services of three appraisers and each of them have provided written appraisals to the Receiver. The average amount of the three appraisals is \$112,656.00. Accordingly, the proposed sale price (\$110,000.00) is well within the allowable two-thirds range.

7. The Court must also find that the proposed sale is such that the best interests of the estate will be conserved thereby. This condition is easily satisfied because of the proposed sale. A sale now will allow future maintenance and insurance costs as well as taxes and utilities to be avoided by the estate. Assuming the Court grants this Motion and the ten-day notice period with respect to the notice which must be published in the newspaper (discussed below) has expired, the Contract for Sale is set to close on or about February 20, 2008.

8. The Court cannot confirm the private sale until the terms of the sale are published in a newspaper of general circulation. The Receiver is advised that the newspaper of general circulation in the area is the *Moberly Monitor-Index*. The Receiver requests that the Court direct and order that the terms of the proposed private sale of the Property be published in *Moberly Monitor-Index* for ten (10) days. In that regard, the Receiver proposes to use the language in the form set forth in Exhibit "A" attached hereto.

9. 28 U.S.C. § 2001 also provides that the sale cannot be approved if a bona fide offer is received which is at least 10% more than the proposed published sale price. The Receiver requests that if no such increased offer is received after publication of the proposed sale that he be allowed to close the proposed sale.

10. 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 USC §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 interest of the estate will be served by a public or a private sale. *Id.* However, section 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).

11. 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 section 2001(b). See *United States v. Garcia*, 474 f.2d 1202 (5th Cir. 1973)(court scrupulously adhered to statutory requirements of section 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 section 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.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully prays that upon final hearing and consideration of this matter that the Court approve a private sale of the real property located at 1730 Parkwood Drive, Moberly Missouri, 65270, free and clear of all liens, claims and encumbrances, and that the Receiver be authorized to publish the proposed sale in the *Moberly Monitor-Index*, 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/ Brent J. Rodine
Michael J. Quilling
State Bar No. 16432300
Brent Rodine
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/ Brent J. Rodine
Brent J. Rodine