

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 764 S. Main St., Union, Oregon 97883 ("Main Property"). The Receiver requests that the sale of the Main Property be free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances attaching to the proceeds of sale.

Pursuant to the Application (the "Employment Application") to Employ Property Manager and Real Estate Broker, filed on August 20, 2007, the Receiver previously sought approval of the listing of Receivership Estate properties (collectively, the "Receivership Estate Properties"), 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 Main Property to the highest offer received for the Main Property. For the Main Property, to the extent that the Receiver obtains a higher offer than the current offer, the Receiver seeks Court approval of sale of the Main Property to the highest offer. The Receiver sells the Main Property "AS IS," "WHERE IS," and "WITH ALL FAULTS", and the Receiver makes no representations or warranties in respect to the condition of the Main Property. Further, the Receiver requests that the Court authorize him to pay from the proceeds of sale of the Main Property the valid liens, taxes and any other claims on the Main 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 Main 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 Main Property is through the commercially reasonable and customary method of listing the Main Property with a broker and conducting a private sale. Further, the Receiver believes that listing and selling the Main Property through a broker for the highest price offered, is the best method to obtain the highest and best price for the Main Property, 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 Main Property. The sales commission amount is 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 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

The Receiver previously identified real properties owned by the Receivership Entities, and real properties for which the Receiver asserted an interest. The Receiver conducted an extensive investigation and analysis in connection with the prospective sale of certain properties, and the claw-back of certain other properties. On August 20, 2007, the Receiver filed the Employment Application.

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 ("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 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, including the Main Property. The Receiver has received and accepted an offer for the Main Property, subject to higher bids. For the Main 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 Main 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 Main Property to the highest bidder.

Main Property

On or about February 9, 2010, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyers Dale and Judy Perkins (collectively, "Perkins"), for the sale of the Main Property to Perkins. *See* Grassmueck Declaration, Exhibit "A". Perkins agreed to purchase the Main Property for the amount of \$42,000, pursuant to an Addendum to Real Estate Sale Agreement signed by Perkins on March 16, 2010. *See* Grassmueck Declaration, Exhibit "B".

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

Since the purchase price is less than \$200,000, the Broker would be entitled to a 6% commission from the sale of the Main Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 6. The Receiver estimates a net return from the sale of the Main Property of \$37,915.80, after payment of the Broker's Commission of \$2,520, and property taxes of \$1,694.42, and after certain credit to property taxes of \$130.22. *See* Grassmueck Declaration, ¶ 12. 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 Main Property.

The Receiver asserts that the purchase price obtained for the Main Property is reasonable, based on the Broker's analysis of the values for similar properties located in Union, Oregon, and the length of time for which the Main Property was marketed. *See* Grassmueck Declaration, ¶ 13.

The Receiver notes that the comparative values (comps) for similar properties are close in range to the purchase price for the Main Property. The Main Property consists of a single-wide mobile home with 2 bedrooms and 2 baths at 778 square feet, and a separate barn building, both sitting on a .44 acre lot. A property located at 598 E. Ash Street, Union, Oregon, consisting of a single-wide mobile home with 2 bedrooms and 2 baths at 896 square feet, sitting on .41 acre lot sold for \$30,000 on August 24, 2009. A second comp property located at 815 Benson Street, Union, Oregon, consisting of a single-wide mobile home with 2 bedrooms and 1 bath at 768 square feet, sitting on .25 acre lot, with a separate building structure, sold for \$48,000 on September 1, 2009. Finally, a third comp property located at 736 N. 1st Street, Union, Oregon, consisting of a double-wide mobile home with 3 bedrooms and 2 bath at 1,440 square feet, sitting on .19 acre lot sold for \$49,000 on November 20, 2009. *See* Grassmueck Declaration, ¶ 14.

Based on these comps, this Main Property purchase price of \$42,500 is close to the range of prices (between \$30,000 to \$49,000) for similarly sized mobile home and real property in this locale, and is reasonable in price relative to the comparison property values listed above. Further, the Receiver's Broker has marketed the Main Property since January 29, 2010, so the offer was obtained after a reasonable period of marketing the Main Property. *See* Grassmueck Declaration, ¶ 15.

E. The Relief Requested

Pursuant to the Application, and the Earnest Money Agreement, the sale of the Main Property is subject to Court approval. Thus, pursuant to the Motion, the Receiver seeks Court approval of the sale of the Main 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 Main Property, and to pay from the proceeds of sale, the valid liens, taxes, and any other claims, on the Main 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 MAIN PROPERTY SHOULD BE AUTHORIZED.

A. This Court has Authority to Order the Sale of the Main 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 Main Property free and clear of all liens, claims, interests, and encumbrances. The Receiver sells such Main Property "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver makes no representations or warranties in respect to the condition of the Main Property. See Grassmueck Declaration, ¶ 16.

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 Main Property, the valid liens, taxes, and any other

claims, on the Main Property, subject to any objections to such liens, taxes, or claims by the Receiver. *See* Grassmueck Declaration, ¶ 17.

IV. THE RECEIVER SEEKS COURT APPROVAL OF THE ADDITIONAL REQUESTS IN CONJUNCTION WITH THE SALE OF THE MAIN 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 Main 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* Grassmueck Declaration, ¶ 18.

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 Main Property is through the commercially reasonable and customary method of listing the Main 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 Main Property through a broker for the highest price offered, is the best method to obtain the highest price for the Main Property, without having to incur the additional expenses for appraisal, publication, and confirmation, as set forth in Section 2001(b). *See* Grassmueck Declaration, ¶ 19.

The Main Property was marketed and advertised in an effort to maximize prices. The Receiver has accepted the best offer for the Main 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 Main 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 Main 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 Main Property, 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, ¶ 20.

V. CONCLUSION.

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

Dated: April 27, 2010

Respectfully submitted,

/s/ David R. Zaro, Esq.

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