

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 1805 Z Avenue, La Grande, Oregon 97850 (the "Z Property"), 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 the approval of the listing of the Z Property, and other 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 Z Property to the highest offer received for such Property. The Receiver has obtained an offer for the Z Property, but such offer is subject to higher bids. To the extent that the Receiver obtains a higher offer than the current offer, the Receiver seeks Court approval of sale of the Z Property to the highest offer. The Receiver sells the Z Property "AS IS," "WHERE IS," and "WITH ALL FAULTS", and the Receiver makes no representations or warranties in respect to the condition of the Property. Further, the Receiver requests that the Court authorize him to pay from the

proceeds of sale of the Z 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 Z 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 Z 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 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 Broker in accordance with the listing agreement (the "Broker Agreement") at the applicable sales commission from the proceeds of sale of the Z Property. The sales commission amounts are 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 such previously approved 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.

Based on the Receiver's investigation, Global sold its inventory on consignment through a handful of retail outlets, but conducted its business on atypical terms. Global also sold some inventory via online auctions. There does not appear to have been financial analysis or reporting that reflects an evaluation as to the cost of the inventory acquired by Global versus the pricing of inventory sold.

B. Global is Not Viable as an Ongoing Business

From his investigation and analysis, the Receiver concluded that Global is not viable as an ongoing business concern. Global's lack of financial controls and record keeping coupled with inadequate working capital, and nonexistent business plans, do not make for a viable ongoing business. The Receiver therefore concluded that Global cannot be sold as a going concern, and its assets must be sold for the benefit of the Receivership Estate.

C. The Receivership Estate Properties and the Application to Employ Broker

The Receiver previously identified at least twenty (20) separate real properties owned by the Receivership Entities. 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.

Pursuant to the Employment Application, the Receiver identified the Z Property on his list of the Receivership Estate Properties to be sold by the Broker. Further, 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 of six percent (6%), if the sales price is less than or equal to \$200,000, and five and one 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 Agreement, 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 Z 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 Properties are located. The Receiver's Broker also sent flyers to 980 of the Broker's clients in his efforts to market the Properties.

The Properties were listed and advertised for a period of at least twenty-one (21) days, after which the Receiver began receiving offers to purchase the Properties. The Receiver accepted the highest offer for the Z Property, subject to higher bids. The accepted offer was derived through arms-length negotiations, and the Receiver believes that the accepted offer, at this time, is the best and highest offer that the Receivership Estate will receive for the Z Property. However, the Receiver reserves the right to pursue a higher and better offer to the extent received

by the Receiver, and seeks as part of the Court's order authority to sell the Z Property to the highest bidder.

Z Property

On or about April 30, 2008, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyer Kurt Peterson, for the sale of the Z Property to Peterson. *See* Grassmueck Declaration, Exhibit "A". Peterson agreed to purchase the Z Property for the amount of \$160,000. Pursuant to an Addendum to the Earnest Money Agreement, Peterson agreed to remove any contingencies to the sale of the Z Property and proceed with the sale of the Property. *See* Grassmueck Declaration, Exhibit "B".

Peterson has paid an earnest money deposit, and will pay the balance of the purchase price following Court approval of the sale of the Z Property and at closing of the sale of the Property. The Earnest Money Agreement also provides at Section 3.2 that Peterson acknowledges that the sale of the Z 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 Z Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 5. The Receiver estimates a net return from the sale of the Z Property of \$150,221.28, after payment of the Broker's Commission of \$9,600, closing charges of \$225, and credit of property taxes of \$46.28. *See* Grassmueck Declaration, ¶ 10.

E. The Relief Requested

Pursuant to the Application, and the Earnest Money Agreement, the sale of the Z Property is subject to Court approval. Thus, pursuant to the Motion, the Receiver seeks Court approval of the sale of the Z 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 Z 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 Z PROPERTY SHOULD BE AUTHORIZED.

A. This Court has Authority to Order the Sale of the Z 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 Z Property free and clear of all liens, claims, interests, and encumbrances. The Receiver sells such Properties "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 a higher offer is received, to sell to the highest bidder, and to pay from the proceeds of sale of the Z 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 Z 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 Z

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, ¶ 13.

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 Z 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, ¶ 14.

The Receivership Estate Properties were marketed and advertised in an effort to maximize the prices received, and after at least twenty-one (21) days of marketing and advertising, the Receiver began receiving offers for the purchase of the Properties. The Receiver accepted the highest offer for the Z 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 and highest 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 one is received by the Receiver, and seeks as part of the Court's order authority to sell the Z 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 Z 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, ¶ 15.

V. CONCLUSION.

WHEREFORE, the Receiver requests that this Court enter an order for authorization to (i) sell the Z 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 Broker's commission.

Dated: June 26, 2008

Respectfully submitted,

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