

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 627 E. Arch Street, Union, Oregon 97883 ("Arch Property"). The Receiver requests that the sale of the Arch 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 Arch Property to the highest offer received for the Arch Property. For the Arch Property, to the extent that the Receiver obtains a higher offer than the current offer, the Receiver seeks Court approval of sale of the Arch Property to the highest offer. The Receiver sells the Arch Property "AS IS," "WHERE IS," and "WITH ALL FAULTS", and the Receiver makes no representations or warranties in respect to the condition of the Arch Property. Further, the Receiver requests that the Court authorize him to pay from the proceeds of sale of the Arch Property the valid liens, taxes and any other claims on the Arch 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 Arch 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 Arch Property is through the commercially reasonable and customary method of listing the Arch Property with a broker and conducting a private sale. Further, the Receiver believes that listing and selling the Arch Property through a broker for the highest price offered, is the best method to obtain the highest and best price for the Arch 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 Arch 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 Arch Property. The Receiver has received and accepted an offer for the Arch Property, subject to higher bids. For the Arch 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 Arch 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 Arch Property to the highest bidder.

Arch Property

On or about January 15, 2010, the Receiver entered into the Receiver's Earnest Money Agreement, with proposed buyer Dale Perkins ("Perkins"), for the sale of the Arch Property to Perkins. *See* Grassmueck Declaration, Exhibit "A". Perkins agreed to purchase the Arch Property for the amount of \$164,500, pursuant to a Seller's Counter-Offer document signed by Perkins on January 22, 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 Arch Property and at closing of the sale of the Arch Property. The Earnest Money Agreement also provides at Section 3.2 that Perkins acknowledges that the sale of the Arch 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 Arch Property in accordance with the Broker Agreement. *See* Grassmueck Declaration, ¶ 6. The Receiver estimates a net return from the sale of the Arch Property of \$151,255.23, after payment of the Broker's Commission of \$9,870, closing and title charges of \$306.50, and property taxes of \$4,287.09, and after certain credit to property taxes of \$1,218.82. *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 Arch Property.

The Receiver asserts that the purchase price obtained for the Arch Property is reasonable, based on the Broker's analysis of the values for similar properties located in or near Union, Oregon, and the length of time for which the Arch Property was marketed (since November 5, 2007). *See* Grassmueck Declaration, ¶ 13.

The Receiver notes that the comparative value (comps) for similar properties are close in range to the purchase price for the Arch Property (which is commercial property of 17,092 square feet in building size, and sits on a 3.21 acre lot). A property located at 101 Main Street, Union, Oregon, with a building size of 8,376 square feet and lot size of 6,000 square feet sold for \$60,000 on February 18, 2009; a property located at 1805 Z Ave., La Grande, Oregon, with a building size of 13,263 square feet and lot size of 1.66 acres sold for \$165,000 on August 6, 2008; and a property located at 1301 Adams Ave., La Grande, Oregon, with a building size of 21,430 square feet, and lot size of 5,000 square feet, sold for \$250,000 on September 29, 2009. *See* Grassmueck Declaration, ¶ 14.

Based on these comps, this Arch Property purchase price of \$164,500 is close to the range of prices (between \$60,000 to \$250,000) for similarly sized 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 Arch Property since November 5, 2007, so the offer was obtained after a long-standing period of marketing the Arch Property. *See* Grassmueck Declaration, ¶ 15.

E. The Relief Requested

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

A. This Court has Authority to Order the Sale of the Arch 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 Arch Property free and clear of all liens, claims, interests, and encumbrances. The Receiver sells such Arch 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 Arch 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 Arch Property, the valid liens, taxes, and any other claims, on the Arch 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 ARCH 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 Arch 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 Arch Property is through the commercially reasonable and customary method of listing the Arch 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 Arch Property through a broker for the highest price offered, is the best method to obtain the highest price for the Arch 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 Arch Property was marketed and advertised in an effort to maximize prices. The Receiver has accepted the best offer for the Arch 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 Arch 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 Arch 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 Arch 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 Arch Property free and clear of all liens, claims, interests and encumbrances; (ii) pay certain liens and claims from the sale of the Arch Property; (iii) relieve the Receiver from the provisions of 28 U.S.C. §§ 2001-2002; and (iv) approve the Broker's commission.

Dated: January 29, 2010

Respectfully submitted,

/s/ David R. Zaro, Esq.

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