

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC;
310 78TH AVE, LLC;
551 3D AVE S, LLC;
604 WEST AZEELE, LLC;
2101 W. CYPRESS, LLC;
2112 W. KENNEDY BLVD, LLC;
5123 E. BROADWAY AVE, LLC;
BLUE WATERS TI, LLC;
BNAZ, LLC;
BR SUPPORT SERVICES, LLC;
BUNGALOWS TI, LLC;
CAPRI HAVEN, LLC;
EA NY, LLC;
EQUIALT 519 3RD AVE S., LLC;
MCDONALD REVOCABLE LIVING TRUST;
SILVER SANDS TI, LLC;
TB OLDEST HOUSE EST. 1842, LLC;

Relief Defendants.

**RECEIVER'S MOTION TO APPROVE
SALE OF PERSONAL PROPERTY
(LUXURY VEHICLES)**

Burton W. Wiand, as receiver over the assets of the corporate and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) moves the Court to approve the sale of certain luxury automobiles, free and clear of any and all liens, encumbrances, and claims. As explained below, the Receiver believes the proposed sale(s) are commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves for relief from the requirements of 28 U.S.C. §§ 2001 and 2004 in connection with the sales.

BACKGROUND

The Securities and Exchange Commission (“**SEC**”) alleges that Brian Davison and Barry Rybicki used various EquiAlt Funds, EquiAlt LLC, and related Receivership Entities (“**EquiAlt**”) to perpetrate a massive real estate Ponzi scheme that raised more than \$170 million from over 1,100 victim investors across the country.

At the request of the SEC, on February 14, 2020, the Court entered a temporary restraining order and asset freeze (“**TRO**”) and an order appointing Mr. Wiand as Receiver over EquiAlt (“**Order Appointing Receiver**” and, collectively with the TRO, the “**Orders**”). (Docs. 10 & 11). A preliminary injunction hearing was scheduled for February 27, 2020, but the parties jointly moved to extend time, and the Court continued the preliminary injunction hearing until May 13, 2020. Due to the COVID-19 pandemic, on March 19, 2020, the Court issued an order continuing all hearings and civil jury trials for cases scheduled to begin on or before May 29, 2020 and staying all associated deadlines. On May 20, 2020, the Court rescheduled the Show Cause hearing for June 16, 2020. On May 28, 2020, Defendant Barry Rybicki requested a thirty-day continuance of the hearing. The Court granted Rybicki’s motion, rescheduling the hearing for July 16. [Doc. 104] Until that time, the Receiver is continuing to operate under the Orders.

Pursuant to the Orders, the Receiver is to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Corporate Defendants and Relief Defendants; marshal and safeguard all of the assets of the Corporate Defendants and Relief Defendants and take whatever actions are necessary for the protection of investors” (Doc. 11 at p. 2). The Orders specifically direct the Receiver to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court” (Doc. 11 at p. 2-3 ¶ 1). And to “[i]nitially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate.” (Doc. 11 at p. 3 ¶ 3).

The Receiver has identified several high-end, luxury vehicles that Mr. Davison purchased with investor funds, outlined in greater detail in the Receiver’s First Interim Report (Doc. 84 at p. 42, 45-46). Some vehicles are encumbered by liens that exceed their value, while others can be sold for more than the balance of their liens. The Receivership has incurred expenses associated with insuring and storing these exotic vehicles.¹ To avoid incurring additional unnecessary expenses and to recoup investor funds, the Receiver requests the Court approve the sale or release of the following five Ferraris (collectively, “the **Ferraris**”):

¹ Prior to the appointment of the receiver, Brian Davison had transported Ferraris No. 1, 2, and 4 to Miller Motorcars in Greenwich, CT for appraisal and sale. After this action was initiated, Miller has been in contact with the Receiver and counsel for Davison regarding the sale of all five of these vehicles. Recently, Miller notified counsel for the Receiver that the cost for storing each car was \$50/day per vehicle.

No.	Vehicle	Lien Amount	Sales Price	Pending Purchaser
1.	2009 430 Scuderi 16M (VIN: ZFFKW66A490169155)	\$0.00	\$200,000.00	Miller Motorcars
2.	2015 F12 Berlinetta (VIN: ZFF74UFA3F0208703)	\$126,637.63	\$165,000.00	Miller Motorcars
3.	2015 458 Speciale (VIN: ZFF75VFA3F0212818)	\$181,759.63	\$272,300.00	ZWECK
4.	2019 488 Spider (VIN: ZFF80AMAXK0238910)	\$238,198.57	\$200,000.00	Return to Ferrari Financial Services
5.	2018 GTC4 Lusso (VIN: ZFF82WNA0J0234336)	\$258,750.79	\$190,000.00	Return to Ferrari Financial Services

Vehicles 1 and 5 are registered/owned by FL DAV, LLC. The manager of FL DAV is BNAZ, LLC, one of the relief defendants in this case, which is under the control of the Receiver. Vehicles 2 and 4 were purchased by FL DAV with Mr. Davison as Co-Owner. Vehicle 3 is owned personally by Mr. Davison.

To determine the value of the Ferraris, the Receiver marketed them for sale individually and as a portfolio to multiple potential purchasers with expertise in the exotic car industry in various locations throughout the country: (1) Miller Motorcars (Greenwich, CT) (“**Miller**”); (2) Dimmitt Automotive Group (Tampa, FL) (“**Dimmitt**”); (3) Orlando Auto Auction (Orlando, FL); and (4) VAS Operations, LLC dba ZWECK (Miami, FL) (“**ZWECK**”). Of these potential purchasers, Miller, Dimmitt, and ZWECK submitted offers to purchase the Ferraris while Orlando Auto Auction was not interested in making an offer. Some of the offers were for individual vehicles while other offers were based on the purchase of multiple vehicles.

The bids on Ferrari No. 3 were so close that upon receipt, the Receiver requested that each purchaser submit their last-and-best offers in a blind format. That is to say, the purchasers did not know exactly what the other purchasers would submit as a last-and-best offer. Using this format further ensured that the Receiver obtained maximum value by incentivizing the purchasers to make the highest commercially reasonable offer while also minimizing expense to the Receivership

Estate by avoiding the costs associated with a live auction format. The last-and-best bids are competitive and the Receiver is confident that they represent the maximum recovery for the Receivership Estate. The winning bid on Ferrari No. 3 was within one percent of the next highest bid.²

The offers for Ferraris No. 2 and 3 exceed the amount of their liens, while the offers on Ferraris No. 4 and 5 do not. The Receiver requests approval to sell Ferraris No. 1, 2, and 3, and for approval to release Ferraris No. 4 and 5 to Ferrari Financial Services to avoid incurring additional expenses associated with continued ownership.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF THE FERRARIS IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of*

² The winning bid for Ferrari No. 3 was \$272,300.00 and the next highest bid was \$270,000.00.

Unsecured Creditors of Worldcom, Inc. v. S.E.C., 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. See *United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. See *S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Given these principles, the Court should approve the proposed sales because they provide significant savings (and thus, a net benefit) to the Receivership by avoiding seller and auction fees and the avoidance of transport fees. An auction is particularly unappealing at this time due to the ongoing COVID-19 pandemic and resulting depression of used car values.³ After reviewing the offers, the Receiver has concluded that selling the Ferraris in this manner will provide the greatest recovery for the Receivership Estate, instead of delaying their sale while continuing to incur carrying costs, in hopes that the pandemic will subside and make an auction more profitable at an unknown date in the future. Additionally, selling the Ferraris soon will avoid incurring the unnecessary carrying and insurance costs, which exceeds \$5,000 per month.

II. THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004 SHOULD BE WAIVED.

Pursuant to 28 U.S.C. § 2004, personal property sold under a federal court order should be sold in accordance with 28 U.S.C. § 2001, which governs the sale of real property, *unless a court*

³ <https://www.bloomberg.com/news/articles/2020-04-13/fear-of-an-impending-car-price-collapse-grips-the-auto-industry>. See also <https://www.caranddriver.com/news/a32268017/used-car-buyers-big-savings-coming/>; <https://www.nytimes.com/2020/05/26/business/classic-car-auctions-coronavirus.html>

orders otherwise. 28 U.S.C. § 2001 imposes relatively onerous and costly procedures, including a hearing with notice to “all interested parties ... by publication or otherwise as the court directs;” court appointment of three independent appraisers to value the property; and publication of the sale terms in at least one newspaper. *See* 28 U.S.C. § 2001(b). Thus, “*unless the Court orders otherwise*” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which newspaper a notice of proposed sale be published prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for any appraisals for any of the vehicles; and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership Estate.

The Receiver believes he is in a position to adequately evaluate the value of the Ferraris, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the Receivership Estate. Indeed, compliance with the statutory requirements would partially offset the expected net sale proceeds of the Ferraris. This is especially true during the COVID-19 pandemic, and resulting depression of the used car market and the hiatus of exotic car auctions. Strict compliance with Section 2004 would require the Receivership Estate to incur additional expenses associated with storing, insuring, and maintaining the Ferraris that is unlikely to be recouped by the potential higher sale price at auction at an unknown date in the future. Additionally, the Receiver has ensured that the Ferraris are sold at maximum value by offering them for sale to multiple experience purchasers in a blind auction format.

The waivers requested by the Receiver routinely occur in enforcement actions and receiverships, including those in this district. *See FTC et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale procedures of 28 U.S.C. § 2001); *SEC v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds. Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived.

III. TO THE EXTENT THAT LIENS ATTACH TO ANY OF THE FERRARIS, THE RECEIVER REQUESTS AN ORDER ALLOWING HIM TO SELL THE FERRARIS FREE AND CLEAR OF ANY SUCH LIENS OR ENCUMBRANCES.

As noted above, certain Ferraris have liens in amounts which constitute a significant portion of the expected sale price. The Receiver has agreed to use the proceeds of any sale to pay applicable lien holders in appropriate amounts. However, because buyers of automobiles at auction expect that vehicles will be sold without any liens or encumbrances, the Receiver requests an Order from the Court allowing him to sell the vehicles free and clear of all liens, claims and encumbrances. Additionally, the Receiver requests that the Court's Order direct any applicable state motor vehicle regulatory agency to issue title for the vehicles upon the purchaser providing sufficient proof of sale.

The relief sought falls squarely within the Court's powers and is in the best interests of the Receivership and the Ferraris' creditors. The relief is also consistent with precedent, which establishes that a court may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933);

People's-Pittsburgh Trust Co. v. Hirsch, 65 F.2d 972, 973 (3d Cir. 1933). In part, the Court has this authority because when a court of competent jurisdiction takes possession of property through its officers—like this Court has done with the Ferraris in connection with the Receivership—it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931). Importantly, the Receiver is not asking the Court to extinguish, overrule, or otherwise impair any creditor's claim. He is only asking the Court to order that the vehicles to be sold are free and clear of liens, claims and encumbrances, and then allow the Receiver to use the proceeds of the sales to satisfy the liens, to the extent applicable.

Given the foregoing efforts and the existence of a ready and able method of sale, the Receiver believes that completing the sale of the Ferraris, without obtaining any appraisals, publishing a formal legal notice, or holding a hearing, is commercially reasonable and will obtain the largest possible recovery for the Receivership Estate.

CONCLUSION

The Receiver moves the Court for entry of an order (in substantially the form of the proposed order attached as Exhibit 1) to sell the vehicles, free and clear of all claims, liens, and encumbrances and to waive the valuation, notice and hearing requirements of 28 U.S.C. §§ 2001 and 2004.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and Counsel for Defendants Brian Davison and Barry Rybicki. Neither the SEC nor Mr. Rybicki object to the relief requested. Mr. Davison has not consented to the relief sought.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 2020, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

/s/ Katherine C. Donlon

EXHIBIT 1

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
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SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 8:20-CV-325-T-35AEP

Plaintiff,

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SILVER SANDS TI, LLC;
TB OLDEST HOUSE EST. 1842, LLC;

Relief Defendants.

_____ /

ORDER APPROVING SALE OF VEHICLES

Before the Court is the Receiver's Motion to Approve Sale of Personal Property (Luxury Vehicles) (the "**Motion**") (Doc. ____). Upon due consideration of the Receiver's powers as set forth in the Order Granting Plaintiff's Emergency Ex Parte Motion for Appointment of Receiver and Memorandum of Law (Doc. 11), it is **ORDERED AND ADJUDGED** that the Motion is: **GRANTED**.

The Court finds that the proposed procedures for the sale of the vehicles reflected in the Motion are in the best interest of the Receivership Estate for the reasons detailed in the Motion. The Court also finds that, to the extent 28 U.S.C. §§ 2001 and 2004 apply to the sale of the vehicles reflected in the Motion, the Motion includes sufficient grounds for waiving the requirements of 28 U.S.C. § 2001(b) for any additional independent appraisals, notice and hearing, and publication of the terms of the sale under the discretion afforded this Court by 28 U.S.C. § 2004.

The Receiver is hereby authorized to sell, or release to Ferrari Financial Services, the certain vehicles identified in the Motion. The sale of the vehicles shall be free and clear of any and all claims, liens, and encumbrances. In addition, upon presentation of proper proof of sale and other sufficient identifying documentation, applicable state motor vehicle regulatory agency(ies) shall issue title to the purchaser(s) of the vehicles (as more specifically described below):

- 2009 430 Scuderi 16M (VIN: ZFFKW66A490169155)
- 2015 F12 Berlinetta (VIN: ZFF74UFA3F0208703)
- 2015 458 Speciale (VIN: ZFF75VFA3F0212818)
- 2019 488 Spider (VIN: ZFF80AMAXK0238910)
- 2018 GTC4 Lusso (VIN: ZFF82WNA0J0234336)

DONE and ORDERED in Chambers in Tampa, Florida this ____ day of _____, 2020

United States District Judge

Copies Furnished To:
Counsel of Record