

**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.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE
SALE OF PERSONAL PROPERTY
(HIGH-END VEHICLES)**

Burton W. Wiand, as receiver over the assets of the corporate and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) files this unopposed motion requesting that the Court approve the marketing and sale of certain high-end automobiles, free and clear of any and all liens, encumbrances, and claims. As explained below, the Receiver believes the proposed manner of sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate.

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 held on July 31, 2020. On August 17, 2020, the Court granted the SEC’s request for entry of a preliminary injunction. 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).

At the time of his appointment, the Receiver took possession of several high-end, luxury vehicles that Mr. Davison purchased with investor funds, including a 2018 Pagani Huayra. Later, the Receiver obtained possession of a 2019 Rolls Royce Cullinan and a 2020 Bentley Convertible GTC which were being used as personal vehicles for the Davison family but purchased by EquiAlt. These are wasting assets and the Receiver believes it is in the best interest of the estate to sell these assets promptly. The vehicles are encumbered by liens, they should be sold for more than the balance of their liens. The Receivership continues to incur expenses associated with insuring these vehicles. To avoid incurring additional unnecessary expenses, avoid certain diminution of value of two of the vehicles¹ and to recoup investor funds, the Receiver requests the Court approve the marketing and sale of the following vehicles (collectively, “the **High-End Vehicles**”):

No.	Vehicle	Lien Amount	Purchase Price	Owner
1.	2020 Bentley Convertible GTC V8 (VIN: SCBDG4ZG8LC075930)	\$182,748	\$308,646	FL DAV LLC
2.	2019 Rolls Royce Cullinan (VIN: SLA689X56KU114239)	\$243,873	\$418,195	Brian and Nicole Davison
3.	2018 Pagani Huayra (VIN:ZA9H12UA3JSF76050)	\$1,031,693 ²	\$3,068,791	FL DAV LLC

¹ While the Rolls Royce and the Bentley will presumably decrease in value with the passage of time, because of the rarity of the Pagani, diminution of value is not as certain. The car is pristine, has literally not been driven and has less the 1000 miles on the odometer. Because of these factors and possible interest of automobile enthusiasts, collectors and dealers, the Receiver believes that an auction format provides the best opportunity to reap the most advantageous price for this car.

² This payoff was good through September 22, 2020.

The Bentley and the Pagani 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. The Rolls Royce is registered in the name of Brian and Nicole Davison.

The Pagani Huayra Roadster was one of Pagani's show cars at the 2019 Geneva Motor Show. Davison purchased the car in April of 2019 for more than \$3 million from Miller Motorcars/Prestige Motor Car Imports. EquiAlt wired a \$500,000 deposit to Miller in March 2019. Then in April, EquiAlt sent a second wire for \$1,723,943.68 to Prestige. The remainder of the purchase price was paid through a financing lease of \$1,050,000 (60 monthly payments of \$15,510.08). EquiAlt paid the monthly payments until this case was filed for a total of \$139,590.72. The funds from the purchase all came directly or indirectly from investor funds.

In August of 2019, the Davisons pre-purchased a 24 month lease on the 2019 Rolls Royce Cullinan plus road hazard insurance for \$153,438.39. On August 8, 2019, EquiAlt wired \$153,800 to Fields Motors. The total purchase price for the Cullinan was \$418,195.

In December 2019, the Bentley was purchased for \$308,646.39 from Fields Motorcars Orlando. Davison received a trade-in allowance of \$115,000 from a 2017 Aston Martin Rapide which was titled in EquiAlt's name and had been paid for with EquiAlt funds. Additionally, EquiAlt made a deposit of \$22,894.81, leaving a financed balance of \$182,748. This vehicle was financed through Bank of America. The sales contract for the vehicle stated that it was for business use. However, Davison's wife drove this vehicle.

Receiver's Plans for Marketing and Sale of Vehicles

The Receiver has contracted with duPont Registry to market these vehicles for sale. duPont is the industry leader in advertising publications for luxury automobiles, real estate and yachts. The vehicles will be featured in a full page "Publishers Showcase", a custom homepage, featured in duPont's blog, and be included in various emails and social media posts from duPont. This publication will reach over 6.5 million recipients, including the target market of the dealers, collectors and market participants for cars of this quality. The information on the automobiles will be initially release in the second week of November and the vehicle will be a primary focus of the duPont Registry holiday issue which will also be distributed in the second week of November. Thereafter, the Receiver will be hosting an online auction (Receivership-Auctions.com) to sell these vehicles.³ This will be a massively publicized public auction. The auction will be with reserve and the vehicles are subject to prior sale should circumstances warrant.⁴ The Receiver will set the reserve prices based on his review and evaluation of available public sources and recent transactions involving similar vehicles. The Receiver's auction website will go live in the first week of November and the Auction will be held on December 10, 2020.

The Receiver requests approval to proceed with the marketing and sale via online auction of these three High-End Vehicles to avoid incurring additional expenses associated with continued ownership.

³ The Receiver's auction website will be live the first week of November and the Auction will be scheduled for December 10th.

⁴ Should the Receiver determine that an offer made prior to the auction or other circumstances warrant selling a vehicle outside the auction, the Receiver will seek approval of the Court prior to completing such private sale outside the auction context.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF THE HIGH-END VEHICLES 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 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 marketing of and Receiver-run online auction of these High-End Vehicles because this plan will provide the greatest marketing reach and ultimate net benefit to the Receivership by avoiding seller and professional auction fees. Reserve pricing will protect the Receivership and the investors from potentially not covering the outstanding liabilities on these vehicles. Further, the sale of these vehicles will avoid incurring the unnecessary carrying and insurance costs for these High-End Vehicles.

II. THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004 WILL BE MET.

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 orders otherwise. 28 U.S.C. § 2001(a) requires that the public sale take place at the courthouse or “upon the premises or some parcel thereof located therein, *as the court directs.*” (Emphasis added). The Receiver is seeking this Court’s approval of the public sale of these vehicles to take place via the Receiver’s online auction site. As stated above, the Receiver will be providing vast public notification of the online auction to interested persons. Given the current pandemic situation and the geographical reach of an online auction, the Receiver believes his proposal meets the requirements of these provisions and requests the Court’s approval.

III. THE RECEIVER REQUESTS AN ORDER ALLOWING HIM TO SELL THE HIGH-END VEHICLES FREE AND CLEAR OF ANY SUCH LIENS OR ENCUMBRANCES.

As noted above, the High-End Vehicles 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 creditors of these High-End Vehicles. 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 these High-End Vehicles 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 marketing and sale, the Receiver believes that proceeding with this plan to sell the High-End Vehicles, 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

Based on the foregoing, the Receiver respectfully moves the Court for entry of an order allowing the Receiver to market and sell through online auction the High-End Vehicles, free and clear of all claims, liens, and encumbrances and to waive the valuation.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel and neither the SEC, Mr. Davison nor Mr. Rybicki object to the relief sought.

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 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