

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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 UNOPPOSED MOTION TO CORRECT SCRIVENER’S ERROR
IN ORDER APPROVING THE SALE OF REAL PROPERTY —
6209 2ND AVENUE NORTH, ST. PETERSBURG, FLORIDA**

BACKGROUND

Burton W. Wiand as Receiver over the assets of the above-captioned Corporate Defendants and Relief Defendants,¹ moves the Court to issue an amended order that corrects a scrivener’s error contained in the Court’s order approving the sale of 6209 2nd Avenue North (Doc. 222). The Receiver filed the Receiver’s Verified Motion to Approve the Private Sale of Real Property — 6209 2nd Avenue North, St. Petersburg, Florida (the “**Motion**”) (Doc. 214) and this Honorable Court granted the Motion (Doc. 222). A proposed order was attached to the Motion as Exhibit 6 and it contained a scrivener’s error. The proposed order (Doc. 214, Ex. 6) listed the buyer as “Rachel Watson Rogale” when in fact, the buyer is named “Ashley Watson Rogale”. Unfortunately, this error was also included in the Court’s order granting the Motion. *See* Doc. 222 at 2, ¶ 3.

The buyer was correctly identified at all other portions of the Motion and Exhibits, including the Purchase and Sale Agreement that was attached to the Motion as Exhibit 1 (Doc. 214 Ex. 1). However, the Receiver has communicated with the title company and the scrivener’s error in the Court’s order must be corrected before closing on the sale as described in the Motion.

¹ The (“**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC. *See* Doc. 184, at 6–7.

ARGUMENT

The relief requested does not change the substantive aspects of the sale as described in the Motion: the sale price, valuations, marketing efforts, equitable principles and substantial compliance with the relevant statutes, including 28 U.S.C. § 2001(b), all remain the same as described in the Motion. Furthermore, the Receiver is not aware of any other association between the Receivership entities and the correctly named buyer, Ashley Watson Rogale. As such, this is an arm's-length transaction. Notably, the Court's order (Doc. 222) directs the Receiver to proceed with the sale "pursuant to the Purchase and Sale Agreement attached as Exhibit 1 to the Motion." Doc. 222 at 2, ¶ 1. The Purchase and Sale Agreement correctly identifies the buyer and the scrivener's error only appears in the proposed order and in the Court's order. The Receiver and the title company cannot close on the transaction due to the scrivener's error. Therefore, the relief requested in this motion is necessary for the Receiver to carry out the Court's directive contained in the order (Doc. 222).

CONCLUSION

For the reasons stated above and those described in the Motion, the Receiver moves the Court to issue a corrected order that is substantially the same as the proposed order attached hereto as Exhibit 1. The only modification in the attached proposed order is the correction of the scrivener's error so that the proposed order correctly identifies the buyer.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the parties and is authorized to represent to the Court there is no objection to the relief sought.

Respectfully submitted,

s/Katherine C. Donlon

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Attorneys for the Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 20, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

EXHIBIT 1

COURT ORDER

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA (TAMPA)**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-cv-325-T-35AEP

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

Defendants,

_____ /

AMENDED ORDER

THIS CAUSE comes before the Court for consideration of the Receiver's Verified Motion to Approve Private Sale of Real Property – 6209 2nd Avenue North, St. Petersburg, Florida (the "Motion") (Doc. 214) and Receiver's Motion to Correct Scrivener's Error. At the request of the Securities and Exchange Commission ("SEC"), the Court appointed the Receiver on February 14, 2020 and directed him, in relevant part, to "[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants," which includes "all real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order." (Dkt. 11) The SEC consented to the relief requested by the Receiver in the Motion. It is hereby **ORDERED** and **ADJUDGED** that:

1. The sale of the real property located at 6209 2nd Avenue North, St. Petersburg, FL, 33710, also known as Pinellas County Property Appraiser's Parcel Folio Number: 20-31-16-14670-002-0140, with the following legal description: "Lot 14, Block B, Central Pasadena, according to the map or plat thereof, as recorded in Plat Book 20, Page(s) 5, of the Public Records of Pinellas County, Florida", (the "Property"), pursuant to the Purchase and Sale Agreement attached as Exhibit 1 to the Motion, is hereby **APPROVED**.
2. The Court finds the sale commercially reasonable, fair and equitable, and in the best interests of the Receivership Estate.
3. The Receiver is hereby directed to transfer the Property to Ashley Watson Rogale free and clear of all claims, liens, and encumbrances by way of a Receiver's Deed, pursuant to the Purchase and Sale Agreement.

DONE and **ORDERED** in Tampa, Florida, this ____ day of November, 2020.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record
Any Unrepresented Person