

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-MSS-AEP

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

Defendants,

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

Relief Defendants.

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**RECEIVER'S OPPOSITION TO BANK OF AMERICA'S MOTION FOR
RECONSIDERATION**

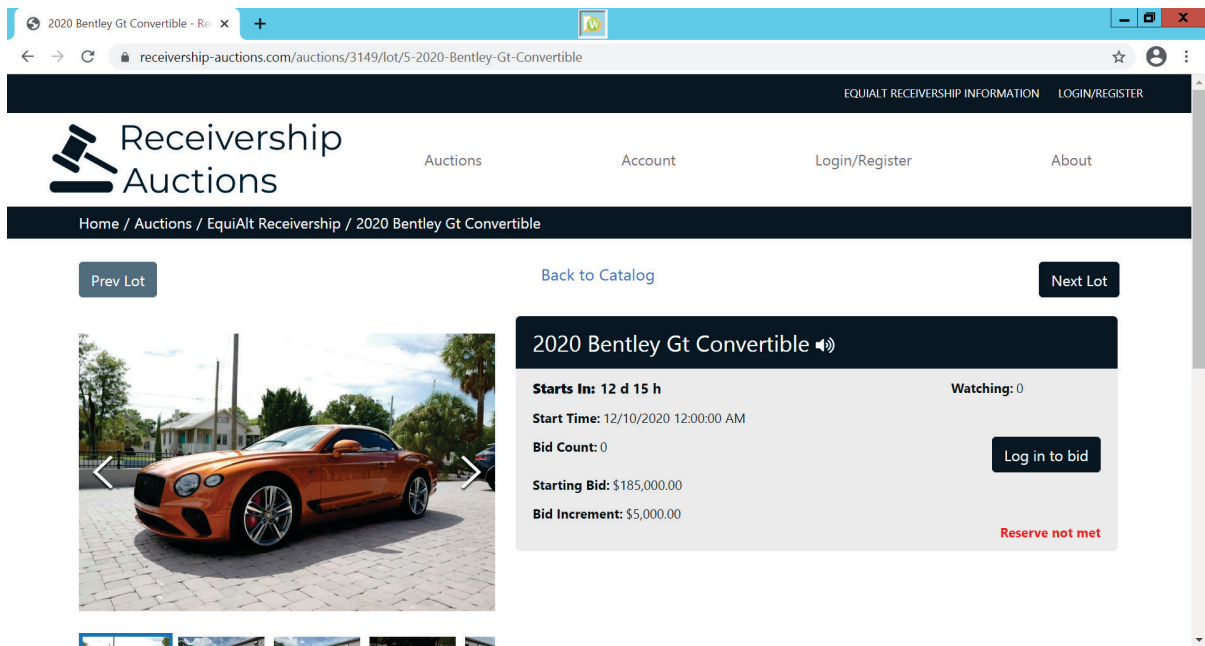
Receiver Burton Wiand files this Opposition to Non-Party Bank of America's Motion for Reconsideration. On October 28, 2020, the Receiver sought this Court's approval to market and sell several high-end vehicles, including a 2020 Bentley financed through Bank of America, which is the subject of the motion for reconsideration. The Court granted the

Receiver's motion (Doc. 210) allowing the Receiver to market and sell the vehicles. In its Order, the Court directed that "the Receiver shall use the proceeds of the sales to satisfy any lien or relevant creditor's claim." To this end, the Receiver's auction website specifically states that funds will not be released to the Receiver until all encumbrances and liens are satisfied:

All funds wired to Burton W. Wiand receiver will be held in a trust account with Wiand Guerra King, PA and used to satisfy any incumbrances on the items sold. No funds shall be released to the Burton W. Wiand Receiver until all encumbrances and liens are satisfied and the item and or title there to is delivered to the buyer.

<https://www.receivership-auctions.com/auctions/3149-EquiAlt-ReceiverShip>

As noted by the Receiver in his original motion, the purchase price for this vehicle was in excess of \$308,000. Based on the Bank's motion, the outstanding lien as of November 12, 2020, was \$184,119.21, accruing at \$19.73/day. The Bank seeks to protect this amount to pay the outstanding lien. However, the Receiver's duties extend further than just an outstanding lien. Rather, it is the Receiver's duty to maximize the sales price for this vehicle to increase the Receivership Estate for the benefit of the defrauded investors. Mr. Wiand as Receiver takes these duties very seriously. As stated in his original motion, the Receiver's auction is being held with reserve. Although it would be inappropriate for the Receiver to disclose the reserve price for his auction items, the Receiver has set the opening bid for the Bentley at \$185,000.



<https://www.receivership-auctions.com/auctions/3149/lot/5-2020-Bentley-Gt-Convertible>

By setting the opening bid at \$185,000, the Bank's interest is protected, but it is the Receiver's goal to sell this vehicle for a price far exceeding the outstanding lien amount. If the Receiver is unable to obtain an opening bid at the set price of \$185,000, the car will not be sold.

Bank of America seems to misapprehend what is occurring with the sale of the Bentley. The Receiver has been appointed to, among other things, hold and liquidate if appropriate, assets of the Receivership such as the Bentley. It is the Receiver's obligation to seek as much from the assets as possible and this Court has already determined that the method suggested for this sale is "commercially reasonable and designed to secure the greatest possible recovery for the Receivership Estate." This is a judicial sale under 28 USC §2001 and is being conducted openly and publicly by a receiver with many years of proven experience in liquidating properties of all kinds. Should the bank be concerned that the auction will not yield an appropriate return, it is free as a lien holder to bid its lien amount and take the vehicle if there

is not a higher bid. If there is a higher bid, the bank will be paid. Under any circumstances, the bank is entitled to no more than its lien amount or the proceeds of the auction should the sale result in a price less than the lien amount. Bank of America suggests that it is in a better position to sell the vehicle, but of course it would have no interest in securing more than its lien amount to benefit other victims or creditors who will make claims in the receivership proceeding. Indeed, if the sale of the vehicle yields less than the lien amount, the bank would then have a general claim in the Receivership for the shortfall.

Bank of America's motion states that there was clear error or manifest injustice because the Court was somehow misled by the Receiver's motion. These facts are not accurate. The Receiver was not aware that the Bank opposed the relief sought nor did the Receiver make any representation to the Court about what the Bank's position was. The Receiver's 3.01 certification reflects that neither the SEC, Mr. Davison nor Mr. Rybicki objected to the relief sought in the Receiver's motion. Counsel for the Bank was served with the Receiver's motion by virtue of the fact that the Bank's counsel is registered to receive notifications of filings in this case.

Further, no manifest injustice will arise if the Motion for Reconsideration is denied. As directed by the Court, the Receiver has taken measures to protect the creditors' interest on the vehicles he will be auctioning. The only injustice that will arise is if the Court grants the Bank's request for attorney's fees. According to the finance contract:

- c. You may have to pay collection costs. If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as the law allows. This includes any attorneys' fees we incur as a result of any bankruptcy proceeding brought by or against you under federal law.**

In this case, the Receiver has been working with the Bank of America lawyers since this case began on numerous issues but largely related to the EquiAlt accounts held at the Bank. As for this vehicle, other than filing this motion, the Bank has not made any efforts to collect on this outstanding lien. Rather, the Receiver negotiated the return of the vehicle from Mr. Davison and has been storing the vehicle and insuring it since that time. The Bank was well aware that the vehicle was secure and made no efforts to obtain possession of the vehicle or collect on the outstanding debt. It was only after the Court granted the Receiver's motion to sell the vehicle that the Bank sought fees for alleged collection efforts. The Bank's request for fees should be denied.

CONCLUSION

Based on the foregoing, Bank of America's Motion for Reconsideration should be denied. The Court's Order (Doc. 210) and the Receiver's actions adequately protect the Bank's interest. Further, Bank of America's request for attorney's fees should be denied.

Dated: November 27, 2020

Respectfully submitted,

/s/ Katherine C. Donlon

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Attorneys for Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2020, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, thereby serving this document on all attorneys of record in this case.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941