

**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, et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE
SALE OF PERSONAL PROPERTY - 2018 PAGANI HUAYRA**

Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants¹ moves the Court to approve the Receiver's sale of the 2018 Pagani Huayara Roadster (VIN ZA9H12UA3JSF76050) ("the Pagani")

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.

purchased by defendant Brian Davison with funds from various Receivership Entities. As explained below, in order to stem additional charges from Putnam and obtain clear title of the Pagani for the future sale of the vehicle, the Receiver believes this settlement is in the best interest of the Receivership Estate.

BACKGROUND

On February 11, 2020, the Securities and Exchange Commission (“SEC”) filed a complaint (Doc. 1) against the above-captioned Defendants and Relief Defendants. On July 9, 2020, the SEC filed an amended complaint (Doc. 138) (the “Amended Complaint”) against the same Defendants and Relief Defendants.

On February 14, 2020, the Court entered an order (Doc. 11) appointing Burton W. Wiand as temporary Receiver. The Court 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 . . . and to administer such assets as is required in order to comply with the directions contained in this Order.” Doc. 11 at ¶1. The Court also entered a temporary restraining order (Doc. 10) imposing a temporary injunction against the Defendants and Relief Defendants, freezing their assets and granting other relief. On August 17, 2020, the Court issued an order (Doc. 184) granting the SEC’s request for a preliminary injunction, extending the temporary

restraining order pending the issuance of the preliminary injunction, and granting the Receiver's Motion to Expand the Receivership to Include REIT and QOZ Entities (Doc. 90).

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 2. The orders appointing the Receiver 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 Davison and Rybicki purchased with investor funds, as outlined in greater detail in the Receiver's First Quarterly Status Report (Doc. 84 at 42-46) and the Court's Order granting the Preliminary Injunction (Doc. 184 at 3). Some

vehicles have already been sold for substantial net recoveries to the Receivership Estate. See Docs. 109, 156, 208, 246, and 265 at p. 1-2.

In addition to the vehicles that have been sold, the Receiver is still in possession of the Pagani. In October 2020, the Receiver petitioned this Court to allow the Receiver to market and sell several vehicles, including the Pagani, through an online auction. In early November, the Court approved the motion and authorized the Receiver to proceed with this procedure to sell the high-end automobiles by listing them with duPont Registry, without obtaining any appraisals, publishing a formal legal notice, or holding a hearing. (Doc. 210).

The Receiver held his auction on December 10, 2020. On December 22, 2020, the Receiver filed a Notice with the Court regarding the results of the auction. (Doc. 246) Although the Receiver was able to sell two of the three vehicles, the reserve on the Pagani was not met. *Id.* Further, the Receiver informed the Court that he had declined a bid of \$2,100,000 for the Pagani believing that he could garner a higher sale price. *Id.* Since the time of the auction, the Receiver has continued his efforts to sell the Pagani, entertaining several interested buyers.

In April 2021, Putnam Leasing, the titled owner of the vehicle, approached the Receiver regarding the lease on the Pagani. Thereafter, with the Court's approval, the Receiver settled with Putnam Leasing to obtain free

and clear title to the Pagani. (Doc. 304) During these negotiations with Putnam, the Receiver continued discussions with several potential purchasers. Ultimately, the Receiver came to terms with Miller Motorcars, the dealership who originally sold the Pagani to Davison. The Receiver and Miller agreed to a sales price of \$2,300,000, an amount which exceeds by \$200,000 the highest bid received at the Receiver's auction for the vehicle. The Receiver has expended substantial effort to market the sale of the Pagani and believes that the sale of the Pagani at the sales price of \$2,300,000 is consistent with the current market price for the vehicle and is in the Receivership's Estate's best interest.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF THE PAGANI 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 sale of the Pagani at the price of \$2,300,000. This amount exceeds the reserve price at the previously approved auction. Further, given the Receiver's settlement with Putnam, there are no outstanding liens or encumbrances. Finally, the

sale of the Pagani will avoid the Receiver incurring ongoing insurance costs for this high-end vehicle.

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 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 Pagani, 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 sale proceeds. This is particularly true here where the price the Receiver will receive for the vehicle substantially exceeds the highest bid in a well-advertised public auction that was previously authorized by this Court.

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. In fact, in approving the December 2020 auction, this Court waived these requirements. (Doc. 210) Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived for this sales transaction as well.

CONCLUSION

Based on the foregoing, the Receiver moves the Court for entry of an order approving the Receiver's sale of the Pagani to Miller Motorcars for \$2,300,000.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and Defendants Brian Davison and Barry Rybicki and they do not object to the relief sought.

Respectfully submitted,

/s/ Katherine C. Donlon

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Attorneys for Burton W. Wiand Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2021, 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_____