

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 — 1995 LAND ROVER DEFENDER**

Burton W. Wiand, as Receiver¹ over the assets of the Corporate and
Relief Defendants moves the Court to approve the Receiver's sale of a highly

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.

customized 1995 Land Rover Defender, VIN: SALLDHAF7MA942337 (the “**Defender**”) purchased by defendant Brian Davison with funds from EquiAlt LLC. The sale price is \$205,000 and the buyer is Flavio Quesada. As explained below, the Receiver believes this transaction 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. *See also*, Doc. 329.

The Court has previously waived strict compliance with 28 U.S.C. §§ 2001 and 2004 for the sale of other high-end vehicles. For example, in July 2020 the Court granted the Receiver's motion (Doc. 109) to sell luxury vehicles and found that the "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." Doc. 156 at 2. In October 2020, the Receiver petitioned this Court to allow the Receiver to market and sell several vehicles through an online auction. In early November 2020, the Court approved the motion and authorized the Receiver to proceed with this procedure to market and 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). In addition to the vehicles that have been sold, the Receiver is still in possession of the Defender and a 1977 Ferrari 308 GTB.

The Defender was not offered as part of the previous auctions, in part because it was retained by Davison until shortly before the SEC settled their

case against him. *See* Doc. 355-1 at 8. However, the sale of the Defender was publicized in duPont Registry where it has the potential to be viewed by hundreds of thousands of high-end and exotic automotive purchasers.² The vehicle was offered through the duPont Registry in both print and online, and the Receiver believes this is most appropriate way to market this vehicle. The Receiver received over fifty inquiries about the Defender and obtained several offers to purchase the vehicle from multiple sources at different prices. Ultimately, the transaction described in this motion is the highest offer, and in the Receiver's opinion, at or near the highest price that can reasonably be expected for the sale of the vehicle. Notably, the sale price is within 5% of the original purchase price for the Defender — Davison purchased the Defender more than two years ago for approximately \$213,000 and the sale price is \$205,000. A copy of the purchase and sale agreement for the transaction described in this motion is attached as Exhibit 1.

ARGUMENT

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

The Court's power to supervise an equity receivership and to determine

² *See* <https://blog.dupontregistry.com/for-sale/1995-land-rover-defender-110-by-ecd-for-sale/> (last visited January 24, 2022).

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.2d368, 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 Defender at the price of \$205,000. The sale of the Defender will also 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 a hearing; (ii) an appraisal for the Defender; and (iii)

the publication in newspapers of a notice of 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 Defender, 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. Furthermore, as noted above, the sale price of the Defender is within 5% of the original purchase price that Davison paid for the vehicle.

The Court has granted these waivers on two previous occasions in this case where the Receiver was seeking to sell high-end vehicles. (Docs. 156 and 210). Similarly, 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 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 Defender for \$205,000.

LOCAL RULE 3.01(G) CERTIFICATION

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

Respectfully submitted,

/s/ R. Max McKinley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 25, 2022, 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/ R. Max McKinley

Receivership Court shall have 15 business days to approve this transaction after receipt of funds by seller. Failure to do so shall grant buyer the right to cancel.

2. **Purchase Price & Contingencies:** The Purchase Price shall be Two Hundred Five Thousand Dollars (\$205,000.00)(“Funds”).

This Agreement is contingent upon Seller obtaining an Order from the Receivership Court (the “Order”) approving: (1) the sale of the Automobile to Buyer as provided for in an Order of the Receivership Court approving this transaction. This transaction is a private sale pursuant to the procedures specified in 28 USC 2001 et seq. Upon receipt of the Purchase price, the Seller shall immediately request from the Receivership Court an Order authorizing this sale to Buyer. Buyer shall be provided with a title* for Automobile upon the approval of the Order by the Court and the delivery of the Funds to the Receiver.

In the event that the Court does not approve of the sale of the Automobile pursuant to this agreement, Buyer acknowledges and agrees that its sole and exclusive remedy is the return of the Funds from Seller. This Agreement, when duly executed by the Parties, constitutes the express waiver in writing of any other remedy, whether legal or equitable, that may be available to the Buyer. Should the Court refuse to authorize sale of the Automobile as provided herein Seller shall immediately upon Buyer’s request return any funds paid to Seller to Buyer. Absent a refusal by the Court to approve this sale it may not be cancelled by Buyer.

Upon Delivery of the title* to the Buyer, the Buyer may collect the Automobile from Seller in Tampa Florida. Any expenses for delivery or transport of the Automobile from Tampa Florida shall be borne by the Buyer.

3. **Payment:** Buyer shall wire the Funds for the purchase to the Trust Account of Burton W. Wiand P.A. immediately upon the filing of a Motion for approval of this transaction with the Receivership Court. The Funds shall be wired according to the instructions attached to this Agreement. **No wire instructions attached**

Until the Funds are received, the Seller is free to accept other bids for the Automobile at any time. Further, until the receipt of the Funds as described above, the Seller may cancel this agreement and shall have no further liability with respect to this agreement.

4. **Costs and Expenses of Sale:** All costs and expenses of the purchase and sale of the Automobile will be obligations of the Buyer, including, but not limited to, any taxes, insurance duties title fees etc., that may apply to this transaction or the delivery of the Automobile. **Buyer expenses to be limited to Sales Tax, Title Transfer Fees, tag fees and Insurances. Any additional unforeseen expenses over \$500 shall be paid by seller or this agreement may be cancelled by either party and all funds shall be returned to buyer.**


* = Title provided by seller to buyer shall be signed and ready for transfer to buyer at a Florida Tag Agency. Any special documentation required by tag agency due to nature of this transaction shall be provided to buyer at no charge.

5. **Damage or Destruction:** In the event the Automobile is damaged or destroyed prior to the date of transfer of title, Buyer may declare this Agreement null and void or Buyer may complete the transaction.

6. **General Provisions:**


- (a) This Agreement shall be governed by the laws of Florida.
- (b) Buyer and Seller hereby (i) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be exclusively litigated as a summary proceeding in *Securities and Exchange Commission v. Brian Davison, et al.*, United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:20-cv-00325-T-35AEP, to the exclusion of the courts of or in any other state or country, and (ii) irrevocably submit to the exclusive jurisdiction of the Receivership Court, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably waive any objection to the laying of venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.
- (c) Captions of the several items of this Agreement are not a part of the context hereof and shall not be used in construing this Agreement, being intended only as aids in locating the various provisions hereof.
- (d) This Agreement shall inure to the benefit of, and be binding upon, the Buyer's successors and assigns, executors, and administrators.
- (e) In the event that this Agreement shall terminate in accordance with the provisions hereof, and in the absence of breach, all funds and documents deposited shall be returned to the depositor thereof and neither Party shall be under any further obligation to the other by reason of this Agreement.
- (f) This offer is open for acceptance by delivery of a fully executed original hereof, up to and including 8:00pm EST on 1-22-2022, 2022, and may thereafter be withdrawn without notice. This Agreement, and any notices required or permitted to be given pursuant to this Agreement, shall be in writing and sent by overnight courier, prepaid, or hand delivered, transmitted by facsimile or e-mail, delivered personally or served by certified or registered mail, return receipt requested. Any facsimile or electronic signature shall be deemed to be an original.
- (g) Notices may be delivered to Seller at the email address burt@burtonwwiandpa.com or via Seller's Attorney at the email address kdonlon@jclaw.com and to Buyer at flaviorquesada@gmail.com

- (h) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained.
- (i) Severability. If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement nevertheless shall be construed, performed, and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

BUYER(S) 

Flavio Quesada

Date 1.21.22

SELLER 

1-21-2022

Date