

**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 VERIFIED UNOPPOSED MOTION TO APPROVE THE
TRANSFER OF TITLE OF MOTOR VEHICLES**

Burton W. Wiand, as Receiver over the assets of the above-captioned
Corporate Defendants and Relief Defendants,¹ moves the Court to approve the

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. *See also*, Doc. 284.

transfer of title of two cars formerly owned by Defendant Barry Rybicki. The cars are a 2019 Porsche 911 Turbo S (VIN: WP0CD2A98KS144283), and a 1981 Land Rover Defender ECD Conversion (VIN: SALLDHAD7BA244596) (the “Cars”). Rybicki surrendered the Cars pursuant to the Final Judgment entered against him. *See* Docs. 528-1 at 8; 526-2 at 3. In order to facilitate the transfer of title, the Receiver requests an order directing the Arizona Department of Transportation to transfer title to the Cars to Burton W. Wiand, Receiver for EquiAlt, et al. Transferring title to the Cars in the manner described in this motion is in the best interests of the Receivership Estate, in part because doing so would avoid payment of taxes normally associated with vehicle sales.

BACKGROUND

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” Doc. 11 (the “Order”) at 2-3, ¶ 1. The Court also ordered that “[t]itle to all property, real or personal, all contracts, rights of action and all books and records of the

Corporate Defendants and Relief Defendants and their principals wherever located within or without this state, is vested by operation of law in the Receiver.” Doc. 11 at 7, ¶ 19.

The Receiver has identified several high-end, luxury vehicles that Defendants 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. This Court has previously directed non-parties to transfer vehicle titles to the Receiver. *See* Doc. 309 at 2, ¶ 3.

The SEC has resolved its claims against Defendant Rybicki and this Court has entered a Final Judgment against him (Docs. 528; 528-1). *See also*, Doc. 526. Pursuant to the Final Judgment, Rybicki was ordered to, among other things, pay disgorgement and interest in the total amount of \$11,425,520. *See* Doc. 528-1 at 6. The Final Judgment also directs Rybicki to disgorge certain assets to the Receiver, including the Cars. *See* Doc. 528-1 at 8. The Cars are currently located in Arizona and registered to Rybicki. The Cars are free of any significant liens or encumbrances, such as dealership financing

or other loans. In order to take possession of, and eventually sell the Cars,² the Receiver requests that this Court issue an order directing the Arizona Department of Transportation to transfer title to the Cars to Burton W. Wiand, Receiver for EquiAlt, et al. An order to this effect will streamline the process and avoid the need to pay taxes that would otherwise be associated with the transfer, thereby saving the Receivership from incurring additional expense. The Receiver has also been advised by the Arizona Department of Transportation that the order will expedite the transfer of the vehicles and will avoid any participation of Mr. Rybicki in this process.

ARGUMENT

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

² The Receiver anticipates filing a separate motion seeking Court approval prior to selling the Cars.

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 and the terms of the Final Judgment, the Court should issue an order directing the Arizona Department of Transportation to transfer title to the Cars to Burton W. Wiand, Receiver for EquiAlt, et al.

CONCLUSION

For the reasons discussed above, the Receiver requests an order directing the Arizona Department of Transportation to transfer title to the Cars to Burton W. Wiand, Receiver for EquiAlt, et al.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not object to the relief sought.

Respectfully submitted,

s/R. Max McKinley

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VERIFICATION OF THE RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this motion is true and correct to the best of my knowledge and belief.

s/ Burton W. Wiand
Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 6, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/R. Max McKinley
R. Max McKinley, FBN 119556