

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35-MRM

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 REAL
PROPERTY — 12100 SEMINOLE BLVD,
UNIT 308, SEMINOLE, FLORIDA**

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

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.

to sell the real property located at 12100 Seminole Boulevard, Unit 308, Seminole, FL 33778 (the “**Property**”). The Property is part of a mobile home co-op, known as Caribbean Isles, in Seminole, Florida. The entire co-op is being purchased by Caribbean Isles Owner, LLC. The terms of the sale are confidential,² however, the purchase price for the lot owned by EquiAlt is \$296,000. Although the Receiver, on behalf of EquiAlt, is but one unit in this transaction and therefore could not direct specifics of the sale, he believes that the sale of the property as described in this motion will result in a fair and equitable recovery for the Receivership Estate.

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. 6 (the “**Order**”) at 73, ¶ 1. The Court also ordered that “[t]itle to all property, real or

² Underlying sales documents are subject to a confidentiality agreement between the parties. However, counsel for the transaction will make the documents available *in camera* if requested by the Court.

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. 6 at 77, ¶ 17.

The Order also directs the Receiver to “[m]ake or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver’s duties.” Doc. 6 at 75, ¶ 8.

The Procedures Applicable to Sales of Real Property

Typically, the Receiver has come before the Court seeking approval of a private sale of certain parcels of real estate. In that situation, the procedures set forth in 28 U.S.C. § 2001(b) would apply. However, as this sale is more of a forced sale, wherein the Receiver’s ownership is inferior to the co-op ownership, the Receiver does not believe that these same procedures apply.

The Property and the Proposed Sale

EquiAlt LLC, a Receivership entity, owned the Property until the Order appointed the Receiver, who took title to the Property. The Property was purchased with scheme proceeds — i.e., money contributed to the scheme by victim investors. The Receiver owns the underlying land as well as the

currently vacant mobile home. The proposed sale is for the land. As part of the sale, the Receiver will receive a lifetime lease. Also, the Receiver will continue to own the trailer.

The board of directors for the Caribbean Isles Co-Op, Inc. (“Co-Op”) voted to approve the sale of the entire mobile home park, including the Receiver’s property. There is no way for the Receiver to opt out of this sale. In order to close on the transaction, counsel for the Co-Op is requiring that the Receiver obtain a court order approving the sale by the Receiver.³

Although this was not a deal negotiated by the Receiver, it was negotiated at arm’s length by the Co-op Board of Directors. In the Receiver’s opinion the sale is very beneficial to the Receivership Estate. The prior BPO on this property, provided by Coldwell Banker, was \$60,000. The Receiver sold a similar lot in this same co-op in his first auction in September of last year for \$54,600. Not only will the Receivership receive \$296,000 but it will also retain ownership of the mobile home the is estimated to be worth approximately \$20,000. Clearly, the sale price of \$296,000 for the Receiver’s for the Co-op interest in the property is in the best interest of the Receivership.

³ For the Court’s convenience, a proposed order is attached as Exhibit 1 to this motion.

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 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 12100 Seminole Blvd., #308. The sale price represents a gross recovery of \$296,000 for the benefit of the Receivership Estate, and ultimately its creditors, including the victim investors. Also, the Receiver’s independent evaluation of the transaction demonstrates that it is commercially reasonable.

CONCLUSION

For the reasons discussed above, this transaction is commercially reasonable, fair and equitable, and will ensure a cost-effective recovery for the ultimate benefit of the Receivership Estate. As such, the Receiver requests an order (1) approving the transaction and (2) ordering that the Receiver or EquiAlt’s General Manager , Tony Kelly, may execute any and all documents and conduct all acts contemplated by the underlying sales documents, including, but not limited to, the execution of any and all closing documents and any other documents necessary for the completion of the transaction.

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/Katherine C. Donlon _____

Katherine C. Donlon, FBN 0066941

kdonlon@jclaw.com

**JOHNSON, CASSIDY, NEWLON &
DECORT P.A.**

2802 N. Howard Avenue

Tampa, FL 33607

Tel: (813) 291-3300

Fax: (813) 324-4629

and

R. Max McKinley, FBN 119556

mmckinley@guerraking.com

GUERRA KING P.A.

1408 N. Westshore Blvd., Suite 1010

Tampa, FL 33607

Tel: (813) 347-5100

Fax: (813) 347-5198

Counsel for Receiver Burton W. Wiand

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 August 4, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Katherine C. Donlon

EXHIBIT 1

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-cv-00325-MSS-MRM

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.

ORDER

THIS CAUSE comes before the Court for consideration of the Receiver’s Unopposed Motion to Approve Sale of Real Property – 12100 Seminole Blvd, Unit 308, Seminole, Florida (the “Motion”). (Dkt. ___) 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 Court has reviewed the Receiver’s Motion. (Dkt. ___)

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The Receiver’s Motion, (Dkt. ___), is **GRANTED**.
2. The Purchase of the Property located at 12100 Seminole Blvd., Unit 308, Seminole, Florida (“the Caribbean Isles property”) is **APPROVED**.

The legal description of the Caribbean Isles property is as follows:

Unit/Lot No. 308, of CARIBBEAN ISLES CO-OP, INC., a Florida not-for-profit corporation, formerly known as STELLA DEL MAR CO-OP, INC., according to Exhibit “B” (the “Plot Plan”) of the October 11, 2005 Declaration of Master Form Occupancy Agreement recorded in O. R. Book 14667, Page 2427, et seq., Public Records of Pinellas County, Florida, as it may be amended from time to time (the “Master Agreement”), and as legally described in Exhibit “A” to said Master Agreement.

Together with that appurtenant Membership Certificate No. 308

3. The Receiver and EquiAlt’s General Manager, Tony Kelly, are authorized to execute any and all documents and conduct all acts contemplated by the underlying sales documents, including, but not limited to, the execution of any and all closing documents and any other documents necessary for the completion of the transaction.

4. Said transfer shall be free of any and all liens and encumbrances.

DONE and ORDERED in Tampa, Florida, this __ day of _____
2022.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record