

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

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.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
SALE OF PERSONAL PROPERTY — THREE HIGH-END VEHICLES**

Burton W. Wiand, as receiver over the assets of the corporate and relief defendants (the “**Receiver**” and the “**Receivership**” or “**Receivership Estate**”) files this unopposed motion requesting that the Court approve the marketing and sale of certain high-end motor vehicles, free and clear of any and all liens, encumbrances, and claims. As explained below, the Receiver

believes the proposed manner of sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate.

### **BACKGROUND**

The Securities and Exchange Commission (“**SEC**”) alleges that Brian Davison and Barry Rybicki used various EquiAlt Funds, EquiAlt LLC, and related Receivership Entities (“**EquiAlt**”) to perpetrate a massive real estate Ponzi scheme that raised more than \$170 million from over 1,100 victim investors across the country. At the request of the SEC, the Court appointed the Receiver on February 14, 2020, and directed him to, in relevant part, “[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 3.

This Court has entered separate orders approving the SEC’s unopposed motions for entry of final judgments against defendants Brian Davison (Doc. 355) and Barry Rybicki (Doc. 528) (collectively, the (“**Final Judgments**”). The Final Judgments reference assets that Davison and Rybicki are to turn over to the Receiver, including the high-end vehicles that are the subject of this motion. *See* Docs. 355-1 at 8; and 528-1 at 8. The vehicles are as follows (collectively, the “**Vehicles**”):

<b>Vehicle</b>	<b>VIN</b>	<b>Previous Owner</b>
1977 Ferrari 308 GTB	22473	FL DAV LLC
2019 Porsche 911 Turbo S	WP0CD2A98KS144283	Barry Rybicki
1981 Land Rover Defender ECD Conversion	SALLDHAD7BA244596	Barry Rybicki

The Receiver took possession of the 1977 Ferrari shortly after he was appointed. The other two vehicles were turned over by Rybicki in Arizona and the Receiver arranged for their transportation to Tampa. Currently, all three Vehicles are in the Receiver's possession in Tampa. The Vehicles are free of any liens or encumbrances. The Receiver believes that it is in the best interest of the Receivership to sell the Vehicles at auction.

#### **Receiver's Plans for Marketing and Sale of the Vehicles**

The Receiver's proposed public auction will be very well publicized. The Receiver has contracted with duPont Registry to advertise the Vehicles and the auction. duPont is an industry leader in advertising publications for luxury automobiles, real estate, and yachts. The Vehicles will be featured in a full page "Publishers Showcase", a custom homepage featured in duPont's blog, and will also be included in various emails and social media posts from duPont. This publication will reach over 6.5 million recipients, including the target market of dealers, collectors, and market participants for cars of this quality. This advertising will begin more than 30 days before the auction and continue until the auction concludes. The services of duPont will cost \$6,000 which is a

significant discount from standard advertising prices. The auction will also be publicized on the Receivership website, [www.equialtreceivership.com](http://www.equialtreceivership.com).

The auction will be open to bidders online and at an in-person event. The Receiver will host the online component on his auction website, [www.Receivership-Auctions.com](http://www.Receivership-Auctions.com). The Receiver controls the auction website and conducts the auction, so there is no cost of a traditional auctioneer or related expenses. The auction will be active online for 10 days prior to concluding at the in-person event where the Vehicles will be on display for potential bidders. The in-person event will take place at 2101 West Cypress Street, which is the warehouse property owned by the Receivership.

The auction will be with reserve and the Vehicles are subject to prior sale should circumstances warrant.<sup>1</sup> The Receiver will set the reserve prices based on his review and evaluation of available public sources and recent transactions involving similar vehicles. This method has been successful in previous sales of other high-end vehicles in this Receivership. *See* Docs. 208 and 246. *See also* Docs. 109, 326, and 487. The Receiver requests approval to proceed with the marketing and sale of the Vehicles via auction to avoid incurring additional expenses associated with continued ownership and to

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<sup>1</sup> Should the Receiver determine that an offer made prior to the auction or other circumstances warrant selling a vehicle outside the auction, the Receiver will seek approval of the Court prior to completing such private sale outside the auction context.

recover the greatest value for the benefit of the Receivership's creditors, including the victim investors.

### ARGUMENT

#### **I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF THE VEHICLES 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 marketing and Receiver-run auction of the Vehicles because this plan will provide the greatest marketing reach and ultimate net benefit to the Receivership by avoiding seller and professional auction fees. Reserve pricing will protect the Receivership to assure that the Vehicles and the Receivership garner reasonable value from the auction. Further, the sale of the Vehicles will avoid incurring the unnecessary carrying and insurance costs. Once the sold, the Receivership will no longer own any vehicles.<sup>2</sup>

## **II. THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004 WILL BE MET.**

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

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<sup>2</sup> The Receivership still owns a vehicle chassis for a 2016 Mazda MX5, which is located in New York. However, given pending storage and repair fees it is unlikely that there will be any recovery from that asset.

the sale of real property, unless a court orders otherwise. 28 U.S.C. § 2001(a) requires that the public sale take place at the courthouse or “upon the premises or some parcel thereof located therein, **as the court directs.**” 28 U.S.C. § 2001(a) (emphasis added). The Receiver is seeking this Court’s approval of the public sale of these vehicles to take place via the Receiver’s online auction site and a live auction. As stated above, the Receiver will be providing significant public notification of the online auction to interested persons. Given the geographical reach of an online auction, the Receiver believes his proposal meets the requirements of these provisions and requests the Court’s approval.

### **III. THE RECEIVER REQUESTS AN ORDER ALLOWING HIM TO SELL THE VEHICLES FREE AND CLEAR OF ANY LIENS OR ENCUMBRANCES.**

The Receiver requests an order from the Court allowing him to sell the Vehicles free and clear of all liens, claims and encumbrances. The relief sought falls squarely within the Court’s powers and is in the best interest of the Receivership. The relief is also consistent with precedent, which establishes that a court may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners’ Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *People’s-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, the Court has this authority because when a court of competent jurisdiction takes possession of property through its officers — like this Court has done with the Vehicles in connection with the

Receivership — it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *See Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931).

Given the foregoing efforts and the existence of a ready and able method of marketing and sale, the Receiver believes that proceeding with this plan to sell the Vehicles is commercially reasonable. Further it avoids the costs of a commercial auctioneer, dealers, and other intermediaries that other methods of sale would incur.

### **CONCLUSION**

Based on the foregoing, the Receiver respectfully moves the Court for entry of an order authorizing the Receiver to market and sell the Vehicles through auction as described herein.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC who does not object to the relief sought.

Respectfully submitted,  
**s/ R. Max McKinley**

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*Attorneys for Receiver Burton W. Wiand*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 18, 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**