

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

BILLY WAYNE McCLINTOCK)
individually, and dba MSC)
HOLDINGS, DIANNE)
ALEXANDER aka LINDA)
DIANNE ALEXANDER,)

Defendants,)

MSC HOLDINGS USA, LLC,)
MSC HOLDINGS, INC., MSC GA)
HOLDINGS, LLC,)

Relief Defendants.)

CIVIL ACTION FILE

NO. 1:12-CV-04028-SCJ

**RECEIVER’S MOTION TO APPROVE PRIVATE SALE
OF REAL PROPERTY IN BRADENTON, FLORIDA**

The Receiver seeks approval to proceed with the sale of the real property located at 5915 Braden Run, Bradenton, Florida, pursuant to 28 U.S.C. § 2001(b).

The Receiver has entered into a sales contract for the private sale of this real property for \$331,000 that far exceeds the average appraised value (\$308,750), as determined by four independent appraisers and is \$125,000 over the two-thirds

amount of the average appraised value (\$205,833.33) that the Receiver is authorized to sell this property for under 28 U.S.C. § 2001(b).

It is the Receiver's belief, as informed by the results of the four appraisals and the advice of his real estate professional, that this contract represents the maximum potential value for this real property, particularly in light of the extensive termite damage to the property, and the sale is in the best interests of the Receivership. Accordingly, the Receiver requests that the Court authorize him to proceed and sell this property in a scheduled July 13, 2020 closing and dispense with any statutory publication requirement for this sale prior to confirmation by this Court.

A. Requirements For a Private Sale Under 28 U.S.C. § 2001(b)

The provisions of 28 U.S.C. § 2001(b) govern the private sale of real property by the Receiver. The Statute provides, in relevant part, that such a private sale may be confirmed by the Court upon a finding by the Court that the best interests of the Estate will be conserved by the sale. The statute requires appraisal of the real property by three (3) disinterested persons; and, the Court shall not approve a sale that is less than two-thirds of the average appraised value of the real property. 28 U.S.C. § 2001(b).

The Receiver has satisfied these statutory provisions by obtaining four (4) independent appraisals for the Braden Run real property and obtaining a sales price that far exceeds what is required by the statute.

B. The Sales Amount Exceeds The Appraised Value Requirements

The Receiver retained four independent, professional appraisers to prepare appraisals for the 5915 Braden Run, Bradenton, Florida real property. The Receiver obtained these appraisals while seeking clear title for the property (now represented in the Court's Second Amended Final Judgment) prior to listing the property in order to determine the appropriate sales price.

The results of the four independent appraisals and copies of the complete appraiser reports and analysis (with appraiser qualifications) for the 5915 Braden Run, Bradenton, Florida real property are as follows:

- 1) Curtis Hunt: **\$300,000** (report attached as "Exhibit A");
- 2) Gerald O. Russell: **\$330,000** (report attached as "Exhibit B");
- 3) Edward D. Martin: **\$325,000** (report attached as "Exhibit C"); and,
- 4) Paul A. Monsen: **\$280,000** (report attached as "Exhibit D").

The foregoing appraisers are all licensed by the State of Florida. All four appraisals were performed using the Uniform Standards of Professional Appraisal Practice ("USPAP") that were adopted and promulgated by the Appraisal

Standards Board of The Appraisal Foundation by certified USPAP instructors. It is also important to note that **none of these appraisers were aware of the extensive termite damage to the property that was subsequently discovered during inspections** (leading to the cancellation of the original sales contract). Had the damage been known, the appraised values would likely have been significantly lower.

The average of these four independent appraisals is \$308,750. Pursuant to 28 U.S.C. § 2001(b), a sale must be at least two-thirds of the average appraised value of the real property. Two-thirds of the average appraised value of this real property is \$205,833.33. The Receiver has negotiated a sales price for the property of \$331,000, which exceeds by over \$125,000 the statutory minimum amount the Receivership is authorized to sell the property for under 28 U.S.C. § 2001(b).

Based upon the amount of the sales contract, the statute clearly authorizes the sale of the Braden Run real property.

C. A Sale For \$331,000 Is Clearly In The Best Interests of The Receivership Estate

The 5915 Braden Run, Bradenton, Florida real property, when received, was in degraded condition that required the Receiver to identify and oversee numerous repairs and improvements to the property with the assistance of a real estate

professional and others. After completing those repairs and improvements, the Receiver listed it for a private sale on May 9, 2020 for \$335,000.

Numerous offers for a private sale were received and the property was soon placed under contract for \$330,000. However, the first contract was abandoned by the prospective buyer after an inspection showed extensive termite infestation and damage to the property. Despite this development, the Receiver subsequently negotiated a contract for a greater amount.

The Receiver and the current prospective buyers agreed to a sales contract for \$332,500 on May 27, 2020. That sales contract was contingent upon a due diligence period in which the buyers could schedule an inspection and seek additional repairs and/or price concessions. In light of the circumstances involving the first contract (which was cancelled during this due diligence period), the Receiver did not seek Court approval for the sale at this time.

Following the inspection, the prospective buyers produced a list of problems and requested repairs on June 8, 2020 seeking a price concession of \$26,400 with a final sales contract of \$310,000. The Receiver declined this request but offered a \$1,500 reduction, which the prospective buyers agreed to. The negotiated final sale price of \$331,000 was agreed to and memorialized in a written addendum to the sales contract along with additional requirements for the seller regarding treating

the active termite infestation on the property, which are memorialized in an amendment to the sales contract.

Even after extensive termite damage to the real property was discovered, the Receiver has negotiated a sales contract for \$331,000, which is more than a sales contract terminated because of termite damage. It is the Receiver's belief, that this contract represents the maximum potential value for this real property, particularly in light of its extensive termite damage. Accordingly, the Receiver requests that the Court authorize him to proceed and sell this property on July 13, 2020 and dispense with the notification requirement of the statute.

D. The Receiver Requests The Court Dispense With Any Publication Requirement

The statute for private sale contains a publication requirement prior to confirmation, i.e.: "the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation." 28 U.S.C. § 2001(b). The express purpose of the statute is for judicial confirmation of private sales for the Receivership Estate "if it finds that the best interests of the estate will be conserved thereby." *Id.* Because the Receiver has negotiated a sale for over \$125,000 more than the minimum amount for a sale under the statute, the Receiver requests approval to proceed with this private sale without prior publication of the sale amount.

The purpose of the 28 U.S.C. § 2001(b) publication requirement is to ensure that the Receivership Estate obtains maximum potential value from a private sale for the real property in question. The statute provides that a “private sale shall not be confirmed if a bona fide offer is made ... which guarantees at least a 10 per centum increase over the price offered in the private sale.” *Id.*

The clear purpose of this statutory publication requirement is to ensure that the Receivership receives maximum value in any private sale. Here, however, that condition has already been met by the current sales contract where the Receiver obtained a sales price for the property (\$331,000). This amount substantially exceeds the average of four independent appraisals (\$308,750) and is \$125,000 more than the minimum amount (\$205,833.33) the Receiver is authorized to sell the property for under the statute. Importantly, these appraisers were unaware of the extensive termite damage to the property that was subsequently discovered during inspections (leading to the cancellation of the original sales contract). Had the damage been known, the appraised values would likely have been significantly lower, as would the appraised averages for the property.

The 28 U.S.C. § 2001(b) publication requirement is clearly designed to prevent a low value “fire sale” of Receivership Property. Because that is clearly not applicable to this sale, the Receiver requests that the Court dispense with the

publication requirement. Given the applicable circumstances and amount of this sale, including the recently discovered termite damage to the property, it is unlikely that the Receiver will obtain a greater amount for the property following publication than reflected in the current sales contract. Instead, given these factors, it is more likely that the Receivership will receive less if this sale does not proceed.

It is the Receiver's belief, as informed by the results of the four appraisals and the advice of his real estate professional, that this contract represents the maximum potential value for this real property, particularly in light of the extensive termite damage and infestation and is in the best interests of the Receivership. Accordingly, the Receiver requests that the Court authorize him to proceed and sell this property in a scheduled July 13, 2020 closing and dispense with any statutory publication requirement for this sale prior to confirmation.

E. Conclusion

In light of the foregoing, the Receiver requests permission from this Court to proceed with the July 13, 2020 closing of the 5915 Braden Run, Bradenton, Florida real property for \$331,000, an amount that exceeds the average appraised value of the property (\$308,750), and is \$125,000 over the minimum amount (two-thirds of the average appraised value or \$205,833.33) for which the Receiver is authorized to sell this property in a private sale under 28 U.S.C. § 2001(b).

Because the private sale of this property for \$331,000 is clearly in the best interests of the Receivership Estate based upon the average appraised value and circumstances, the Receiver respectfully requests that this Court dispense with the pre-publication requirement and approve and confirm this private sale.

A proposed Order is attached hereto as “Exhibit E.”

Respectfully submitted this 29th day of June, 2020.

Receiver for MSC Holdings

/s Jason L. Nohr
Georgia Bar No. 545435

212 Church Street
Marietta, Georgia 30060
770-528-0150
770-528-0160 – facsimile
jln@cauthornnohr.com

CERTIFICATE OF SERVICE

This certifies that I have this day served a copy of the foregoing
RECEIVER’S MOTION TO APPROVE PRIVATE SALE OF REAL PROPERTY
IN BRADENTON, FLORIDA via the CM/ECF electronic filing system which will
send notice of such filing to counsel of record.

This 29th day of June, 2020.

/s Jason L. Nohr _____
Georgia Bar No. 545435

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