

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

**ORDER ON 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\(b\)](#). Under this statute, the Receiver must seek judicial confirmation and approval for the sale of real property owned by the Receivership, including independent appraisals of that property and a sales price that must be at least two-thirds of the

average appraised value of the property. Because the Receiver has negotiated a sales price for the Braden Run real property that far exceeds this minimum amount, the Court hereby confirms and authorizes the Receiver to proceed with the sale of the property.

The Receiver's Motion for Court approval of the sale presents four independent appraisals of the real property located at 5915 Braden Run, Bradenton, Florida by certified property appraisers. According to the Motion, the Receiver has entered into a sales contract for the private sale of this real property in an amount (\$331,000) that exceeds the average appraised value (\$308,750), as determined by these four appraisers. In addition, the amount of the sales contract is over \$125,000 more than two-thirds of the average appraised value of the property (\$205,833.33) for which the Receiver is authorized to sell it under [28 U.S.C. § 2001\(b\)](#).

The Court notes that the Receiver apparently negotiated this contract despite the discovery of extensive termite damage (which led to the cancellation of the original sales contract on this property). Because of this discovery, the Receiver maintains that the appraised values for the property would likely be lower if the appraisers were aware of this problem. Under these circumstances, it is the Receiver's belief that this sales contract represents the maximum potential value for this real property, particularly in light of these problems, and is in the best

interests of the Receivership. Accordingly, the Receiver seeks approval to proceed with this sale promptly and without pre-confirmation publication.

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 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 express purpose of the statute is for judicial confirmation of a private sale if the Court “finds that the best interests of the estate will be conserved thereby.” *Id.*

The clear purpose of the statutory publication requirement is to ensure that the Receivership receives maximum value in any private sale. Here, the price of the proposed sale of the property (\$331,000) exceeds by over \$125,000 the amount the Receiver is authorized to sell the property for under the statute (two-thirds of the average appraised value or \$205,833.33). The Court also notes that the average appraised price of the property (and minimum sales amount of two-thirds that average price) would likely be lower had the independent appraisers been aware of the termite damage to the property that was subsequently discovered during inspection by the first buyer. Because the amount of the proposed sale so far

exceeds the minimum amount for which the Receiver is authorized to sell the property under 28 U.S.C. § 2001(b), it is clearly in the best interests of the Receivership Estate to proceed with this sale.

The Court finds that a private sale of the real property located at 5915 Braden Run, Bradenton, Florida under the terms set forth in the Receiver's Motion seeking approval and confirmation is in the best interest of the Receivership Estate and satisfies the requirements of 28 U.S.C. § 2001(b). Accordingly, the Court hereby confirms and approves the sale of 5915 Braden Run, Bradenton, Florida for \$331,000 and dispenses with any publication requirements of the statute. The Receiver is, therefore, authorized to proceed with and take those steps necessary to complete this sale and transfer of the property at closing on behalf of the Receivership Estate.

SO ORDERED this 20th day of July, 2020.



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STEVE C. JONES  
UNITED STATES DISTRICT JUDGE