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MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

No. 3:16-cv-00438-PK

RECEIVER'S MOTION FOR AN ORDER
AUTHORIZING SALE OF RESIDENTIAL
REAL PROPERTY IN IDAHO, AND FOR
RELATED RELIEF



AEQUITAS MANAGEMENT, LLC;
 AEQUITAS HOLDINGS, LLC;
 AEQUITAS COMMERCIAL FINANCE,
 LLC; AEQUITAS CAPITAL
 MANAGEMENT, INC.; AEQUITAS
 INVESTMENT MANAGEMENT, LLC;
 ROBERT J. JESENİK, BRIAN A. OLIVER;
 and N. SCOTT GILLIS,

Defendants.

LR 7-1 CERTIFICATION

On March 7, 2018, the undersigned circulated to the approximately 70 counsel of record, via email, a version of this motion (and supporting declaration and proposed form of order) that is substantially the same as this filed version. The conferral requested that counsel respond by 12:00 noon (Pacific Time) on March 14, 2018, as to whether their clients object or consent to the motion. As of the time of filing this motion the undersigned had received two consents and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for Aequitas Commercial Finance, LLC (“ACF” or “Seller”), hereby moves (the “Motion”) this Court for the entry of an order (1) approving the sale of a recreational home located in Coeur d’Alene, Idaho pursuant to a Real Estate Purchase and Sale Agreement dated March 6, 2018, between ACF, as Seller, and John Swallow, as Buyer (the “Agreement”), (2) authorizing the sale of the Property (defined below), (3) authorizing the Receiver, on behalf of ACF, and Buyer, to perform the Agreement and to execute such other instruments and take such other actions as may reasonably be required to effectuate the Agreement, and (4) authorizing the Receiver, on behalf of ACF, to quitclaim to Buyer any interest in a dock situated at the Real Property (defined below) to the extent, if any, that the Receiver determines that he holds such an interest, without further notice or approval of

this Court.

This Motion is supported by the Declaration of Brad Foster (“Foster Decl.”) submitted herewith, and the following memorandum.

I. Procedural and Fact Background.

A. Appointment of the Receiver.

1. On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

2. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (the “Interim Receivership Order”). On April 14, 2016, pursuant to the Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on a final basis (the “Final Receivership Order”) [Dkt. 156].¹ The Receivership Entity includes ACF, a Receivership Defendant. (Foster Decl., ¶ 2).

B. Marketing and Proposed Sale of Property in Coeur d’Alene, Idaho.

3. Pursuant to the Interim Receivership Order and the Final Receivership Order the Receiver has, among other things, undertaken to determine the nature, location and value of all Receivership Property. Receivership Property includes ACF’s ownership of a lake-front, recreational home in Coeur d’Alene, Idaho, legally described as: Lot 6, Washington Place Subdivision, according to the plat recorded in Book F of Plats, Pager 4, records of Kootenai County, Idaho (the “Real Property”).² (Foster Decl., ¶ 3).

¹ Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Final Receivership Order.

² The Real Property to be conveyed will not include any improvements constituting a dock or similar structure. If Seller determines it holds an interest in a dock, Seller seeks authority to quitclaim any such interest to Buyer without further notice or approval of this Court.

4. In December 2017 the Receiver received a broker's opinion of value for the Real Property, estimating the value to be between \$595,000 and \$650,000. (Foster Decl., ¶ 4).

5. The Receiver engaged a broker to market the Real Property. The broker has received multiple offers for the Real Property, including the offer memorialized in the Agreement. The Receiver has determined, in the exercise of his reasonable business judgment, that the sale of the Real Property and all appliances situated at the Real Property (together, the "Property") on the terms set forth in the Agreement is the highest and best offer received, and is in the best interests of ACF, the Receivership Entity, and their investors and creditors. (Foster Decl., ¶ 5 and Exhibit 1).

6. The primary business terms of the proposed sale of the Property are:

(a) Buyer: John Swallow ("Buyer")

(b) Purchase Price: \$650,000.

(c) Payment of the Purchase Price:

(i) \$100,000 cash at closing; and

(ii) \$550,000 in financing from Seller (the "Loan"). The Loan shall accrue interest at the rate of 5.0% interest, and repaid on a 30-year amortization schedule at the rate of \$2,952/month. The unpaid balance of the Loan shall be repaid nine (9) months after closing of the sale. The Loan shall be secured by a first priority deed of trust lien on the Real Property.

(d) Buyer has waived any inspection contingency.

(e) Commission: \$6,000 to be paid by Seller at closing, with an additional \$33,000 to be paid by Seller upon repayment of the Loan.

(f) Closing Deadline: March 30, 2018.

(g) The sale of the Property is conditioned on approval of this Court.

(Foster Decl., ¶ 6, Exhibit 1, at ¶¶ 2-4, 10, and 35, and page 8).

7. The Agreement was negotiated in a fair and reasonable manner under the circumstances and at arm's-length. In the Receiver's opinion the Purchase Price and Loan to Buyer are reasonable. There is no evidence that the Receivership Entity, Receiver, or Buyer engaged in any conduct (including but not limited to collusion or fraud of any kind) that would cause or permit the Agreement or the sale of the Property to be avoided. Buyer has no known relation to the Receiver or the Receivership Entity. Buyer has at all times acted in good faith in connection with the negotiation of the Agreement and therefore is entitled to all the protections afforded good faith purchasers under applicable law. (Foster Decl., ¶ 7).

8. The Receiver, in the exercise of his reasonable business judgment, believes that sale of the Property on the terms provided in the Agreement is in the best interests of ACF, the Receivership Entity, and their creditors and investors. The Agreement also provides an opportunity for the Receivership Entity to liquidate one of its smaller assets. (Foster Decl., ¶ 8).

9. To the best of the Receiver's knowledge, after diligent investigation, there are no Liens against the Property. (Foster Decl., ¶ 9).

II. Points and Authorities.

10. Pursuant to the Final Receivership Order, the Receiver may sell assets "outside the ordinary course of business...only with Court approval after reasonable notice under the circumstances and an opportunity for interested parties to be heard." (Final Receivership Order, ¶ 26). Here, the proposed sale of the Property is outside the ordinary course of business. Consequently, this Court's approval of ACF entering and performing the Agreement is required.

11. The Receiver's proposed sale of the Property is comparable to a bankruptcy trustee's sale of assets in a bankruptcy proceeding under Section 363 of the Bankruptcy Code. 11 USC § 363. That section authorizes a trustee, "after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 USC § 363(b)(1). This provision generally allows a debtor in possession to sell property of the estate

outside the ordinary course of business where the proposed sale is within the sound exercise of the trustee's business judgment and when the sale is proposed in good faith and for fair value. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2nd Cir 1983). When a trustee or debtor articulates a reasonable basis for its business decisions, the "court will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 BR 612, 616 (Bankr SDNY 1986).

12. Here, for the reasons set forth above, there is substantial business justification for ACF to sell the Property. The Receiver believes, in the exercise of his reasonable business judgment, that the Agreement and sale of the Common Stock is in the best interests of the Receivership Entity, its creditors, and the Aequitas investors.

III. Conclusion.

For the foregoing reasons, the court should enter an order (1) approving the Agreement, (2) authorizing the sale of the Property, (3) authorizing the Receiver, on behalf of ACF, and Buyer, to perform the Agreement and to execute such other instruments and take such other actions as may reasonably be required to effectuate the Agreement, and granting related relief, and (4) authorizing the Receiver, on behalf of ACF, to quitclaim any interest in a dock situated at the Real Property to the extent, if any, that the Receiver determines that he holds such an interest, without further notice of approval of this Court.

A proposed form of order is submitted herewith.

Dated this 14th day of March, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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