

2. The Receiver was authorized to have complete and exclusive control, possession, and custody of all Receivership Assets and Receivership Records of Defendants. Receivership Assets and Receivership Records were defined in the Order as “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the [Receivership Entities] and all entities they own or control . . . and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers telephones, personal digital devices, and other informational resources of or in possession of the [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities].”¹

3. The Receiver has fulfilled his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities’ investors and creditors. These efforts have included interactions with existing and former employees, reviews of corporate records, and discussions with involved third parties.

II. FACTS

4. After his appointment and pursuant to the responsibilities with which he is charged, the Receiver took control and possession of personal property owned and maintained by the Defendants. This property includes, but is not limited to, one authentic Rolex watch, one unauthentic Rolex watch, several computer monitors, basic office supplies, sporting goods, i.e., bats, golf bags, etc., picture frames, and some unauthenticated but signed sports memorabilia. In addition, the Receiver recently negotiated and reached a property settlement with the wife of

¹ Order Appointing Receiver, ¶1.

Brian Bjork. Pursuant to this property settlement, the Receiver collected a handgun and a second yet-to-be authenticated Rolex watch from Ms. Bjork.

5. The office supplies and computer monitors in the Receiver's possession are several years old. The sports memorabilia and frames are unauthenticated and, at best, are in average condition. Finally, the two authentic Rolex watches are in poor condition and require significant refurbishing according to local jewelers. After soliciting bids from local jewelers, the Receiver does not anticipate a bid for either watch to exceed \$1,000. With this Motion, the Receiver respectfully requests permission to sell, auction, donate, and/or dispose of all personal property valued at less than \$2,500 in a manner and at a price that the Receiver determines is in the best interest of the Receivership Estate.

III. **AUTHORITIES**

6. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief.² It is well settled that this Court has the authority to direct property to be sold by a receiver.³

² See *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 369, 372 (5th Cir. 1982); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103-04 (2d Cir. 1972).

³ See generally *S.E.C. v. Forex Asset Mgmt. v. Waller, Receiver*, 242 F.3d 325 (5th Cir. 2001); *First Nat'l Bank of Cleveland v. Shedd*, 121 U.S. 74 (1887); see also, e.g., Moore's Federal Practice, Vol 13, Ch. 66 (Matthew Bender 3d ed. 1997); Federal Practice & Procedure, Vol 12, §§ 2981-86; Clark on Receivers (Anderson 2d ed. 1929).

This Court's authority to effect a sale of property derives from its equitable power, which is fundamentally granted by Section 2 of Article III of the United States Constitution, and also by statute, as being coextensive with the powers of an English court of chancery at the time of the separation of the two countries. *Matthews v. Rodgers*, 284 U.S. 521, 529, 52 S. Ct. 217, 221 (1932) (referring to Judiciary Act of 1789, 1 Stat. 78). The Federal Rules of Civil Procedure, in turn, expressly provide that, "The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United states or as provided in rules promulgated by the district courts." Fed. R. Civ. P. 66. The practice of appointing receivers is commonly dated to the reign of Queen Elizabeth I of England. See, e.g., I Clark on Receivers § 6, at 8 (Anderson 2d ed. 1929). It continues to the present. See, e.g., *S.E.C. v. Forex Asset Mgmt.*, 242 F.3d 325 (5th Cir. 2001) (affirming an order of the United States District Court for the Northern District of Texas approving a distribution plan proposed by a receiver appointed by Judge Solis). Moore's Federal Practice devotes an

7. The primary goal of a receivership is to provide a conduit through which assets can be held, liquidated and distributed to the particular beneficiaries of the Receivership Estate.⁴ As stated above, the Receiver has seized office supplies, monitors, watches, sports memorabilia, and other personal property in this endeavor.

8. There are two statutory provisions that govern the sale of property. 28 U.S.C. § 2004 governs the sale of personalty, and 28 U.S.C. § 2001 governs the sale of realty. According to the plain language in 28 U.S.C. § 2004, the court has the discretion to modify the sale procedures of personalty. To assist courts in this purpose, 28 U.S.C. § 2004 states:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title [28 U.S.C. § 2001], **unless the court orders otherwise.**⁵

9. The Receiver contends that while some of the personal property on hand can be efficiently liquidated through private sale, i.e., the Rolex watches, most items lack sufficient value to warrant the investment of time and resources to sell. When structuring the sale of personal property, the Court has discretion under the relevant statutes to establish procedures or approve proposed procedures that are well-tailored to suit the needs and circumstances of a particular case.⁶ While a private sale of real estate must adhere to the specific requirements⁷ and a court hearing to confirm the sale, subjecting the sale of certain items of personal property to the same stringent requirements may be oppressive for the efficiency of the Receivership. Compliance with either the public or private sale procedures of 28 U.S.C. § 2001 would create costly, time consuming and burdensome procedures that would substantially diminish the

entire chapter to the subject. Moore's Federal Practice, Vol 13, Ch. 66 (Matthew Bender 3d ed. 1997). Wright and Miller's procedural treatise has six sections. Federal Practice & Procedure, Vol 12, §§ 2981-86.

⁴ See *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 369, 371 (5th Cir. 1982).

⁵ 28 U.S.C. § 2004 (emphasis added).

⁶ 28 U.S.C. § 2004; see *SEC v. Kirkland*, No: 6:06-cv-183, 2008 WL 4264532, at *2-3 (M.D. Fla. Sept. 12, 2008) (allowing the receiver to deviate from the sale requirements in 28 U.S.C. § 2001).

⁷ See 28 U.S.C. § 2001.

liquidation value of the property being sold. The aforementioned statute and other applicable authority grant the Court the explicit power to allow personal property to be sold under modified sale procedures. Based on the foregoing, the Receiver respectfully requests the authority to liquidate via private sell, auction, donation and/or disposal of all personal property currently maintained with an estimated value of less than \$2,500 in a manner and at a value that the Receiver determines is in the best interest of the Receivership Estate.

IV.
RELIEF REQUESTED

10. The Receiver requests that the Court declare title and ownership of all personal property in the Receiver's possession free and clear of any and all encumbrances. In addition, the Receiver respectfully requests permission to sell, auction, donate, and/or dispose of all personal property valued at less than \$2,500 in a manner and at a value that the Receiver determines is in the best interest of the Receivership Estate. For items worthy of liquidation and sale, the Receiver intends to solicit bids from various local retailers and pawn shops to ensure the most economical and fair recovery for the items at issue. For all other items, the Receiver intends to use his best judgment and proceed in a manner and sell at a value that is in the best interest of the Receivership Estate.

11. Pursuant to Local Rule CV-7, the Receiver advises the Court that the Plaintiff Securities and Exchange Commission consents to the relief requested in this motion. The Defendant entities are all controlled by the Receiver.

V.
CONCLUSION

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

DATED: January 8, 2014

Respectfully submitted,

By: /s/ Steven A. Harr

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CERTIFICATE OF CONFERENCE

On January 7, 2014, I conferred with Tim McCole and he stated that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ Sameer S. Karim

Sameer S. Karim

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Houston, Texas, this 8th day of January, 2014.

/s/ Sameer S. Karim

Sameer S. Karim

