

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
	)	Civil Action No. 19-cv-5957
Plaintiff,	)	
v.	)	Hon. John Z. Lee
	)	
NORTHRIDGE HOLDINGS, LTD., ET AL.,	)	
	)	Magistrate Judge Susan E. Cox
Defendants.	)	

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RECEIVER'S MOTION FOR COURT APPROVAL OF (1) SETTLEMENT  
AGREEMENT BETWEEN BRUCE AND CHERYL SWIFT AND RECEIVER AND (2)  
RATES TO BE CHARGED BY RECEIVER'S COUNSEL DICKLER KAHN FOR  
TURNOVER OF CONTROL OF THE PALATINE  
PROPERTY AND SURREY PROPERTY

N. Neville Reid, not individually, but solely as the court-appointed receiver (the “Receiver”) for the Estate of Defendant Northridge Holdings, Ltd. and the related entities and affiliates as set forth in more particularity in the Receivership Order (as defined herein) (collectively, the “Receivership Defendants”), and pursuant to the powers vested in him by the *Order Appointing Receiver* entered by the Court on September 12, 2019 [Dkt. No. 22] (the “Receivership Order”), respectfully submits this Motion for Court Approval of (1) the Settlement Agreement between Bruce and Cheryl Swift (the “Swifts”) and the Receiver and (2) the rates to be charged by Dickler, Kahn, Slowikowski & Zavell, Ltd. (“Dickler Kahn”) (the “Motion”). In support of the Motion, the Receiver states as follows:

**INTRODUCTION**

1. On or about June 8, 2006, the Swifts entered into a letter agreement (the “Letter Agreement”) with Defendant Northridge Holdings, Ltd. (“Northridge”) in connection with a

property located at 22W371 Emerson Avenue, Glen Ellyn, IL 60137 (the “Glen Ellyn Property”). Pursuant to the Letter Agreement, Northridge, among other things, (1) paid to the Swifts \$70,000 and (2) agreed to pay all costs related to the Glen Ellyn Property (to include mortgage payments, real estate taxes, insurance, utilities, repairs, and maintenance) (the “Carrying Costs”). In exchange, Northridge: (1) was entitled to keep any rental income; (2) obtained an option to buy the Glen Ellyn Property; and (3) obtained a portion of the net sale proceeds upon sale of the Glen Ellyn Property. Despite various oral and written amendments to the Letter Agreement, the critical terms have essentially remained the same, including that Northridge would pay the Carrying Costs in exchange for the right to receive rental income and a portion of the net sale proceeds upon sale of the Glen Ellyn Property.

2. The Swifts have represented to the Receiver that they cannot continue to bear all Carrying Costs. In addition, the Glen Ellyn Property is encumbered by both a mortgage and line of credit with Chase Bank, N.A. (the “Chase Loans”). In light of the aforementioned circumstances, to prevent the potential for litigation arising out of a dispute as to the parties’ rights with respect to the Glen Ellyn Property (and the time and monetary cost attendant thereto), and to ultimately maximize the Glen Ellyn Property’s value and minimize Carrying Costs, the Receiver and the Swifts have agreed to fully and finally settle any and all differences and delineate the parties’ respective rights with regard to the Glen Ellyn Property pursuant to the terms of a proposed settlement agreement (the “Settlement Agreement”), attached hereto as **Exhibit A**.

3. In addition, the Receiver intends to retain Dickler Kahn to perform legal services in connection with the condominium associations of the property located at 106 Surrey Drive, Glen Ellyn, Illinois 60137 (the “Surrey Property”) and the property located at 486 N. Lakeshore

Drive, Palatine, IL 60067 (the “Palatine Property”). The Palatine Property is part of a condominium conversion and this unit was the last unit to sell. As a result, control of the condominiums at the Palatine Property now requires turnover to the condominium association’s board. Similarly, the Surrey Property is comprised of 48 condominium units that are part of a 60 unit condominium association. The Surrey Property is presently being marketed for sale. Upon closing of such sale, control of the condominium association for the Surrey Property will also need to be turned over to the buyer.

4. The Receiver seeks to engage Dickler Kahn to perform legal services in connection with turning over the aforementioned associations and any related issues. Because the Receiver’s general counsel does not practice in the area of condominium and homeowner association law, the engagement of additional special counsel is necessary in order to ensure the efficient and proper execution of the turnover process.

#### **I. SWIFT SETTLEMENT**

##### **AUTHORITY**

5. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission (the “SEC”) sought and obtained the appointment of a Receiver. Under the Receivership Order, the Receiver has authority in equity, as well as under 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of the Receivership Defendants. The Receivership Order provides, among other things, that the assets and property of Receivership Assets are to be placed in the Receiver’s control; that the Receiver is to manage, control, and operate the Receivership Estate; that the Receiver is to take such action as necessary and appropriate to prevent the dissipation of Receivership Assets; that the Receiver is authorized to take all

necessary and reasonable actions to cause the sale of real property the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property; and that the Receiver is authorized to investigate, prosecute, institute, defend, compromise, and/or adjust any legal actions. (Receivership Order, ¶¶ 8B, 8D, 8L, 19, 38-39, 43.) The Settlement Agreement is in accordance with, and furtherance of, such duties and obligations, and the Receiver files this Motion in connection therewith.

### **THE PROPOSED SETTLEMENT AGREEMENT**

6. The proposed Settlement Agreement provides in pertinent part:
- The Swifts shall pay the Carrying Costs; however, the Swifts may invoice the Receiver for such Carrying Costs for the months of February 2020, March 2020, June 2020, and July 2020 and for those months only.
  - The Swifts and the Receiver will list the Glen Ellyn Property for sale. Any sale will be subject to mutual agreement of the parties; however, should a sale be presented whereby the net proceeds would exceed the Chase Loans, the Swifts and the Receiver will be deemed to have agreed to such sale.
  - Sale proceeds will be used and distributed as follows: (1) to pay off the Chase Loans and to pay real estate broker fees and other customary closing costs; (2) to pay the Swifts and the Receiver's respective Carrying Costs from February 1, 2020 onward (to the extent such proceeds are insufficient, Carrying Costs will be reimbursed on a pro-rata basis); and (3) to the extent proceeds remain after the execution of payments and distributions pursuant to the conditions set forth in (1) and (2), such proceeds will be split evenly between the Receiver and the Swifts.
  - The Receiver will retain the right to abandon his interest in the Glen Ellyn Property along with the Receiver's rights under the Settlement Agreement by providing written notice to the Swifts. The exercise of this right by the Receiver will eliminate any further payment obligations on the part of the Receiver with respect to the Glen Ellyn Property and will also remove the Receiver's entitlement to proceeds relating to the Glen Ellyn Property.
  - Mutual limited releases of certain identified claims.

*See Ex. A.*

## **JURISDICTION**

7. The Receiver and the Swifts request that the United States District Court for the Northern District of Illinois retain jurisdiction to enforce the terms of the Settlement Agreement and decide any other issues arising therefrom. The Swifts exclusively submit to the jurisdiction of this Court for such purposes and waive any right to challenge this Court's jurisdiction, as expressly reflected in the proposed Settlement Agreement. Ex. A, ¶ 14. The Receiver and the Swifts agree that in the event of an enforcement action or any other litigation arising from the Settlement Agreement, the prevailing party in that action will be entitled to an award of its attorneys' fees and costs, and the Swifts exclusively submit to the jurisdiction of this Court for such purposes and waive any right to challenge this Court's jurisdiction. See Ex. A, ¶ 14.

## **BEST INTERESTS OF THE RECEIVERSHIP**

8. The Receiver respectfully submits that the Court should approve the proposed Settlement Agreement because it is in the best interest of the Receivership Estate. The process of reaching the proposed Settlement Agreement was fair, well-informed, and well-advised by the Receiver's professionals.

9. The ultimate inquiry in assessing a proposed receivership settlement is whether the proposed "settlement is fair, adequate, and reasonable." *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); see *In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) ("We see no reason to upset the court's conclusion that the settlement process and result were fair."). Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling*, 158 F. 3d at 1202. In determining fairness, the Court should examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of

possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Sterling*, 158 F. 3d at 1203 n. 6; *see also SEC v. Princeton Economic Int'l*, Case No. 99 CIV 9667(RO), 2002 WL 206990, \*1 (S.D.N.Y. 2002) (receivership court should consider “various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise”).

10. For example, the district court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” No. 1:05CV2726, 2008 WL 1805787, at \*10 (N.D. Ohio Apr. 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” *Gordon v. Dadante*, 336 F. App’x 540, 546-48 (6th Cir. 2009). As the district court noted in a later approval proceeding, the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, No. 1:05-CV-2726, 2010 WL 148131, at \*3 (N.D. Ohio Jan. 11, 2010).

11. Here, the Receiver respectfully submits that the Settlement Agreement is a fair, adequate, and reasonable resolution of the parties’ differences and delineation of the parties’ rights with respect to the Glen Ellyn Property. The proposed Settlement Agreement fairly

allocates present and future Carrying Costs; minimizes the duration for which the Receiver may be responsible for any Carrying Costs, thereby lending certainty to the Receiver's ability to value and marshal Receivership Assets; and maximizes the opportunity to eliminate all encumbrances on the Glen Ellyn Property, reimburse Carrying Costs paid by the Receiver (and the Swifts) prior to sale, and obtain additional proceeds from a potential sale of the Glen Ellyn Property. In addition, the proposed Settlement Agreement affords the Receiver the right and ability to prevent dissipation of the Receivership Estate by abandoning his interest in the Glen Ellyn Property if, in the exercise of his professional judgment, he deems the Glen Ellyn Property is no longer a valuable asset to the Receivership. Finally, the proposed Settlement Agreement prevents any potential litigation arising out of any dispute between the Receiver and the Swifts as to their respective rights related to the Glen Ellyn Property. The Receiver will therefore avoid any expenditure of attorneys' fees and costs incurred by such litigation, and will ensure that the Glen Ellyn Property is not unsellable due to entanglement in litigation.

**II. ENGAGEMENT OF DICKLER KAHN**

**AUTHORITY**

12. In addition the powers set forth in paragraph 5 of this Motion, the Receiver is authorized to retain attorneys. *Receivership Order*, ¶¶ 8K, 50. Although the Receivership Order likely authorizes the Receiver to Dickler Kahn without further order of the Court, the Receiver seeks such approval out of an abundance of caution and in the interest of full disclosure to the Court and interested parties.

**RELEVANT BACKGROUND**

13. Under the Illinois Condominium Property Act, 765 ILCS 605/1, *et seq.*, certain conditions require that the control of condominium properties be turned over by a developer to a

board of managers comprised of a majority of unit owners other than the developer. *See* 765 ILCS 605/18.2. In addition, this turnover process requires the delivery of, *inter alia*, certain documents, accountings, funds, schedules, and legal information as outlined more specifically in the statute. *Id.* The Receiver has been advised by his property manager that the sale of the Palatine Property triggered conditions requiring such turnover and the expected sale of the Surrey Property will also trigger such requirements that property. However, because the Receiver's general counsel does not practice in the area of condominium and homeowner association law, the engagement of additional counsel is necessary in order to ensure the efficient and proper execution of the turnover process in accordance with all statutory requirements.

14. In order to identify counsel, the Receiver researched and sought referrals for counsel experienced in condominium and homeowner association law. For the reasons set forth below, the Receiver selected Dickler Kahn.

**RATES TO BE CHARGED BY DICKLER KAHN**

15. Dickler Kahn proposes to charge \$300 per hour for its legal work on this matter.

16. The Receiver selected Dickler Kahn as counsel for this matter because, *inter alia*:  
(a) Dickler Kahn's rate is competitive in the market for legal services in this practice area;  
(b) Dickler Kahn has extensive experience in this practice area, as James A. Slowikowski of Dickler Kahn, who will serve as the lead attorney on this matter, has been a member of the bar for more than 40 years and focuses his practice on condominium and homeowner association law, including counseling and litigating on behalf of condominium and community associations; and  
(c) the Receiver has a prior relationship with Mr. Slowikowski (as described below), and believes such relationship will add an additional layer of accountability.

17. In short, Dickler Kahn's proposed compensation is fair, reasonable, appropriate

and in the best interest of the efficient and economical administration of this receivership.

18. Finally, Dickler Kahn does not hold or represent an interest materially adverse to the interests of the receivership.

**DISCLOSURE OF RELATIONSHIP**

19. Mr. Slowikowski of Dickler Kahn has provided legal services in connection with certain matters pertaining to the condominium association for the condominium building in which one of the Receiver's current attorneys resides. Mr. Slowikowski is not currently representing the Receiver's counsel or the condominium association for the building in which said counsel resides. Although the foregoing relationship does not create a legal conflict and no financial conflict of interest exists, the Receiver discloses such relationships in the interest of full transparency.

**NO OBJECTION BY THE SEC**

20. The SEC has indicated that it does not object to the relief requested herein.

WHEREFORE, the Receiver respectfully requests that the Court (a) grant this Motion and enter the *Order Approving the Settlement Agreement and Approving the Rates to be Charged by Dickler Kahn* (a proposed form of which is attached hereto as **Exhibit B**) and (b) grant all other or further relief as is just and proper.

Dated: April 16, 2020

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

N. Neville Reid, Esq.  
Ryan T. Schultz, Esq.  
L. Brandon Liss, Esq.

Fox Swibel Levin & Carroll LLP  
200 West Madison, Suite 3000  
Chicago, IL 60606  
Tel: 312.224.1200  
Fax: 312.224.1201  
nreid@foxswibel.com  
rschultz@foxswibel.com  
L. Brandon Liss