

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

V.

NORTHRIDGE HOLDINGS, LTD., ET AL.,

Defendants.

Civil Action No. 19-cv-05957

Hon. John Z. Lee

Magistrate Judge Susan E. Cox

**RECEIVER'S MOTION FOR ORDER (1) AUTHORIZING SALE OF REAL ESTATE
AND RELATED RELIEF (SURREY PROPERTY) AND (2) PROVIDING PARTIAL
RELIEF FROM SECOND AMENDED GENERAL ORDER 20-0012**

N. Neville Reid, not individually, but solely as the Court-appointed receiver (the “Receiver”) for the Estate of Defendant Northridge Holdings, Ltd. and its related entities and affiliates as more particularly set forth in the Receivership Order (as defined herein) (collectively, the “Receivership Defendants,” and the assets of such entities as more particularly set forth therein, the “Receivership Assets,” and such estate the “Receivership Estate” and such administration, the “Receivership”), 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”), hereby moves: (1) for authority to sell the Surrey Property (defined below) and obtain related relief and (2) for partial relief from the Court’s Third Amended General Order 20-0012 (the “General Order”) to shorten the notice/objection period. In support of the Motion, the Receiver states as follows:

INTRODUCTION

1. As set forth in prior motions, the Receivership Assets include 48 units of a 60 unit condo development and a garage unit located at 106 Surrey, Glen Ellyn, Illinois (collectively, the “Surrey Property” or “the Property”).¹ By prior motions, the Receiver sought approval of the commission rate to be charged by 33 Realty LLC (“33 Realty”) – the Receiver’s broker for the Surrey Property – and sales procedures to be used for the marketing and sale of the Surrey Property (the “Sales Procedures Motion”). *See* Dkt. No. 82. The Sales Procedures Motion was granted by the Court (the “Sales Procedure Order”). *See* Dkt. No. 93.

2. As described herein, the sales procedures as set forth in the Sales Procedures Motion (“Sales Procedures”) have been fully complied with and produced multiple offers. In the Receiver’s business judgment, the best and final offer was submitted by Lover’s Leap Property Ventures, LLC (“Proposed Buyer”). A true and accurate copy of the Agreement of Purchase and Sale between the Receiver and Proposed Buyer (the “PSA”) is attached hereto as **Exhibit A**. The terms of the PSA can be summarized as follows:

- a. **Purchase Price:** \$5.7 million
- b. **Earnest Money Deposit:** \$100,000, payable two (2) business days from execution of the PSA and non-refundable upon closing of due diligence
- c. **Due Diligence Period:** 14 days beginning as of the execution of the PSA
- d. **Contingencies:** Financing: Purchaser shall have until the day that is thirty (30) days from the date of execution of the PSA in which to obtain a firm, written mortgage commitment from Amalgamated Bank or an affiliated entity thereof for a commercial loan in the amount of not less than seventy-five percent (75%) of

¹ The Receivership Entities include the two fee owners.

the Purchase Price, at an interest rate of not greater than five percent (5%), amortized over not less than twenty-five (25) years, with a balloon payment due in not less than eighteen (18) months (the “Financing Terms”).

3. The Receiver seeks (a) approval of the PSA; (b) authority to convey the Surrey Property to the Proposed Buyer free and clear of all liens, claims and encumbrances pursuant to the terms of the PSA; and (c) authority to pay closing costs and take certain actions in furtherance of closing the sale of the Surrey Property. The Receiver seeks such approval prior to the completion of due diligence and the satisfaction of the Financing Terms so that the sale can close as soon as possible given the current COVID-19 crisis and its attendant market uncertainties. Additionally, as more fully set forth below, good cause exists to shorten the extended objection periods set forth in the General Order. *General Order* at ¶ 2(c).

AUTHORITY

4. 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 pursuant to the Receivership Order. 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. Among other powers, the Receiver is authorized to cause the sale of real property at a public or private sale. *Receivership Order*, ¶¶ 37–38. Upon further order of this Court, the Receiver may be authorized to sell, and transfer clear title to, real estate. *Id.* at ¶ 39.

RELEVANT BACKGROUND

5. Maximizing the value of the Receivership Defendants' real estate assets is a major objective of the Receivership. With the assistance of the Receiver's property manager 33 Realty, the Receiver prepared the Surrey Property to be marketed for sale. This effort included updating the rent roll, transitioning the building's leases and finances to a generally acceptable property management software system/platform, creating a financial pro forma of the Surrey Property, creating a data room and identifying comparable sales. The Receiver then sought approval of the Sales Procedures which were designed by the Receiver and 33 Realty to maximize the value of the Surrey Property. *See* Dkt. 93.

COMPLIANCE WITH SALES PROCEDURES

6. 33 Realty marketed the Surrey Property on a local and national basis – exposing the Property to as much of the market as possible as follows:

a. **Marketing Phase:** On January 27, 2020, 33 Realty sent out marketing materials to an extensive database of multifamily property owners and buyers in the greater Chicagoland area (such owners and buyers are local and national) that is maintained by 33 Realty (www.33realty.com). On February 7, 2020, 33 Realty listed the Surrey Property through Co-Star, Loopnet, and Crexi which are all national databases of potential buyers and brokers. 33 Realty also called high probability buyers and distributed a press release to major real estate publications around the country.²

b. **Marketing Result Summary:** As a result of 33 Realty's

² Due to a miscommunication between Receiver's counsel and 33 Realty, ads/notices of sale were not placed in the Chicago Tribune or Crain's. Because of the response to 33 Realty's marketing efforts (i.e. number of tours and offers), the Receiver is confident that the local and national market was provided appropriate notice of this sale.

marketing efforts:

- Emails were sent to approximately 22,000 potential buyers, and approximately 3,129 potential buyers opened the emails;
- The email outreach generated approximately 1,291 incoming leads through Crexi and 299 incoming leads through Loopnet;
- Many potential buyers requested additional due diligence information; and
- 38 potential buyers toured the Surrey Property in person.

c. **Call for Offers:** 33 Realty set an offer deadline of March 17, 2019.

33 Realty received eleven (11) offers. 33 Realty and the Receiver reviewed all the offers and jointly determined that six parties (those that offered \$5.5 million and above) would be invited to participate in a final round of bidding – a “best and final round.”

d. **Best and Final Round:** 33 Realty set a best and final offer deadline of March 27, 2020. The parties invited to participate in the best and final offer round were asked to: (1) provide their best monetary offer; (2) redline a form purchase and sale agreement drafted by counsel for the Receiver (so the Receiver could more easily evaluate differences in the potential buyers’ non-monetary proposed terms); and (3) provide detailed financial *bone fides*. Three parties submitted best and final offers, and the rest of the parties withdrew their offers due to the COVID-19 crisis.

SELECTION OF THE BEST OFFER

7. After the best and final round and buyer interviews, the Receiver’s choice can be

summarized as follows: selecting between the Proposed Buyer and an offer to purchase the Surrey Property for \$8.0 million (with \$6.4 allocated to the Surrey Property) that was contingent on the Receiver using majority ownership to sell all units pursuant to powers contained in the Illinois condominium Act (with the sale proceeds of the twelve non-Receivership units being paid to their owners) (the “Contingent Offer”).³ The Receiver, with the assistance of 33 Realty, used the following criteria to select the highest and best offer: (a) price; (b) contingencies (e.g., financials, due diligence, etc.) or lack thereof; (c) ability to close (e.g., evidence of financial *bona fides* and speculative factors affecting whether the buyer would close the sale); (d) terms related to good faith deposit (e.g., amount, “hard” deposit, etc.); and (e) any other terms which the Receiver determined were in the best interests of the Receivership Estate.

8. Here, the Receiver selected the Proposed Buyer’s offer as the highest and best offer principally because: (a) after reviewing all of the relevant information, the Receiver believes the Proposed Buyer has the highest likelihood of closing at the contract price; (2) the Proposed Buyer’s due diligence period was significantly shorter than the other offers, resulting in a shorter sale process; (3) the Receiver, relying on the advice of 33 Realty, determined that the Financing Terms were likely to be satisfied (even in the current COVID-19 crisis); and (4) the Proposed Buyer’s revisions to the Receiver’s form purchase agreement were minimal.

9. Addressing the Contingent Offer specifically, the Receiver concluded that while such offer could result in the highest per unit proceeds, it was not the best offer because: First, in order to sell all units the Receiver must comply with legal hurdles under the Illinois Condominium Property Act (i.e. this buyer was requesting the Receiver perform a full condominium deconversion). This would require establishing a functional condominium board,

³ The third offer was lower than the Proposed Offer and had a much longer due diligence period (45 days from the end of the Governor’s Stay at Home Order). As a result, the Receiver considered the Proposed Buyer’s offer superior.

calling a meeting of unit owners and conveying the offer. This requires thirty days' notice. During that time, and through closing, the sale could face potential challenges from the other unit owners. Specifically, the non-Receivership unit owners may argue that the sale of the units is not for fair market value. Indeed, many of the unit owners paid more for their units than the per unit price of the proposed sale and may argue that the bulk sale in a receivership during the COVID-19 crisis resulted in a lower value.⁴ If successful, the "market value" would be deducted from the total sale proceeds and would reduce the Receivership's net proceeds. Also, because some unit holders paid more for their units than would be currently offered, there may not be enough proceeds for some unit holders to pay off their mortgages. Lenders would need to be paid in full before the units could be conveyed potentially reducing the Receivership's share of proceeds further. Finally, if any of the unit holders initiates litigation to stop the sale, given COVID-19's impact on the legal system, resolution of such dispute (whether or not meritorious) would likely take months if not more than a year. These legal hurdles would be costly and uncertain before the COVID-19 crisis and are only amplified due to the current crisis. Put simply, this offer contains too many contingencies and does not provide for a large enough premium to justify the increased legal costs, delay and uncertainty.

10. Second, after the satisfaction of the above-described legal hurdles, the Contingent Offer contained a 30 day due diligence period (i.e. the buyer could still pull out of the deal after the expenditure of significant time and resources).

11. Third, the Contingent Offer also contained an aggressive financing contingency which may be difficult to satisfy under current market conditions.

12. Addressing the offer from the Proposed Buyer, the Receiver understands that 33

⁴ As described in the Sales Procedures Motion, a sale of the units on a unit-by-unit basis may result in a higher per-unit price, but such sales could take years.

Realty manages other properties for the Proposed Buyer and will likely remain the manager for the Surrey Property post-closing. While the Receiver does not consider this to be a conflict, the Receiver discloses same in the interest of full transparency.

13. In summary, while the Proposed Buyer's offer does not provide the highest price, in the Receiver's business judgement, it is the best offer under all relevant considerations including, but not limited to, the current COVID-19 crisis.

BEST INTERESTS OF RECEIVERSHIP ESTATE

14. A receiver's proposed sale of assets in an equity receivership is generally governed by 28 U.S.C. § 2001. Sale of property in the possession of a receiver must generally be conducted by public sale at the courthouse of the county, parish or city where the property is located or on the premises of the property. 28 U.S.C. § 2001(a). Courts may also determine in equity receiverships that the best interests of the estate are served by permitting private sales with adequate notice to all interested parties and requiring three independent appraisals. 28 U.S.C. § 2001(b). 28 U.S.C. § 2004, however, allows the Court to deviate from Section 2001 and "order otherwise." *See* 28 U.S.C. 2004 ("Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with 28 U.S.C. § 2001, **unless the court orders otherwise.**") (emphasis added). Courts throughout the country have exercised their discretion in permitting receivers to enter into private asset sales outside of the requirements of Sections 2001 and 2004. *See FTC v. E.M. Sys. & Serv., LLC*, 2016 WL 11110381, *3 (M.D. Fla. 2016) (citing *SEC v. Nadel*, Case No. 8:09-cv-87-T-26TBM, Dkt. No. 1050 (M.D. Fla. Aug. 13, 2013)) (waiving requirements of three (3) independent appraisals and publication of terms of sale); *SEC. v. Kirkland*, Case No. 6:06-cv-183-Orl-28KRS, 2008 WL 4264532, at *3 (M.D. Fla. Sept. 12, 2008) (permitting sale of motorcycle based on highest of six (6) offers received).

Additionally, District Courts have broad power and wide discretion in determining relief in an equity receivership. *SEC v. Elliott*, 953 F. 2d 1560, 1566 (11th Cir. 1992); *see also A.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964) (once the equitable jurisdiction of a district court has been properly invoked, the Court may use all of its equitable remedies to effectuate the statutory purpose, including ordering non-injunctive relief in a variety of forms). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F. 2d at 1566. The relief sought by the Receiver in this Motion falls squarely within the Court's discretionary powers.

15. Here, the Receiver seeks the Court's approval of the sale of the Surrey Property to the Proposed Buyer. The Receiver has complied fully with the Court-approved Sale Procedures, which exposed the Surrey Property to the market (local and national) in order to obtain the highest and best offer for the Surrey Property. After payment of the mortgage holder's claim, the Receivership Estate will realize approximately \$2.7 million from the proposed sale.

16. Additionally, to the Receiver's knowledge the Proposed Buyer has no relation to Mr. Mueller or any of the Receivership Entities and the sale will not benefit Mr. Mueller or any persons or entities related to Mr. Mueller. The Proposed Buyer will sign a declaration to that effect at closing of the sale and such declaration is an exhibit to the PSA.

17. Therefore, the Court should grant the Receiver authority to convey title to the Surrey Property free and clear of all claims, liens and encumbrances and to pay certain required costs at closing (i.e., payoff the existing mortgage and all associated costs and fees, 33 Realty's real estate commission, any amounts due to the Surrey condominium association⁵, etc.).

⁵ The Surrey Property is part of a condominium association which the Receivership Entities currently manage. In order to sell the units and turn over control of the association to the unit owners (and Proposed Purchaser), all association funds must be accounted for and turned over to the association.

RELIEF FROM THE GENERAL ORDER

18. Under the General Order, 28 days is added to an objection period in addition to the 21 day extended period under Amended General Order 20-00012 and the 28 day extended period under the Second Amended General Order 20-00012. *General Order* at ¶ 2. As a result, approval of this Motion may be subject to an objection period of over 8 weeks. Under the General Order, the Court has authority to shorten the extended notice periods set forth in the General Order for good cause. *Id.* at ¶ 2(c). In this case, good cause exists to limit the objection period for this Motion to fourteen (14) days in order to reduce the uncertainty caused by any delay of the sale of the Surrey Property. Fourteen (14) days will allow any objector time to raise his or her objection with the Court (or with the Receiver who will work with such objector in good faith to resolve such objection consensually).

NO OBJECTION BY THE SEC

19. Counsel for the SEC has indicated that the SEC 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 Sale (Surrey Property)*;⁶ (b) shorten the notice period as proscribed in the General Order to fourteen (14) days and (c) grant all other or further relief that is just and proper.

Dated: April 28, 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
bliss@foxswibel.com

⁶ Upon granting the Motion, the Receiver will submit to chambers a stand-alone order in a form acceptable to the parties and the relevant title company and seek entry of same.