

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	Civil Action No. 19-cv-05957
)	
Plaintiff,)	
v.)	Hon. John Z. Lee
)	
NORTHRIDGE HOLDINGS, LTD., ET AL.,)	
)	Magistrate Judge Susan E. Cox
Defendants.)	
_____)	

**RECEIVER’S AMENDED MOTION FOR ORDER: (1) AUTHORIZING SALE OF
REAL ESTATE AND RELATED RELIEF (SURREY PROPERTY);
AND (2) SHORTENING NOTICE/OBJECTION PERIOD**

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 for: (1) authority to sell the Surrey Property (defined below) and obtain related relief and (2) shortening the Court’s prior 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” or “Proposed Purchaser”). The Receiver then sought approval of the sale (the “Prior Sale Motion”). *See* Dkt. No. 138.²

3. The Prior Sale Motion sought approval of a sale to the Proposed Buyer at a purchase price of \$5.7 million and required an earnest money deposit of \$100,000 that became non-refundable upon the closing of due diligence. In the interest of time and so a sale could be closed as soon as possible given the ongoing COVID-19 crisis, the Receiver filed the Prior Motion while the due diligence period was still open and the Proposed Buyer’s financing contingency was outstanding (i.e., the Receiver filed the Prior Motion so any objection period and the due diligence/contingency period would run concurrently). During due diligence, the Proposed Buyer identified some issues with the Property, and the COVID-19 crisis continued to

¹ The Receivership Entities include the two fee owners.

² While the objection period for the Prior Sale Motion has expired, since an order granting the Prior Motion has not been entered, the Receiver voluntarily withdrew the Prior Motion contemporaneously with the filing of the instant Motion.

impact the real estate market (as set forth below). As a result, the Proposed Purchaser requested a modest purchase price reduction. After good faith negotiations between the parties, the Receiver agreed to reduce the purchase from \$5.7 million to \$5.425 million in exchange for the Proposed Buyer agreeing to increase its earnest money deposit from \$100,000 to \$400,000 and agreeing to waive any outstanding due diligence and financing contingencies. As a result, the Proposed Buyer's increased earnest money is now "hard".

4.

5. A true and accurate copy of the Agreement of Purchase and Sale between the Receiver and Proposed Buyer and First Amendment thereto (the "First Amendment" and collectively with the prior agreement, the "PSA") is attached hereto as **Exhibit A**. The terms of the PSA as amended can be summarized as follows:

- a. **Purchase Price:** \$5.425 million
- b. **Earnest Money Deposit:** \$400,000, which is now non-refundable.
- c. **Due Diligence Period:** None.
- d. **Contingencies:** None.
- e. **Other Provisions:** The Receiver will assign to the Proposed Buyer the developer rights set forth in the condominium declaration governing the Property, but the receivership will retain liabilities arising from pre-closing management of the condominium association which supervises the Property (the "Association"). The Receivership Estate will indemnify the Proposed Buyer for any losses it may experience post-closing as a result of actions or omissions of the owner of the Surrey Property that may have occurred pre-closing in relation to the management or operation of the Association (the "Limited Indemnity"). Any post-closing

liability of the Receivership Estate to the Proposed Buyer for any breach of the agreement, including with respect to the Limited Indemnity, is capped at 1% of the Purchase Price, in the aggregate (the “Indemnity Cap”). The Receiver will also satisfy from the sale proceeds certain liabilities owed to the Association as of the Closing Date. Lastly, a small correction to the property description was made.

6. 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. Additionally, as more fully set forth below, good cause exists to shorten the Court’s prior thirty day objection period for the Prior Motion.

AUTHORITY

7. 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

8. 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

9. 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.³

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

³ Due to a miscommunication between Receiver's counsel and 33 Realty, ads/notices of sale were not placed in the Chicago Tribute 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.

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 *bona 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

10. 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 million 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”).⁴ 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.

11. Here, the Receiver selected the Proposed Buyer’s offer (as set forth in the Prior Sale Motion) 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 or close to 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 contingency was likely to be satisfied (even with the current COVID-19 crisis); and (4) the Proposed Buyer’s revisions to the Receiver’s form purchase agreement were minimal.

12. 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, 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

⁴ 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 Homer Order). As a result, the Receiver considered the Proposed Buyer’s offer superior.

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.⁵ 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.

13. 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).

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

15. Addressing the offer from the Proposed Buyer, the Receiver understands that 33 Realty manages other properties for the Proposed Buyer and, based on information from the Proposed Buyer, will remain the manager for the Surrey Property post-closing. While the Receiver does not consider this to be a conflict, the Receiver discloses the same in the interest of

⁵ 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.

full transparency.

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

THE REVISED OFFER AND FIRST AMENDMENT

17. After the filing of the Prior Sale Motion and prior to the expiration of due diligence, the Proposed Buyer requested a purchase price reduction for among the following reasons: (a) the condo board and association were apparently never officially put into place, so it has been running unofficially and perhaps incorrectly and, therefore, there is no current board for proper decision making authority; (b) current board regulations may not allow the Proposed Buyer to be on the board; (c) these board issues increase the risk that the Proposed Buyer will not be able to deconvert the association and sell all sixty units in the future; (d) a decrease in collections during the due diligence period; (e) lenders are requiring additional equity and/or reserve accounts be established due to market uncertainty (decreasing investment returns and market value); and (f) COVID-19 uncertainty in general. The Proposed Buyer sought clarity on these issues as well as assurances that amounts owed to the Association would be trued-up at closing.

18. Because the due diligence period under the original PSA had not expired, absent the parties agreeing to a revised terms, the Proposed Buyer had the right to terminate the original PSA and would have been entitled to return of its earnest money.⁶ As a result, with respect to the First Amendment, the Receiver's analysis can be summarized as a determination of whether the Receivership Estate was better off: (a) proceeding with the Proposed Buyer under the PSA as

⁶ To be clear, if the sale is not approved, under the PSA, the Proposed Buyer would be entitled to return of its earnest money.

modified by the First Amendment; or (b) remarketing the Surrey Property for sale or otherwise selling the Surrey Property to a different buyer. In the Receiver's business judgment, proceeding with the Proposed Buyer is in the best interest of the Receivership Estate because:

19. First, the requested purchase price reduction is only 4.8% of the original purchase price, which represents a reasonable and market discount under these unprecedented circumstances. In connection with evaluating the reasonableness of the price reduction, the Receiver confirmed that market conditions continue to deteriorate as a result of the COVID-19 crisis. Among the factors causing decline in property values generally are rent collection uncertainty and adverse conditions in the debt market. With respect to rent collection, April rent collection for the Surrey Property was less than in prior months, and that trend is continuing based on current information as to May collections. Additionally, most real estate professionals expect rent collections to decline further to some extent as this crisis continues. With respect to the debt markets, worsening interest rate spreads and increased escrow requirements are negatively impacting investment returns which in turn impacts market value.

20. Second, contemporaneous with negotiating the First Amendment, the Receiver worked with his broker to obtain evidence of what a market discount would be, and this confirmed that the Receiver was not likely to do better with another buyer (taking all factors into account). The Receiver, with the assistance of his broker, identified one of the previous bidders who could close in cash. This buyer, while still interested in purchasing the property in a deteriorated market, indicated its willingness to pursue a transaction at slightly more for the Property (approximately \$75,000 more) than the purchase price under the PSA. However, this buyer indicated that it would not start due diligence until Illinois ended its shelter-in-place policy. As a result, pursuing a transaction with this buyer would subject the Receivership Estate

to further market risk, and there would be nothing to stop this other interested party from completing due diligence and requesting a purchase price reduction before its earnest money went hard.

21. Third, proceeding with the Proposed Buyer provides a more certain recovery for the Receivership Estate. Under the PSA, the Proposed Buyer increased its earnest money by \$300,000.00, agreed to make the \$400,000 (total earnest money) non-refundable, and agreed to closing five (5) business days after the order approving this Motion becoming final and non-appealable (as required by the parties' title company). As a result, it is more likely that the Proposed Buyer will close under this deal (as evidenced by the Proposed Buyer placing substantially more earnest money at risk, thus demonstrating the intent to close). Remarketing the property would mean taking on risk that an alternative transaction would have a lower purchase price and also exposes the Receivership Estate to continued uncertainty as to rent collection (i.e., the same risk that is causing diminution of property values generally).

22. With respect to resolving the issues relating to the condominium association, the Receiver anticipated making true-up payments and sought authority to pay the same at closing in the Prior Motion, and agreed to the Limited Indemnity which merely protects the Proposed Buyer from any liabilities arising from any of the Surrey Property owner's pre-closing actions or omissions (up to the Indemnity Cap).

23. Put simply, after reviewing this unprecedented situation with his broker and other professionals, the Receiver believes that closing the sale pursuant to the PSA, as amended by the First Amendment, is in the best interests of the Receivership Estate. Such sale will still allow the Receivership Estate to realize *in excess of \$2.4 million* and would eliminate any future uncertainty of the Receiver continuing to own or manage the Surrey Property (i.e., rent

collection, capital availability, etc.).

BEST INTERESTS OF RECEIVERSHIP ESTATE

24. 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.

25. 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 \$2.4 million from the proposed sale.

26. 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.

27. 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 association,⁷ etc.).

LIMITED NOTICE/OBJECTION PERIOD

28. The Fourth Amended COVID-19 order removed the extended objection periods set forth in the prior orders. Prior to such orders, and for the Prior Motion, the Court had set a thirty (30) day objection period.

29. In this case, good cause exists to limit the objection period for this Motion to ten (10) days for the following reasons: (a) the terms of the PSA are reasonable under the

⁷ 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 Buyer), all association funds must be accounted for and turned over to the association.

circumstances; (b) the uncertainty in the real estate market generally; (c) the paramount importance to the receivership and its investors of quickly closing this sale in this uncertain post-COVID-19 world; and (d) with respect to the revised sale terms, as set forth below, Mr. Mueller (who indicated potential objection to the original sale) and the SEC do not object to the Motion. As result, the Receiver seeks shortening of the objection period to ten (10) days. Ten (10) 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

30. Counsel for the SEC has indicated that the SEC does not object to the relief requested herein.

NO OBJECTION BY MR. MUELLER

31. Defendant Glenn Mueller has indicated that he 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)*⁸; (b) shorten the notice/objection period to ten (10) days; and (c) grant all other or further relief that is just and proper.

Dated: May 29, 2020

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

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⁸ The Proposed Sale Order is attached hereto as **Exhibit B**.