IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
	)	**No. 19 C 5957**
v.	)	
	)	**Judge John Z. Lee**
NORTHRIDGE HOLDINGS, LTD., et al.,	)	
Defendants.	)	

ORDER

Before the Court is the Receiver's motion (1) to authorize the sale of the Timber Lake Property, (2) approving the agreement as to the distribution of the proceeds of the sale, and (3) to modify the Receivership Order to add a Receivership defendant. *See* ECF No. 183 ("Mot."). For the following reasons, the motion is granted. The parties are directed to submit a proposed order effectuating the sale that is consistent with this ruling.

STATEMENT

The Receiver moves to confirm the sale for $50.25 million of an apartment complex located at 1200 Kings Circle, West Chicago, Illinois 60185 (the "Timber Lake Property"). Mot. at 2, ECF No. 183. Defendant Glenn Mueller filed an objection, taking issue with the procedures that the Receiver used to market the property and solicit bids and asserting that another buyer is (potentially) willing to pay more. Glenn C. Mueller's Obj. Receiver's Mot. Authorize Sale of Real Estate

and Related Relief ("Obj.") at 3–5, 6, ECF No. 196. The Court addresses each objection in turn.

A. **Sales Procedures**

In 2019, before the Timber Lake Property was placed under the Receiver's control, Mr. Mueller's real estate broker began negotiating its sale with numerous interested parties. Obj. at 2. Through that process, in September 2019, Sapphire Investment Group ("Sapphire")[1] provided the real estate broker with a non-binding letter of intent that offered $65 million for Timber Lake Property.[2] Obj. at 2; Receiver's Reply Supp. Mot. Confirm Sale ("Reply") at 4, ECF No. 198.

In February 2020, the Receiver filed a motion seeking court approval of the procedures the Receiver planned to use to market and sell the Timber Lake Property. *See* Receiver's Mot. for Court Approval of Sales Process, ECF No 112. No objections were filed to that motion. *See* 6/8/20 Minute Entry, ECF No. 156. But, after the Receiver filed the motion describing the proposed procedures, the world was engulfed by the COVID-19 pandemic. As a result, the Receiver deviated from those procedures to minimize the downside risk of a bad real estate market and to maximize the value of the estate from the sale. Mot. at 4–5. Those deviations are disclosed in the instant motion. *Id.*

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[1] Both the Receiver and Mr. Mueller note that Sapphire made the offer through another entity, Balance Partners Properties, LLC, an acquisition company that Sapphire periodically uses when organizing real estate deals. Obj. at 2 n.1; Receiver's Reply Supp. Mot. Confirm Sale at 4, ¶ 5, ECF No. 198.

[2] Sapphire's letter of intent was for the purchase of three properties, but $65 million is the estimated amount to be allocated to the purchase of the Timber Lake Property. Obj. at 2.

Under the revised sales procedures, instead of marketing the Timber Lake Property broadly, the Receiver "target[ed] strategic active purchasers who could potentially transact in the COVID-19 environment." *Id.* at 5. The Timber Lake Property was ultimately marketed to 112 potential buyers, including parties that submitted letters of intent pre-Receivership. *Id.* at 6.

Mr. Mueller asserts that the property was not marketed widely enough, claiming that the procedures previously approved by this Court would have exposed "thousands of buyers" to the Timber Lake Property. Obj. at 5. Mr. Mueller also complains that all of the pre-Receivership letters of intent contemplated purchasing the Timber Lake Property for more than $50.25 million, and suggests that broader marketing could have resulted in an offer higher than the $50.25 million sale the Receiver asks the Court to approve now. *See* Obj. at 2.

The Receiver responds that two of the three entities that submitted pre-Receivership letters of intent *did* participate in the Receiver's modified bidding process, and one offered only $47 million, while the other did not even submit an offer. Reply at 2–3. The third, Sapphire, has been given an opportunity to submit a firm offer even after the bidding process concluded. *Id.* at 4–5. The SEC does not object to the procedures that the Receiver used. Mot. at 17.

Judicial sales of real property under receivership are governed by 28 U.S.C. §§ 2001–2002. The Seventh Circuit has recognized that under § 2001(a), "sales of real property shall be upon such terms and conditions as the court directs," and "confirmation of a judicial sale rests in the sound discretion of the district court

and will not be disturbed on appeal except for abuse." *United States v. Peters*, 777 F.2d 1294, 1298 n.6 (7th Cir. 1985) (internal quotation marks omitted); *see also United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir. 1968) ("There can be no doubt that Congress has authorized the federal judiciary to use sound discretion in setting the terms and conditions for judicial sales."); *Pennant Mgmt., Inc. v. First Farmers Fin., LLC*, No. 14-cv-7581, 2015 WL 5180678, at *7 (N.D. Ill. Sept. 4, 2015) (approving receiver's sale procedures that did not "strict[ly] compl[y]" with § 2001(a) because the proposed process achieved better results than the "archaic procedures" of the statute). Further, a court in its discretion can confirm the procedure a receiver used after the fact, when it confirms the sale of real estate. *See Pennant*, 2015 WL 5180678, at *7 (approving sales procedures in the same order that approved the sale).

The COVID-19 pandemic is unprecedented. The Receiver observed that "many broadly marketed properties in other deals were being pulled from the market so as to not result in failed campaigns or deeply discounted pricing" and determined, after consultation with the Receivership Estate's broker, that the revised procedures would "effectively control[] the real risk of a potential failed broader marketing campaign." Mot. at 16 n.4. The Court finds that this conclusion was reasonable given the circumstances. The Court thus approves the procedures outlined in the Receiver's motion and waives the requirements of 28 U.S.C. §§ 2001–2002.

B. Potentially Higher Offer from Sapphire

As a result of the procedures that the Receiver implemented, the Receiver determined that the best and final offer was submitted by TMIF II Timber Lake LLC, an affiliate of Turner Impact Capital ("Turner"). Mot. at 2. The terms of Turner's Purchase and Sale Agreement ("PSA") are as follows:

- **Purchase Price**: $50.25 million.
- **Earnest Money Deposit**: $5 million which has been deposited into escrow and is currently non-refundable.
- **Due Diligence Period**: Completed.
- **Contingencies**: None.

Id. Additionally, Turner has offered an all-cash close. *Id.* at 8.

The Receiver's motion also discloses the existence of a letter of intent from Sapphire, which was communicated to the Receiver *after* the revised procedures had concluded and the Receiver had already awarded the deal to Turner. *Id.* at 10–13. Sapphire's letter of intent originally proposed a $60.26 million purchase price, $500,000 earnest money deposit, and 45-day due diligence period. *Id.* at 10.

After learning of Sapphire's interest, the Receiver sought to ascertain the legitimacy of this late offer. *Id.* at 11. The Receiver provided Sapphire with updated financial information and due diligence, to which all the potential buyers had access. *Id.* After reviewing that information, Sapphire lowered its offer and proposed two scenarios: (1) it would offer $53.5 million and complete due diligence in 14 days, sign a PSA, and go hard on a 5% deposit ($2.675 million); or (2) it would offer $57 million and complete due diligence in 45 days, sign a PSA, and go hard on a 5% deposit ($2.85 million). *Id.* The Receiver gave Sapphire a deadline of three business days prior to the objection deadline to the Receiver's motion to agree

to substantially similar terms as Turner with a purchase price of at least $53.5 million and no contingencies. *Id.* at 11–12. Sapphire did not meet that deadline and has not made such an offer. *See* Reply at 5–6.

Mr. Mueller objects, arguing that the Receiver should sign a contract with Sapphire and allow Sapphire to conduct its due diligence, at the risk of leaving an additional $9.75 million on the table. Obj. at 6. But the Receiver explains that Sapphire was already provided an opportunity to conduct due diligence. *See* Mot. at 11–12 (stating that Sapphire was invited to continue its due diligence until three business days prior to the objection deadline before submitting a "hard" offer); Reply at 6 ("Turner has completed due diligence at its own expense and is eager to close, Sapphire has apparently done no onsite due diligence despite the Receiver's offer to pay its expenses to do so in the event Sapphire does make a 'hard' offer and is subsequently outbid or otherwise not awarded the deal.").

Mr. Mueller's argument also ignores the fact that, after receiving the additional information, Sapphire dropped its offer from $60 million to a maximum of $57 million, and there is nothing to prevent it from dropping its offer further still. *See* Mot. at 11. Although Mr. Mueller asserts that there is "little risk to signing Sapphire's PSA," because Turner's offer contains a specific performance clause and is "secured indefinitely," Obj. at 7–8, the Court agrees with the Receiver that "it makes no sense to invite potential litigation over enforcement of that clause just to entertain an 'option' for Sapphire," Reply at 6.

Courts have consistently warned against setting aside transactions and disrupting the reasonable expectation of bidders, given the impairment of public confidence in the sales process that ensues from a lack of finality. *See, e.g.*, *In re Gil-Bern Indus., Inc.*, 526 F.2d 627, 628–29 (1st Cir. 1975) (reversing the decision to set aside a sale merely because a higher offer was received after the bidding deadline because, in the long run, this practice would be "penny wise and pound foolish" as creditors would suffer if "unpredictability discouraged bidders altogether" or at least "encourage[d] low formal bids"); *cf. Shlensky v. H. R. Weissberg Corp.*, 410 F.2d 1182, 1185–86 (7th Cir. 1969) (holding in the restructuring context that a district court confirming a judicial sale may weigh the value of finality in the sales process against a later, higher price, and the decision to reopen the bidding or not is committed to the district court's discretion.); *Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 772 (7th Cir. 2004) (same).

Given the need to maintain public confidence in the sales process relating to the Receivership Estate—to say nothing of the uncertainty that Sapphire would ultimately close at a higher price—the objection is overruled. The Receiver's motion is granted.

IT IS SO ORDERED.

ENTERED: 11/3/20

John Z. Lee
United States District Judge