

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Palm Beach Division)**

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,
et al.,

Defendants,

H.S. MANAGEMENT GROUP LLC, et al.,

Relief Defendants.

**RECEIVER’S MOTION FOR AUTHORITY TO SELL CERTAIN DIAMONDS
SECURED BY THE RECEIVER; INCORPORATED MEMORANDUM OF LAW**

Jeffrey C. Schneider, not individually, but solely in his capacity as the Court-appointed Receiver (the “Receiver”) for Natural Diamonds Investment Co. (“NDIC”), Eagle Financial Diamond Group, Inc. (“EFDG”), and Argyle Coin, LLC (“Argyle”) (collectively, the “Receivership Entities”), moves the Court for authority to sell certain diamonds previously secured by him.

A. Background

1. On May 16, 2019, the Court appointed the Receiver for Argyle in the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver [DE 20] (the “Appointment Order”).

2. On March 28, 2019, approximately two months before the Receiver's appointment, the Honorable Donald Middlebrooks appointed the Receiver as Corporate Monitor for Defendants NDIC and EFDG in the case of *Rounds v. Natural Diamonds Investment Co., et al.*, Case No. 18-cv-81151 (the "Corporate Monitor Action").

3. Shortly after his appointment as Corporate Monitor, the Receiver secured a number of diamonds from Defendant Jose Aman and others. This Motion involves only the uncut diamonds referred to in the Receiver's First and Second Receiver's Reports [DE 111-1, 144-1] as the "104 pouches of uncut diamonds," and Aman's fiancé's engagement ring.

4. On July 11, 2019, the Court issued an Order expanding the Receivership to include NDIC and EFDG. The Receiver has since moved to close the Corporate Monitor Action. On October 25, 2019, Judge Middlebrooks granted that motion.

B. Aman

5. Aman was previously holding rough diamonds in 104 separate pouches that he turned over to the Receiver at the first proffer session in April 2019. The diamonds are uncut, unpolished and, therefore, in what is colloquially referred to as a "rough" state. The Receiver's inventory of the 104 pouches of rough diamonds is attached as Exhibit A.

6. The Receiver has also secured from Aman his fiancée's diamond engagement ring.

7. All of the above items are located in the Receiver's safe deposit box that he opened for purposes of this case.

8. The Receiver has obtained an appraisal¹ for the diamond engagement ring and the 104 pouches of rough colored diamonds (collectively, the "Aman Diamonds"). The appraisal is

¹ The appraisal was performed by the Receiver's retained appraiser Jewelry by Frank Inc. Appraisal Service.

attached as Exhibit B, but the appraised values of the items are redacted because disclosing the appraised total value or individual values of the Aman Diamonds before any sale of them occurs will likely negatively impact any offers and likely lead to lower offers.

9. The Receiver has also evaluated whether any of the rough diamonds in the 104 pouches can be “cut.” Cutting diamonds into a finished, polished state increases their value, but runs the risk of destroying the diamonds in the cutting process.

10. The majority of the rough diamonds likely cannot be cut because they are too small and thus pose a higher risk of compromising or being destroyed during the cutting process, thus reducing or eliminating any value they may have. However, there are several rough diamonds that may be large enough to cut, which, again, could potentially significantly increase the value of those specific diamonds.

11. As discussed below, the Receiver recommends that the Aman Diamonds be liquidated promptly using his discretion regarding pricing, marketing, and whether or not to cut any of them.

12. It could be preferable to sell the Aman Diamonds as a bulk sale to one buyer or alternatively to many different individual buyers. Regardless, the Receiver will use his discretion and best efforts to realize the highest price(s) possible for the Aman Diamonds.

13. 28 U.S.C. § 2004 states that a receiver should follow the requirements of 28 U.S.C. § 2001 “unless the court orders otherwise.” Specifically, 28 U.S.C. § 2001 requires, among other things, that: (1) three disinterested appraisers appraise the items sold; (2) the sale be at least two-thirds of the appraised value; (3) the terms of the sale be published in a newspaper of general circulation at least ten days before confirmation of the sale; and (4) no confirmation of the sale if a bona fide offer is made of at least 10 percent above the offered price.

14. As stated above, the Receiver has already obtained an appraisal for the Aman Diamonds from the Receiver's appraiser.

15. The Receiver does not believe that it is in the best interests of the Receivership Estate to obtain two additional appraisals, which would require the Receiver to file another motion to employ two additional appraisers simply to satisfy 28 U.S.C. § 2001.

16. In addition, the Receiver does not believe that it is in the best interests of the Receivership Estate to publish the terms of any proposed sale(s) of the Aman Diamonds in a newspaper for four weeks because there could literally be dozens to more than 100 proposed sales of these diamonds to separate buyers. Again, there are 104 pouches and one engagement ring, so potentially 105 buyers and thus potentially 105 separate publications, which would be virtually impossible to do and cost-prohibitive.

17. As such, requiring the Receiver to meet the elements of 28 U.S.C. § 2001 would be cost-prohibitive and undoubtedly defeat the purpose of the Receiver efficiently selling the Aman Diamonds. Therefore, the Receiver respectfully requests that he not be required to sell the Aman Diamonds in conformance with 28 U.S.C. § 2001 or 28 U.S.C. § 2004. As stated above, the Receiver will, of course, use his best efforts to realize the highest price(s) possible for the Aman Diamonds.

C. Memorandum of Law

18. The Court's power to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir.

1982)). These powers include the authority to approve the sale of property of the Receivership Entities. *Clark on Receivers* § 482 (3rd ed. 1992) citing *First National Bank v. Shedd*, 121 U.S. 74, 87, 7 S.Ct. 807, 814, 30 L.Ed. 877 (1887) (A court of equity having custody and control of property has power to order a sale of the property in its discretion). Indeed, Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961) (citation omitted).

19. Pursuant to the Appointment Order and 28 U.S.C. § 754, the Receiver has complete jurisdiction of the assets at issue and, subject to the Court’s approval, has authority to sell such assets to a third-party purchaser. *See SEC v. American Capital Investments Co.*, 98 F.3d 1133, 1144 (9th Cir. 1996) (providing under Section 754, a receiver is “vested with complete jurisdiction and control of all such property and selling such property is simply an exercise of that control.”). Moreover, a receiver’s sale of personal property is governed by 28 U.S.C. § 2004, which directs that any personal property sold under order of the Court be sold in accordance with 28 U.S.C. § 2001, unless the Court orders otherwise.

20. Unless otherwise ordered, § 2001(b) requires that three separate appraisals are conducted, that the sale terms are published in a circulated newspaper ten days prior to sale, and that the sales price is not less than two-thirds of the appraised value. Because of the above-described circumstances, the Receiver requests that the Court use its statutorily-granted discretion to depart from the stated requirements of the statute and order otherwise to approve the future sale(s) of the Aman Diamonds in a self-executing manner pursuant to this Motion.

21. Courts within this District, including this Court itself, have relieved receivers from the requirements of 28 U.S.C. § 2001 and/or § 2004 on several occasions. Copies of some

representative Orders, including multiple Orders in this case, are attached as Composite Exhibit C.

22. The goal of a receiver charged with liquidating assets is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp 226, 239-240 (D.C. Mass. 1996), citing *Jackson v. Smith*, 254 U.S. 586 (1921). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

23. The Receiver will use his discretion to obtain the highest and best offer in the market for the subject assets and maximize the value of the Receivership Estate. “When a sale of receivership assets is ordered by the court, the assets should be sold at the ‘best price under the circumstances.’” *SEC v. Schooler*, 2013 U.S. Dist. LEXIS 162559 (S.D. Cal. Nov. 14, 2013) (citations omitted). Here, the public market will dictate the fair value price that an individual or entity is willing to pay for any asset.

24. In addition, the Court’s broad authority over the Receivership Estate includes the equitable power “to sell property free of liens, transferring the lien to the proceeds.” *Seaboard Nat'l Bank v. Rodgers Milk Products Co.*, 21 F.2d 414, 416 (2d Cir. 1927). “It has long been recognized that under appropriate circumstances, a federal court presiding over a receivership may authorize the assets of the receivership to be sold free and clear of liens and related claims.” *Regions Bank v. Egyptian Concrete Co.*, 2009 U.S. Dist. LEXIS 111381 at *18-19 (E.D. Mo. Dec. 1, 2009) (citations omitted). Indeed, a sale free and clear of liens, encumbrances, interests or other claims is customary in receiverships under §§ 2001 and 2004, and in bankruptcy cases under 11 U.S.C. § 363. See e.g., *AgStar Fin. Servs., PCA v. Eastwood Dairy, LLC*, 2012 U.S. Dist. LEXIS

51052 at *5-6 (S.D. Ohio April 11, 2012); *Regions Bank*, 2009 U.S. LEXIS 111381 at *18-19; *In re Touse, Inc.*, No. 08-10928-JKO (Bankr. S.D. Fla. Dec. 21, 2009) (Docket Entry 3432); *In re Protective Products of America, Inc.*, No. 10-10711-JKO (Bankr. S.D. Fla. Jan. 19, 2010); and *SEC v. McGinn, Smith & Co., Inc.*, No. 1:10-CV-457-GLS-CFH (N.D.N.Y. Apr. 4, 2012) (Docket Entry 580).

25. All sale(s) of the Aman Diamonds should be final and free and clear of any liens, encumbrances, interests, or other claims with respect to the subject assets. A “free and clear” provision is essential to the transaction to maximize the value of the assets by reducing the risks to the buyers against potential claims.

26. For the Court’s information, no creditor or other party has recorded any UCC-1’s, or otherwise attempted to perfect any liens, against the Aman Diamonds. The request that the sale(s) be “free and clear of any liens” is merely a cautionary one to help to facilitate the potential sale(s) of the Aman Diamonds and preclude any issues subsequent thereto.

27. Based on the above, the Court should exercise its authority and discretion, dispense with the requirements of 28 U.S.C. § 2001 or 28 U.S.C. § 2004, and authorize the Receiver to sell the Aman Diamonds using his discretion in a self-executing manner.

28. The Receiver would like to note that paragraph 31 of the Appointment Order provides that “[t]he Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.”

29. Given the foregoing, the Receiver did not technically need to file this Motion; the Receiver is filing this Motion for cautionary purposes to ensure there is an issued Order that, among other things, provides that: (1) title can be passed from the Receiver to the potential buyer(s); (2) any sales are final and free and clear of any liens, encumbrances, interests, or other claims with respect to the subject assets; and (3) there is a clear exception from the requirements of 28 U.S.C. § 2001 and 28 U.S.C. § 2004. The proposed Order attached as Exhibit D provides for the foregoing relief.

D. Local Rule Certification

30. Pursuant to Local Rule 7.1(a)(3), the Receiver hereby certifies that he has conferred with counsel for the SEC, the Defendants, and the Relief Defendants regarding this Motion and the attached proposed Order (Exhibit D).

31. The SEC takes no position on this Motion because the Appointment Order already provides that the Receiver can sell or dispose of receivership property in the manner the Receiver deems most beneficial to the Receivership Estate without further Order of the Court. Aman states that he has no objection to this Motion. Counsel for the Seigels and Relief Defendant H.S. Management Group LLC have not provided their position. Counsel for Relief Defendant Gold 7 of Miami, LLC states that his client has no objection to this Motion. The remaining Relief Defendants have not provided their position.

The Receiver respectfully requests that this Court grant this Motion, issue the proposed Order attached as Exhibit D, and provide such other relief as is just and proper.

Dated: December 18, 2019

Respectfully submitted,

SALLAH ASTARITA & COX, LLC
Co-counsel for the Receiver
3010 North Military Trail, Suite 210
Boca Raton, FL 33431
Tel.: (561) 989-9080
Fax: (561) 989-9020

/s/Patrick J. Rengstl
Patrick J. Rengstl, P.A.
Fla. Bar No. 0581631
Email: pjr@sallahlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Patrick J. Rengstl
PATRICK J. RENGSTL, P.A.

SERVICE LIST

Counsel for Securities and Exchange Commission:

Amie Riggle Berlin, Esq.
Senior Trial Counsel
Linda S. Schmidt, Esq.
Senior Trial Counsel
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Email: berlina@sec.gov

Counsel for Harold Seigel, Jonathan Seigel, and H.S. Management Group LLC:

Ellen M. Kaplan, Esq.
Law Office of Ellen M. Kaplan P.A.
9900 W Sample Rd Fl 3
Coral Springs, Florida 33065
Email: ellenkaplanesq@aol.com

Counsel for Gold 7 of Miami, LLC:

Aaron Resnick, Esq.
Law Offices of Aaron Resnick, P.A.
100 Biscayne Boulevard, Suite 1607
Miami, Florida 33132
E-mail: aresnick@thefirmmiami.com

Counsel for Winners Church, Frederick Shipman, and Whitney Shipman:

Carl Schoeppl, Esq.
Terry A.C. Gray, Esq.
Schoeppl Law, P.A.
4651 North Federal Highway
Boca Raton, Florida 33431
Email: carl@schoeppllaw.com
tgray@schoeppllaw.com

Via Email

Jose Aman, pro se
E-mail: joseaman123@gmail.com