

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

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v.

Civil Action No. 4:11-cv-655

JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.

**REPLY IN SUPPORT OF (i) MOTION FOR AUTHORITY TO SELL PROPERTIES TO
LAKESIDE PORTFOLIO MANAGEMENT, LLC and (ii) MOTION FOR AUTHORITY
TO SELL PROPERTY AND TO APPROVE SALES PROCEDURES**
[Regarding Docket No. 103 and Docket No. 104, respectively]

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Receivership Entities”), and submits this Reply in Support of (i) Motion for Authority Sell Properties to Lakeside Portfolio Management, LLC and (ii) Motion for Authority to Sell Property and to Approve Sales Procedures. In support of the Motion, the Receiver would respectfully show the Court as follows:

I.
PROCEDURAL BACKGROUND

1. On August 6, 2012, the Receiver filed his Motion for Authority Sell Properties to Lakeside Portfolio Management, LLC [Docket No. 103] (the “Lakeside Motion”).

2. On August 6, 2012, the Receiver filed his Motion for Authority to Sell Property and to Approve Sales Procedures [Docket No. 104] (the “Barrier Motion” and collectively with the Lakeside Motion, the “Sales Motions”).

3. The Sales Motions are incorporated by reference.

4. On August 23, 2012, John Graves, as attorney for JEG Property Investments, L.P. *f/k/a Beracah Valley Enterprises, LP*, NG Roth Investments, LLC, JG Roth Investments, LLC, JG Roth, LLC, and JEG Property Investments 401k Trust (collectively “JEG”) filed JEG’s Response in Opposition and Objection to the Receiver’s Sales Motions [Docket No. 111].

5. On August 23, 2012, Bruce Berg, Stuart Cartner, Kevin Doyle, Walter Haydock, Edward Leh, Kevin Murphy, Philip Schantz, DAIS Partners, LP, Singer Bors., LLC, Skeleton Kale, LLC, and Wildcat Lake Partners (collectively, the “Lunn Group”) filed their Response in Opposition to the Receiver’s Motion for Authority Sell Properties to Lakeside Portfolio Management, LLC [Docket No. 112].

6. On August 23, 2012, the Association (as defined in their Response) filed the Stewardship Receivership Claimants Association’s Response in Opposition and Objection to the Receiver’s Sales Motions [Docket No. 114].

7. JEG, the Lunn Group, and the Association are referred to collectively as the “Objectors.”

II.

REPLY IN SUPPORT OF SALES MOTIONS

A. The Court Can and Should Modify the Provisions of 28 U.S.C. §§ 2001-2002

8. Each of the Objectors alleges that the provisions of 28 U.S.C. §§ 2001-2002 are mandatory and cannot be waived.

9. To the contrary, both 28 U.S.C. § 2001 and 28 U.S.C. § 2004 contemplate that the Court, after appropriate notice, can modify or waive the provisions of 28 U.S.C. §§ 2001-2002. Such provisions are routinely waived. *See SEC v. Nelson et al.*, Case No. 3:09-cv-02222-F, Order Granting Receiver's Motion for Order (i) Authorizing the Sale of Certain Real Property; (ii) Relieving the Receiver from the Provisions of 28 U.S.C. §§ 2001-2002; and (iii) Approving Retention of Real Estate Broker, Docket No. 92 (N.D. Tex. June 7, 2010) (attached as **Exhibit A** hereto).

10. The Objectors propose that the Receiver obtain three appraisals, presumably for each of the hundreds of assets being sold. Engaging three separate appraisers to appraise each of the hundreds of assets subject to the Sales Motions would result in a cost to the estate that would do nothing but harm the investors and reduce net recovery by thousands of dollars. The Receiver submits that it is not in the best interest of the Receivership Estate to incur the time and expense of obtaining three appraisals for each of the assets subject to the Sales Motions.

11. Given the nature of the investors in this matter, many of whom are professionals engaged in the purchase and sale of precisely the type of assets subject to the Sales Motions, the Receiver also believes that notice of the Sales Motions was appropriate under the circumstances. With respect to the Lakeside Motion, the investors are ideally situated to bid on the Subject Assets or locate others to bid on the Subject Assets. Similarly, the Barrier Motion proposes the sale of assets after marketing such assets on several market exchanges, including the Carlton Debt Exchange, for 30 to 45 days. The Receiver submits that such procedures will result in a higher return for investors than newspaper publication coupled with a sale on the courthouse steps, as the Objectors request.

12. Finally, the Receiver is not opposed to a hearing on the Sales Motions, after which the Receiver can supply any additional notice the Court deems appropriate.

B. The Commissions in the Sales Motions are Appropriate

13. The Receiver believes the commissions in the Sales Motions are reasonable. First, the 20% commission to Barrier Advisors (“Barrier”) was already the subject of a motion and order before this Court. *See* Docket Nos. 52, 59. The files analyzed by Barrier were in disarray due to the manner of the Receivership Entities’ operations pre-receivership. They were not in a condition that could be marketed and sold. For this reason, the Receiver previously sought, and the Court approved, authority to retain Barrier with a compensation structure including a 20% commission. *See* Docket Nos. 52, 59. The 20% commission compensates Barrier for the efforts expended in researching the assets at issue and transforming the asset files into a marketable and sellable condition. Additionally, the 20% commission includes within it the costs of listing the assets on the Carlton Debt Exchange.

14. The 5% Commission to Halo regarding the Lakeside Motion is also reasonable given Halo’s marketing of the Subject Assets.

C. The Objectors Have Failed to Present Suitable Alternatives

15. The Receiver has spoken to individuals that are part of the Lunn Group on various occasions. The Receiver and his counsel have also met with David Lunn, counsel for the Lunn Group, and specifically requested a proposal in writing for any alternative method of selling the Subject Assets. Despite request, the Lunn Group has failed to respond with a specific proposal in writing.

16. The Receiver has also scheduled both a telephone call and a meeting with the Association to discuss their objection. Finally, the Receiver has scheduled a meeting with JEG to discuss JEG's objection.

17. In sum, despite filing their objections, the Objectors have not offered any concrete, alternative way of selling the assets subject to the Sales Motions. The Receiver is committed to maximizing value for all investors, but at this time, the Receiver is concerned that objections that are not constructive will only lead to the loss of tangible offers that will result in recovery to the investors.

D. The Sales Motions are Appropriate Notwithstanding JEG's Claimed Interest

18. JEG claims that certain assets were either purchased by JEG pre-receivership, or secure obligations to JEG pursuant to security agreements between JEG certain of the Receivership Entities. JEG's assertions are set forth in its Objection to the Sales Motions [Docket No. 111] and also in its Notice of Potential Claimant JEG Property Investments Group with Respect to Receiver's Motion for Show Cause Hearing [Docket No. 70] (the "Notice of Potential Claimant").

19. The Receiver is continuing to analyze JEG's claimed interests to hundreds of assets overall, and to dozens of assets that are the subject of the Sales Motions. Such analysis will be completed prior to any hearing on the Sales Motions.

20. However, to date, the Receiver's analysis indicates that none of the assets subject to the Sales Motions are owned by JEG. In fact, JEG admits that with respect to certain assets in which JEG claims an interest, "[b]efore Legal Assignments could be completed, Stewardship was placed in Receivership." *See* Notice of Potential Claimant, Docket No. 70, at ¶ 5. If such is

the case, then JEG's situation is no different than any other investor who claims he was defrauded by the Receivership Entities.

21. To the extent JEG instead claims the assets subject to the Sales Motions act as security for a claim to JEG, the Receiver's research indicates that many of such assets were not "mapped" to Stewardship Fund, meaning that Stewardship Fund, presumably, would have lacked the authority to grant a security interest in such assets. Additionally, Mr. Graves, the attorney for JEG, apparently utilized office space at Stewardship Fund, and the Receiver in fact returned various personal items to Mr. Graves after the Receiver's appointment. The Receiver further notes that JEG's UCC-1 financing statements were filed after the institution of this action by the SEC, after the issuance of a temporary restraining order, after the FBI seized property at Stewardship Fund's offices (a fact of which Mr. Graves may have been aware), and just two days before the Receiver's appointment. Such financing statements are invalid to the extent the Receivership Entities did not own the listed collateral and, given the curious timing of the filings, may be avoidable as a preferential and/or fraudulent transfer. Finally, the Receiver has no proof that JEG provided consideration to the Receivership Entities through which JEG can assert an interest in any of the assets subject to the Sales Motions.

22. The Receiver has scheduled a meeting with Mr. Graves regarding JEG's claims, and reserves his right to supplement this Reply pending his meeting with Mr. Graves and the completion of his analysis of the assets in which JEG claims an interest. The Receiver has confirmed with Mr. Graves that JEG is not opposed to the Receiver's supplementation of this Reply at a later date prior to any hearing on the Sales Motions.

III.
RELIEF REQUESTED

WHEREFORE, the Receiver prays that, upon final consideration of the Lakeside Motion, the Court authorize the sales of the 127 Marketed Assets to Lakeside unless a superior bid is received within 21 days after entry of the Court's order. The Receiver further prays that, upon final consideration of the Barrier Motion, the Court authorize the sale of the Legacy Assets and Substitute Assets (as defined therein) as requested in the Barrier Motion.

Dated: September 4, 2012

BRYAN CAVE LLP

By: //s// Jay L. Krystinik
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CERTIFICATE OF SERVICE

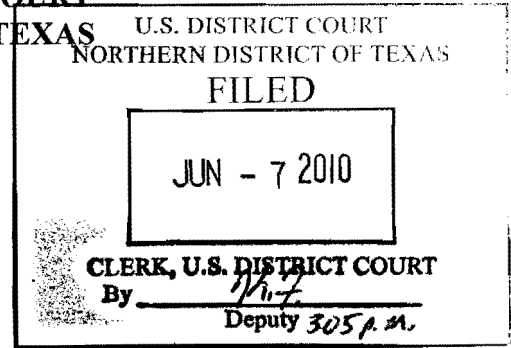
I certify that on September 4, 2012, I served a true and correct copy of the foregoing pleading by electronic mail through the Court's CM/ECF system to all parties consenting to service through same, including to counsel for the SEC, the Defendants, and the Objectors.

Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

//s// Jay L. Krystinik
Jay L. Krystinik

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION, :
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 Plaintiff, :
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 v. :
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 DEREK A. NELSON, CAPITAL MOUNTAIN :
 HOLDING CORP., SYSTEMS XXI, ACT I, LLC :
 and SYSTEMS XXI, ACT II, LLC, :
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 Defendants, and :
 :
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 PLOUTEO, INC., HOMAIDE REAL ESTATE :
 SERVICES CORP., and RG RETIREMENT, INC. :
 :
 :
 Relief Defendants, :
 Solely for the Purposes of :
 Equitable Relief :

Civil Action No. 3:09-cv-02222-F

ORDER GRANTING RECEIVER’S MOTION FOR ORDER
(i) AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY; (ii) RELIEVING
THE RECEIVER FROM THE PROVISIONS OF 28 U.S.C. §§ 2001-2002.; AND
(iii) APPROVING RETENTION OF REAL ESTATE BROKER

Came on for consideration the Receiver’s Motion for Order (i) Authorizing the Sale of Certain Real Property; (ii) Relieving the Receiver from the Provisions of 28 U.S.C. §§ 2001-2002.; and (iii) Approving Retention of Real Estate Broker (the “*Motion*”) filed by Keith M. Aurzada as Receiver (the “*Receiver*”) for DEREK A. NELSON, CAPITAL MOUNTAIN HOLDING CORP., SYSTEMS XXI, ACT I, LLC and SYSTEMS XXI, ACT II, LLC, (“*Defendants*”), and PLOUTEO, INC., HOMAIDE REAL ESTATE SERVICES CORP., and RG RETIREMENT, INC. (“*Relief Defendants*”, and together with the Defendants, the “*Receivership Companies*”). Based upon a review of the Motion, and the pleadings on file, the Court finds and concludes that (a) the relief requested in the Motion is in the best interests of the

Receiver and his receivership estates; (b) proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and (c) good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion. Therefore, it is hereby **ORDERED** that:

- i. The Motion is **GRANTED** on a final basis.
- ii. The Receiver is authorized to sell that certain real property located in Texas and more particularly described in **Exhibit A** attached to the Motion (the "**Texas Property**").
- iii. The Receiver is authorized to sell the Texas Property pursuant to one or more listing agreements substantially in the form of the Residential Real Estate Listing Agreements Exclusive Right to Sell (collectively, "**Listing Agreement**") attached to the Motion as **Exhibit A**, which is hereby approved, and through the services of the broker identified therein ("**Broker**").
- iv. The Receiver may sell the Texas Property pursuant to the manner set forth in the Motion, notwithstanding the provisions of 28 U.S.C. §§ 2001-2002, which are hereby waived.
- v. The Receiver may sell parcels of the Texas Property to a buyer without further court approval so long as the Receiver files a notice of sale and no objections are filed within three (3) days of such notice. The notice of sale shall identify at minimum: (i) property to be sold; (ii) terms of sale; (iii) price to be paid; and (iv) the name of the buyer. If an objection is received, the Receiver will not sell such property until further order of the Court.

IT IS SO ORDERED.

SIGNED this 7th day of June, 2010.



 Royal Fergeson
 Senior United States District Judge