

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

SECURITIES AND EXCHANGE COMMISSION	§	
Plaintiff,	§	
	§	
	§	
v.	§	Civil Action No. 4:11-cv-655
	§	
JAMES G. TEMME, and	§	
STEWARDSHIP FUND, LP,	§	
Defendants.	§	

**MOTION FOR AUTHORITY TO SELL REAL AND PERSONAL PROPERTY AND TO
APPROVE SALES PROCEDURES AND MOTION TO RELEASE FUNDS DEPOSITED
INTO COURT REGISTRY**

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 Motion for Authority to Sell Real and Personal Property and to Approve Sales Procedures and Motion to Release Funds Deposited into Court Registry (the “Motion”). In support of the Motion, the Receiver would respectfully show the Court as follows:

I.

BACKGROUND

1. By this Motion, the Receiver seeks a Court Order authorizing the sale of certain assets of the Receivership Estate pursuant to the sales procedures described herein.

2. On October 14, 2011, the Securities and Exchange Commission instituted the above-captioned action, and the Receiver was appointed as receiver for the Receivership Entities through the Court's entry of the Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme [Dkt. No. 24]; Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities [Dkt. No. 25]; and Order Appointing Receiver Over James Temme [Dkt. No. 30] (together, the "Receiver Orders"). Pursuant to the Receiver Orders, the Receiver is to "immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 [Dkt. No. 24].

A. The Assets

3. Through his investigation, the Receiver determined that in July 2008, Harbour Portfolio I, LLC ("Harbour I") and Harbour Portfolio II, LLC ("Harbour II") attempted to purchase from the Receivership Entities 221 and 172 distressed real estate mortgages and corresponding notes. As part of those transactions, each of the mortgages should have been assigned to Harbour I and Harbour II (and the assignments recorded) and an allonge should have been executed for each note indicating that Harbour I and Harbour II were the new holders of the notes. Although the transactions closed in 2008, few, if any, of the mortgage assignments or allonges were ever executed or recorded. As a result, the Receiver claimed an interest in the remaining mortgages and notes owned by Harbour I and Harbour II.

4. Based on the Receiver's potential claims, Harbour I and Harbour II entered into settlement agreements with the Receiver [Dkt. No. 79]. Under the settlement agreements, Harbour I agreed to transfer its interest in eighty (80) mortgages and notes to the Receivership

Estate and Harbour II agreed to transfer its interest in thirty seven (37) mortgages and notes to the Receivership Estate.

5. The Receiver entered into a similar settlement with ER, LLC (“ER”), in which ER agreed to transfer to the Receiver eighteen (18) properties acquired from Receivership Entities [Dkt. Nos. 80 and 95].

6. The assets acquired from Harbour I, Harbour II, and ER have been serviced by Halo Companies, Inc. (“Halo”) since they were acquired by the Receiver.

B. The Sales Motion

7. On July 20, 2012, Lakeside Portfolio Management, LLC (“Lakeside”) submitted a Letter of Intent to the Receiver to buy 127 of the Harbour/ER assets for \$195,437.30 (the “Subject Assets”).¹ A list of the Subject Assets is attached hereto as Exhibit A. The sale price offered by Lakeside represented approximately 3.4 cents on the dollar of the outstanding principal balance of the Subject Assets. In the Receiver’s business judgment, the sale price offered by Lakeside was fair and reasonable and represented the highest and best offer received on the Subject Assets at the time.

8. As a result, on August 6, 2012, the Receiver filed a Motion for Authority Sell Properties to Lakeside Portfolio Management, LLC [Dkt. No. 103] (the “Lakeside Sale Motion”). The Receiver intended to close the transaction with Lakeside in August 2012. Based on certain investors’ objections to the Lakeside Sale Motion, including the Stewardship Receivership Claimants Association (the “Association”) and John Graves, the Receiver delayed the sale from August 2012 to December 2012 and continued marketing the Subject Assets.

¹ The Receiver’s investigation has revealed that one of the assets that was the subject of the Letter of Intent is owned by Harbour I. Specifically, 1301 Cumberland Street, Gadsden, Alabama. As a result, the Receiver does not have authority to transfer that property to Torok. The Subject Assets do not include 1301 Cumberland Street, Gadsden, Alabama.

9. Based on the continued objections of the Association and John Graves, the Receiver again delayed the sale and, eventually, the Lakeside Sales Motion was denied by the Court, subject to re-instatement [Dkt. No. 181].

C. Wingspan's Analysis

10. Since filing the Lakeside Sales Motion in August, the Receiver has met with investors (mostly members of the Association) to, among other things, resolve their objections to the sale of the Subject Assets.

11. During those meetings, the Association requested that the Receiver determine whether it is in the Estate's best interest to conduct an immediate outright sale of the Subject Assets or whether it is better to service the Subject Assets for a period of time and conduct a sale at a later date. The Association requested that the Receiver employ Wingspan Portfolio Advisors, LLC ("Wingspan") to make that determination. The Receiver retained Wingspan to perform the analysis requested by the investors [Dkt. No. 160].

12. The report prepared by Wingspan concludes that it is in the Estate's best interest to immediately sell the Subject Assets and that the proposed sales price of \$195,000 was fair and reasonable. As a result, the Receiver intended to move forward with a sale of the Subject Assets as soon as practicable.

D. Additional Offers to Purchase the Subject Assets

13. Since filing the Lakeside Sales Motion, the Receiver has continued to market the Subject Assets albeit without a broker or a public auction process. The Receiver has maintained contact with Lakeside, which is still interested in pursuing the sale.

14. Moreover, on February 26, 2013, the Receiver received a letter of interest from Dyck O'Neal, Inc. regarding the potential purchase of the Subject Assets. The Receiver has

provided Dyck O'Neal, Inc. with due diligence materials so that it can further evaluate the Subject Assets.

E. HP Debt Exchange Offers to Purchase the 127 Subject Assets

15. On November 27, 2012, the Receiver received a non-binding letter of intent from HP Debt Exchange, LLC ("HP") to purchase the Subject Assets for \$250,000 (the "Letter of Intent").

16. As with Lakeside and Dyck O'Neal, the Receiver informed HP that, although the Estate intends to sell the Subject Assets, it could not move forward with a sale until the Receiver resolved certain objections of the Estate's investors.

17. Despite the Receiver's clear statements that he was not moving forward with the sale of the Subject Assets, on or about March 25, 2013, the Receiver and his counsel were contacted by Mark Torok (attorney for, and principal of, Toroklaw Equity Management Company, LLC and Toroklaw Equity Management Fund I, LLC (collectively "Torok")) who suggested that he and his affiliated entities had purchased the Subject Assets from HP and its principal Christopher Ganter for \$450,000. Further investigation revealed that the assets purportedly sold to Torok were, in fact, the Subject Assets that were the subject of the Lakeside Sale Motion.

18. Neither Mr. Ganter nor HP had the authority from the Court or from the Receiver to sell the Subject Assets to Torok.

F. The Motion for Contempt

19. Based on the unauthorized purported sale of the Subject Assets by HP and Mr. Ganter, the Receiver filed a Motion for Order to Show Cause Why HP Debt Exchange, LLC and Christopher Ganter Should Not be Held in Contempt and Brief in Support (the "Motion for Contempt") [Dkt. No. 190]. The Motion for Contempt requested that the Court hold HP and Mr.

Ganter in contempt for purporting to sell assets of the Estate without authorization. The Receiver also requested an order requiring HP and Mr. Ganter to disgorge the \$450,000 payment received from Torok into the Court Registry.

20. Additionally, in an effort to minimize the harm to Torok and maximize the return for the Estate, the Receiver requested that the Court authorize the sale of the Subject Assets from the Estate to Torok in exchange for the \$450,000 paid into the Court Registry (subject to a public auction period).

21. On July 1, 2013, the Court held an evidentiary hearing on the Motion for Contempt and, subsequently, entered an Order Holding HP Debt Exchange, LLC and Christopher Ganter in Contempt [Dkt. No. 209] and a supplemental Order of contempt [Dkt. No. 210] (together, the "Contempt Orders").

22. The Contempt Orders require HP and Ganter to pay into the Court Registry the \$450,000 they received from Torok, but did not make a final determination regarding the sale of the Subject Assets to Torok. On July 26, 2013, HP and/or Ganter wired \$450,000 into the bank account for the Receivership Estate, which, in turn, deposited the funds into the Court Registry. *See* Notice of Receipt of Payment from Christopher Ganter and HP Debt Exchange, LLC [Dkt. No. 223] and Registry Funds Received from Stewardship Fund, LP in the amount of \$ 450000.00, Receipt #TXE800000339.

23. The Receiver believes that selling the Subject Assets is in the best interest of the Estate and that a sale to Torok will both maximize the return for the Estate and minimize the harm to Torok. As a result, the Receiver requests Court approval to sell the Subject Assets to Torok in exchange for the \$450,000 deposited into the Court Registry, subject to the sales procedures outlined below. Additionally, the Receiver requests the release of the \$450,000

deposited into the Court Registry to, and for the benefit of, the Receivership Estate, as set forth below.

II.

ARGUMENT

24. By this Motion, the Receiver requests that the Court authorize the sale of the Subject Assets² pursuant to 28 U.S.C. §§ 2001(a), 2002, and 2004 using the sales procedures described herein.

25. The Receiver believes that selling the Subject Assets as soon as practicable is in the Estate's best interest. As a result, the Receiver seeks Court approval of a sale of the Subject Assets to Torok, subject to an open bidding period and public auction.

26. To ensure that the Estate receives the highest possible price for the Subject Assets, the Receiver requests that the Court approve a thirty (30) day open bid period (the "Bid Period") that commences the day after Court approval of this Motion for sale of the Subject Assets. During the Bid Period, the Receiver will accept bids from any party that has an interest in acquiring the Subject Assets. The Receiver will not place any restrictions on who may bid on the Subject Assets, except having sufficient financing to close the transaction. Thus, investors may bid and purchase assets; however, the investors must bid in cash and will not be allowed to credit bid. Pursuant to the Request to Release Funds Deposited in the Court Registry below, the Receiver will consider Torok to have submitted a bid of \$450,000.

27. The Receiver will provide notice of the Bid Period and auction by: (1) serving a copy of this Motion and any order granting this Motion on all investors that have filed a proof of claim with the Receiver; (2) contacting all parties that have expressed an interest in purchasing

² As stated previously, the Subject Assets are 126 of the 127 assets that were the subject of the Lakeside Motion and the purchase and sale contract between Torok and HP (excluding 1301 Cumberland Street, Gadsden, Alabama).

the Subject Assets to determine whether they will outbid Torok, including Lakeside, Cienda Partners, and Dyck O'Neal, Inc.; (3) posting a notice of the Bid Period and auction at the courthouse on the first day of the Bid Period; and (4) publishing a notice of Bid Period and auction in the Wall Street Journal once a week for four (4) consecutive weeks. On the last day of the Bid Period, the Receiver will hold a public auction on the steps of the courthouse located at Federal Building, 101 East Pecan Street, Room 216, Sherman, Texas 75090 from 9:00 am until 12:00 pm (noon) CST. The Receiver will open the auction with the highest bid received during Bid Period (the "Opening Bid") and will accept any bids at the auction that exceed the Opening Bid. Pursuant to the Request to Release Funds Deposited in the Court Registry below, the Opening Bid will be from Torok for \$450,000 unless a higher offer is received during the Bid Period.

28. The sale of the Subject Assets will be conducted "AS IS – WHERE IS", and no warranties of any kind will be provided.

29. The Receiver also requests that he be allowed to sell the Subject Assets to the highest bidder at the auction without further approval of this Court so long as the Receiver files a notice of sale. The notice of sale shall identify at minimum: (i) the addresses for each of the Subject Assets; (ii) terms of sale; (iii) price to be paid; and (iv) the name of the buyer. If no objection is filed to the notice of sale within three (3) business days, the sale will be deemed approved, and the Receiver shall be entitled to close the transaction. This will allow the Receiver to minimize the cost of disposing of Receivership Estate assets.

G. Request for Release of Funds Deposited in Court Registry

30. The Receiver respectfully requests that the Court release the \$450,000 deposited by the Receiver into the Court Registry on the following conditions: (i) to the Receiver for the

benefit of the Receivership Estate if Torok is the highest bidder at the auction of the Subject Assets; or (ii) to Torok if Torok is not the highest bidder at the auction of the Subject Assets.

H. Request to Execute Assignments and Allonges on Behalf of Prior Mortgagees and Assignors

31. Additionally, the Receiver respectfully requests that the Court authorize him to execute any assignment, allonge, or other title curative documents needed to transfer title of the Subject Assets to Torok. As with most assets owned or serviced by the Receivership Entities, title documents and loan documents (including mortgage assignments and note allonges) for the Subject Assets are often incomplete, unrecorded, or otherwise incorrect, thus, creating gaps in title or incomplete records of ownership of mortgages and notes. The Receiver believes that performing title curative work and other documents paperwork on the Subject Assets will be necessary for Torok to receive value from the Subject Assets and prevent continued harm to the homeowners whose interest have been adversely effected by the Receivership Entities and to prevent the actions of the Receivership Entities from unduly restraining the alienation of such assets. The Receiver has agreed to perform title curative work for other parties that have reached agreements with the Estate. *See e.g.* Motion to Approve Agreement to Perform Title Curative Work [Dkt. No. 188].

32. As a result, the Receiver requests authority from the Court to execute any title documents, mortgage assignments, note allonges, or other loan or title documents on behalf of the current note and mortgage assignees for the Subject Assets. The Receiver has investigated the physical files and online records to determine the holder of record of each of those documents. Attached as Exhibit B is a chart showing each of the Subject Assets and the current assignee of the mortgage and note. The Receiver will provide notice of this Motion and any order granting the same for each assignee to allow them an opportunity to object or otherwise

respond to the Motion. If no objection is received, the Receiver requests that the Court give him limited authority to execute assignments of notes, allonges, and other title documents on behalf of the current assignees.

III.
RELIEF REQUESTED

WHEREFORE, the Receiver prays that, upon final consideration of this Motion, the Court authorize the sale of the Subject Assets to the highest bidder received under the sales procedures described above. Furthermore, the Receiver prays that the Court approve the procedure to sell the properties to a buyer without further Court approval so long as the Receiver files a notice of sale. Moreover, the Receiver requests that the Court Release the \$450,000 deposited in the Court Registry pursuant to the conditions described above.

Dated: August 19, 2013

BRYAN CAVE LLP

By: //s// Bradley J. Purcell
Keith Miles Aurzada
State Bar No. 24009880
Jay L. Krystinik
State Bar No. 24041279
Bradley J. Purcell
State Bar No. 24063965
2200 Ross Avenue, Suite. 3300
Dallas, Texas 75201
(214) 721-8000
(214) 721-8100 Fax
keith.aurzada@bryancave.com
jay.krystinik@bryancave.com
Counsel for Keith Miles Aurzada, Receiver

CERTIFICATE OF CONFERENCE

I have discussed the relief requested herein with David Reece of the Securities and Exchange Commission. The relief requested herein is not opposed by the Securities and Exchange Commission.

//s// Bradley J. Purcell
Bradley J. Purcell

CERTIFICATE OF SERVICE

I certify that on August 19, 2013 I served a true and correct copy of the foregoing pleading by United States First Class Mail, postage prepaid, to the following in accordance with the Federal Rules of Civil Procedure:

David Reece
United States Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street
Fort Worth, Texas 76102

John Helms, Jr.
Helms, Roberts & Diaz LLP
6060 N. Central Expressway, Suite 560
Dallas, Texas 75206
COUNSEL FOR JAMES G. TEMME

ALL INVESTORS THAT HAVE FILED A PROOF OF CLAIM IN THIS MATTER, WHICH ARE PROVIDED IN THE ATTACHED LIST.

ALL ASSIGNEES LISTED ON EXHIBIT B

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

//s// Bradley J. Purcell
Bradley J. Purcell