

**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: (i) ASSIGN LEASE; (ii) SELL REAL PROPERTY;
(iii) APPROVE SALES PROCEDURES; AND (iv) ENTER INTO LISTING
AGREEMENT AND REQUEST FOR SERVICE BY PUBLICATION**

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: (i) Assign Lease; (ii) Sell Real Property; (iii) Approve Sales Procedures; and (iv) Enter into Listing Agreement and Request for Service by Publication (the “Motion”). In support of the Motion, the Receiver would respectfully show the Court as follows:

I.
BACKGROUND

1. 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 specifically directed and authorized to perform the following ... collect, marshal, and take custody, control, and possession of all ... assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership Estate, [including] lands [and] leases.” Order Appointing Receiver Over James G. Temme ¶ 4 [Dkt. No. 30].

2. Through his investigation, the Receiver has discovered that Mr. Temme and his wife Laura Temme own a single-family residence located on Bonham Lake, commonly known as 8700 Lake Drive, Bonham, Texas 75418 (the “Lake House”).¹

3. As is common with lakefront properties in Texas, the real property on which the Lake House is located is owned by the City of Bonham (the “Property”), which has granted an assignable long term lease of the Property to the owner of the Lake House. A title report obtained by the Receiver indicates that Mr. and Ms. Temme are the current leasees of the Property and the grantees of a general warranty deed covering all improvements on the Property, including the Lake House. A true and correct copy of the Title Report is attached as Exhibit A to the Declaration of Keith M. Aurzada in Support of the Motion for Authority to: (i) Assign Lease; (ii) Sell Real Property; (iii) Approve Sales Procedures; and (iv) Enter into Listing Agreement and Request for Service by Publication (the “Aurzada Declaration”) attached hereto as Exhibit 1.

¹ The Lake House constitutes part of Lot No. 7 of the Oakridge Subdivision to Lake Bonham, Fannin County, Texas.

4. Additionally, the Fannin County Appraisal District lists Mr. and Ms. Temme as the current owners of the Lake House. A true and correct copy of the Fannin County Appraisal District Report is attached as Exhibit B to the Aurzada Declaration.

5. Despite the Title Report and Fannin County Appraisal District Report, Mr. and Ms. Temme (through counsel) have indicated that they no longer own the Lake House and have provided the Receiver with a copy of a partially handwritten agreement to sell the Lake House dated April 17, 2011 (the "Sales Agreement"). A copy of the Agreement to Sell Real Estate, as provided to the Receiver, is attached as Exhibit C to the Aurzada Declaration.

6. The Sales Agreement purports to sell and/or assign all interests in the Lake House and Property to the "B and B Family Trust" for a cash payment of \$65,000. The Sales Agreement also purports to grant Mr. and Ms. Temme a leasehold interest in the Lake House for a period of three years after the closing date of April 17, 2011. Specifically, the Sales Agreement provides that "Buyer will lease the property back to seller for a period of 3 years from the date of closing. Terms to be detailed in official leasing contract between the parties." *See Sales Agreement ¶ 24.*

7. The signature of the buyer on the Sales Agreement is nearly illegible but appears to say "Nick Brower." *See Sales Agreement at p. 4.* The Receiver has attempted to confirm this name with Mr. Temme but was only able to confirm the last name is "Brower." *See Email from John Helms to Bradley Purcell dated May 20, 2013, attached as Exhibit D to the Aurzada Declaration.*

8. The Receiver has conducted a diligent search of Mr. Temme's laptop, known email accounts, the physical files from the Receivership Entities, the server for the Receivership Entities, and has conducted multiple telephone interviews with Mr. Temme and his counsel

related to the Lake House. Despite a diligent investigation, the Receiver has found no evidence that the Lake House or Property were sold by the Temmes, other than the partially handwritten Sales Agreement provided by Mr. Temme. The Receiver has not located any copies of the Sales Agreement other than the one provided by Mr. Temme. The Receiver has not located any communications regarding a sale of the Lake House, including any communications with a broker or real estate agent, attorney, escrow agent, or anyone with the last name Brower or any communications with or related to the B and B Family Trust. The Receiver has not located anyone in Fannin County with the last name Brower and Mr. Temme claims that he does not have any contact information for Mr. Brower or anyone with the B and B Family Trust. Furthermore, neither the Sales Agreement, nor any other document evidencing a transfer of the Lake House or Property have been recorded in Fannin County. Additionally, neither the B & B Family Trust or anyone else paid the ad valorem taxes due on the Lake House for 2012. In short, the Receiver has found **no** evidence indicating that the Lake House was sold by the Temmes or that anyone else is asserting an interest in the Lake House.

9. Moreover, in 2011 the Temmes took out a loan for approximately \$5,861.05 to pay back taxes owed to Fannin County for the Lake House. *See* Title Report, attached as Exhibit A to the Aurzada Declaration. The loan is secured by a deed of trust on the Lake House. *See id.* The loan was not paid off by the Temmes as part of the purported sale, no payments have been made by B & B Family Trust or anyone else, and the loan is now in in default.

10. Based on the lack of supporting evidence, the Receiver does not believe that the Sales Agreement is genuine and, therefore, believes that the Lake House is an asset of the Receivership Estate. Accordingly, by this Motion, the Receiver seeks to sell the Lake House and assign the lease to the Property for the benefit of the Estate.

11. The Receiver has determined the necessity of employing a real estate agent located near Bonham, Texas to assist with the sale of the Lake House and desires to employ Jo Carolyn Hicks with Century 21 Realtors. Ms. Hicks is experienced in real estate sales in Fannin County and has previously sold properties located on Lake Bonham. Ms. Hicks has been a real estate agent for twenty nine (29) years in the Bonham/Sherman area and is a certified residential real estate specialist.

12. In the Receiver's opinion, Ms. Hicks is a duly qualified real estate agent and is qualified to sell the Lake House for the highest and best price on behalf of the Estate. A copy of the proposed listing agreement between Ms. Hicks and the Receiver is attached as Exhibit E to the Aurzada Declaration.

13. To the best of the Receiver's knowledge, Ms. Hicks and Century 21 do not hold or represent an interest adverse to the Receivership Estate and are disinterested for the purpose of representing the Receiver in this proceeding.

14. Compensation for services rendered in this proceeding by Ms. Hicks shall be based on the consideration received in the sale of the Lake House. The proposed listing agreement contemplates that Ms. Hicks will receive a commission equal to 6% of the consideration received by the Receivership Estate for the sale of the Lake House. The Receiver believes that this rate is consistent with the industry standard for these types of transactions and is reasonable.

15. Ms. Hicks has prepared a Broker's Opinion of Value, which provides a suggested sales price for the Lake House of \$125,000. *See* p. 19 of the Seller Presentation, a true and correct copy of which is attached as Exhibit F to the Aurzada Declaration. Upon approval of this Motion, the Receiver will direct Ms. Hicks to publicly list the Lake House for sale for

\$125,000.00 on the Multiple Listing Service, in the local newspapers, and in all other forums to which she has access.

16. The Receiver seeks authority from the Court to market the Lake House for an initial period of three months to locate potential buyers. At the end of the three month period, the Receiver intends to sell the Lake House to the highest bidder. If no offers are received, the Receiver will file an Amended Motion seeking additional time to market the Lake House. The Receiver will not place any restrictions on who may bid on the Lake House, except having sufficient financing to close the transaction within a reasonable time. Thus, investors may bid and purchase the Lake House; however, the investors must bid in cash and will not be allowed to credit bid.

II.

ARGUMENT

A. Sale of the Lake House and Assignment of the Lease to the Property

17. By this Motion, the Receiver requests that the Court authorize the sale of certain real property of the Receivership Estate known as the Lake House and assign the lease to the Property.

18. The Receiver also requests, by this Motion, that the Court waive the provisions of 28 U.S.C. §§ 2001(a) and 2002, which provide for the sale of the assets pursuant to a foreclosure-type or public auction process. Further, the Receiver seeks waiver of the provisions of 28 U.S.C. § 2001(b) applying to private sales, including requiring certain appraisals, newspaper publications for the private sale, and confirmation of the private sale.²

² Although there is no controlling authority regarding the Court's ability to waive the provisions of 28 U.S.C. §§ 2001(a) and 2002, the Receiver has identified several courts that have done so. *See e.g., Securities and Exchange*

19. In accordance with the Receiver's business judgment, the waivers of Sections 2001(a) and 2002 are appropriate. The most likely way for the Receiver to realize the highest price for the Lake House is through the commercially reasonable and customary method of listing the properties with a real estate agent that will publicly market the property through all available channels. Furthermore, the Receiver believes that listing and selling the Lake House through Ms. Hicks, is the best method to obtain the highest and best price for the Lake House without having to incur additional expenses in complying with Section 2001(b).

20. The Receiver also requests that he be allowed to sell the Lake House and assign the lease to the Property to a buyer 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) terms of sale; (ii) price to be paid; and (iii) the name of the buyer. If no objection is filed to the notice of sale within five (5) 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.

B. Request for Service by Publication

21. Additionally, the Receiver seeks an order from the Court authorizing service of this Motion by publication because the name and address of the B & B Family Trust is unknown.

22. The Receiver and his counsel have conducted a diligent investigation and have been unable to locate any information regarding the purported purchaser of the Lake House. *See* Aurzada Declaration. As a result, pursuant to Rule 71.1 of the Federal Rules of Civil Procedure,

Comm'n v. Kirkland, No 6:06-cv-183, 2009 WL 14390874, at *2 (M.D. Fla. May 22, 2009); *Huntington Nat. Bank, N.A. v. Big Sky Dev. Flint, LLC*, No. 10-10346, 2010 WL 3702361, at * 7 (E.D. Mich. Sept. 16, 2010); *but see Securities and Exchange Comm'n v. T-Bar Resources, LLC*, No. 3:07-cv-1994, 2008 WL 4790987, at *2-3 (N.D. Tex. Oct. 28, 2008) (finding that such waiver was not appropriate). To the extent the Court believes that it may not waive 28 U.S.C. §§ 2001(a) and 2002, the Receiver will modify this Motion.

the Receiver seeks to provide notice of the sale of the Lake House to any parties with a potential interest in the Lake House by publishing a notice in the Fannin County Leader—the newspaper of record for Fannin County (the county in which the Lake House is located)—for three (3) consecutive weeks.³ This will serve the dual purpose of providing notice of the sale to any party with an interest in the Lake House, as well as advertising the sale publicly.

III.

RELIEF REQUESTED

WHEREFORE, the Receiver prays that, upon final consideration of this Motion, the Court authorize: (i) the sale of the Lake House and assignment of the lease to the Property to the highest bidder; (ii) waiver of the requirements of 28 U.S.C. §§ 2001(a) and 2002; (iii) the retention of Ms. Hicks as real estate agent for the Estate pursuant to the terms of Exhibit E to the Aurzada Declaration; and (iv) service of this Motion by publication pursuant to Rule 71.1 of the Federal Rules of Civil Procedure. 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.

³ Although the Receiver is not seeking a condemnation of the Lake House, the Receiver believes that the procedures set forth in Rule 71.1 provide the greatest protections for any persons with a purported interest in the Lake House.

Dated: August 19, 2013

BRYAN CAVE LLP

By: //s// Bradley J. Purcell

Keith Miles Aurzada

State Bar No. 24009880

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Counsel for Keith Miles Aurzada, Receiver

CERTIFICATE OF SERVICE

I certify that on August 12, 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

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

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

Moreover, a notice of the foregoing will be published in the Fannin County Leader once a week for at least three (3) weeks beginning on the first Thursday after this Motion is filed.

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

CERTIFICATE OF CONFERENCE

I certify that on or before August 19, 2013, I conferred with David Reece of the SEC regarding the Agreement and the relief requested in the foregoing Motion and that the SEC is not opposed to said relief.

///s// Bradley J. Purcell

Bradley J. Purcell

CERTIFICATE OF COMPLIANCE WITH RULE 71.1

I certify that, pursuant to Rule 71.1 of the Federal Rules of Civil Procedure, and as set forth above in more detail, I conducted a diligent inquiry to locate the residence or other contact information for the B and B Family Trust or any person named Nick Brower. I was unable to locate any person with the name Nick Brower within Fannin County or Bonham, Texas and was unable to locate any information related to the B and B Family Trust in the State of Texas.

///s// Bradley J. Purcell

Bradley J. Purcell