

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 3:22-cv-00487-TJC-MCR

MICHAEL RANDO, VALERIE
RANDO, PROSPERITY TRAINING
TECHNOLOGY LLC, ELITE
CUSTOMER SERVICES, LLC,
DIGITAL BUSINESS SCALING
LLC, FIRST COAST
MATCHMAKERS INC.,
FIRST COAST MATCHMAKERS
LLC, FINANCIAL CONSULTING
MANAGEMENT GROUP LLC,
RESOURCE MANAGEMENT
INVESTMENTS, LLC,

Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE SALE OF
PERSONAL PROPERTY (LUXURY VEHICLE)**

Maria M. Yip, as Receiver over the assets of the corporate defendants (the "Receiver" and the "Receivership" or "Receivership Estate"), moves the Court to approve the sale of a certain luxury automobile, free and clear of any and all liens, encumbrances, and claims. As explained below, the Receiver believes the proposed sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves

for relief from the requirements of 28 U.S.C. §§ 2001 and 2004 in connection with the sales.

BACKGROUND

At the request of the FTC, on May 3, 2022, the Court entered a temporary restraining order and asset freeze (“TRO”) and an order appointing Maria Yip as Temporary Receiver over the corporate defendants in this case (Doc. 12). A preliminary injunction hearing was scheduled for September 21, 2022, but the parties jointly moved for the entry of a Stipulated Preliminary Injunction on August 31, 2022 (Doc. 89) which was entered by this Court on September 27, 2022 (“Injunction Order”)(Doc. 101). In the Injunction Order, the Court specifically noted that Ms. Yip was to continue as Receiver over the corporate defendants.

Pursuant to the Injunction Order, the Receiver is to “take exclusive custody, control, and possession of all Assets of . . . any Receivership Entity” and to “conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities, and perform all acts necessary or advisable to preserve the value of those Assets.” (Doc. 101 at ¶XIV(B) and (D)). One such Asset is a 2016 Lamborghini Aventador LP770-4 (VIN: ZHWUC1ZD3GLA04647), a luxury vehicle leased by Receivership Entity Prosperity Training Technology. This vehicle was driven by Mr. Rando. Counsel for the Receiver and the Rando Defendants negotiated the surrender of the car by Mr. Rando to the Receiver

on September 26, 2022. Although, the vehicle was in good condition, the leather on the dashboard had damage and has to be replaced, the bumper needs to be repainted and the catalytic converter and muffler had been removed and need to be replaced by the buyer.

The vehicle is leased through VA Leasing. The Receivership continues to incur monthly payments of \$4,568 to stay current with the VA Leasing agreement. The Receiver requests that the Court approve the sale of the vehicle so that she may proceed with the liquidation of this Receivership asset as soon as possible to avoid incurring continued lease payments. The purchase of the leased vehicle will provide the Receivership Estate with approximately \$62,000.

To determine the value of the vehicle, the Receiver marketed it to multiple potential purchasers with expertise in the luxury and exotic car industry: (1) Prestige Imports Lamborghini Miami (Miami) (“Prestige”); (2) Formula Sports Cars (Miami) (“Formula”); (3) Braman Miami (Miami); (4) Ocean Automotive Group (Miami); and (5) The Collection (Miami). Of these potential purchasers, Prestige and Formula submitted offers in writing. The others prospective purchasers expressed interest but ultimately did not submit an offer. Prestige which is the oldest Lamborghini franchise in the United States had the higher offer of \$295,000 based on the condition of the vehicle.

The approximate payoff on the lease agreement is \$233,722. It is anticipated that the sale, if approved by the Court, will net approximately \$62,000 to the Receivership Estate.¹ The Receiver requests approval to sell the Lamborghini to Prestige to avoid incurring additional expenses associated with continued ownership

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SALE OF THE LAMBORGHINI IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter

¹ This does not take into account transportation and clutch testing costs of \$1,300.

such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Given these principles, the Court should approve the proposed sale because it provides significant savings (and thus, a net benefit) to the Receivership by avoiding seller and auction fees and the avoidance of any further transport fees. After reviewing the offers and the condition of the vehicle, the Receiver has concluded that selling the Lamborghini in this manner will provide the greatest recovery for the Receivership Estate.

II. THE REQUIREMENTS OF 28 U.S.C. §§ 2001 AND 2004 SHOULD BE WAIVED.

Pursuant to 28 U.S.C. § 2004, personal property sold under a federal court order should be sold in accordance with 28 U.S.C. § 2001, which governs the sale of real property, unless a court orders otherwise. 28 U.S.C. § 2001 imposes relatively onerous and costly procedures, including a hearing with notice to “all interested parties ... by publication or otherwise as the court directs;” court appointment of three independent appraisers to value the property; and publication of the sale terms in at least one newspaper. *See* 28 U.S.C. § 2001(b). Thus, “*unless the Court orders otherwise*” pursuant to Section 2004, Section 2001(b) requires a court to appoint three disinterested persons as appraisers and to direct in which newspaper a notice of proposed sale be published prior to confirmation of a sale. Here, using the discretion afforded by Section 2004, the Court should “order otherwise” in this instance with regard to (i) the need for any appraisals for any of the vehicles; and (ii) the publication in newspapers of notice of any sale. The Court’s authority to deviate from the requirements of Section 2004 is supported by caselaw and is in the best interests of the Receivership Estate.

The Receiver believes she is able to adequately evaluate the value of the vehicle, and that full compliance with Section 2004 and Section 2001(b) would result in the unwarranted expenditure of funds and resources of the

Receivership Estate. Indeed, compliance with the statutory requirements would partially offset the expected net sale proceeds. Strict compliance with Section 2004 would require the Receivership Estate to incur additional expenses associated with storing, insuring, and maintaining the vehicle that is unlikely to be recouped by a potentially higher sale price at auction at an unknown date in the future.

The waivers requested by the Receiver routinely occur in enforcement actions and receiverships, including those in this district. *See FTC et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale procedures of 28 U.S.C. § 2001); *SEC v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds. Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived.

III. TO THE EXTENT THAT LIENS ATTACH TO THE VEHICLE, THE RECEIVER REQUESTS AN ORDER ALLOWING HER TO SELL THE VEHICLE FREE AND CLEAR OF ANY SUCH LIENS OR ENCUMBRANCES.

As noted above, the Lamborghini has a payoff of approximately \$188,000 to VA Leasing, which is a significant portion of the expected sale price. The Receiver has agreed to use the proceeds of any sale to pay applicable lien holders in the appropriate amount. However, because buyers of automobiles at auction expect that vehicles will be sold without any liens or encumbrances, the Receiver requests an Order from the Court allowing her to sell the vehicle free and clear of all liens, claims and encumbrances. Additionally, the Receiver requests that the Court's Order direct any applicable state motor vehicle regulatory agency to issue title for the vehicle upon the purchaser providing sufficient proof of sale.

The relief sought falls squarely within the Court's powers and is in the best interests of the Receivership and the Lamborghini's creditors. The relief is also consistent with precedent, which establishes that a court may authorize the sale of property free and clear of all claims, liens, and encumbrances. *See, e.g., Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *People's-Pittsburgh Trust Co. v. Hirsch*, 65 F.2d 972, 973 (3d Cir. 1933). In part, the Court has this authority because when a court of competent jurisdiction takes possession of property through its officers—like this Court has done with

the Lamborghini in connection with the Receivership—it has jurisdiction and authority to determine all questions about title, possession, and control of the property. *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737-38 (1931). Importantly, the Receiver is not asking the Court to extinguish, overrule, or otherwise impair any creditor’s claim. She is only asking the Court to order that the vehicle be sold free and clear of liens, claims and encumbrances, and then allow the Receiver to use the proceeds of the sales to satisfy the liens, to the extent applicable.

Given the foregoing efforts and the existence of a ready and able method of sale, the Receiver believes that completing the sale of the Lamborghini, without obtaining any appraisals, publishing a formal legal notice, or holding a hearing, is commercially reasonable and will obtain the largest possible recovery for the Receivership Estate.

CONCLUSION

The Receiver moves the Court for entry of an order granting the Receiver’s unopposed motion to sell the Lamborghini to Prestige for \$295,000, free and clear of all claims, liens, and encumbrances and to waive the valuation, notice and hearing requirements of 28 U.S.C. §§ 2001 and 2004.

LOCAL RULE 3.01(g) CERTIFICATION

Undersigned counsel for the Receiver has conferred with counsel for the FTC and Defendants and there is no objection to the relief sought.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

kdonlon@jclaw.com

JOHNSON, CASSIDY, NEWLON &
DECORT P.A.

3242 Henderson Blvd., Ste 210

Tampa, FL 33609

Tel: (813) 291-3300

Fax: (813) 324-4629

Attorneys for Receiver Maria M. Yip

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2022, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court through the CM/ECF system, which served counsel of record.

/s/ Katherine C. Donlon