

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

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

v. §

Civil Action No. 3:05-CV-1328-L

MEGAFUND CORPORATION, STANLEY A. §
LEITNER, SARDAUKAR HOLDINGS, IBC., §
and BRADLEY C. STARK, CIG, LTD., and §
JAMES A. RUMPF, Individually and d/b/a §
CILAK INTERNATIONAL, §

Defendants, §

and §

PAMELA C. STARK, §

Relief Defendant. §

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

SEP 23 2005

CLERK, U.S. DISTRICT C
By Deputy

**RECEIVER'S UNOPPOSED MOTION TO SELL REAL PROPERTY AT PRIVATE
SALE AND TO APPOINT APPRAISERS AND BRIEF IN SUPPORT**

TO THE HONORABLE SAM A. LINDSAY, UNITED STATES DISTRICT JUDGE:

COMES NOW, Michael J. Quilling, ("Receiver"), the Receiver appointed by this Court in these proceedings and files this his Unopposed Motion to Sell Real Property at Private Sale and to Appoint Appraisers and in support of such would respectfully show unto the Court as follows:

FACTUAL BACKGROUND

1. On July 1, 2005 the United States Securities and Exchange Commission ("SEC") initiated these proceedings and, in connection therewith, sought the appointment of a receiver. On July 5, 2005 the Court issued an Order appointing Michael J. Quilling Receiver as to the Defendants and the Equity Relief Defendants named in the Complaint at that time. On July 18, 2005 the SEC filed an Amended Complaint and sought to add other individuals and entities to the receivership.

On July 19, 2005 the Court issued an Amended Order Appointing Receiver. One of the entities to which the Receivership Order applies is CILAK International and its related entities, CILAK Properties I and CILAK Properties II, all of which are owned and controlled by James Rumpf (collectively "CILAK").

2. Subsequent to his appointment, the Receiver took control and possession of three houses in which CILAK has an interest located in Denton County, Texas (collectively, the "Properties"). The street addresses of the Properties are: (1) 110 Eagles Nest Circle, Argyle, Texas 75077; (2) 3405 Pecan Meadows Drive, Flower Mound, Texas 75029; and (3) 2608 Gentle Drive, Flower Mound, Texas 75022.

3. CILAK purchased the Eagles Nest Property on April 15, 2005 for \$426,900.00, the Pecan Meadows Property on May 27, 2005 for \$327,500.00, and the Gentle Drive Property on June 2, 2005 for \$680,000.00.

4. In that the money used by CILAK to purchase each of the Properties is traceable to monies received from investors, the Properties constitute a receivership asset within the meaning of the Receivership Order. To the best knowledge of the Receiver, there are no outstanding liens, claims, or encumbrances with respect to the Properties other than possibly property taxes for 2005.

5. As part of his duties, and pursuant to 28 U.S.C. § 2001(b), the Receiver requests that he be allowed to market and sell the Properties¹ by virtue of a private sale and that in connection therewith, the Court appoint three disinterested persons² to appraise the Properties.

¹ Subject to Court approval to be sought by virtue of a separate Motion. A buyer has already been located but the requirements addressed in this Motion must be satisfied before the sale is brought before the Court.

² In anticipation of filing this Motion, the Receiver has hired three appraisers, Leonard Appraisal and Consulting, Apex Valuation and The Wilson Group. The appraisals will cost between \$300.00 to \$450.00 each.

ARGUMENTS AND AUTHORITIES

6. The ultimate purpose of a receivership is to provide a vehicle through which assets can be held, liquidated and distributed to the particular beneficiaries of the receivership. In this instance, the beneficiaries are the creditors and investors of CILAK. Allowing the Properties to be sold by virtue of private sales will both further and expedite the process. It will also allow the receivership estate to avoid ongoing liabilities for taxes, insurance, and maintenance.

7. A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. *SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978). *See SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)(court overseeing a receivership is accorded "wide discretionary power" in light of "the concern for orderly administration"). A primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors. *See SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9th Cir. 1986).

8. To guide courts in this purpose, 28 U.S.C. § 2001 governs the sale of real property by order of court by both public and private sale. Subsection (a) sets out the terms of a public sale and Subsection (b) sets out the procedure for a private sale. Subsection (b) provides as follows:

After a hearing, of which notice to all parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof *at private sale* for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will

be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property . . . No private sale shall be confirmed at a price less than two-thirds of the appraisal value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale (emphasis added).

Taken in its entirety, section 2001 provides safeguards to prevent the sale of realty through the use of unfair price or value procedures.

9. The district court has wide discretion in judging whether a receiver's sale is fair in terms and result and serves the best interests of the estate. *Fleet National Bank v. H&D Entertainment, Inc.*, 96 F.3d 532 (1st Cir. 1996), citing *United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7th Cir. 1985) and *United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir.), cert. denied, 391 U.S. 966, 88 S.Ct. 2034 (1968). The court has broad discretion in setting the terms of conditions of a sale under 28 U.S.C. § 2001. *United States v. Hundwardsen*, 39 F.Supp.2d 1157 (N.D. Iowa 1999), citing *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3rd Cir.), cert. denied, 391 U.S. 966, 88 S.Ct. 2034 (1968); see *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973). The court must decide whether, based on the record made by the parties, the best interest of the estate will be served by a public or a private sale. *Id.* However, section 2001(b) "limits the receiver's ability to sell foreclosed property at a private sale for an unfair price" by setting in place appraisal procedures and acceptable price limits. *United States v. Stonehill*, 83 F.3d 1156 (9th Cir. 1996). Section 2001

“contemplates compliance with certain procedures designed to protect the best interest of the estate”
Tanzier v. Huffines, 412 F.2d 221 (3rd Cir. 1969).

10. In general, the court has broad discretion to set the terms of a public sale; whereas it must generally follow the procedures in place for a private sale. *See Tanzier v. Huffines*, 412 F.2d 221 (3rd Cir. 1969)(federal statute expresses preferential course to be followed in connection with a court authorized sale of *personal property* and district court should not order otherwise except *under extraordinary circumstances*). In cases involving the private sale of realty, the courts have consistently adhered to the procedures outlined in section 2001(b). *See United States v. Garcia*, 474 F.2d 1202 (5th Cir. 1973)(court scrupulously adhered to statutory requirements of section 2001 for judicial sale of realty); *U.S. v. “A” Manufacturing Company*, 541 F.2d 504 (5th Cir. 1976)(affirming court confirmation of realty sale for greater price than highest appraisal value). Consequently, broad discretion of the court does not include bypassing the specific procedures set out in section 2001(b). To bypass the stringent requirements of 2001(b), the court can order a public sale under 2001(a) and set the terms and conditions as it so desires.

11. In order for the Receiver to sell the Properties in a private sale he must first obtain permission from the Court to do so and then he must comply with 28 U.S.C. § 2001, which provides in part that the Court appoint three disinterested persons to appraise the Properties and that confirmation of sale of the Properties be at a price no less than two-thirds of the appraised value. In addition, the statute provides that the terms of the sale shall be published in a newspaper of general circulation as the Court directs at least ten (10) days before confirmation of the sale.

12. Accordingly, the Receiver respectfully requests that upon final consideration of this matter that he be permitted to retain the services of three disinterested persons to appraise the Properties and that he be authorized to market the Properties for private sale. After the appraisals

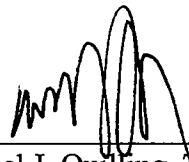
are obtained the Receiver will file a motion to actually sell the Properties and to publish the proposed sale in the appropriate media.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final hearing and consideration of this matter that the Court authorize him to retain the services of three appraisers and to offer the Properties for private sale, and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By:

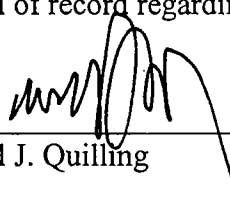


Michael J. Quilling, Texas Bar No. 16432300
D. Dee Raibourn, III, Texas Bar No. 24009495

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

I certify that I have consulted with all counsel of record regarding this motion and none of them oppose the motion.



Michael J. Quilling

CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of September, 2005, a true and correct copy of the above and foregoing Motion was served, via first class mail, with full and proper postage prepaid thereon, to:

Stephen J. Korotash Securities and Exchange Commission 801 Cherry Street, Suite 1900 Fort Worth, Texas 76102	Scott Baker 10830 North Central Expressway Suite 475, B4 Dallas, Texas 75231
Jeffrey Henderson Henderson & Lyman 175 West Jackson Boulevard, Suite 240 Chicago, Illinois 60604	CIG, Ltd. c/o James Rumpf 1802 Pleasant Valley Drive, Suite 100-149 Garland, Texas 75040
James Rumpf, Individually and d/b/a CILAK International 1802 Pleasant Valley Drive, Suite 100-149 Garland, Texas 75040	Steve Smoot Smoot Law Firm, P.C. 4545 Mt. Vernon Houston, Texas 77006



Michael J. Quilling