
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION, Case No: 11-cv-00574-MJD-FLN

Plaintiff(s)

v.

JASON BO-ALAN BECKMAN and
THE OXFORD PRIVATE CLIENT
GROUP, LLC,

Defendant(s)

And

HOLLIE BECKMAN,

Relief Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S
MOTION TO CONFIRM RELEASE OF PALM CITY PROPERTY
FROM RECEIVERSHIP AND ASSET FREEZE ORDER**

INTRODUCTION

To further the objectives of the Receivership and prevent a drain on the limited funds available, the Receiver respectfully requests that the Court enter an Order granting the Receiver's Motion to confirm the release of the real property located at 752 SW Squire Johns Lane in Palm City, Florida, from both the Receivership and the Court's

Asset Freeze Order (Court File No. 9), thereby returning the property to the custody, control and possession of Jason Bo-Alan and Hollie Beckman.

FACTS

On November 23, 2009, this Court appointed R.J. Zayed of Carlson, Caspers, Vandenburg and Lindquist as Receiver for Trevor Cook, Patrick Kiley and several entities controlled by them. *See Order Appointing Receiver*, 09-cv-3333 (“SEC” case), Docket No. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009). Part of the Receiver’s duties include “to take custody, control and possession of all the funds, property, premises, leases and other assets of or in the direct or indirect control of the Receiver Estates, to manage, control, operate and maintain the Receiver Estates, to use income, earnings, rents and profits of the Receiver Estates . . .” *Second Amended Order Appointing Receiver*, SEC Docket No. 68, at 3.

On March 8, 2011, this Court appointed R.J. Zayed of Carlson, Caspers, Vandenburg and Lindquist as Receiver Jason Bo-Alan and Hollie Beckman and all entities under their control, including The Oxford Private Client Group LLC. *See Order Appointing Receiver*, 11-cv-00574 (“Beckman” case), Docket No. 10, at 2 (Mar. 8, 2011). Also on March 8, 2011, this Court issued an Order freezing all assets of the Defendants and Relief-Defendant, including the real property located at 752 SW Squire Johns Lane in Palm City, Florida (“Palm City Property”). *See Order Imposing Asset Freeze And Other Ancillary Relief And Setting Hearing On Motion For Preliminary Injunction*, Beckman Docket No. 9, at 6 (Mar. 8, 2011) (“Asset Freeze Order”).

Under the *Order Appointing Receiver*, the Receiver has the power to determine the nature, location and value of all assets and property of the Receiver Estates. *Order Appointing Receiver*, Beckman Docket No. 10, ¶ I(A). The Receiver is also empowered to take custody, control and possession of the property and premises of the Receiver Estates. *Id.*, ¶ I(C). Pursuant to the Court's Orders, the Receiver inspected the Palm City Property and ascertained its present value. *See Asset Freeze Order*, at 6. In support of its motion for an asset freeze order, the SEC determined the Palm City Property had negative equity. *See Declaration of Luz M. Aguilar*, Beckman Docket No. 4, ¶ 5, Ex. 4(D) (Mar. 7, 2011) ("Aguilar Declaration"); (Declaration of Brian Hayes in Support of Receiver's Motion to Confirm Release of Palm City Property from Asset Freeze Order ("Hayes Declaration"), ¶ 8, Ex. D).

This Court's *Order Appointing Receiver* also directs the Receiver to "take such action as necessary and appropriate to prevent the dissipation of any funds or assets or for the preservation of any such funds and assets of the Receiver Estates." *Order Appointing Receiver*, Beckman Docket No. 10, ¶ I(G). To that end, the Receiver released the Palm City Property from the Receivership and the Court's Asset Freeze Order on March 25, 2011. (Hayes Decl., ¶ 5, Ex. A) The Receiver hereby seeks an Order from the Court confirming the release of the Palm City Property from both the Asset Freeze Order and the Receivership to prevent further dissipation of funds and to preserve the value of the remaining assets and funds of the Receivership.

ARGUMENT

The purpose of this Receivership is the marshalling, preserving, accounting for and liquidating the assets of Trevor Cook, Bo Beckman and the other Defendants and Relief Defendants. *See Ex Parte Statutory Restraining Order*, No. 09-cv-3332 (“CFTC” case), Docket No. 12, at 7 (Nov. 23, 2009). To accomplish this mandate, the Receiver must take exclusive custody, control and possession of all assets of the Receivership wherever situated. *Order Appointing Receiver*, Beckman Docket No. 10, ¶ I(C); *see also Order Appointing Receiver*, Beckman Docket No. 10, § V (allowing the use of the Receivership account opened in *SEC v. Cook et al.* for recovered assets and paying fees and other expenses relating to *SEC v. Beckman et al.*).

This Court’s Orders appointing the Receiver authorize the Receiver to bring legal actions based on law or equity in any state, federal, or foreign court that he deems necessary to preserve or increase the assets of the Receivership or to carry out his duties as Receiver. *Id.* ¶ I(D); *see also Order Appointing Receiver*, SEC Docket No. 13, ¶ I(D). The Receiver must also take such action as necessary and appropriate to prevent the dissipation or concealment of any funds or assets or for the preservation of any such funds and assets of the Receivership. *Order Appointing Receiver*, Beckman Docket No. 10, ¶ I(G); *see also Order Appointing Receiver*, SEC Docket No. 13, ¶ I(G).

Further, one of the Receiver’s primary duties is to maximize distributions to defrauded investors and other claimants. *See Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver’s “object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors”); *SEC v. TLC Invs. & Trade Co.*, 147 F.

Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004).

Federal Courts have broad powers and wide discretion to determine relief in an equity receivership, including the authority to authorize the sale or transfer of real estate within a receivership. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992). Similarly, a common law equity receiver has the power to dispose of property of the receivership when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). When a receivership asset has become a drain upon the receivership as a whole, the district court has broad discretion to authorize the receiver to abandon the asset so as to preserve the receivership as a whole. *See Denver & Rio Grande W. R.R. Co. v. Comm'r*, 32 T.C. 43, 54 (1959); *Iowa v. Old Colony Trust Co. of Boston, Mass.*, 215 F. 307, 312-15 (8th Cir. 1914). Courts appointing a receiver should ensure that the property is liquidated as economically and efficiently as possible, unless its continuance and retention is demonstrably beneficial to creditors. *Jones v. Village of Proctorville*, 290 F.2d at 50 (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2nd Cir. 1931)).

The Palm City Property would require significant assets of the Receivership to manage and maintain, and there is no reason to believe that the Receiver will be able to liquidate the Palm City Property for a demonstrable benefit to the Receiver Estates in the future. Given the current status of the Palm City Property and the other limited assets of

the Receiver Estates, the Receiver finds it imprudent to diminish the Receivership's severely limited resources to continue efforts to market and/or maintain the Property.

By analogy, the United States Bankruptcy Code specifically allows trustees to abandon property that is burdensome to the estate or that is of inconsequential value and benefit to the estate. *See* 11 U.S.C. § 554(a). Here the Receiver is not seeking to abandon the property, but rather have the Court confirm the return the property to the Beckmans' custody, control and possession, thereby placing at least some of the burden of unwinding the fraud on its perpetrators. Like the Beckmans' new bank account, this property will now fall outside of the Receivership. *See Stipulation*, Beckman Docket No. 27, ¶ 3 (Mar. 18, 2011) Similarly, creditors and other individuals will no longer be stayed from commencing or continuing proceedings against the Palm City Property, including foreclosure proceedings should the Beckmans fail to make payments on the mortgage.

As the Aguilar Declaration illustrates, as part of the Receivership and subject to the Asset Freeze Order, the Palm City Property is, at the very best property valuation, of inconsequential value, and at worst a significant drain on the incredibly limited resources of the Receivership. *See Aguilar Declaration*, ¶ 5, Ex. 4(D); (Hayes Decl., ¶ 8, Ex. D). The minimal potential rental income generated by the Palm City Property pales in comparison to the real expenses the Receivership would incur to maintain and manage the property. (Hayes Decl., ¶¶ 10-11) The Palm City Property has a remaining mortgage balance of at least \$707,301.51 against a market value of approximately \$500,000, and

would therefore likely continue to have negative equity (popularly known as being “under water”) for the duration of the Receivership. (Hayes Decl., ¶¶ 6-9)

Accordingly, the Receiver has determined that the Receiver Estates are best served by releasing the Palm City Property from the Receivership and from this Court’s Asset Freeze Order, returning the property to the custody, control and possession of the Beckmans.

CONCLUSION

For all the foregoing reasons, the Receiver respectfully requests that the Court enter an Order granting the Receiver’s Motion to confirm the release the real property located at 752 SW Squire Johns Lane in Palm City, Florida, from the Receivership and the Court’s Asset Freeze Order (Court File No. 9) thereby returning this property to the custody, control and possession of Jason Bo-Alan and Hollie Beckman.

Dated: March 25, 2011

Respectfully submitted,

s/ Brian Hayes

R.J. Zayed (MN Bar No. 309,849)

Tara C. Norgard (MN Bar No. 307,683)

Russell J. Rigby (MN Bar No. 323,652)

Brian W. Hayes (MN Bar No. 294,585)

Carlson, Caspers, Vandenburg & Lindquist

225 S. 6th Street, Suite 3200

Minneapolis, MN 55402

Telephone: (612) 436-9600

Facsimile: (612) 436-9605

Email: bhayes@ccvl.com