
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff(s)

v.

Case No: 11-cv-00574-MJD-FLN

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 RELEASE PLYMOUTH 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 release the real property located at 5140 Terraceview Lane North, Plymouth, Minnesota 55446, 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*, No. 09-cv-3333 (“Cook” case), Doc. 13, at 4 (Nov. 23, 2009); *see also Amended Order Appointing Receiver, Cook Doc. 18*, at 4 (Nov. 24, 2009); *Second Amended Order Appointing Receiver, Cook Doc. 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, Cook Doc. 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*, No. 11-cv-00574 (“Beckman” case), Doc. 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 5140 Terraceview Lane North, Plymouth, Minnesota 55446 (“Plymouth Property”). *See Order Imposing Asset Freeze And Other Ancillary Relief And Setting Hearing On Motion For Preliminary Injunction, Beckman Doc. 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 Doc. 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 Plymouth Property and ascertained its present value. *See Asset Freeze Order*, at 6; *Declaration of Brian Hayes in Support of Receiver’s Motion to Release Plymouth Property from Receivership and Asset Freeze Order* (“Hayes Declaration”), ¶¶ 5-8, Exs. A-C).

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 Doc. No. 10, ¶ I.G. To that end, the Receiver hereby seeks an Order from the Court releasing the Plymouth 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), Doc. 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 Doc. 10, ¶ I.C.; *see also Order Appointing Receiver*, Beckman Doc. 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*, Cook Doc. 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 Doc. 10, ¶ I.G.; *see also Order Appointing Receiver*, Cook Doc. 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 Plymouth Property has negative equity, 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 Property for a demonstrable benefit to the Receiver Estates in the future. Given the current status of the Plymouth 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 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' Palm City Property, which similarly was released on March 25, 2011, this property will now fall outside of the Receivership.

See Stipulation, Beckman Doc. 27, ¶ 3 (Mar. 18, 2011); *Order Confirming Release of Palm City Property from Receivership and Asset Freeze Order*, Beckman Doc. 51 (Apr. 13, 2011). Similarly, creditors and other individuals will no longer be stayed from commencing or continuing proceedings against the Plymouth Property, including foreclosure proceedings. *See, e.g., Asset Freeze Order*, at 7.

As the Hayes Declaration illustrates, the Plymouth Property possesses negative financial value and is a significant drain on the limited resources of the Receivership. *See Hayes Decl.*, ¶¶ 5-8, Exs. A-C. The Plymouth Property has remaining mortgage balances of at least \$1,124,239.47 and \$299,538.67 (totaling \$1,423,778.14) against a market value of approximately \$680,000, and therefore is almost certain to have negative equity (popularly known as being “under water”) for the duration of the Receivership. *Hayes Decl.*, ¶¶ 6-8. With the winter approaching, the Receivership would incur significant expenses to maintain and manage the property; moreover, the Receiver believes he has extracted all possible funds from the Plymouth Property. *Hayes Decl.*, ¶¶ 9-10.

Accordingly, the Receiver has determined that the Receiver Estates are best served by releasing the Plymouth 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 release the real property located at 5140 Terraceview Lane North in Plymouth, Minnesota 55446, 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: August 24, 2011

Respectfully submitted,

s/ Brian Hayes

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