

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

CIVIL ACTION NO. 06 CV 2431

vs.

PINNACLE DEVELOPMENT
PARTNERS, LLC, and GENE A.
O'NEAL

Defendants.

**NOTICE OF SALE OF REAL PROPERTIES BY PUBLIC SALE AND
MOTION FOR ORDER DESIGNATING REMAINING PROPERTIES
AS PART OF RECEIVER ESTATE**

S. Gregory Hays ("Receiver"), the court-appointed Receiver for Pinnacle Development Partners, LLC, files his Notice of Sale of Real Properties by Public Sale and Motion for Order Designating Remaining Properties as Part of Receiver Estate, Second Interim Report showing the Court as follows:

INTRODUCTION

1. The Receiver was appointed as Receiver for Pinnacle Development Partners, LLC ("Pinnacle" or "PDP") pursuant to the terms of an Order dated October 11, 2006 (the "Receivership Order").

2. Among other things, the Receivership Order authorizes the Receiver to marshal and sell the assets of the Receiver Estate, including the assets of partnerships or other entities controlled by Pinnacle. (Receivership Order, §§ VI-VII.)

3. On January 26, 2007, the Receiver filed his Second Interim Report, which addressed the status of the 21 parcels of real property included in the Receiver Estate (the “Real Properties”). The Appendix to the Receiver’s Second Interim Report set forth the recent and current ownership of each of the Real Properties. As summarized in the Second Interim Report and the Appendix, the Receiver’s investigation and analysis showed that each of the Real Properties was owned by Pinnacle, a partnership formed and controlled by Pinnacle, or a non-existent partnership under which Pinnacle placed title. Accordingly, each of the Real Properties is part of the Receiver Estate and, thus, subject to sale by the Receiver.¹

¹ The Appendix to the Second Interim Report identified title issues with the following properties: 1171 South Gordon Road, Austell, Georgia, and 1459 E. Mercer, College Park, Georgia. These issues have been resolved to the satisfaction of the Receiver; however, the Receiver has since discovered a discrepancy in the chain of title for 2637 Ben Hill Avenue, Atlanta, Georgia. The Receiver is working to correct this defect but anticipates that he will need to file a motion pursuant to Section 2 of the Court Approved Real Property Disposition Procedures to resolve the issue.

4. From the outset, the Receiver Team has developed and revised its plan for realizing the highest value for each of the Real Properties under the circumstances of this receivership. To that end, the Receiver filed, and on April 18, 2007, the Court approved, the Receiver's Real Property Disposition Procedures. The Real Property Disposition Procedures permit the Receiver to sell the Real Properties either by private sale or by public sale, *i.e.*, auction.

5. In an effort to obtain the maximum price for each of the Real Properties, the Receiver, since April 2007, has focused on selling the Real Properties by private sale. Despite active marketing by the Receiver, however, only two of the properties – 15 Oxbo Road, Roswell, Georgia, and 406 E. Rhinehill Road/2217 Browns Mill Road, Atlanta, Georgia – have sold to date, with a net gain to the Receiver Estate of approximately \$1.275 million. In addition, one of the Real Properties is currently under contract, two of the Real Properties are being negotiated and pending contract, and one is awaiting the Court's entry of an Amended Order authorizing sale.²

² The property under contract is 8 & 16 Clifton Way, Atlanta, GA. The properties being negotiated pending contract are: (1) 1459 E. Mercer Avenue College Park, Georgia; and (2) 6175 Old National Highway, College Park, Georgia. The property currently awaiting the entry by the Court of and Amended Order is 1967 Brian Way.

6. The Real Properties have required a significant amount of the Receiver Teams' resources to make marketable and maintain. These costs have depleted and will continue to deplete the assets of the Receiver Estate. Moreover, the real estate market in the Atlanta area has been in a state of decline for several months, and has not shown significant signs of recovery. These poor market conditions pose an additional hurdle to selling the remaining Real Properties by private sale. Accordingly, the Receiver has determined that it is in the best interest of the Receiver Estate to sell 15 of the remaining Real Properties by public sale pursuant to Section 3 of the Receiver's Real Property Disposition Procedures.

THE PUBLIC SALE

7. The Receiver plans a public sale of the following properties on February 12, 13, and 14, 2008:

February 12th Public Sale:

- a. Old Alabama and Cardell, Austell, Georgia
- b. 1171 South Gordon Road, Austell, Georgia
- c. 00 Davis Drive, Austell, Georgia
- d. 2990 Jones Road, Atlanta, Georgia
- e. 000 Bankhead Highway, Atlanta, Georgia
- f. 000 Adeline Avenue, Atlanta, Georgia

- g. 1 Sandpiper Lane, Austell, Georgia
- h. 3440 Boulder Park Drive, Atlanta, Georgia

February 13th Public Sale:

- i. 2990 Mt. Zion Road, Atlanta, Georgia
- j. 1051 Regis Road, Atlanta, Georgia
- k. 1484 and 1500 Columbia Drive, Decatur, Georgia
- l. 1967 Brian Way, Atlanta, Georgia (in the event the private sale is not consummated)

February 14th Public Sale:

- m. 5927 Rockbridge Road, Stone Mountain, Georgia
- n. 2062 Poplar Falls Road, Lithonia, Georgia
- o. 2139 Poplar Falls Road, Lithonia, Georgia

8. The Receiver has engaged the firm of Rowell Auctioneers (“Rowell”) to run the public sale. Rowell, founded in 1936, is based in Moultrie, Georgia, and has provided clients with comprehensive marketing services for over 70 years. The Receiver has worked with Rowell multiple times over the past five years, and Rowell has consistently obtained good results.

9. Information regarding the Real Properties to be auctioned will be listed soon on Rowell’s website at www.rowellauctions.com. In addition, this

Notice will be posted on the Receiver's website and the Receiver recently sent a letter to investors informing them of the planned auctions.

10. An extensive marketing campaign for the auctions has been implemented, which includes advertising in the Atlanta Journal Constitution, Marietta Daily Journal, Fulton Daily Report, Atlanta Business Chronicle and various other local newspapers, as well as advertising on-line at websites such as eBay, Realestatejournal.com, Auctionzip.com, and other similar websites. A brochure containing information on each property and due diligence materials will be mailed to approximately 10,000 third parties advertising the auction. For the improved properties, an open house will be conducted prior to the auction for those interested in viewing the property.

11. With the exception of four properties with inadequate parking, the auctions will take place at the property to be auctioned³ on the date specified above. Prior to the auctions, property information packages will be distributed containing the terms of the purchase and sale, property tax information, a legal description of the property and a bidder registration form. On the day of the auction, winning bidders will be required to deposit a sum equal to ten percent of

³ The Sandpiper and Old Alabama properties will be auctioned at the South Gordon property; the Adeline property will be auctioned at the Jones Road property and the Mt. Zion property will be auctioned at the Regis Road property.

the winning bid/purchase price (the "Buyer's Premium"). The Buyer's Premium is intended to cover advertising and other related costs of auctioning the property. In all events, the Buyer's Premium will be non-refundable but applicable to the purchase price. Winning bidders will be required to execute a purchase agreement at the auction and close on the property within thirty (30) days. There will not be any contingencies (e.g., financing, inspections) permitted in the purchase agreements, and closing will not be extended for such purposes.

12. The Receiver's public sale plan complies with Section 3 of the Court Approved Real Property Disposition Procedures. Accordingly, additional Court Approval of the public sale is not required.

ORDER REGARDING REAL PROPERTIES' INCLUSION IN
RECEIVER ESTATE

13. In investigating and analyzing the Pinnacle scheme, the Receiver team discovered that each of the Real Properties is owned by Pinnacle, a partnership owned and controlled by Pinnacle, or a non-existent partnership in which Pinnacle placed title.⁴ Therefore, it is within the Receiver's authority to take possession of and sell the Real Properties. (Receivership Order at §§ VI and VII.)

⁴The Receiver included details regarding the record ownership status of each of the Real Properties in the Appendix to the Second Interim Report.

14. Despite the authority granted to the Receiver by the Receivership Order, the fact that the Real Properties are not titled in the Pinnacle's name has led to numerous inquiries from potential buyers and title insurance companies. To avoid such inquiries and issues from hampering the Receiver's efforts to sell the remaining Real Properties – both those currently under contract and those that will be part of the public sale in February, the Receiver seeks an order from this Court explicitly finding that the remaining Real Properties are part of the Receiver Estate.⁵ A Proposed Order is attached hereto as Exhibit A.

15. The Properties encompassed by the Receiver's motion are:

- a. Old Alabama and Cardell, Austell, Georgia 30168
- b. 1171 South Gordon Road, Austell, Georgia 30168
- c. 00 Davis Drive, Austell, Georgia 30106
- d. 2990 Jones Road, Atlanta, Georgia 30318
- e. 000 Bankhead Highway, Atlanta, Georgia 30318
- f. 000 Adeline Avenue, Atlanta, Georgia 30314
- g. 1 Sandpiper Lane, Austell, Georgia 30106
- h. 3440 Boulder Park Drive, Atlanta, Georgia 30331

⁵ As addressed above, the property located at 2637 Ben Hill Avenue, Atlanta, Georgia, has a title issue that requires resolution prior to sale. Accordingly, the Receiver does not request that the Court, at this time, enter an order regarding the Ben Hill property.

- i. 2990 Mt. Zion Road, Atlanta, Georgia 30354
- j. 1051 Regis Road, Atlanta, Georgia 30315
- k. 1484 and 1500 Columbia Drive, Decatur, Georgia 30032
- l. 1967 Brian Way, Atlanta, Georgia 30033
- m. 5927 Rockbridge Road, Stone Mountain, Georgia 30032
- n. 2062 Poplar Falls Road, Lithonia, Georgia 30058
- o. 2139 Poplar Falls Road, Lithonia, Georgia 30058
- p. 6175 Old National Highway, College Park, Georgia 30349
- q. 8 & 16 Clifton Way, Atlanta, Georgia 30317
- r. 1459 E. Mercer Avenue, College Park, Georgia 30337

16. Though not required for the Receiver to effectuate the sale of the remaining Real Properties, the Receiver believes that the Court's entry of the Proposed Order would significantly reduce the number of issues that could potentially delay the consummation of sales. Specifically, an Order from this Court could be attached to the purchase and sale agreement, and deed for each property, and would clarify to the current and future purchasers the Receiver's authority to sell the Real Properties. Pursuant to the Real Property Disposition Procedures, the Receiver would continue to seek Court Approval of the terms of each private sale entered into by the Receiver.

CONCLUSION

For the reasons stated above, the Receiver requests that the Court enter an Order finding that the remaining Real Properties are part of the Receiver Estate and subject to sale by the Receiver.

Respectfully submitted, this 16th day of January, 2008.

By: /s/ Thomas B. Bosch
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Certification of Counsel

I hereby certify that this document is submitted in Times New Roman 14 point type as required by N.D. Ga. Local Rule 5.1(b).

/s/ Thomas B. Bosch
Georgia Bar No. 068740

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Defendants.

CERTIFICATE OF SERVICE

This is to certify that on January 16, 2008, I electronically filed this
NOTICE OF SALE OF REAL PROPERTIES BY PUBLIC SALE AND MOTION
FOR ORDER DESIGNATING REMAINING PROPERTIES AS PART OF
RECEIVER ESTATE with the Clerk of Court using the CM/ECF system which
will automatically send email notification of such filing to the following attorneys
of record:

James Alexander Rue

William P. Hicks

Michael D. Watson

John Gerald Westrick

This 16th day of January, 2008.

By: /s/ Thomas B. Bosch
Thomas B. Bosch
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