

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

SECURITIES AND EXCHANGE §  
COMMISSION, §  
Plaintiff, §  
v. §  
TRAVIS E. CORRELL, individually and §  
doing business as Horizon Establishment, et. al. §  
Defendants, §

Case 4:05-cv-00472-RAS Document 115-1 Filed 05/19/2006 Page 1 of 15  
Civil Action No. 05-CV-472-RAS

**RECEIVER’S MOTION TO SELL REAL PROPERTY FREE AND CLEAR  
OF ALL LIENS, CLAIMS AND ENCUMBRANCES  
(29530 Ancestral Trail, Bulverde, Texas)**

TO THE HONORABLE RICHARD A. SCHELL, UNITED STATES DISTRICT JUDGE:

COMES NOW S. Gregory Hays, the duly appointed and qualified receiver in this case (the “Receiver”), and files this Motion to Sell Real Property Free and Clear of All Liens, Claims, and Encumbrances and in support of such would show unto the Court as follows:

**I.**

**INTRODUCTION**

1.1 On December 7, 2005, upon the application of the Securities and Exchange Commission (“SEC”), this Court entered its Order Appointing Receiver (the “Receiver Order”) in the above-styled and numbered action wherein the Court appointed S. Gregory Hays as the receiver (the “Receiver”) in these proceedings. Thereafter, the Receiver qualified by filing the bond as required by the Receiver Order, which was accepted and approved by the Court.

1.2 On the same date that the Court appointed the Receiver, it also signed and entered its *Ex Parte* Temporary Restraining Order, Order Freezing Assets, Requiring an Accounting,

Authorizing Expedited Discovery and Granting Other Emergency Relief (the “Asset Freeze”). Thereafter, at the preliminary injunction hearing on December 13, 2005, the Court entered its Agreed Order of Preliminary Injunction and other Equitable Relief as to Defendant Gregory Thompson (“Preliminary Injunction Order”).

1.3 Among the duties and obligations of the Receiver established in the TRO Order and Preliminary Injunction Order is the obligation to marshal the assets of the Defendants. One of the assets identified and marshaled by the Receiver is a ranch house and acreage commonly known as 29530 Ancestral Trail, Bulverde, Comal County, Texas, and is generally referred to as the “Ancestral Trail Property.”

Case 4:05-cv-00472-RAS Document 115-1 Filed 05/19/2006 Page 2 of 15

1.4 The Ancestral Trail Property is commonly known as 29530 Ancestral Trail, Bulverde, Comal County, Texas and consists of 114.84 acres of usable land, an additional 38.28 acres that is subject to the 100 year flood maps promulgated by FEMA, a 3,364 square foot 3 bedroom, 2 ½ bath stone masonry ranch style home with metal roof, a “dog run” guest cabin and a 2800 square foot metal pole barn. Ancestral Trail is a private road, the property is not actually within the corporate city limits of Bulverde, and does not have city sewer or water, but instead has a septic system and a fresh water well. The Ancestral Trail Property is more particularly described by metes and bounds on Exhibit “B” to the “Farm and Ranch Contract” (the Contract) which is attached hereto as **Exhibit “A”** and incorporated by reference herein for all purposes.

#### ANCESTRAL TRAIL PROPERTY IS PART OF THE RECEIVER ESTATE

1.5 The Ancestral Trail Property is apparently community property and is titled in the name of Gregory Thompson and Sandra Thompson and presently serves as their primary residence. Gregory Thompson’s interest in the Ancestral Trail Property is clearly part of the Receiver Estate

as that term is defined in the Receiver Order. Gregory Thompson purchased the Ancestral Trail Property in the past two years, putting down \$200,000.00 and giving a note for \$1,000,000.00 back to the sellers, Pat and Martha Moore (the "Moore Note"). The monthly principal and interest payment on the Moore Note is \$8,439.00. Other than income obtained from the alleged Ponzi scheme described in the Complaint, Thompson's primary income was as the owner and operator of a small office supply company in San Antonio, Texas,<sup>1</sup> which grossed less than two million dollars annually in gross receipts. It is the Receiver's belief that the down payment for the Ancestral Trail Property came in whole or in part from the alleged illegal Ponzi scheme described in the Complaint in this matter. Further, the Receiver believes that the funds used to make the monthly note payments came in principal part from the alleged illegal Ponzi scheme. Past bank records from TNT Office Supply Company do not support salary or income to Thompson that would support the almost \$12,500.00 in monthly payments that Thompson was making on the Moore Note as well as for the Sunrise Beach Property.<sup>2</sup> While the Receiver has not been appointed over Sandra Thompson, the Receiver believes that it is in the best interest of the Receiver Estate to compel Mrs. Thompson to enter into the transaction, if necessary. Accordingly, as part of this motion the Receiver requests that the Court notify Mrs. Thompson of the hearing on this motion to give her the opportunity to appear and show cause why she should not be ordered to enter into the sale, assuming that the Court approves the sale.

---

<sup>1</sup>. TNT Office Supply, Inc., another named defendant in this action, and over which S. Gregory Hays has also been appointed receiver.

<sup>2</sup>. The Sunrise Beach Property was the subject of a different motion, which was approved by the Court at a hearing on April 18, 2006, and was closed pursuant to the Order from said hearing on April 24, 2006. The Sunrise Beach Property had monthly payments totaling almost \$4,000.00 per month.

1.6 As set forth herein above, the Ancestral Trail Property is subject to the Moore Note. As of May 1, 2006 the principal balance on the Moore Note was approximately \$950,000.00. The Receiver has made the payments on the Moore Note for February, March, April and May. If this motion is approved, the June payment will not be made, as the Moore Note will be retired at closing.

1.7 As was set forth, *supra*, attached hereto as **Exhibit A** is a true and correct copy of a “Farm and Ranch Contract” (the “Contract”) entered into between the Receiver (through counsel) and J.M.J. Properties, Ltd., (“Buyers”). As is set forth in the Contract, the proposed purchase price is \$1,335,000.00. Additionally, Buyers are paying almost all traditional closing costs, including some usually paid by the Seller such as the title policy. Further, a survey is usually required for sales such as this, and the Receiver has been informed that the survey would cost approximately \$15,000.00. Accordingly, substantial savings are being realized in closing costs that have a value to the Receiver’s Estate of approximately \$30,000.00. It is anticipated that the net to the Receiver’s Estate at closing should be approximately \$300,000.00 after commissions, taxes and closing costs.

1.8 The prospective purchaser is J.M.J. Properties and/or assigns. The Contract is signed by John Walker, who is a registered realtor in Texas. Mr. Walker’s principal is his mother’s company, MCW Properties, LTD. (“MCW”). MCW is a Texas Limited Partnership, whose general partner is Mary Cecil Billings Walker. Attached hereto at **Exhibit B** are documents from the Texas Secretary of State showing the ownership and management of MCW. The prospective purchaser is paying cash at closing. At **Exhibit C** is a letter from Ms. Walker’s bank indicating that she has the economic ability to close the sale in the event that this Court approves the Contract.

1.9 The prospective buyer was obtained through the Receiver's realtor Bret Beach of Beach Properties, a private realtor who specializes in the listing and sales of farms and ranches in the area where the Ancestral Trail Property is located. The Receiver has agreed to pay Beach Properties a sales commission of 6% which is reasonable and customary in the area. Mr. Beach procured the Contract within two (2) weeks of the Receiver contracting with him. Prior to contracting with Mr. Beach, the Receiver attempted to sell the property without utilizing a realtor. The only offers that the Receiver received were hundreds of thousands of dollars less than the present Contract. Mr. Beach obtained a contract for 95% of the asking price of \$1,400,000.00. Further, as is set forth *supra*, the Contract sells the property "as is, where is, and with all faults", shifts over \$30,000.00 of closing costs traditionally born by the seller to the buyer, and seeks to close almost as soon as this Court can hear and approve the Contract. Under the totality of the circumstances, the Receiver contends that Mr. Beach has certainly earned his commission.

#### OTHER OFFERS

1.10 The Receiver accepted the Contract (pending this Court's approval IAW 28 USC § 2001) on May 4, 2006. On May 11, 2006 and again on May 16, 2006, while the Receiver's counsel was preparing this motion and waiting on one appraisal to be completed, two unsolicited offers were received through the Receiver's broker. from a Daniel Piseni and a Todd Hanson, respectively, both through brokers in Humble, Texas.<sup>3</sup> Both of these offers are attached hereto as **Exhibit D** (the "Unsolicited Offers"). Both of the Unsolicited Offers appear to be for more money than the Contract, however, contain irregularities. The Receiver's counsel requested his broker to contact the brokers

---

<sup>3</sup>. Mr. Hanson is the broker and agent for an undisclosed principal on the May 16, 2006 offer.

to obtain more information regarding the Unsolicited Offers, however, the brokers involved never returned the Receiver's broker's calls. Some of the inconsistencies about the Unsolicited Offers are:

- a. they seek to "assume" the present \$1.1 million dollar note;<sup>4</sup>
- b. the first offer was for \$1.4 million, total, the second for \$1.45 million, total, but also sought to assume the Moore Note.
- c. the offers require that the seller provide the title policy and pay for a survey, additionally, the first proposal had a closing date of September 1 and the second proposal a closing date of July 20.

To the best of the Receiver's knowledge, neither of the brokers ever visited or viewed the Ancestral Trail Property, and the property is not listed on a multiple listing service.<sup>5</sup> This seemed to the Receiver's counsel to be odd, so the Receiver's counsel contacted Pat Moore to find out if he had been contacted regarding an assumption of the Moore Note. According to Mr. Moore, the Moore Note is not assumable without his consent and no one has contacted him regarding an assumption of the Moore Note. Mr. Moore told the Receiver's Counsel that he did not want to allow an assumption of the Moore Note, but would rather be paid in cash, as is contemplated in the Contract. Additionally, the offer from Mr. Pisenti was never signed, and no earnest money was tendered on

---

<sup>4</sup>. As was stated, *supra*, the Moore Note had an original principal amount of \$1,000,000.00, not \$1,100,000.00.

<sup>5</sup>. For the type of property that the Ancestral Trail Property is, the Receiver's broker proposed to advertise in property specific magazines published in the area, as his experience has been that the MLS does not generally produce qualified buyers. Additionally, he had several prospective buyers that had already contacted him regarding ranch property prior to the Receiver contracting with him, and the present purchaser was one of the potential buyers that Mr. Beach showed the property to prior to advertising it.

either offer. These irregularities, added to the longer closing times and coupled with the inconsistencies of the amount of the Moore Note and the undisclosed nature of the ultimate principals, caused the Receiver to determine that the offers did not appear to be bona fide. Further, given the additional costs involved with the Unsolicited Offers, the net to the Receiver's Estate, if the proposed contracts actually closed, would not be substantially more than the Contract

MATTERS REQUIRED BY 28 USC § 2001

1.11 As the court is aware, 28 U.S.C. § 2001(b) requires three appraisals of real property in order to proceed to a private sale. In February of this year, the Receiver's counsel engaged Stouffer & Associates, qualified real estate appraisers in San Antonio, Texas to render an appraisal of the Ancestral Trail Property. Attached hereto as **Exhibit "E"** and incorporated by reference herein for all purposes is the appraisal report by Stouffer & Associates. According to this appraisal, the value of the Ancestral Trail Property is \$1,400,000.00. After receiving the Contract,<sup>6</sup> the Receiver's counsel requested that W.K. Shumpes, a disinterested real estate broker who is experienced in sales of farm and ranch property in the general vicinity of the Ancestral Trail Property, provide a broker's opinion of market value of the Ancestral Trail Property. Attached hereto as **Exhibit "F"** is a true and correct copy of Mr. Shumpes opinion stating that in his opinion the value of the Ancestral Trail Property on May 11, 2006 was \$1,385,000.00. Finally, as is stated in footnote 6, the buyer's also obtained an appraisal. This appraisal is dated May 16, 2006, and was completed by Richard W. Coffin. A true and correct copy of said appraisal is attached hereto as

---

<sup>6</sup>. An additional benefit of the Contract is that the buyer's must obtain and provide an appraisal, an additional cost savings to the Receiver Estate of \$1,500.00.

**Exhibit "G"** and is incorporated by reference herein for all purposes. The Coffin appraisal indicates that the market value of the property on May 9, 2006 is \$1,350,000.00.

1.12 Based upon the average of the three appraisals described, *supra*, the appraised market value of the Ancestral Trail Property is \$1,378,333.34. 28 U.S.C. § 2001(b) requires that any private sale be for no less than two-thirds of the appraised value of the property. Two-thirds of the appraised value would be \$918,889.53. Such would not, however, be enough to cover the remaining principal balance on the Moore Note. The proposed price in the Contract, however, more than satisfies the requirements of 28 U.S.C. § 2001(b) and is 96.85% of the appraised market value for the property.

1.13 As part of his duties, and pursuant to 28 U.S.C. § 2001(b), the Receiver requests that the court approve the Contract and authorize the Receiver to proceed to sell the Property<sup>7</sup>, free and clear of all liens, claims and encumbrances, by virtue of a private sale. Pursuant to the requirements of 28 U.S.C. § 2001, the Court must authorize the Agent to hire appraisers. In the interest of saving time, this has already been done. Accordingly, the Receiver requests that the Court approve the three appraisals that are attached to this motion as being the opinions of value of three disinterested parties, pursuant to 28 U.S.C. § 2001. Pursuant to 28 U.S.C. § 2001(b), the time, date and location of the hearing, must be advertised in the Comal county area (just north of San Antonio, Bexar county) at least ten days prior to the hearing authorizing the sale. The Contract seeks to close on June 7, 2006, but is also subject to this Court's approval. Accordingly, the Receiver requests that the Court further order the Receiver to advertise the terms of this sale consistent with the foregoing and requests the court to set a hearing for the approval and closing of the Contract, during the week

---

<sup>7</sup>Subject to Court approval which will be sought at an evidentiary hearing, to be set by the court, pursuant to this motion.



of June 5, 2006, if the Court's schedule permits. Finally, the Receiver requests that the Court order that notice of the hearing be given to Sandra Thompson, pursuant to certified mail return receipt requested and first class mail, ordering her to appear at the hearing and show cause, if any there be, why the sale should not go forward with, or without, her consent.

### ARGUMENTS AND AUTHORITIES

2.1 The ultimate purpose of the Receiver's appointment is to provide a vehicle through which assets can be held, and preserved to make a potential fund for the payment of the defrauded investors who are the victims of the Ponzi scheme described in the Complaint. Allowing the Property to be sold by virtue of a private sale will both further and expedite the process. It will also allow the Receivership Estate to avoid ongoing liabilities for taxes, insurance, and monthly payments of the Moore Note.

2.2 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1978). *See SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5<sup>th</sup> 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 (9<sup>th</sup> Cir. 1986).

2.3 To guide courts in this purpose, 28 USA § 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 private sale. Subsection (b) provides as follows:

Case 1:06-cv-00422-RAS Document 15-1 Filed 05/19/20 Page 10 of 15

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.

2.4 The district court has wide discretion in judging whether a 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 (1<sup>st</sup> Cir. 1996), *citing United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7<sup>th</sup> 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 USC §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 (5<sup>th</sup> 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 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 (9<sup>th</sup> 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 (3<sup>rd</sup> Cir. 1969).

2.5 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 (3<sup>rd</sup> Cir. 1969). 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 (5<sup>th</sup> 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 (5<sup>th</sup> 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).

2.6 In order for a receiver to sell property 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 property and that confirmation of sale of the property 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. The Receiver intends to publish

the terms of the sale in the official publication for legal notices in the north San Antonio/Comal county area.

2.7 Accordingly, the Receiver respectfully requests that a hearing, near the closing date, be set. As noted above, three appraisals have already been obtained, and the Receiver requests that the Court ratify these appraisals as being acceptable to the Court. The Contract is to be set for closing on June 7, 2006, accordingly, the Receiver requests the Court grant this motion without hearing, and that the Court set a hearing to confirm the sale of the Property during the week of June 5, 2006, if the Court's schedule permits, and that at said hearing, the Court authorize the Receiver to proceed to close the Contract. Additionally, the Receiver prays that the Court further order the Receiver to notify Sandra Thompson of the time and date of the hearing, via certified mail return receipt requested and first class mail, informing her that the Court intends to proceed to consider the Receiver's motion, and may order the Ancestral Trail Property sold, including her community property interest at the hearing, and that said hearing is her opportunity to appear and be heard on the matter.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that the court ratify the Receiver's action in entering into the Contract at Exhibit "A", set a hearing for a confirmation of the sale during the week of June 7, 2006, pursuant to 28 U.S.C. §§2001 and 2002, and for such other and further relief as the Court may deem appropriate under all fo the circumstances.

Respectfully submitted,

TROUTMAN SANDERS, LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, GA 30308-2216

Case 4:05-cv-00472-RAS Document 115-1 Filed 05/19/2006 Page 13 of 15

(404) 885-3000  
(404) 962-6799 (facsimile)

by: /s/ J. David Dantzler, Jr.

J. David Dantzler, Jr.  
GA Bar No. 205125

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

By: /s/ Clark B. Will

Clark B. Will, P.C.  
State Bar No. 21502500

ATTORNEYS FOR S. GREGORY HAYS,  
RECEIVER

## CERTIFICATE OF CONFERENCE

I certify that on May 18, 2006, I transmitted an electronic copy of this motion to Scott Baker, counsel for Greg Thompson, and requested that he inform me if he was opposed to the motion. Thereafter, on May 19, 2006, I spoke with Mr. Baker who informed me that he needed to discuss the matter with his client, and that he would get back to me on Monday, May 22, 2006. I informed him that I would proceed to file this matter due to time issues, and would follow up with him on Monday, and inform the Court of his position on the motion.

Case 4:05-cv-00472-RAS

Document 115-1  
/s/ Clark B. Will

Filed 05/19/2006

Page 14 of 15

Clark B. Will

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2006, true and correct copy of the foregoing document was served on the following parties:

Marshall Gandy

Scott R. Baker

Burnett Plaza, Suite 1000

10830 North Central Expressway

801 Cherry Street, Unit #18

Suite 475, LB 4

Fort Worth, Texas 76103-6822

Dallas, Texas 75231-1050

(817) 978-6464

(214) 750-4444

(817) 978-4927 (facsimile)

(214) 363-1058

ATTORNEYS FOR PLAINTIFF

ATTORNEY FOR TNT OFFICE SUPPLY,  
GREG THOMPSON, HARRY ROBINSON  
"Robbie" GOWDEY, and DWIGHT J.  
JOHNSON

SECURITIES AND EXCHANGE  
COMMISSION

/s/ Clark B. Will

Clark B. Will