

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**ALBERT E. PARISH, JR., PARISH
ECONOMICS, LLC, and
SUMMERVILLE HARD ASSETS, LLC,**

Defendants.

**CIVIL ACTION NO.
2:07-cv-00919-DCN**

**THE RECEIVER'S MOTION TO APPROVE THE SALE OF CERTAIN
REAL PROPERTY FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES AND BRIEF IN SUPPORT THEREOF**

S. Gregory Hays, the Court-appointed Receiver for Albert E. Parish files this motion seeking approval of the sale of four parcels of real property free and clear of any liens, claims and encumbrances.¹ As more fully set forth below, it is not clear that the Receiver Estate will realize any money from these sales; however, because these parcels are assets of the Receiver Estate, the Receiver is responsible

¹ The auction sale proposed in this Motion provides a process that addresses the issues raised in the Motions to Modify/Lift Stay filed by the Bank of South Carolina [Doc. No. 115] and the Bank of America [Doc. No. 121].

for their disposition. Accordingly, in support of this Motion, the Receiver shows this Court as follows:

BACKGROUND

1. In its *Order Granting Preliminary Injunction, Freezing Assets, Appointing a Receiver and Ordering Other Ancillary Relief* entered on April 5, 2007 (the “Receivership Order”), this Court appointed S. Gregory Hays as Receiver for Parish, Parish Economics, and Summerville. Among other things, this Court authorized and directed the Receiver to: take custody and control of assets of the Receiver Estate; to sell assets of the Receiver Estate; and to marshal and administer assets held by third-parties. (See Receivership Order §§ VIII, XI.)

2. In accordance with the provisions of the Receivership Order, the Receiver has taken custody and control of several parcels of real property owned by the Receiver Estate, including four residential properties located in and around Charleston, South Carolina. It is these four properties that are the subject of this Motion.

3. As more fully described below, each of the subject properties is collateral for various loans and guarantees. In addition, the circumstances regarding one of the properties is complicated, and the ultimate use of sales proceeds requires resolution of various issues involving the lenders and other third-parties.

4. The Receiver has made no payment since his appointment on any of the loans or other obligations for which these properties serve as collateral.

5. Because of the nature of the subject properties, the current real estate market and the overall debt structure associated with the subject properties, it is quite likely that the various liens exceed the value of the properties. However, because so much investor money was used to acquire, improve and/or pay the subject loans, the Receiver believes that it is in the best interest of the Receiver Estate to endeavor to realize the value of any “equity” in the subject properties. In this regard, the ultimate result will depend upon the sales price achieved and the resolution of certain issues regarding how certain proceeds are to be distributed. Accordingly, it is important to establish a cost efficient way of disposing of these properties while, at the same time, providing for the possibility that the Receiver Estate might realize some amount of money as a result of these sales. Therefore, the Receiver believes that an auction of the subject properties is the best way to accomplish these objectives.

THE SUBJECT PROPERTIES

6. “The Rabbit Run House” – This was the Parish family’s primary residence. It is located at 224 Rabbit Run Lane, Berkeley County, Summerville,

SC 29483. The owners are Albert E. Parish, Jr. and Yolanda Yoder.² The Bank of South Carolina has a first priority mortgage lien on the property securing a loan in the principal amount of \$749,594.16 as of April 5, 2007, the date of the Receiver's appointment. The property (like all four of the subject properties) is collateral for a \$2.5 million loan made to Parish by the National Bank of South Carolina ("NBSC") in January 2006. Accordingly, NBSC has a second mortgage lien on this property. In addition, there is a lis pendens on the property filed by a group of plaintiffs (Steven Smith, et. al.) and a lis pendens filed by the Receiver.

7. "The Townhouse" – This property is located at 156 - A Tradd Street, Charleston County, Charleston, SC 29401. The owners are Albert E. Parish, Jr. and Yolanda Yoder. This property serves as collateral for the NBSC loan, and NBSC holds a first mortgage lien on the property.

8. "The Edisto Condo" – This property is located at The Retreat at Edisto, Unit #6-A, 126 Jungle Road, Colleton County, Edisto Beach, SC 29438. The owners are Albert E. Parish, Jr. and Yolanda Yoder. This property serves as collateral for the NBSC loan, and NBSC holds a first mortgage lien on the property.

9. "The Beach House" – This property is located at 3622 Yacht Club Road, Colleton County, Edisto Beach, SC 29455. The owner is Albert E. Parish,

² The Receiver and his counsel believe that Ms. Yoder will consent to these sales. Even so, through her counsel, she

Jr. The debts and liens related to this property are complicated and, as of the filing of this Motion, remain unresolved. Bank of America is the record holder of a first priority mortgage lien on the property securing a loan of principal and interest in the amount of \$465,489.49 as of April 5, 2007, the date of the Receiver's appointment. NBSC is the owner of a second position lien as a result of Parish's guarantee of a portion of a working capital loan made to Ulanji, Inc. The principal amount of this second lien was \$610,000 as of April 5, 2007. This property also serves as collateral for the \$2.5 million loan from NBSC to Parish, and NBSC holds a third position lien with respect to this loan. Based on information provided to the Receiver and his counsel, it appears that the following circumstances are relevant to the liens on this property:

- a. With respect to the first position lien held by the Bank of America ("B of A"), it appears that the Beach House was collateral for a B of A Equity Line Account maintained by Parish. When the \$2.5 million was loaned to Parish by NBSC on January 24, 2006, the B of A Equity line was to be closed using loan proceeds, and the lien was to be extinguished. NBSC's attorneys were Nexsen Pruet LLC. As of the date that the loan closed, Parish's outstanding indebtedness to B of A on

is being served with a copy of this Motion.

this equity line totaled \$481,266.07. Apparently, Nexsen Pruett paid this amount to B of A from the loan proceeds in satisfaction of the outstanding balance. However, Nexsen Pruett and NBSC failed to obtain any documentation satisfying or canceling B of A's first mortgage lien and confirming that the secured equity line account had been closed. Hence, B of A's lien remained in place, and the equity line account remained open. Parish continued to use the equity line account and, thereafter, incurred further indebtedness to B of A (currently in excess of \$470,000), which B of A asserts is secured by the first mortgage lien. Had the B of A payoff been properly handled, this first mortgage would not be in place and more than \$470,000 in "equity" would be available to satisfy the other debts and/or provide money to the Receiver Estate. The Receiver is informed and believes that NBSC has asserted a claim against Nexsen Pruett demanding payment in the amount of B of A's first mortgage loan. As of the filing of this Motion, this claim remains unresolved. Obviously, the resolution of this claim will have a significant impact on how the proceeds from the sale of the Beach House are disbursed.

b. The second position lien held by NBSC secures Parish's personal guarantee of NBSC's line of credit to Ulanji, Inc., n/k/a True Prism Technologies, Inc. ("Ulanji"). The current amount owed by Ulanji to NBSC is in excess \$800,000. The Receiver is informed and believes that Ulanji is in default. Parish guaranteed repayment of \$610,000 of this amount. There are other guarantors, and NBSC has also secured claims against those individuals. This matter is further complicated by the fact that Parish directly loaned Ulanji approximately \$1 million and owned ten percent of the company's shares. The company continues to operate, but its future is uncertain. Based on the information currently available to the Receiver, it appears that the guarantors will be required to pay some or all of the debt owed to NBSC. However, the Receiver cannot simply agree to pay a disproportionate amount of this debt, which will benefit Ulanji and the other guarantors at the expense of the Receiver Estate and investors.³ While there have been discussions between some of the guarantors

³ There are two other guarantors. One is also a Parish investor, who has lost substantial amounts of money as a result of those investments.

(including the Receiver) and NBSC, these issues remain unresolved. Obviously, the resolution of the obligations of all the guarantors will have a significant impact on how the proceeds from the sale of the Beach House are disbursed.

THE AUCTION

10. The proposed auction detailed herein is consistent with the requirements of 28 U.S.C. § 2001 and has been developed in accordance with the express recognition that the court has discretion to determine how and whether those requirements have been met. See 28 U.S.C. § 2001. Approval of the auction will ensure the cost-effective and efficient sale of the Properties and will conserve the resources of both the Court and the Receiver. Consistent with 28 U.S.C. § 2001, the auction provides a concrete and consistent framework under which the Receiver can efficiently dispose of each of the Properties without burdening the Court with a myriad of small issues.

11. The Receiver believes that the best and most efficient way to sell the subject Properties is by public auction to be conducted prior to January 31, 2008.

12. The sales will be free and clear of all liens, so that good and marketable title can be conveyed to the purchaser.

13. The use, disbursement or application of proceeds of the auction sales will be in full satisfaction of all amounts owed to any lender or other lien holder by

Parish, his wife, the Receiver Estate or any other person who might be liable for such payments.

14. The Receiver has arranged for Roumillat's Estate & Business Auctioneers of Charleston, S.C. to act as auctioneer on the following terms:

- a. Each property will be sold separately.
- b. Mortgage holders will be entitled to bid, including making "credit bids" – i.e., applying the amount owed on a certain property to the purchase price.
- c. The minimum opening bid for each of the properties is as follows:

The Rabbit Run House - \$0.00

The Townhouse - \$750,000

The Edisto Condo - \$415,000

The Beach House - \$1.5 million

To the extent that a minimum opening bid is not made by a third-party, NBSC will make a "credit bid" on the Townhouse, the Edisto Condo and the Beach House in an amount equal to the minimum bid amount set forth in this subparagraph.

- d. Each property will be sold to the highest bidder. The auctioneer shall select the highest and best offer for each

property, and the highest and best bidder will be notified at the close of the auction of the subject property.

- e. Bids are firm offers and binding when submitted.
- f. Except for winning credit bids by a lender, a 6% buyer's premium will be added to the amount of each winning bid.

With respect to a winning credit bid by The Bank of South Carolina, NBSC, or Bank of America, a 3% buyer's premium will be added to the amount of the winning bid.
- g. Prior to submitting a bid at the auction, a deposit of \$10,000 in the form of a cashier's check or wire transfer must be made by each party interested in participating in the auction. Except for winning bids, the deposit will be returned upon completion of the auction. The winning bidders' deposit will be applied toward the purchase price of the property.
- h. Except for "credit bids" submitted by The Bank of South Carolina, NBSC, or Bank of America, all bids must be for cash, to be paid to the Receiver (or auctioneer) by cashier's check or wire transfer at the time that title is conveyed to the purchaser ("the Closing"), which shall occur not later than 30 days after the date of the auction.

- i. The winning bidder will execute a real estate contract with the auctioneer at the time the winning bid is awarded that provides for a Closing within 30 days of execution.
- j. All expenses of sale, including auctioneer's fees, real estate agents' commissions and advertising, will be paid from the buyer's premium. Notwithstanding the foregoing, a lender submitting a winning credit bid shall not be entitled to reimbursement of any of its expenses associated with the auction.
- k. The Receiver, in conjunction with the auctioneer, will establish more detailed auction procedures, such as bidder qualifications, that are consistent with the terms outlined in this section. Those procedures and qualifications will be published to prospective bidders prior to the commencement of the auction.

USE/APPLICATION OF SALES PROCEEDS

15. The proceeds of the sale of each property shall be used to make the payments in the amounts and in the priorities set forth below. In the event that one of the lenders submits a winning credit bid, it will be responsible for making payment to superior lien holders, if any, but shall have no responsibility for making any payment to a subordinate lien holder.

16. At the time of the Closing of the sale of the Rabbit Run House, the sales proceeds shall be paid or applied in priority as follows:

- a. Payment of the appropriate buyer's premium;
- b. Payment of any property taxes due and owing on the property;
- c. Payment to Bank of South Carolina of principal and interest in the amount of \$749,594.16, plus simple interest at The Bank of South Carolina Prime Rate, plus 1% per annum (\$191.42 per day), accrued from April 5, 2007, to the date of Closing which shall be in full satisfaction of all amounts owed, including accrued interest and other fees;⁴
- d. Payment to NBSC up to an amount to be determined; and,
- e. Any remaining balance paid to the Receiver Estate.

17. At the time of the Closing of the sale of the Townhouse, the sales proceeds shall be paid or applied in priority as follows:

- a. Payment of the appropriate buyer's premium;
- b. Payment of any property taxes due and owing on the property;

⁴ The Receiver believes that it is appropriate to pay simple interest to the secured lenders at the rates established in the various loan documents, so long as the sales proceeds are sufficient to satisfy such payments. Under the circumstances of this case, the Receiver does not believe that it is equitable for the lenders to be paid any other fees or expenses out of the sales proceeds.

- c. Payment to NBSC in the amount of \$750,000, which shall be in full satisfaction of all amounts owed in connection with this property, including accrued interest and other fees; and,
- d. Any remaining balance paid to the Receiver Estate.

18. At the time of the Closing of the sale of the Edisto Condo, the sales proceeds shall be paid or applied in priority as follows:

- a. Payment of the appropriate buyer's premium;
- b. Payment of any property taxes due and owing on the property;
- c. Payment to NBSC in the amount of \$415,000, which shall be in full satisfaction of all amounts owed in connection with this property, including accrued interest and other fees; and,
- d. Any remaining balance paid to the Receiver Estate.

19. With respect to the sale of the Beach House, the Receiver believes that, with the exception of payment of the buyer's premium and any property taxes due and owing on the property, the proceeds of this sale should not be distributed (or applied by a winning credit bidder) until all issues regarding the various liens – including the various issues related to Nexsen Pruetts liability and the Ulanji line of credit and related guarantees – are resolved. If the proceeds are disbursed or applied prior to the resolution of these issues, then the Receiver Estate is at risk of having proceeds used to satisfy the obligations of third-parties at the expense of

investors and other creditors of Parish. Conversely, by holding these funds in escrow, all affected parties should be motivated to resolve all outstanding issues expeditiously.

20. Notwithstanding the disbursement allocations set forth above, NBSC will not, under any circumstance, be paid more than the principal amount(s) owed by Parish to NBSC as of April 5, 2007, plus simple interest accrued as of the date of the various Closings.

21. All other liens, specifically including the *Lis Pendens* notices filed by the Receiver and certain investors, will be extinguished as to the subject property; however, the rights of investors to pursue claims in the Receivership action shall not be affected by extinguishing any *Lis Pendens* filed as to the real property that is the subject of this motion.

22. Notice of this Motion is being provided to the following persons and entities:

- a. Yolanda Yoder;
- b. Zayda Yoder;
- c. The Bank of South Carolina;
- d. The National Bank of South Carolina;
- e. Bank of America;

- f. the county attorney for Charleston, Colleton and Berkeley counties (i.e., the counties in which the properties are located);
- g. the United States Attorney;
- h. the Securities and Exchange Commission;
- i. Nexsen Pruettt LLP;
- j. True Prism, Inc. f/k/a Ulanji, Inc.;
- k. claimants who have filed lis pendens on the subject properties;
- l. any parties that have requested notice in this case; and
- m. all parties who have expressed an interest in purchasing the Subject properties.

The Receiver also posted the Motion on his website: www.haysconsulting.net.

WHEREFORE, the Receiver respectfully requests that this Court enter and grant this Motion and enter an Order substantially similar to the proposed Order attached to this Motion.

This ____ day of November, 2007.

By: /s/ David Popowski
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CERTIFICATE OF SERVICE

This is to certify that on November 16th, 2007, the foregoing *The Receiver's Motion To Approve The Sale Of Certain Real Property Free And Clear Of Liens, Claims And Encumbrances And Brief In Support Thereof* was filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record, and by depositing a copy in the United States Mail, properly addressed and with adequate postage thereon to:

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