

**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**

**CONSENT ORDER AUTHORIZING SALE OF CERTAIN
REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES,
AND OTHER INTERESTS AND ESTABLISHING SALE PROCEDURE**

This matter comes before the Court on the Receiver's Motion to Approve the Sale of Certain Real Property Free and Clear of Liens, Claims, and Encumbrances ("the Motion") [Doc. No. 132], as well as Motions to Modify/Lift Stay filed by the Bank of South Carolina [Doc. No. 115] and the Bank of America [Doc. No. 121]. Upon appropriate notice of the Motion and the hearing given in accordance with the Federal Rules of Civil Procedure, and no other or further notice being necessary, a hearing on the Motion (the "Hearing") was held on December 18, 2007. As indicated by the signatures of counsel below, the Receiver and the affected lenders have consented to the entry of this Order and the process provided for herein. No other objections were filed (though during the course of

the hearing, an individual who had invested with Parish questioned whether the lenders were entitled to be paid accrued interest and attorney's fees in accordance with the terms of their respective mortgages and loan agreements).

Based upon the Motion, the evidence and arguments presented at the Hearing, and the entire record herein, and upon due deliberation and sufficient cause appearing therefore, the Court hereby makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction over this matter.
 2. The Receiver is authorized to sell the assets of the Receiver Estate, including the properties that are the subject of this Motion. (See Receivership Order §§ VIII, XI.).
 3. The Receiver has given notice of the Motion to the following individuals 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's Office for the District of South Carolina;
 - h. the Securities and Exchange Commission;
 - i. Nexsen Pruet 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;
 - m. all parties who have expressed an interest in purchasing the subject properties; and
- the Receiver also posted the Motion on his website:

www.haysconsulting.net.

4. An adequate opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all creditors, interested persons and entities.

5. The Court finds that such notice comports with due process and is sufficient to bind any and all parties who may have a claim against the Receiver Estate or the properties that are the subject of the Receiver's Motion. This is adequate and sufficient notice of the Motion, and no other or further notice is necessary

6. 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 the following four properties, which are the subject of this Motion:

- a. "The Rabbit Run House" located at 224 Rabbit Run Lane, Berkely County, Summerville, SC 29483, owned by Albert E. Parish, Jr. and Yolanda Yoder;
- b. "The Townhouse" located at 156 - A Tradd Street, Charleston County, Charleston, SC 29401, owned by Albert E. Parish, Jr. and Yolanda Yoder;
- c. "The Edisto Condo" located at The Retreat at Edisto, Unit #6-A, 126 Jungle Road, Colleton County, Edisto Beach, SC 29438, owned by Albert E. Parish, Jr. and Yolanda Yoder; and
- d. "The Beach House" located at 3622 Yacht Club Road, Edisto Beach, SC 29455, owned by Albert E. Parish, Jr.;

7. As more fully described in the Receiver's Motion, each of the subject properties is encumbered by one or more mortgages and/or liens securing repayment of loans and other obligations of Defendant Albert E. Parish, Jr. The Receiver has concluded, based on his investigation and analysis that the amounts secured by the liens may exceed the value of the subject properties. Even so, the Receiver is responsible for dealing with these properties and the related debts and obligations of Parish. In addition, the Receiver hopes to sell the properties in such a way that to the extent there is equity in the properties, that equity might be realized for the benefit of the Receiver Estate.

8. The Receiver has determined that it is in the best interest of all concerned to sell the subject properties at public auction. However, in order for an auction to be conducted in a manner that is likely to attract potential purchasers, the Receiver must be able to convey good and marketable title, free and clear of any liens or encumbrances.

9. Based on the foregoing, and the evidence before the Court, the Court concludes that it is in the best interest of the Receiver Estate to establish a cost efficient way of selling the subject properties and/or turning them over to the

appropriate lender(s) free and clear of liens while, at the same time, providing for the possibility that the Receiver Estate could realize some amount of money if there is equity in any of the properties. Accordingly, as recommended by the Receiver and consented to by the lenders, the Court finds that an auction of the subject properties is the best means to accomplish these objectives.

10. The Receiver has full power and authority to execute all documents necessary to consummate the transactions contemplated by this Order, and no other consents or approvals are required for the Receiver to consummate such transactions.

11. Sound business reasons exist for the Receiver to sell the subject properties, as set forth in the Motion and at the Hearing. The proposed sale reflects a proper exercise of the Receiver's fiduciary duties, and is in the best interests of the Receiver Estate and its creditors. The terms and conditions of the proposed sale, including the consideration to be paid for the subject properties, are fair and reasonable, and will achieve the highest and best offer for the subject properties.

12. The auction process recommended by the Receiver and provided for below is preferable to any other public sale, including foreclosure sales as requested by The Bank of South Carolina and Bank of America in their Motions to Modify/Lift Stay [Doc. No. 115 and Doc. No. 121, respectively].

13. Approval at this time of the Motion and the transactions contemplated thereby, is in the best interests of the Receiver Estate, Parish and the other Receiver Entities, and their creditors, and good and sufficient business justification for consummating the sales has been established.

14. The sale of the subject properties pursuant to the terms set forth herein will be a legal, valid, and effective transfer of the subject properties and will vest in the buyer all right, title, and interest of the Receiver in the subject properties free and clear of all encumbrances.

15. Prospective buyers would not consummate the transactions contemplated by this sale, thus adversely affecting the Receiver Estate and its creditors, if the sale to the successful bidder were not free and clear of all encumbrances of any kind or nature whatsoever, or if the Buyer would, or in the future could, be liable for any such Encumbrances and if the transfer of the subject properties could not be made.

Based upon the foregoing, **IT IS HEREBY ORDERED ADJUDGED**

AND DECREED THAT:

16. The Motion is GRANTED on the terms set forth in this Order, and all of the transactions contemplated by the Motion, are approved in all respects.

17. The Motions to Modify/Lift Stay filed by the Bank of South Carolina [Doc. No. 115] and the Bank of America [Doc. No. 121] are hereby DISMISSED.

18. The Receiver is authorized to sell and convey the subject properties pursuant to the terms and conditions set forth herein.

19. The Receiver is authorized and directed to take all steps necessary and appropriate to consummate the sales and implement this Order in accordance with its terms, and to execute necessary and appropriate ancillary documents. Time is of the essence in carrying out this authorization.

20. The sale of the subject properties shall be free and clear of any and all liens, claims (including but not limited to any and all "claims", defined as any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, and any and all rights and claims under any bulk transfer statutes and similar laws), mortgages, guarantees, security agreements, security interests, pledges, hypothecations, charges, obligations, rights, restrictions, indentures, offsets, recoupments, judgments, orders or decrees of any court or governmental entity, interests and encumbrances of any kind or nature whatsoever, in or with respect to any of the subject properties (including without limitation, any options or rights to purchase such assets, any mechanics' or tax liens or claims, tort claims, employee wages or benefits, any fines, penalties, or assessments imposed by any governmental entity, any successor liability, products liability, environmental liability, tax or other liabilities and claims against Parish, the Receiver Estate or the subject properties, whether choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, known or unknown, whether arising prior to or subsequent to the filing of the above-captioned action, and whether imposed by agreement, understanding, law, equity or otherwise).

21. The Court hereby authorizes the Receiver to sell the four properties that are the subject of the Motion free and clear of all liens, claims, and encumbrances, pursuant to the following terms:

- a. The Receiver has arranged for Roumillat's Estate & Business Auctioneers of Charleston, S.C. to act as auctioneer consistent with the terms of this Order.
- b. Each property will be sold separately.

- c. 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.
- d. The minimum opening bid for each of the properties is as follows:

The Rabbit Run House - \$900,000

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 shall make a “credit bid” on the Rabbit Run House (\$900,000), Townhouse (\$750,000), the Edisto Condo (\$415,000) and the Beach House (\$1,500,000) in an amount equal to the minimum bid amount set forth in this subparagraph.

- e. 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.
- f. Bids are firm offers and binding when submitted.
- 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 (other than the mortgage holders) 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 winning credit bids by The Bank of South Carolina, NBSC, or Bank of America, 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.
- i. 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 by the Receiver to the purchaser ("the Closing"), which shall occur not later than 30 days after the date of the auction.

- j. 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 the date of the auction.
- k. The winning bidder will also pay the Receiver (or auctioneer) a down payment in the amount of 5% of the winning bid at the time the winning bid is awarded.
- l. The Receiver is authorized and directed to sign any and all contracts, deeds and other documents necessary to convey title to the subject properties and to effect the purchase and sale transactions.
- m. A copy of this Order may be attached to any deed executed by the Receiver and recorded with the Registrar of Deeds of the respective counties in which the property is located.
- n. 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.
- o. The Receiver, in conjunction with the auctioneer, is authorized to establish more detailed auction procedures, such as bidder qualifications, that are consistent with the terms outlined in this section. Those procedures and qualifications shall be published to prospective bidders prior to the commencement of the auction and will be binding terms of sale.

22. 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.

23. 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 and homeowners association fees due and owing on the property;

- c. Payment to The 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 and attorney's fees in the amount of \$8,478.85, which shall be in full satisfaction of all amounts owed, including accrued interest and other fees;
- d. Payment to NBSC up to an amount to be determined; and,
- e. Any remaining balance paid to the Receiver Estate.

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

25. 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 and homeowners association fees 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 the Edisto Condo, including accrued interest and other fees; and,
- d. Any remaining balance paid to the Receiver Estate.

26. With respect to the sale of the Beach House, except for payment of the buyer's premium to the auctioneer and payment of any property taxes and homeowners association fees due and owing on the property, the proceeds of this sale shall not be distributed (or applied by a winning credit bidder) pending resolution of all issues regarding the various liens – including the various issues related to Nexsen Pruetts liability to NBSC, if any, and the Ulanji line of credit and related guarantees described in the Receiver's Motion. The Receiver shall hold the sales proceeds, if any, in an interest bearing account pending resolution of these issues or in his discretion he may pay out said funds at an earlier date. If NBSC is the winning bidder based upon a credit bid, it shall pay \$497,422.86 due as of November 5, 2007, plus simple interest thereafter at the rate of \$118.91 per diem (i.e., the amount claimed by Bank of America) plus attorney's fees in the amount of \$6,750 to the Receiver to be held in escrow pursuant to the terms of this

order. Moreover, in such event, NBSC shall not apply the balance of the credit bid in satisfaction of the Ulanji or Parish loans until such issues have been resolved. If the issues related to the various liens and other claims have not been resolved within 45 days of the closing of the sale of Beach House, then the proceeds of the sale shall be paid or credited as follows, unless the Receiver or NBSC petitions this Court to continue to have the funds held in escrow:

- a. \$497,422.86 due as of November 5, 2007, plus simple interest thereafter at the rate of \$118.91 per diem (i.e., the amount claimed by Bank of America) plus attorney's fees in the amount of \$6,750 shall be paid to Bank of America, through its attorney S.R. Anderson;
- b. The balance of the escrowed funds shall be paid to NBSC up to the amount of the indebtedness secured by its liens on the Beach House (as adjusted for other payments and credits); and,
- c. Any remaining balance paid to the Receiver Estate.

27. Notwithstanding the disbursement allocations set forth above, NBSC shall 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.

28. 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.

29. The Receiver shall continue to maintain appropriate insurance with respect to each of the subject properties until such time as each is sold.

30. The sales will be in full satisfaction of all amounts owed by Parish, Yolanda Yoder, and/or the Receivership Entities to any lender or other lien holder.

31. No buyer shall be liable for any claims against the Receiver Estate or Receiver Entities, and no buyer shall have successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising.

32. All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, tort or products liability claimants, lenders, trade and other creditors holding Encumbrances of any kind or nature whatsoever against or in any of the Receivership Entities or Subject properties (whether legal or equitable, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, known or unknown, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or

subordinated), arising under or out of, in connection with, or in any way relating to, the Receiver Entities or Subject properties are hereby forever barred, estopped, and permanently enjoined from asserting against the buyer, its affiliates, its successors or assigns, their property, their officers, directors and shareholders, or the subject properties. All holders or beneficiaries of any liens or other encumbrances are hereby directed to cooperate with the successful buyer in delivering such documents reasonably requested by the successful buyer that may be necessary to evidence and effectuate the extinguishment of any encumbrances from or against the subject properties.

33. The provision of this Order authorizing the sale of the subject properties free and clear of liens and other encumbrances shall be self-executing. Neither the Receiver, any successful bidder, nor any other party shall be required to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or in the Motion with respect to the sale of the subject properties. Notwithstanding the foregoing, the Receiver and any and all third parties are ordered to execute any deeds, releases, termination statements, assignments, consents, or other instruments reasonably requested by any successful bidder in order to carry out the sale of the subject properties hereunder, and the Receiver is authorized and directed to execute any such releases, termination statements, assignments, consents or instruments on behalf of any third party.

34. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any subsequent order that may be entered dismissing these cases.

35. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated herein, including without limitation, documents and instruments for recording in any governmental agency or department required to transfer title in the subject properties to the successful bidder.

36. This Order (a) shall be effective as a determination that, as of the auction date, all encumbrances of any kind or nature whatsoever existing prior to such closing as to the subject properties sold pursuant to this Order have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file,

register or otherwise record or release any documents or instruments, or who may be required to report or to insure any title or state of title in or to any of the Subject properties.

37. Pursuant to Federal Rule of Civil Procedure 54(b), this Court finds that there is no just reason for delay the entry of judgment as to the sale of the subject properties, and this Order shall constitute a final judgment as to the relief granted herein.

38. This Court hereafter shall and does retain jurisdiction (a) to enforce and implement the terms and provisions of this Order, and (b) to resolve any disputes, controversies or claims arising out of or relating to this Order.

39. The findings of fact and conclusions of law of this Court as set forth herein shall constitute findings of fact and conclusions of law. The terms and provisions of this Order shall be binding in all respects upon, and shall inure to the benefit of, the Receiver Estate, its creditors, any successful bidder, and any other parties in interest, and their respective affiliates, successors and assigns and any affected third parties (including, but not limited to, all persons asserting any interest in or encumbrances on any of the subject properties).

IT IS SO ORDERED this 28TH day of December 2007.



David Norton, Judge
United States District Court
District of Carolina, Charleston Division

AGREED AND CONSENTED TO:

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