

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

FEDERAL TRADE COMMISSION
and STATE OF GEORGIA,

Plaintiffs,

v.

LAPTOP & DESKTOP REPAIR, LLC,
a Nevada limited liability company, also
d/b/a cashforiphones.com,
cashforlaptops.com, ecyclebest.com,
smartphonetraders.com, sell-your-
cell.com; and VADIM OLEGOVICH
KRUCHININ, also a/k/a Vadim
Kruchin, David Kruchin, David Vadim
Kruchin, Dave Kruch, as the owner and
an officer of Defendant Laptop &
Desktop Repair, LLC,

Defendants.

Case No. 1:16-CV-3591-AT

**MEMORANDUM IN SUPPORT OF THE RECEIVER’S MOTION FOR
APPROVAL OF PRIVATE SALE OF REAL AND PERSONAL PROPERTY**

COMES NOW, Hays Financial Consulting LLC and S. Gregory Hays,
(collectively the “Receiver”) and herewith files this Memorandum in Support of the

Receiver's Motion for Approval of Private Sale of Real and Personal Property (the "Sale Motion") and shows as follows:

I. BACKGROUND AND INTRODUCTION.

The Receiver was initially appointed on September 26, 2016, in the Temporary Restraining Order (the "TRO") [ECF No. 9] entered in the above-captioned case. This Court appointed the Receiver for the business activities of the receivership defendant Laptop & Desktop Repair, LLC ("Receivership Defendant"). The Court reappointed the Receiver in the Stipulated Preliminary Injunction Order (the "Preliminary Injunction") entered on October 5, 2016 [ECF No. 14.]. Both the TRO and Preliminary Injunction (the "Receivership Orders") authorize the Receiver to marshal and seek to sell the assets of the Receivership Defendant.

On November 3, 2016, the Receiver filed its Motion to Expand Receivership (the "Motion to Expand") [ECF No. 23] wherein the Receiver requested an Order of this Court to expand the assets under the control of the Receiver to include an entity named Coney Island 84 and any and all assets of that entity. In particular, the Receiver requested that the Receivership be expanded to include real estate located at 84 Coney Island Drive, Sparks, Nevada which was the Receivership Defendant's primary place of business, and which is where the assets and business records of the

Receivership Defendant are currently housed (the “Coney Island Drive Building”). On November 17, 2016, this Court entered an Order granting the Motion to Expand [ECF No. 28] and the Receiver has been in control of the Coney Island Drive Building since that date.

Prior to the filing of this lawsuit, the Receivership Defendant conducted business at the Coney Island Drive Building which had both office and warehouse space. The Receivership Defendant was engaged in the business of acquiring, repairing and selling phones and computer equipment. Located within the Coney Island Drive Building are computers, computer parts, phones, equipment, inventory, furniture, fixtures and other personal property (“LDR Business Assets”). Since its appointment, the Receiver has attempted to find buyers both for the LDR Business Assets and for the Coney Island Drive Building.

As set forth in the Declaration of Scott Askue (“Askue Dec.”) which is filed with the Motion, the Receiver contacted several real estate brokers for the purpose of selecting a broker to market and sell the Coney Island Drive Building. These brokers each recommended to the Receiver that the Coney Island Drive be listed for sale at \$1,600,000 and each advised that the Receiver could reasonably expect to sell

the Coney Island Drive Building relatively quickly for between \$1,400,000 and \$1,500,000. (Askue Dec. at Paragraph 5).

In addition, the Receiver obtained a copy of an appraisal of the Coney Island Drive Building commissioned in August, 2016 by a lender which made a loan against the Coney Island Drive Building. This appraisal contained an estimated market value of \$1,300,000 for the Coney Island Drive Property. (Askue Dec. at Paragraph 5). All of the information available to the Receiver indicated that the market value of the Coney Island Drive Building should be between \$1,300,000 and \$1,500,000.

However, the Receiver encountered significant difficulties in seeking to market and sell the LDR Business Assets which are detailed in the Askue Declaration. In particular, this effort was hampered by several factors. First, it took several weeks to obtain an accurate inventory listing for LDR. Second, the LDR inventory for sale to third parties consisted of a large number of smartphones and laptop and computer parts. Some of these items were ready for re-sale while others were still in the process of being repaired, being swept to clean consumer data or, in the case of laptops, being taken apart such that the parts could be sold separately. Third, the Receivership Defendant owned a significant amount of furniture, fixtures

and equipment located throughout its warehouse which would require significant time to prepare for sale. Some of these items, particularly the furniture and fixtures, were old and/or severely worn. Finally, there were a significant number of laptops and smartphones contained in a caged area in the warehouse (the “Caged Inventory”) which the Receivership Defendant had received from consumers, but for which the Receivership Defendant had not yet paid the consumer. (Askue Dec. at Paragraph 8).

Issues relating to the Caged Inventory were detailed in Paragraph 37 of the Receiver’s First Report filed in this Case on October 5, 2016 [ECF No. 15]. These items were referred to in the First Report as “Unboxed Consumer Equipment” but are defined in the APA as “Caged Inventory” for purposes of convenience in drafting the APA. As set forth in Paragraph 37 of the First Report, the Receiver believes that the Caged Inventory is covered by Section XI of the TRO and that the Receiver is obligated to return the Caged Inventory to the affected consumers. However, the Receiver did not have sufficient funds in the Receivership to pay for the return of these items.

One of the companies with which the Receiver met regarding the LDR Business Assets was Pulse Electronic Recycling (“Pulse”) out of Dallas, Texas. As

discussions progressed with Pulse, Pulse ultimately offered to purchase all of the LDR Business Assets as well as the Coney Island Drive Building. Pulse's offer essentially amounted to a turn-key sale in that the Receiver would simply turn everything over to Pulse and they would take control of the building. In addition, Pulse was willing to enter into an agreement with the Receiver to establish a process by which Pulse could either separately purchase the Caged Inventory or have the Caged Inventory returned to affected consumers while generating sufficient funds for the Receiver to pay the cost of returning these items if so requested by the consumer. After negotiations, Pulse agreed to pay \$1,400,000 for the building and \$200,000 for the LDR Business Assets. (Askue Dec. at Paragraph 10). Based on this, the Receiver continued negotiations with Pulse and reduced this agreements to definitive, written agreements for which the Receiver seeks approval.

II. TERMS OF THE PROPOSED SALE.

Attached hereto as Exhibit "A" and incorporated herein by reference is a true and correct copy of a Real Estate Sales Agreement entered into between the Receiver and AN Jadhavji Investments, LLC (the "Real Estate Agreement") which remains subject to the approval of this Court. AN Jadhavji Investments, LLC was the entity designated by Pulse to purchase the Coney Island Drive Building. The Real Estate

Agreement provides that the Receiver shall sell the Coney Island Drive for a purchase price of \$1,400,000. No broker was involved in the sale and no broker commission will be paid. The Real Estate Agreement provides for a deposit of \$90,000 which has been paid to the Receiver. The Real Estate Agreement is a relatively straightforward agreement which provides for the sale of the Coney Island Drive Building on an “as is/where is” basis.

Attached hereto as Exhibit “B” and incorporated herein by reference is a true and correct copy of an Asset Purchase Agreement entered into between the Receiver and Pulse (the “APA”) pursuant to which the Receiver will sell certain of the LDR Business Assets to Pulse subject to the approval of this Court. The APA requires a deposit of \$25,000 which has been paid to the Receiver.

There are several important aspects to APA. First, the Receiver has carved out from the sale certain business records of the Receivership Defendant including employee files and personnel records and consumer data, to the extent it exists. (Section 1.4 of the APA). The Receiver will also preserve any additional business records required for the administration of the Receivership Estate. Second, the Receiver has excluded the Caged Inventory from the sale and established procedures pursuant to which the Caged Inventory can either be sold to Pulse or returned to the

Consumer. (Section 1.7 of the APA). Essentially, Pulse will contact each consumer to make an offer to purchase their item. In each case, the consumer shall have the option of accepting the offer or rejecting the offer and obtaining the return of their equipment. If the consumer elects to sell their item, the Receivership Estate will receive a portion of the sale proceeds. Third, no broker or other fees are being charged as part of this agreement. Finally, the Receiver is LDR Business Assets on an “as is/where is” basis. The Receiver will not be required to incur any fees, expenses or charges preparing or organizing these assets for sale.

III. TREATMENT OF EXISTING LIENS.

Based on information currently available to the Receiver, the Coney Island Drive Building is currently encumbered by approximately \$950,000 in valid liens. All of these liens will be satisfied at closing in order to provide clear title to the purchaser. After the sale, the Receivership Estate will receive approximately \$400,000 which will be held by the Receiver pending further order of this Court.

In addition to the liens existing against the Coney Island Drive Property, it is also subject to a sub-lease agreement and approximately 25% of the building is leased to a sub-tenant. This subtenant has consistently made rent payments to the Receiver. The sale is subject to this sublease and the Receiver is advised and informed that the

purchaser has reached an agreement with the subtenant regarding the continuation of the sublease. The subtenant will receive notice of this Motion.

Prior to engaging in a sale of the LDR Business Assets, the Receiver conducted research to determine whether any UCC filings had been made with respect to personal property or other assets of the Receivership Defendant. The Receiver has determined that there are two valid lien claims against some or all of the LDR Business Assets and two other claims have been asserted against certain of the LDR Business Assets which the Receiver believes are invalid or which are not included in the proposed sale.

First, Western Alliance Bank asserts a lien in the approximate amount of \$400,000 which the Receiver believes is valid. In addition to its asserted lien against the LDR Business Assets, Western Alliance has advised the Receiver that it asserts security interests in certain cash seized by the Receiver and other claims held by the Receivership Defendant which the Receiver planned on pursuing. The Receiver believes that Western Alliance is responsible for a share of the costs incurred by the Receiver in maintaining and preserving the LDR Business Assets. The Receiver proposes to satisfy this lien through the payment of the \$200,000 to Western Alliance Bank. Western Alliance has not yet accepted this proposal and the Receiver is currently in negotiations with Western Alliance Bank regarding a negotiated

resolution of its lien. Based on the information available to the Receiver and based on the Receiver's investigation of the value of the LDR Business Assets (Askue Dec. at Paragraphs 7 – 9), the Receiver believes that this is the maximum value which can be obtained for the LDR Business Assets and that value of the LDR Business Assets is significantly less than the amount of the lien asserted by Western Alliance Bank.

Second, a lien is asserted by LiftForward, Inc. which is subject to the lien of Western Alliance Bank; however, the LiftForward lien is cross collateralized by a lien against the Coney Island Drive Building. The lien claim of LiftForward will be satisfied entirely from the proceeds of the sale of the Coney Island Drive Building and LiftForward should have no claim of lien against the LDR Business Assets. The Receiver will request that LiftForward release its liens against the LDR Business Assets as a condition of receiving its share of the proceeds of the Coney Island Drive Building.

Two other claims have or may be asserted against the LDR Business Assets. First, Merchant Cash & Capital, LLC d/b/a BizFi ("BizFi") has filed a UCC statement which is attached hereto as Exhibit "C". This statement purports to assert a lien against accounts receivable of the Receivership Defendant which were sold to BizFi. The Receiver does not believe that this lien attaches to the LDR Business Assets. Indeed, the APA specifically excludes any accounts receivable of the

Receivership Defendant. (Section 1.5 of the APA). BizFi has retained counsel in this matter and the Receiver has had direct communications with BizFi. Counsel for BizFi is being served with a copy of this Motion and has been advised of the Receiver's position with respect to its asserted lien.

Finally, PCS Wireless, a wholesaler of smartphones, sold equipment to the Receivership Defendant on an unsecured basis prior to the appointment of the Receiver. Sometime after the appointment of the Receiver, PCS Wireless purported to make a reclamation claim against the Receiver which was rejected by the Receiver and PCS Wireless has taken no further action since that date. The Receiver does not believe that PCS Wireless has any interest in the LDR Business Assets and PCS Wireless is receiving notice of this Motion through its counsel.

The Receiver requests as part of any order authorizing the Receiver to complete the transactions contemplated herein, that the Receiver be authorized to pay the pending, valid liens against the Coney Island Drive Building and to make a distribution of \$200,000 to Western Alliance Bank in full and final satisfaction of any liens it may have against the LDR Business Assets. The Receiver does not request authority to make any other disbursements at this time.

IV. ARGUMENT AND CITATION TO AUTHORITY

Where the administration of a receiver estate requires the sale of real property, 28 U.S.C. § 2001 provides the general procedures that a receiver must follow. Specifically, subsection (b) establishes the following procedures for a private sale of real property:

After a hearing, of which notice to all interested 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 or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised 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.

28 U.S.C. §2001(b).

The procedures for the sale of personal property are set forth in 28 U.S.C. §2004 which incorporates §2001 by reference.

Notwithstanding the processes outlined in section 2001(b), in overseeing equity receiverships, district courts have wide discretion in overseeing the sale of real and personal property. Accordingly, except in cases of abuse, appellate courts will not disturb the exercise of the district courts' sound discretion in setting the conditions for judicial sales or the confirmation thereof. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir. 1968), *cert. denied*, 391 U.S. 966 (1968).

One of the ultimate purposes of the Receiver's appointment in this case is to provide a vehicle through which assets can be gathered, preserved, and, ultimately, liquidated in order to minimize to the extent possible the losses incurred. To that end, the Court has extremely broad powers to supervise the receivership and to determine the appropriate action to be taken in the administration of the receivership. *See SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986); *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 606 (9th Cir. 1978); *see also SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (holding that a court overseeing a receivership is accorded "wide discretionary power" in light of "the concern for orderly administration") (citations omitted).

Each receivership case presents its own distinct circumstances that require the presiding court to employ case-specific procedures. *See SEC v. Hardy*, 803

F.2d at 1038 (recognizing that courts must often craft reasonable administrative procedures to deal with the complex circumstances of each case). Because a court may not have the resources to ascertain which procedures will be most efficient in a given situation, the receiver has a duty to assist the court in understanding the specific issues in the case and developing the appropriate procedures. *See id.* (citing *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9th Cir. 1986)) (noting the duty of an equity receiver to aid the court in orderly and efficient administration of the estate); *see also Marsch v. Williams*, 23 Cal. App. 4th 238, 248 (Cal. Ct. App. 1994) (noting that the receiver is “the hand of the court, to aid it in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong”).

As set forth in detail in the Declaration of Scott Askue, the proposed sale offers several benefits to the Receivership Estate. (Askue Dec at Paragraph 11). First, the Receiver would not be obligated to pay any brokerage commission either for the Coney Island Drive Building or for the LDR Business Assets. The commission on the Coney Island Drive Building could ultimately have been between \$60,000 to \$90,000 depending upon the sale price. Second, the Receivership Estate is spared from the cost of sorting the furniture, fixtures and inventory as well as costs and expenses associated with the possible sale and

disposition of the furniture and fixtures. Third, Pulse has agreed to comply with existing privacy standards in the sale of the inventory such that inventory sold by Pulse will not contain personal consumer data. This was of critical importance to the Receiver since the Receiver did not want the inventory of the Receivership Defendant re-sold with consumer data on it.

Fourth, the Receiver can return the Caged Inventory to affected consumers or enable them to sell their items for what they deem to be an acceptable price. Essentially, these consumers will obtain the benefit of the bargain they originally sought from the Receivership Defendant --- a sale at an acceptable price or a return of their equipment.

Fifth, the Receiver has reached an agreement with Pulse to retain access to business records and other information necessary to the Receivership while ensuring that consumer data and information regarding former employees of the Receivership Defendant will remain with the Receiver. Sixth and finally, these sales will enable the Receiver to both satisfy outstanding, valid liens against the Coney Island Drive Building and the LDR Business Assets and recover approximately \$400,000 for the Receivership Estate.

With respect to appraisals of the building, the Receiver respectfully submits that the information provided herein complies with the appraisal requirements of §2001(b). The Receiver has submitted both a recent appraisal and the opinions of three separate commercial real estate brokers in the Reno, Nevada that the Receiver list the Coney Island Drive Building for sale at \$1,600,000 with the expectation that it would sell for between \$1,300,000 and \$1,500,000. By obtaining a sale price of \$1,400,000 without the requirement of paying a commission, the Receiver has obtained fair market value for the Coney Island Drive Building.

With respect to the LDR Business Assets, based on the information obtained by the Receiver concerning the LDR Business Assets, the Receiver believes that this Court should approve the sale at this amount under these conditions. In particular, the Receiver broadly offered the opportunity for interested buyers and for the affected lenders to inspect and make offers for the LDR Business Assets. (Askue Dec. at Paragraphs 8 – 9). The offer from Pulse was the highest offer received. Requiring the Receiver to obtain appraisals for the LDR Business Assets under these conditions would be unduly burdensome and expensive

With respect to the notice of the proposed sale, the Receiver is serving the Motion and this Memorandum upon all parties who have appeared in this case as well as any persons who have claimed or asserted liens or interests in the property to be sold. A copy of the Motion and Memorandum, with exhibits, will be posted on the Receiver's web site maintained for this case.

In light of the purposes and principles underlying the administration of this receivership, the broad discretion granted to this Court to administer and approve the disposition of the assets of Receivership Estates as set forth in the cases cited herein and in an effort to minimize additional costs incurred by the Receiver Estate in disposing the assets outlined herein, the Receiver requests approval for the transactions contemplated in Exhibits "A" and "B" hereto, to make the disbursements outlined herein and to execute and deliver such documents and agreements as may be required to close the proposed sale.

WHEREFORE, the Receiver respectfully requests that this Court grant this Motion, authorize the Receiver to consummate the transactions and agreements contemplated in Exhibits “A” and “B” which are attached hereto and for such additional relief as may be just and proper.

This 4th day of April, 2017.

LAW OFFICES OF HENRY F. SEWELL JR.,
LLC

/s/ Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
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CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This the 4th day of April, 2017.

LAW OFFICES OF HENRY F. SEWELL JR.,
LLC

/s/ Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
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