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7 Stephen J. Donell

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - EASTERN DISTRICT

11 ELIZABETH TAYLOR, an individual,
12 CHASITY JONES, an individual,
13
14 Plaintiffs,
15
16 v.

14 ALKIVIADES DAVID, an individual,
15 HOLOGRAM USA, INC., a Delaware
16 corp., HOLOGRAM USA
17 ENTERTAINMENT, INC., a Delaware
18 corp., FILMON MEDIA HOLDINGS,
19 INC., a Delaware corp., FILMON.TV,
20 INC., a Delaware corp., FILMON.TV
21 NETWORKS, INC., a Delaware corp.,
22 ALKI DAVID PRODUCTIONS, INC., a
23 Delaware corp., ANAKANDO MEDIA
24 GROUP USA, an unknown business entity,
25 FILMON.TV UK LIMITED, a foreign
26 corporation; and DOES 1 through 25,
27 inclusive
28 Defendants.

24 AND RELATED CROSS-ACTION

Case No.: BC649025

[Assigned to the Hon. Peter A. Hernandez,
Dept. K]

**RECEIVER STEPHEN J. DONELL'S EX
PARTE APPLICATION FOR AN ORDER:**

- (1) **APPROVING THE
STIPULATION WITH AXOS
BANK RE: RELEASE OF
LIENS; AND**
- (2) **APPROVING THE SALE OF
THE PROPERTY FREE AND
CLEAR OF ALL LIENS;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Filed concurrently with Declarations of
Philip D. Seymour, Stephen J. Donell, and
Michael E. Bubman; [Proposed] Order

Date: April 3, 2024
Time: 9:00 a.m.
Place: Dept. K

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- 1 b. Subject to paragraph 5 below, pay all Costs of Sale, identified by the categories
2 found on the Closing Statement, including: (i) Commissions, (ii) Title and Escrow
3 Charges, (iii) Government Charges and (iv) Miscellaneous Charges, as identified
4 on the draft statement appended to this Stipulation as Exhibit “A.”
- 5 c. Repay to Axos the Axos Advance, together with accrued interest to the escrow
6 closing date, as will be set forth on Exhibit “A”;
- 7 d. Disburse to the Receiver the sum of \$500,000, which shall constitute the Holdback,
8 which shall be held by the Receiver in trust; and
- 9 e. Pay to Axos the remaining Net Proceeds to be credited against the outstanding
10 balance of the Loan in Axos’ discretion on the Sale closing date.

11 5. Axos and Receiver understand and agree that: (1) so long as the price does not change, both
12 expect that the amounts in every category other than Payoffs to Axos and Miscellaneous shall remain the
13 same; (2) Payoffs to Axos will increase and remain solely within Axos’ control; and (3) miscellaneous
14 charges may change slightly due to prorations and/or other minor unexpected charges (i.e., additional
15 notarial or courier charges, tax prorations). After agreement by Axos and the Receiver to the final Closing
16 Statement, any increases in excess of \$5,000 shall be identified and discussed by Axos and the Receiver
17 to determine whether those charges/changes: (i) were reasonable; (ii) were necessary; and (iii) whether
18 they can be removed or reallocated.

19 6. Both Axos’ lien for repayment of the Loan (i.e., the difference between the amounts due
20 pursuant to the Loan and the Net Proceeds,) and the Receiver’s claim for payment of Administrative
21 Expenses shall attach to the Holdback. Absent agreement of the Receiver and Axos, the Court shall
22 determine the disposition of the Holdback as between the Receiver and Axos, which shall remain in the
23 Receiver’s trust account pending further court order or written agreement between the Receiver and Axos
24 and submitted to Escrow.

25 Aside from the fact that all parties have stipulated to the relief sought herein, Receiver is seeking
26 relief on an *ex parte* basis because the Receivership Estate no longer has the funds to continue operating,
27 and the insurance premium will be due on April 11, 2024; the total cost for the premium is \$65,730, and
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1 there is a 25% minimum earned premium. Therefore, if the sale has not closed by April 11, the Receiver
2 will have to pay a minimum of \$16,432.50 to the insurance company, and the Receiver does not have the
3 funds to pay such a hefty fee.

4 Proper *ex parte* notice was given by counsel for the Receiver to counsel for all parties on April 2,
5 2024 at approximately 10 a.m. See Declaration of Michael E. Bubman (“Bubman Decl.”), ¶ 21, Ex. 4.

6 This Application is based on the authority vested in the Receiver pursuant to the Order Appointing
7 Receiver, this Notice of Application and Application, the attached Memorandum of Points and
8 Authorities, the Declarations of Philip D. Seymour, Stephen J. Donell and Michael E. Bubman, the
9 pleadings and records on file in this matter, such further papers as may be filed in connection with this
10 Application, and on such further evidence and argument as may be presented at the hearing on the
11 Application.

12 Dated: April 2, 2024

MIRMAN, BUBMAN & NAHMIAS

13
14 By: 

15 Michael E. Bubman, Esq.
16 Counsel for State Court Receiver,
STEPHEN J. DONELL

TABLE OF CONTENTS

1

2

3 MEMORANDUM OF POINTS AND AUTHORITIES 1

4 I. INTRODUCTION 1

5 II. BACKGROUND AND STATEMENT OF FACTS 1

6 A. The Senior Lien on the Property 1

7 B. The Underlying Facts in this Action and the Appointment Order 2

8 C. Hiring a Sales Broker and Initial Issues with Marketing the Property,
9 Including the Property’s State of Disrepair and Interference by David 3

10 D. Receiver Files Unlawful Detainer Action and Reduces Listing Price 4

11 E. Receiver Issues \$150,000 in Receiver’s Certificates to Axos in Exchange
12 for Super-Priority Lien Against the Property to Fund Clean Up Efforts 5

13 F. Broker Remarkets Property After It Is Fixed Up and Obtains the Offer from
14 Buyer at Fair Market Value to Purchase the Property 6

15 G. The Stipulation To Allow the Senior Lien to Attach to Proceeds of the Sale 6

16

17 III. THE COURT HAS THE AUTHORITY TO AUTHORIZE THE SALE FREE
18 AND CLEAR OF ALL LIENS 9

19 IV. GOOD CAUSE EXISTS FOR APPROVING THE STIPULATION AND
20 CONSEQUENTLY, THE SALE OF THE PROPERTY 10

21 V. CONCLUSION 11

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASES

Cal-American Income Prop. Fund VII v. Brown Dev. Corp.,
138 Cal.App.3d 268,274 (1982).....9

Cty. of Sonoma v. Quail,
56 Cal.App.5th 657, 684 (2020) 10

Lesser & Son v. Seymour,
35 Cal.2d 494, 499 (1950) 10

People v. Riverside Univ.,
35 Cal.App.3d 572, 585 (1973)9

STATUTES

California Code of Civil Procedure §5689

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Stephen J. Donell is the State Court-appointed Receiver (the "Receiver" or "Seller") for the real
4 property located at 23768 Malibu Road, Malibu, CA 90265 (the "Property"). The Receiver was appointed
5 for the purpose of marketing and selling the Property. By this Application, the Receiver requests the Court
6 to approve: (1) the Sale of the Property to Groco, Inc. ("Buyer") free and clear of all liens; and (2) the
7 Stipulation with Axos Bank ("Axos") releasing the Senior Secured Liens (defined below) from title and
8 allowing these Senior Secured Liens to attach to the proceeds from the Sale of the Property instead. Based
9 on the Receiver's evaluation of the Property, the purchase price offered by Buyer (\$16,550,000) represents
10 the fair market value for the Property, and it is in the best interest of the Receivership Estate to complete
11 this sale, as the Receiver does not believe he will get a higher offer than the one presented at this point in
12 time or in the next sixty days. Additionally, the Receiver cannot close this Sale unless the Stipulation is
13 approved—*without the Stipulation* allowing the Senior Secured Liens (defined below) to be cleared from
14 title and attached to the proceeds from the sale instead, *the sale will not close*.

15 The Receiver seeks approval of this Application pursuant to the terms of the March 21, 2023 Order,
16 which appointed the Receiver for the purpose of selling the Property and the April 19, 2023 Order, which
17 provided the specific duties and responsibilities of the Receiver. Accordingly, the Receiver respectfully
18 requests this Court approve the Stipulation allowing the release of Axos's Senior Secured Liens and
19 authorize the Receiver to sell the Property free and clear of liens to Buyer for \$16,550,000.

20 **II. BACKGROUND AND STATEMENT OF FACTS.**

21 **A. The Senior Lien on the Property.**

22 On April 23, 2019, Senior Secured Creditor Axos Bank ("Axos") made a \$15,000,000 loan (the
23 "Loan") to Defendant Alkiviades David ("David"), evidenced by, among other things, that certain Interest-
24 Only Period Adjustable Rate Note (the "Note") payable by David to the order of Axos. The indebtedness
25 under the Note is secured by, among other things, that certain Deed of Trust, including an Accommodation
26 Rider, dated April 23, 2019 in favor of Axos (the "Deed of Trust"), which encumbers the Property, which
27 is owned by Harmonia Malibu LLC, a California limited liability company ("HML"). The Deed of Trust
28

1 was recorded on April 26, 2019 in the Official Records of Los Angeles County as Document Number
2 20190375317. Pursuant to the Deed of Trust, Axos has a perfected first priority lien on the Property (the
3 “Senior Lien”). Declaration of Michael E. Bubman (“Bubman Decl.”), ¶ 2.

4 **B. The Underlying Facts in this Action and the Appointment Order.**

5 On June 12, 2019, judgment creditor Chastity Jones was awarded a judgment against Defendant
6 Alkiviades David (“David”) in the amount of \$13,591,300. On February 14, 2023, Judgment Creditor filed
7 a motion seeking the appointment of Receiver in Aid of Enforcement of Money Judgment. On February
8 16, 2023, the Judgment Creditor and HML agreed to appointment of the Receiver for the purposes of
9 selling the Property. Bubman Decl., ¶¶ 3-4.

10 The Receiver was initially appointed by this court on March 21, 2023, with a more detailed and
11 complete order issued on April 19, 2023 (the “Appointment Order”). The Receiver was appointed to sell
12 the Property, a residential home in Malibu. Declaration of Stephen J. Donell (“Donell Decl.”), ¶2; Bubman
13 Decl., ¶ 5. The Receiver’s duties included the following: (a) retain a realtor to market and sell the Property;
14 (b) gain control of the Property, including negotiations with the occupants (or their counsel) to get them
15 to vacate without requiring full blown unlawful detainer litigation, to allow the Receiver to actually market
16 it for sale; (c) obtain sufficient funding to allow the Receiver to clean up and rehabilitate the Property
17 sufficiently to make it presentable for showing to the public; (d) actually clean up and repair the Property,
18 including the retention of cleaning crews and contractors to perform the work on an expedited basis; (d)
19 negotiate with prospective buyers for the sale of the Property; (e) negotiate with the lender, Axos Bank,
20 to allow a sale for less than the amount owed to them on their senior secured debt on the Property. Donell
21 Decl., ¶ 3.

22 At the time of the Appointment Order, HML advised that David was staying at the Property from
23 time to time to oversee work being performed at the Property in his role as a member of the investment
24 committee of Harmonia Trusts.¹ Qrib was staying at the Property as a guest of, and assistant to, David.
25 Bubman Decl., ¶ 6.

26
27
28 ¹ For reference, the Harmonia Trusts own HML, and HML owns the Property; HML was deemed the alter
ego of Alki.

1 **C. Hiring a Sales Broker and Initial Issues with Marketing the Property, Including the**
2 **Property’s State of Disrepair and Interference by David.**

3 In May 2023, the Receiver officially retained the sales broker (“Broker”) for the Property.
4 Declaration of Phillip D. Seymour (“Seymour Decl.”), ¶3; Donell Decl., ¶ 4; Bubman Decl., ¶ 7. The
5 Property had previously been unsuccessfully listed for \$28,500,000 for a very prolonged period of time,
6 so *when the Broker decided to list the Property for sale on May 3, 2023, he did so at a listing price of*
7 *\$23,000,000*; since the Property had already been on the market for some time without selling and was in
8 need of somewhat substantial repair work, the Broker believed a significant price drop would generate
9 interest and account for this repair work that needed to be completed. Seymour Decl., ¶ 5; Donell Decl.,
10 ¶ 5.

11 The Property at that time was a mess, as Defendant Alkiviades David’s (“David”) belongings were
12 strewn about the house; these belongings included trash, clothing, rotting food, audio and video
13 equipment, and paraphernalia and products related to David’s cannabis-related business. Seymour Decl.,
14 ¶ 8. There was a patio between the garage and the house that originally was tiled and included a water
15 feature, in which David covered the ground in green astroturf and covered the entire area in netting to
16 create an area for David’s seven exotic birds, who were very loud and very messy. *Id.* There was also a
17 huge cage in that area for those birds. *Id.* There was also a separate “aviary” section of the house in which
18 the birds were uncaged and were allowed to roam wild, not only creating a mess, but doing damage to the
19 doors and door framing inside the house, as well as attracting bugs and other insects. *Id.* The majority of
20 the house was mainly unkempt, with television mounts hanging from the walls (without televisions
21 attached), uncovered plugs, shades that would not open, doors that would not open, damaged and broken
22 windows, animal feces left through the Property, dead plants, etc. *Id.*

23 Aside from the state of disrepair the Property was in, there were significant difficulties with
24 marketing and selling the Property as a result of David’s interference. The Receiver had to schedule
25 appointments either through David’s attorney, Dana Cole, or his girlfriend, Nissrine Qrib (“Qrib”), who
26 was also staying at the Property with David, to attempt to show the Property, and initial showings were
27 blocked by David, who had instructed his security guard to not let the Receiver or Broker enter the
28

1 Property. Seymour Decl., ¶¶ 6-7; Donell Decl., ¶ 6; Bubman Decl., ¶ 7. The Receiver was able to work
2 with Mr. Cole to get David to allow the Property to be shown, but even then, the Property could not be
3 shown without Qrib present to control the animals. If David was present when the Property was being
4 shown, he was screaming and cursing at the Receiver, Broker, and potential buyers. Other times, David
5 left guns laying around the Property. If David was not present, he had a security guard follow the Receiver,
6 Broker, and potential buyers with David on the phone, yelling that he would sue them all. Showings
7 became limited and potential buyers had to often be coaxed to visit the Property due to a fear of David.
8 Seymour Decl., ¶¶ 6-7.

9 **D. Receiver Files Unlawful Detainer Action and Reduces Listing Price.**

10 In July 2023, the Receiver learned David had left the country and his Visa had been revoked,
11 thereby leaving him unable to return. Donell Decl., ¶ 8; Bubman Decl., ¶ 9. Despite this, David still
12 managed to interfere with showings of the Property (e.g., having his staff leave unsecured guns around
13 the Property during showings, making potential buyers nervous). Seymour Decl., ¶ 11; Bubman Decl., ¶
14 9. David's absence also made the Property less secure, as David's security disappeared and Qrib was no
15 longer staying at the Property (although David and Qrib still controlled access to the Property). Donell
16 Decl., ¶¶ 8-9.

17 In mid-July, 2023, the *Receiver came to an agreement with a purchaser at \$19.1 million* and
18 prepared a purchase and sales agreement ("PSA") with that buyer, with escrow opening on July 25, 2023.
19 *After the buyer's inspections, however, buyer reduced their proposed purchase price from \$19.1 million*
20 *to \$14.4 million and promptly cancelled escrow when the Receiver would not reduce the price that low.*
21 Seymour Decl., ¶ 12; Bubman Decl., ¶ 8. Shortly thereafter, transients broke into the Property and caused
22 additional damage and safety concerns. Seymour Decl., ¶ 13. The Receiver and Broker agreed that, in light
23 of the Property's dilapidated condition and safety concerns due to transients and David, *the Property price*
24 *needed to be reduced to \$19.9 million; the price was reduced accordingly in mid-August.* Seymour Decl.,
25 ¶¶ 12-13.

26 The conditions for showing the Property became far too difficult to continue without any controls
27 being exercised over the Property, and each offer required that we deliver the Property vacant, which the
28

1 Receiver could not assure due to the actions of David who the Receiver was advised was attempting to
2 return to the United States. Seymour Decl., ¶ 14. On August 21, 2023, the Receiver filed an unlawful
3 detainer action against David and Qrib in order to gain full control of the Property to be able to make some
4 repairs, clean up the Property and make sure the transients did not take control of the Property. *Id*; Donell
5 Decl., ¶¶ 9-10, Bubman Decl., ¶ 10. Once the unlawful detainer was filed, Qrib advised the Broker he
6 would no longer be allowed to show the Property. Seymour Decl., ¶ 16; Donell Decl., ¶ 10.

7 Around the same time, the *Receiver received another offer for \$17 million*. This second
8 prospective purchaser began conducting their own due diligence on the Property before entering into
9 escrow, and based upon the information obtained and the conditions at the Property, *they withdrew the*
10 *\$17 million offer and submitted a new offer of \$12 million*. Seymour Decl., ¶ 15; Bubman Decl., ¶ 8.

11 **E. Receiver Issues \$150,000 in Receiver’s Certificates to Axos in Exchange for Super-**
12 **Priority Lien Against the Property to Fund Clean Up Efforts.**

13 Around this time, the Receiver began discussions with lender Axos in an effort to obtains sufficient
14 capital to clean up the Property. Donell Decl., ¶ 12. In November 2023, the Receiver sought and received
15 permission from the Court to issue a Receiver’s Certificate in the amount of \$150,000 for the purpose of
16 getting a loan to make repairs to the Property; shortly thereafter, *Axos agreed to fund the \$150,000 in*
17 *Receiver’s Certificates in exchange for a super-priority lien against the Property*. Seymour Decl., ¶ 18;
18 Donell Decl., ¶ 12; Bubman Decl., ¶¶ 13-14.

19 At approximately the same time, the Receiver negotiated a stipulation with Qrib to acknowledge
20 she was not in possession of the Property and to have her remove all the personal property and the exotic
21 birds from the Property by the end of November 2023. Seymour Decl., ¶ 18; Donell Decl., ¶ 13; Bubman
22 Decl., ¶ 11. Between December 2023 and early January 2024, the Property was cleaned up, with more
23 than two large dumpsters of trash removed, and significant repairs were made throughout the Property,
24 including plumbing, electrical, woodwork, replacing broken and damaged doors and windows. Seymour
25 Decl., ¶ 19; Donell Decl., ¶ 14. The Property was also fumigated and repainted. *Id*.

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1 **F. Broker Remarkets Property After It Is Fixed Up and Obtains the Offer from Buyer at**
2 **Fair Market Value to Purchase the Property.**

3 After repairs were made, the Property was remarketed with new pictures and updated materials,
4 which resulted in a significant number of additional showings of the Property. Seymour Decl., ¶ 20; Donell
5 Decl., ¶ 15; Bubman Decl., ¶ 15. By the end of January 2024, there were multiple offers to purchase the
6 Property, for which a multiple counteroffer form was sent out to the prospective buyers in order to
7 determine the highest and best offer to accept. *The best offer was from the current Buyer for*
8 *\$16,550,000—this offer was reached after negotiations through February 2024, and this offer was*
9 *better by approximately \$1 million.* Escrow opened on February 23, 2024, and since that time, Buyer has
10 conducted and completed all his due diligence for the purchase of the Property. Seymour Decl., ¶ 21,
11 Donell Decl., ¶¶ 15-16; Bubman Decl., ¶ 15. The only issues that remained before the sale could close
12 (aside from obtaining approval from this Court) pertained to the clouds on title. All clouds on title have
13 since been cleared so the property can be transferred free and clear of liens with the approval of the
14 Stipulation at issue in this Application. Bubman Decl., ¶¶ 16-21.

15 The Receiver and Broker continued to market the Property notwithstanding the escrow, and in the
16 time since this offer was received, there have been substantially fewer people interested in viewing the
17 Property both online and in person; the market for properties in Malibu has softened and there have been
18 less sales reported in the last couple months. Seymour Decl., ¶ 22. The Broker is confident the purchase
19 price is at the high end of fair market value for the Property at this time and does not believe the Receiver
20 would be able to obtain a higher price for the Property in its current condition in the next 30-60 days.
21 Seymour Decl., ¶ 24.

22 **G. The Stipulation To Allow the Senior Lien to Attach to Proceeds of the Sale.**

23 The \$16,550,000 Purchase Amount is insufficient to satisfy the all the claims in this Action,
24 including the Senior Lien and Receiver’s Certificate (collectively, “Senior Secured Liens”), delinquent
25 amounts relating to the Property (including but not limited to, property taxes), the usual and customary
26 costs of sale including commissions, escrow fees, title insurance (“Costs of Sale”), and the Administrative
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1 Expenses (the “Claims”). As a result, the Sale cannot be completed and Escrow cannot close. Bubman
2 Decl., ¶ 17.

3 Counsel for the Receiver entered into negotiations with and obtained the Stipulation with Axos
4 sought herein. Axos has agreed to allow the Sale to be completed, allow payment of the Costs of Sale and
5 to authorize an administrative expense “holdback” in escrow of \$500,000 (the “Holdback”). In exchange,
6 the Receiver agrees to the release to Axos the “net proceeds” in excess of the aggregate of the Costs of
7 Sale and the Holdback amount, which will leave a balance of \$500,000, which will be distributed to the
8 Receiver and held in trust pending resolution of the disposition of the Holdback. Axos and the Receiver
9 further agree that Axos shall have a continuing lien on the Holdback amount, with disposition to be made
10 pursuant to further court order, with the Receiver and Axos each reserving their respective rights and
11 arguments as to the disposition of such amounts. Bubman Decl., ¶ 20, Ex. 3.

12 The Parties seek to stipulate as follows:

13 1. If it has not already done so, Axos shall submit two payoff demands to Escrow - one for
14 the Axos Advance and one for the Loan (and all amounts associated with those liens), with the payoff
15 demand for the Loan in an amount not to exceed the Net Proceeds. The closing statement from Escrow
16 (the “Closing Statement”) shall contain line items showing (i) payment of the Costs of Sale (ii) distribution
17 of the Holdback to the Receiver, (iii) payment of the Axos Advance, plus interest, and (iv) distribution to
18 Axos of payment of the Net Proceeds.

19 2. Axos shall submit to Escrow fully executed and duly notarized original Reconveyances of
20 (i) the Deed of Trust, and (ii) the Certificate (collectively, the “Reconveyances”), in such form as may be
21 approved by Fidelity. Fidelity shall prepare the Reconveyances for Axos’s approval. The Reconveyances
22 shall not be effective, and Fidelity shall not record them, until payment of the Net Proceeds has been wired
23 to Axos and Axos has confirmed receipt thereof.

24 3. Once the Court has approved the Stipulation and issued its order confirming the Sale,
25 Fidelity shall proceed to close the Escrow in accordance with the Purchase and Sales Agreement (“PSA”)
26 and complete the sale to Buyer.

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1 **III. THE COURT HAS THE AUTHORITY TO AUTHORIZE THE SALE FREE AND CLEAR**
2 **OF ALL LIENS.**

3 Courts have the authority to approve a receiver's sale and to direct the manner in which the sale is
4 to be conducted. *See*, Code Civ. Proc., § 568. ("The receiver has, under the control of the court, power to
5 ... make transfers, and generally to do such acts respecting the property as the court may authorize"). A
6 receivership court has the "inherent equitable power ... to prescribe the manner in which a receiver may
7 sell property ... [including] a private sale, at the best price attainable under the circumstances" *People*
8 *v. Riverside Univ.*, 35 Cal.App.3d 572, 585 (1973). Because the main function of a receivership court is
9 to manage and dispose of the receivership estate in the best manner possible and for the best interests of
10 the parties, it is vested with "a degree of flexibility with respect to the time and manner in which property
11 should be sold to meet exigencies as they arise." *Id.*; *see also Cal-American Income Prop. Fund VII v.*
12 *Brown Dev. Corp.*, 138 Cal.App.3d 268,274 (1982).

13 "The court has full power to order the receiver to dispose of property in such a manner as the court
14 may deem to be for the best interest of the parties concerned and the advice of the receiver and his opinion
15 in regard to the value of the property, the manner, time and place of its disposition are entitled to great
16 respect and weight." *Riverside Univ., supra*, 35 Cal.App.3d at 583. As an agent of the Court, a receiver is
17 vested with the authority to manage and dispose of receivership property, under the court's direction and
18 supervision. *See, e.g., Lesser & Son v. Seymour*, 35 Cal.2d 494, 499 (1950). And, "[g]enerally speaking if
19 no good reason appears for refusing to confirm a receiver's sale, such as chilling of bids or other
20 misconduct or gross inadequacy of price, the sale should be confirmed." *Riverside Univ., supra*, 35
21 Cal.App.3d at 582.

22 A court's authority to approve a receiver's sale extends to authorizing the receiver to sell
23 receivership property on such terms as the Court shall authorize:

24 Code of Civil Procedure section 568 grants receivers the general power "to
25 do such acts respecting the property as the court may authorize." Read
26 together [with Section 568.5], these provisions permit a court to tailor the
27 method of sale of receivership property to the circumstances before it.

1 Indeed, several courts have recognized “the broad power of a court to
2 determine the manner in which [receivership] property should be sold.”

3 *Cty. of Sonoma v. Quail*, 56 Cal.App.5th 657, 684 (2020) (citing *Riverside Univ.*, 35 Cal.App.3d at 584).

4 California law is now settled that courts may authorize sales of real property free and clear. The
5 court in *Cty. of Sonoma* went on to explicitly provide that the court has the authority to approve sale of
6 real property free and clear of liens; “[w]e thus conclude that the trial court here had the authority to
7 authorize the sale of the property free and clear of all liens and encumbrances” *Cty. of Sonoma*, 56
8 Cal.App.5th at 687. Additionally, in *Lesser & Son*, the California Supreme Court upheld a court’s
9 authority to confirm the sale of receivership assets in a manner which conflicted with its prior order of
10 sale. *Lesser & Son*, Cal.2d at 499. Explaining its reasoning, the Court stated:

11 [T]he main function of the court is to manage or dispose of the estate in the
12 best manner possible and for the best interest of the parties concerned. To
13 effectually perform that duty necessarily requires some flexibility and
14 continuity of jurisdiction in giving instructions to the receiver as to the
15 manner in which the property should be sold to meet exigencies as they may
16 arise.

17 *Id.* In support of its conclusion, the Court noted that “[t]he receiver is a mere agent and the property in
18 [the receiver’s] hands is really under the control and continuous supervision of the court.” *Id.*

19 **IV. GOOD CAUSE EXISTS FOR APPROVING THE STIPULATION AND**
20 **CONSEQUENTLY, THE SALE OF THE PROPERTY.**

21 Here, the Appointment Order expressly authorizes the Receiver to sell the Property. *See* Donell
22 Decl., ¶ 2. Based upon his analysis and business judgment, the Receiver believes, notwithstanding the
23 price differential between the first and second listing prices for the Property and the Buyer’s offer, the
24 Buyer’s offer for the Property presented in this Application represents the fair market value of the Property
25 at this time, and accepting this offer is in the best interest of the Receivership Estate. This is in
26 consideration of the fact that the Receiver never obtained a *final* offer to purchase the Property at a price
27 higher than the \$16,550,000 Purchase Price—while the Receiver did obtain earlier offers at higher prices,
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1 these were withdrawn in an attempt to negotiate lowball offers due to the state of disrepair the Property
2 was in. In fact, *the last offer the Receiver obtained was for \$12 million; after a mere \$150,000 loan by*
3 *Axos, the Receiver was able to clean up the Property and subsequently secure the Purchase Price for*
4 *an additional \$4,550,000.* The Receiver does not believe he can get a higher offer at than the one presented
5 at this point in time or in the next sixty days. Thus, the Receiver seeks this Court's approval of the Purchase
6 Price to sell the Property to Buyer.

7 The only issue remaining before the Sale can close, aside from Court approval, is that of the cloud
8 on title by way of the Axos Senior Secured Liens. The Purchase Price is insufficient to pay off the Senior
9 Secured Liens, delinquent amounts relating to the Property (including but not limited to, property taxes),
10 the Costs of Sale, and the Claims. As a result, the Sale cannot be completed and Escrow cannot close.
11 After negotiations with Axos, the Receiver and Axos have entered into the Stipulation, which allows the
12 sale to close and the Costs of Sale to be paid, authorizes the Holdback for the administrative expenses of
13 the Receivership which can be determined by this Court at a later date, provides that the Senior Secured
14 Liens will be removed from title and will instead attach to the proceeds of the Sale and the Holdback
15 amount.

16 This Stipulation is in the best interests of the Receivership Estate because without this Stipulation,
17 the Buyer will not be able to purchase the Property free and clear of all liens and encumbrances and will
18 therefore not be getting the benefit of the bargain, and the sale will not be completed, leaving the Receiver
19 back at where he started and having to remarket the Property all over again while this same exact issue is
20 sure to arise again in the event of another attempt to sell the Property to someone else.

21 Accordingly, the Receiver seeks the Court's approval of the Sale free and clear of all liens, as well
22 as the Stipulation allowing for the Senior Secured Liens to attach to the proceeds of the Sale.

23 **V. CONCLUSION.**

24 Based upon the foregoing, the Receiver respectfully requests that this Court:


- 25 • approve the Stipulation authorizing the sale of the Property pursuant to the terms described in the
26 Stipulation;

27 ///

- find that the sale price for the Property is fair and reasonable and that the Receiver and Buyer of the Property acted in good faith in connection with the negotiation, execution, delivery and completion of the sale;
- authorize the Receiver to amend or modify the Purchase Agreement and any related sale documents as necessary to complete the sales of the businesses if the Receiver in good faith believes such modification is reasonable and required to serve the interests of the receivership estate;
- authorize the Receiver to take all actions necessary to execute the documents required to carry out and effectuate the sale of the Property aside from reducing the sale price; and
- approve the sale of the Property to Buyer.

Dated: April 2, 2024

MIRMAN, BUBMAN & NAHMIAS

By: 
Michael E. Bubman
Attorneys for State Court Appointed Receiver, Stephen J. Donell

PROOF OF SERVICE

LOS ANGELES COUNTY)
) ss
STATE OF CALIFORNIA)

I am employed in the County of Los Angeles, State of California, in the office of a member of the bar of this court at whose direction the service was made. I am over the age of 18 and not a party to the within action. My business address is 16133 Ventura Blvd., Suite 1175, Encino, California 91436.

On **April 2, 2024**, I served a true and correct copy of the document described as **RECEIVER STEPHEN J. DONELL'S EX PARTE APPLICATION FOR AN ORDER: (1) APPROVING THE STIPULATION WITH AXOS BANK RE: RELEASE OF LIENS; AND (2) APPROVING THE SALE OF THE PROPERTY FREE AND CLEAR OF ALL LIENS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties named below, as follows:

SEE ATTACHED SERVICE LIST

- (BY MAIL) I am familiar with the ordinary business practice of the law firm of MIRMAN, BUBMAN & NAHMIA for collection and processing of correspondence for mailing with the United States Postal Service at the aforementioned place of business and that the above-entitled document was placed in a sealed envelope and deposited for collection and mailing on the date stated above, following such ordinary practices, and in such manner as to cause it to be deposited with the United States Postal Service that same day, with postage thereon fully prepaid, in the ordinary course of business, addressed as indicated above.
- (BY FACSIMILE TRANSMISSION) Based on the agreement of the parties to accept service by facsimile transmission, I faxed the document(s) to the person(s) via facsimile machine number (818) 451-4620 to the person(s) at the fax number(s) listed on the service list on April 2, 2024. No error was reported by the facsimile machine that I used.
- (BY E-MAIL) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission. I caused the documents to be sent to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
- (BY OVERNIGHT DELIVERY, CCP 1013(c, d) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 2, 2024, at Encino, California.



ANA I. ACOSTA

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