

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN-NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Case No.: 12-cv-15062

v

Honorable Thomas L. Ludington

JOEL I. WILSON, DIVERSIFIED GROUP PARTNERSHIP
MANAGEMENT, LLC, AND AMERICAN REALTY
FUNDS CORPORATION,

Defendant(s).

**BRIEF IN SUPPORT OF RECEIVER'S MOTION TO SELL 41 PARCELS OF
IMPROVED REAL PROPERTY PURSUANT TO PUBLIC SALE**

Now comes Randall L. Frank, Court Appointed Receiver in this matter (the "Receiver") by and through his counsel, LAMBERT LESER, and for his brief in support of motion states as follows:

Statement of Facts:

On February 7, 2013, this Court entered an Amended Order Appointing Randall L. Frank as Receiver [Docket No. 56] (the "Receivership Order"). The Receivership Order allows Receiver to manage and sell the property of the receivership estate.

Mr. Frank, in his capacity as the Receiver, was charged with gaining control and managing properties located in Bay County, Michigan and Saginaw County, Michigan. The properties were either leased, vacant or occupied pursuant to land contracts. A majority of tenants and land contract vendees were in default of the monetary terms and non-monetary covenants of the leases and land contracts when the Receiver was appointed by the Court.

Defaults of the tenants or land contract vendees included, but were not limited to, failure to pay lease or land contract payments, failure to pay real property taxes and failure to maintain the property.

Compounding the lack of cash flow, because of the numerous monetary defaults by lessees and land contract vendees, was the fact that the receivership estate had very little cash when the Receiver gained possession. In addition, the Receivership was indebted to the townships, villages, cities and counties where the properties were located for past due real property taxes in an amount in excess of \$180,000.00.

The Receiver also discovered that American Realty Funds, a defendant herein, had not obtained licenses and/or permits with the cities to lease and/or make improvements to the Properties and that the improvements to the houses performed by American Realty Funds were generally not in accordance with code requirements, were completed poorly or improperly and final permits and approvals had not been obtained. Further, American Realty Funds had also failed to adequately maintain the houses. Consequently, substantial sums of money were required to repair the houses and to obtain licenses and permits.

When the Receiver was first appointed, it appeared that all Properties would need to be immediately sold due to the lack of cash flow. The Properties also needed to be immediately sold due to the daunting task of improving the Properties to bring them into compliance with code requirements and obtaining permits and paying past due and current property taxes. However, the sale of all Properties, however, in 2013-2014 because of market conditions and the condition of the properties would likely have yielded essentially no return to the investors and creditors after payment of past due property taxes, administrative fees and closing fees. Consequently, the

Receiver decided to operate the Properties until such time as market conditions allowed a more favorable return to investors and creditors.

Considerable time, effort and money were required in 2013 - 2014 to gain control of the various properties in default, bring them into compliance with code requirements, lease properties and to sell properties that would be too expensive to salvage or that offers were received that made financial sense to accept, due to the cash flow needs of the estate and the condition of the property.

Another factor that negatively impacted the estate was the Receiver's inability to find tenants to lease the properties. In the early phases of the case, the Receiver had trouble finding tenants and many of the tenants damaged the property the tenants were occupying. The poorly rehabilitated houses and the damage caused by tenants created a constant cash drain to the estate.

The Receiver retained MDL Investments, MDL Realty and Michael Loomis in April of 2014 to manage the Properties, make improvements to the Properties and oversee third parties retained to make repairs and improvements to the Properties, pursuant to the Order Granting Receiver's Motion to Retain MDL Investments entered by the Court on or about April 8, 2014 [Docket No. 121]. The Receiver obtained a loan in the approximate amount of \$200,000.00 to assist in paying off past due real property taxes, eliminating significant interest and penalty costs to the estate. Eventually, the Receiver, with the assistance of MDL Investments and the Receiver's other retained professionals, gained control of the properties, made required improvements, obtained licenses, sold homes, improved the tenant mix, and the estate began to generate enough cash flow from operations and sales to pay ongoing operating costs including property taxes.

The Receiver sought input from the investors and creditors of this estate as to the preferred method to wind down the estate, and the majority of the respondents indicated that liquidation is the preferred method to close this estate. The Receiver has reported to the Court, through quarterly reports and at various hearings and status conferences, that liquidation, after the Properties were stabilized, was the only likely manner in which the investors and creditors would receive a meaningful distribution in the near term.

The Receiver considered the possibility of transferring the Properties to a trust, allowing the continued operation of the remaining properties and paying the investors and creditors from the cash flow after payment of administrative claims. The majority of parties that responded to the Receiver's request for input and guidance chose liquidation. Further, such a plan would not yield a meaningful payment to the creditors and investors within the near term, because not only would outstanding administrative costs and the remaining bank loan require payments, but there would also be ongoing operating expenses and management fees. Therefore, the Receiver believes the sale of the homes is the best course to provide a meaningful return to the creditors and investors.

The Receiver, through MDL Realty and/or Century 21 marketed homes for sale since 2013. MDL compiled a listing sheet for each of the homes and listed them for sale individually and as a group. The listing was published in the following sources: multi list, Homes.com (2 years), Facebook (1 year), Trulia.com (1 year), Craigslist (1 year) and Zillow.com (1 year). During the most recent one year period, approximately 64 inquiries were received regarding the properties. Both MDL Realty and Century 21 obtained offers on individual homes. Some offers were ultimately accepted and the sales were approved by this Court.

Until recently, no offers were received for the purchases of a large block of homes despite the efforts of MDL Realty to market same. The Receiver received an offer from Ryan Zaninovich in the amount of \$1,170,000.00 for 39 homes located in Bay County, Michigan and Saginaw County, Michigan, a copy of which is attached as Exhibit "A" (the "Offer"). The Offer had originally contemplated the sale of 40 homes for a sales price of \$1,200,000.00. However, one of the homes suffered significant damage from a fire. The home was located at 2305 Barnard, Saginaw, Michigan. The Receiver received \$30,000.00 for the home from the insurance carrier. An additional \$10,000.00 was paid by the insurance carrier and is held by Saginaw County, and will not be released until the home is demolished or repaired. The Receiver is currently negotiating with the proposed purchaser to purchase the property.

The Receiver also received an offer from DC Properties of Michigan to purchase the home located at 144 Lockwood, Saginaw, Michigan for \$23,000.00. The Receiver accepted the offer pending Court approval.

MDL Realty will receive a commission of 8% of the gross sales price from the sale. A commission of 8% of the gross sales price has been previously approved by this Court. [see Docket No. 122]. Michael Loomis is the primary contact and is the majority member of MDL Investments and MDL Realty. The Receiver, after making inquiry, believes the commission to be paid to MDL Realty is fair and reasonable, considering the properties, the time and expense to list and show the properties and location of the properties for sale.

As stated earlier, MDL Investments is also the property manager employed by the Receiver to manage and maintain the properties. As such, MDL Investments has received compensation from this estate since 2014. The compensation was for services provided pursuant

to the Agreement to Manage and Lease Real Estate as disclosed in a motion filed with this court to retain MDL Investments [see Docket No. 120]. The Receiver disclosed the compensation paid to MDL Investments in the quarterly reports filed with this Court.

MDL Investments has also negotiated an agreement with the proposed purchaser to manage the properties to be purchased from the estate by the proposed purchaser. The form of the agreement and the compensation will be substantially similar to the compensation and the agreement the Receiver signed with MDL Investments.

Entities owned or controlled by Michael Loomis, including General Property Holdings, LLC (11 properties), MDL Investments (1 Property) and 306 N. Oakley Land Trust (1 property), has also entered into a purchase agreement with the proposed purchaser, wherein the proposed purchaser will purchase the 13 homes, totaling 16 units, located in the City of Saginaw, paying the sum of \$304,600.00. A combined commission of \$9,000.00 will be paid to MDL Realty by one or more of the MDL related entities identified herein, with \$4,500.00 of the commission paid to Tom Ciaciuch, an agent employed by MDL Realty. Mr. Ciaciuch has also acted as an agent on the sale of homes by the estate, including the sale to the proposed purchaser.

The Receiver does not believe, and has not been presented with any evidence, that Michael Loomis or his related entities creates a conflict of interest or that an impermissible advantage has been gained by Mr. Loomis or his related entities at the expense of this estate. The Receiver believes this is true because the average sales price for the homes sold by the Loomis related entities is less than the average sales price to be received by the estate for each home when deducting the proposed commission. The Receiver, as part of his due diligence, obtained appraised values for each of the Sale Properties from a certified appraiser. The average

sales price of the homes to be sold by the estate exceeds the appraised average sales price for the homes to be sold. During many quarters of the Receivership, the Receiver received no offers even though there was more than one broker listing the properties. Additionally, it is important to note that the average sales price, as set forth in this Offer, exceeds the average sales price received for the sale of homes during the pendency of the receivership. It is even more important to note that in the last 12 months only 6 homes have been sold. At this rate, it would take almost seven years to liquidate the homes if the homes are sold on a one by one basis.

The Receiver has disclosed the Loomis/MDL relationships and transactions to provide the Court and interested parties full disclosure, so that this Court and the interested parties can make an informed, independent determination regarding the relevance of the Loomis/MDL/proposed purchaser future relationship, and the transaction approval requested.

Attached to the Offer is the list of properties to be sold pursuant to the Offer and shall be referred to herein as the "Bulk Sale Properties". The Receiver seeks this Court's approval to sell the Bulk Sale Properties and the Property located at 144 Lockwood, Saginaw, Michigan (the "Lockwood Property") pursuant to a public sale with the offers standing as stalking horse minimum bids. The Receiver also seeks this Court's approval to sell the property located at 2305 Barnard, Saginaw, Michigan (the "Barnard Property") for a price of \$10,000.00 in the current "as is condition" and to assign the right to receive \$10,000.00 from Saginaw County or for a price of at least \$30,000 if the Receiver repairs the property. Collectively the Bulk Sale Properties, the Lockwood Property and the Barnard Property shall be referenced to herein as the "Sale Properties").

Federal Statutes allow both the private sale of real and personal property and the public sale of real and personal property. (See 28 U.S.C. §§2001, 2001 & 2004) In this matter, the

Receiver seeks permission to sell up to 40 properties by virtue of a public sale. Accordingly, 28 U.S.C. § 2001(a) and 28 U.S.C. § 2002 govern the public sale of the real property and 28 U.S.C. §2004 governs the sale of the personal property of the estate located in each of the homes.

28 U.S.C. §2001(a) provides in pertinent part as follows:

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. §2002 provides in pertinent part as follows:

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

28 U.S.C. § 2004 provides in pertinent part as follows:

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

The Receiver seeks permission to sell personal property located in the homes only to the extent the personal property is property of the estate. The request is a precautionary request to the extent an item located in a home and owned by the estate could be classified personal property instead of a fixture. For instance, the homes will have furnaces which the Receiver

believes is a fixture. Some homes may have dishwashers, ranges/stoves and refrigerators that are owned by the estate. The Receiver seeks permission to sell these items to the successful bidder at the sale as part of the purchase price and not as separate items.

The Sale Properties will be sold in the existing "as is, where is" condition without warranties or representation, except as provided in the Offer.

The Receiver believes that conducting the sale as a public sale is in the best interest of the estate. The Receiver has determined the combined price contained in the Offer is fair and reasonable given the condition of the homes, time on the market and the average appraised values of the Sale Properties. A public sale will allow one last opportunity for an interested party to come forward and bid on the Sale Properties.

The Receiver proposes to advertise the sale in a paper published in Saginaw County, Michigan and Bay County, Michigan once each week for four consecutive weeks prior to the sale. The Receiver shall also place notice of the sale on the website maintained by the Receiver. The Receiver shall instruct MDL Realty to maintain the listing on the Sale Properties and advertise the sale in the listing. The notice published in the newspapers shall designate that persons or entities intending to bid at the sale must register and complete the bidder packet information the Receiver develops before the sale and submit a deposit of \$10,000.00 on a date that is at least 3 days prior to the scheduled sale date. The proposed purchaser that submitted the Offer shall not be required to register for the sale or attend the sale. The notice will be substantially in the form attached hereto as Exhibit "B".

The Receiver, through his agents, will appear at the designated sale location and may accept bids, if deposits and documents are signed as provided in the Notice of Publication. In the

event that no person or entity appears at the sale to make a bid, or does not follow the bid procedures announced by the Receiver or its counsel at the sale, then the Receiver requests that sale of the Sale Properties be deemed approved pursuant to the Offer attached hereto. In the event a person or entity appears at the sale and fulfills the requirements provided for herein and as announced at the sale and makes the highest offer for the Sale Properties which is accepted by the Receiver, then the Receiver requests that this Court approve the highest accepted offer without further order of the Court. The Receiver shall have the right to accept an offer that differs from the Offer and may in his discretion withdraw one, more or all Sale Properties from the sale.

The Receiver requests that the sale be free and clear of all land contract vendee interests of vendees that abandoned or turned over the property to the Receiver and for which a land contract forfeiture action was not completed or commenced. Several parties that were purchasing properties pursuant to land contracts defaulted and simply abandoned or voluntarily turned over their interest to the estate, and had no further communication with the Receiver or its agents. The Receiver seeks this relief because the issue was raised by a title insurer in the past. To the extent the issue is raised by a title insurer, the Receiver proposes to provide notice of the sale to the last known address of the named land contract vendee. Notice to the last known vendee along with published notice of the sale provides sufficient opportunity for such party to assert an interest and afford due process protections.

The Receiver shall also reserve the right to withdraw one or more properties from the sale in the event an issue with title arises that cannot be resolved timely or in the Receiver's opinion may delay or jeopardize the sale. In the event a property is withdrawn, the purchase price would be reduced by a sum not greater than \$30,000.00 per house withdrawn.

WHEREFORE, for the reasons stated herein and in the motion the Receiver requests that the Court approve the public sale as set forth herein. The proposed order is attached to the Motion as Exhibit "A".

Dated: September

LAMBERT LESER

By: /s/ Keith A. Schofner
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