

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 19-01174 AG (KESx)	Date	November 4, 2019
Title	SECURITIES AND EXCHANGE COMMISSION v. RICHARD VU NGUYEN, A/K/A NGUYEN THANH VU, ET AL.		

Present: The Honorable	ANDREW J. GUILFORD		
Melissa Kunig/Rolls Royce Paschal	Not Present		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		

[IN CHAMBERS] ORDER REGARDING THE RECEIVER’S MOTIONS (DKT NOS. 79, 83)

In September 2019, the Court amended an order appointing a permanent receiver: Jeffrey Brandlin (“the Receiver”) (“Amended Order”). (Dkt. No. 71.) Now, the Receiver has filed two motions: (1) for an order in aid of the Amended Order (Dkt. No. 79, “Motion One”) and (2) for an order authorizing him to market for sale, establish sales procedures, and engage a broker for a property owned by Defendant NTV Financial Group, Inc. (“NTV”) (Dkt. No. 83, “Motion Two”). The remaining defendants, Richard Nguyen and Relief Defendant Mai Do (collectively “Defendants”), oppose Motion One but didn’t file an opposition to Motion Two. (Dkt. No. 86.)

The Court GRANTS Motions One (Dkt. No. 79) and Two (Dkt. No. 83).

1. BRIEF BACKGROUND

In July 2019, the Court issued an order continuing a freeze over Defendants’ assets, requiring Defendants to file accountings, and appointing the Receiver. (Dkt. No. 25.) Defendants filed an accounting of their assets on July 15, 2019. (Dkt. No. 38.) The list included real property located at 2506 Monte Carlo Dr., Santa Ana, CA 92706 (the “Monte Carlo property”), which Mr. Nguyen claimed was purchased with income from sources outside of NTV. (Dkt. No. 49 at 4.) The Court amended the preliminary injunction and the order appointing the Receiver. The Court found that Defendants were “attempting to sell a significant portion of one of the

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assets listed in the accounting of assets, the Monte Carlo property, that the receiver has confirmed was purchased using investor funds.” (Dkt. No. 69.)

On September 18, 2019, the Court issued the Amended Order, amending the preliminary injunction and the order appointing the Receiver. (Dkt. No. 71.) In its Amended Order the Court appointed the Receiver as the permanent equity receiver over “[NTV] and its subsidiaries and affiliates, and of all bank and brokerage accounts through which [Mr. Nguyen’s] and NTV’s investors and/or clients’ funds flowed and property acquired in whole or in part with clients’ funds.” (*Id.* at 8-9.)

Recently, the SEC and NTV stipulated to judgment and on September 25, 2019, the Court entered judgment against NTV. (Dkt. No. 73.) In Motion One, the Receiver moves for an order in aid of the Court’s Amended Order. (Dkt. No. 79.) In Motion Two, the Receiver moves for approval to sell a property owned by NTV.

2. MOTION FOR AN ORDER IN AID OF THE COURT’S AMENDED ORDER

The Receiver asks the Court to issue an order in aid of its Amended Order. Specifically, the Receiver requests the Court “explicitly” bring the following assets into the receivership estate: (1) the property at 2101 North Westwood Avenue, Santa Ana, CA (“the North Westwood property”); (2) the Monte Carlo property; (3) a 2007 Porsche 911; (4) a 2012 Ferrari 458 Italia; (5) a Patek Philippe watch acquired from Watches of Switzerland; (6) a Patek Philippe watch acquired from Luxage Group, Inc.; and (7) jewelry acquired from Wonder Jewelers. (collectively, “the Receivership Assets”). (Dkt. No. 80 at 2.) The Court referenced all of the Receivership Assets in its Amended Order, except the two watches and the jewelry. (*See* Dkt. No. 69.) But the Receiver still moves “out of an abundance of caution” for an order explicitly bringing all the Receivership Assets into the receivership estate so the Receiver “can take possession and control of [them] for the investors’ benefit.” (Dkt. No. 80 at 2.)

Defendants oppose the Receiver’s motion arguing: (1) that it is based on inadmissible evidence; (2) that it requests “redundant” relief with no basis in law; and (3) that the receiver cannot take Defendant Mai Do’s personal residence and investment property before trial.

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(Dkt. No. 86.) Defendants object to all but the first of the Receiver’s exhibits. (Dkt. No. 88.) Defendants seek to exclude documents showing transfers that the Receiver cites as support for his conclusion that the Receivership Assets were bought with investor money.

First, the Court finds that the Receiver properly opined as an expert that all the assets were obtained with NTV investors’ funds. (*See* Dkt. No. 81.) The Receiver submitted his declaration with his expert opinion that based on the bank records, escrow documents, and other records, the properties at issue were acquired with funds directly traceable to four Receivership Accounts. And the Receiver submitted the underlying evidence from nine sources—banks, escrow companies, and jewelry sellers—that were reviewed by the Receiver. Even if it’s assumed that the facts the Receiver relied upon were not admissible, the Receiver’s expert opinion is admissible. *See* Fed. R. Evid. 703.

Second, the relief sought here isn’t redundant. The Receiver adds property to the receivership estate: the watches and the jewelry. Regarding the Receiver’s request that Defendant Mai Do turn over keys, vacate the home, and identify any tenants of the property, Defendants argue this is an unconstitutional deprivation of property without due process because the ultimate issue of liability is to be determined. (Dkt. No. 86 4-5.) But the Court disagrees. The federal receivership statute expressly authorizes a district court to “authorize a receiver . . . to take possession of real . . . property and . . . sell real property.” 28 U.S.C. § 3103. Further, receivership is generally initiated before trial and is not allowed to “continue past the entry of judgment . . . unless the court orders it continued.” *Id.* Defendants’ constitutional challenges to basic tenants of the receivership process fail. In this case, sufficient due process has been provided.

The Court **ORDERS** the Receivership Assets to be included in the receivership estate and Defendants must deliver possession and control of the Receivership Assets to the Receiver within **THREE** weeks of this Order. Regarding the North Westwood property and the Monte Carlo property, Defendants are ordered to vacate the property and deliver to the Receiver the keys and any accounting documents, such as mortgage and tax records associated with both properties. Defendants are also ordered to deliver to the Receiver the 2007 Porsche 911, the

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2012 Ferrari 458 Italia, both cars' keys, and both cars' ownership/finance documentation. Defendants are ordered to deliver to the Receiver the Patek Philippe watch acquired from Watches of Switzerland, the Patek Philippe watch acquired from Luxage Group, Inc., and the jewelry acquired from Wonder Jewelers.

If at any time during the receivership, Defendants are no longer in possession of any of the assets included in the receivership, Defendants shall file a declaration stating so. Finally, the receivership estate shall remain frozen, unless otherwise ordered by this Court. The Receiver may not mortgage or transfer any of the receivership estate without the Court's express approval. (*See* Dkt. No. 71 at 6-7.)

The Court GRANTS the Receiver's motion for an order in aid of the Court's Amended Order (Dkt. No. 79).

3. MOTION FOR AN ORDER AUTHORIZING THE RECEIVER TO MARKET FOR SALE, ESTABLISH SALES PROCEDURES, AND ENGAGE A BROKER

Next, the Receiver moves for an order authorizing him to market for sale, establish sales procedures, and engage the broker for the property at 900 W. 17th Street #2B, Santa Ana, CA 92706. NTV holds the title to this property.

Courts have "broad powers and wide discretion to determine the appropriate relief in an equity receivership." *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). If a court orders a receiver to sell property, it "shall be sold at public sale in the district wherein any such receiver was first appointed." 28 U.S.C. § 2001. Such a sale "shall not be made without notice published once a week for at least four weeks prior to the sale." 28 U.S.C. § 2002.

The Amended Order gives the Receiver "full power to sue, foreclose, marshal, collect, receive, and take into possession all [real property managed by NTV]." (Dkt. No. 71 at 9.) In Motion Two, the Receiver proposes a plan for a noticed public sale, complete with bidding

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procedures. (Dkt. No. 84 at 4-7.) The Receiver states, “In my business judgment, the proposed marketing of the Property, sale procedures, and broker engagement are in the best interest of the Receivership Estate, and will likely lead to the return of the highest value to the Receivership Estate and the investors.” (Dkt. No. 84-1 at 2.)

Here, the relief sought in unopposed Motion Two is reasonable and appropriate. *See SEC*, 397 F.3d 738 (holding “broad deference” is given to courts’ supervisory role and “reasonable procedures instituted by the district court that serve the purpose of orderly and efficient administration of the receivership for the benefit of credits” are generally upheld). The Court removes the freeze on the property at 900 W. 17th Street #2B, Santa Ana, CA 92706 and approves the Receiver’s plan for marketing for sale, sales procedures, and engaging the broker to sell this property.

The Court GRANTS Motion Two (Dkt. No. 83).

4. DISPOSITION

The Court GRANTS Motions One (Dkt. No. 79) and Two (Dkt. No. 83).

Initials of Preparer : 0
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