

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 11/06/2020

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Not Requested

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2019-00049151-CU-MC-CTL** CASE INIT.DATE: 09/09/2019

CASE TITLE: **People of the State of California vs Silver Saddle Commerical Development LP**

[IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Thomas W McNamara

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 10/13/2020

APPEARANCES

Robert Lux, counsel, present for Plaintiff(s) telephonically.

Mark T Hiraide, counsel, present for Defendant, Plaintiff(s) telephonically.

Thomas Balames, Defendant, present telephonically.

April Hua and Nicolas Morgan, counsel, telephonically for SS Purchoco, LLC, et al.

Antonio Garcia and Carlos Novelo, telephonically as Interested Parties.

Byron Moldo, counsel, telephonically Bidder, Rick Jones.

Appearances Continued:

April Hua and Nicolas Morgan, counsel, telephonically for SS Purchoco, LLC, et al.

Antonio Garcia and Carlos Novelo, telephonically as Interested Parties.

Cornelia Gordon, counsel and Thomas McNamara, Receiver telephonically.

Byron Moldo, counsel, telephonically for Bidder, Rick Jones

Due to the COVID-19 pandemic, this hearing will be conducted remotely. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com.

The Court hears oral argument and confirms the tentative ruling as follows: The Motion (ROA # 334) of Defendants SS PURCHCO, LLC, ACCELERATED ASSETS, LLC, and PAHRUMP VALLEY REAL ESTATE CO., LLC ("Defendants" or "Companies") to order Expedited Alternative Dispute Resolution ("ADR") among the Companies and Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through the COMMISSIONER OF BUSINESS OVERSIGHT ("Plaintiff") (together, the "Parties"), is DENIED WITHOUT PREJUDICE.

The Court is not adverse to any effort the parties invest in to resolve this lawsuit; however, the question is whether the Court, in the absence of a consensus among the parties to participate in ADR, should order the parties to participate in ADR. Plaintiff objects and indicates that "the People believe that an expedited ADR at this time is premature and will not serve the interests of the court or the parties." Page 2 of Plaintiff's opposing memorandum.

People to serve notice of the Court's ruling.

The Motion (ROA # 342) of Thomas W. McNamara, as Court-appointed receiver ("Receiver") for permission to sell real property located at 20751 Aristotle Drive, California City, CA 93505, APN 457-020-12 and 457-020-27, which is owned by Receivership Defendant Silver Saddle Ranch & Club, Inc., is GRANTED.

A Receiver's functions and powers are controlled by statute, by the order appointing the Receiver, and by the Court's subsequent orders. Cal-American Income Property Fund VII v. Brown Development Corp. (1982) 138 Cal. App. 3d 268, 273. Code of Civil Procedure sections 568 and 568.5 authorize a Receiver to perform such acts respecting the property as the Court may authorize, including the sale of real and personal property upon notice and subject to Court confirmation. Id. at 274. "Judicial confirmation of a receiver's sale rests upon the appointing court's sound discretion exercised in view of all the surrounding facts and circumstances and in the interest of fairness, justice and the rights of the respective parties The proper exercise of discretion requires the court to consider all material facts and evidence and to apply legal principles essential to an informed, intelligent, and just decision" Id. (internal citations omitted).

The October 30, 2019 preliminary injunction order (ROA # 66) appointing the Receiver tasked the Receiver as follows: "13. To carry on any lawful business activity of the entities and persons or entities in receivership, to preserve investors' assets and to foreclose and/or actively seek and negotiate with potential buyers, assignees or other parties who may be interested in acquiring, purchasing, leasing, subleasing or renting real or personal property of Receivership Defendants and to sell, lease, sublease or rent such real or personal property of Receivership Defendants, subject to court approval."

The Receiver has sufficiently demonstrated the necessity of selling the ranch property. Maintenance and protection of the property constitute the Receivership's largest monthly expense. Defendants shut down the ranch before the Receiver's appointment. But the ranch was never profitable when it was operating. Instead, Defendants used the ranch as a loss leader to lure investors. If the property is not sold in the near term, its upkeep will exhaust the Receivership estate's remaining funds. Thus, sale of the property is necessary. The ranch cannot operate profitably and will continue to drain the Receivership estate's resources absent a sale. In addition, the Receiver has sufficiently demonstrated that the current offer should be approved. The property has been extensively marketed by the listing agents since early May 2020. This included solicitation of best and final offer requests. The buyer's offer is the result of a competitive process among motivated buyers, making the offer inherently fair and reasonable.

The Purchco Defendants contend that a better alternative exists, which would result in "a mutually beneficial arrangement" among all of the parties, including Plaintiff. However, it is noteworthy that

Plaintiff has not opposed the Receiver's Motion to sell the property. Given Defendants' purported past conduct in committing fraud, they lack credibility and the Court is dubious that they are now acting in the best interests of the investors. In addition, it is unclear if the purchase offer by Rick Jones was valid or "for real." In short, Defendant's alternative "joint venture" does not appear to be realistic, and the Court defers to the Receiver's judgment that the proposed sale is the best way to protect and preserve the assets for eventual distribution to the injured investors.

Receiver to serve notice of the Court's ruling.



Judge Joel R. Wohlfeil