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5 *Attorneys for Receiver,*
Thomas W. McNamara
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/05/2020 at 10:23:00 AM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11 PEOPLE OF THE STATE OF CALIFORNIA,
by and through the COMMISSIONER OF
12 BUSINESS OVERSIGHT,

13 Plaintiff,

14 v.

15 SILVER SADDLE COMMERCIAL
DEVELOPMENT, LP, a California limited
16 partnership; SILVER SADDLE RANCH &
CLUB, INC., a California corporation; THE
17 GALILEO COMMERCIAL PROPERTY
OWNERS ASSOCIATION, INC., a California
18 non-profit corporation; THOMAS M.
MANEY, an individual; ACCELERATED
19 ASSETS, LLC, an Arizona limited liability
company; SS PURCHCO, LLC, a Delaware
20 limited liability company; PAHRUMP
VALLEY REAL ESTATE CO., LLC, a
21 Nevada limited liability company; and DOES 1
through 100, inclusive,

22 Defendants.

23 And,

24 MARIAN G. DUCREUX, an individual;
25 CLIFFORD J. REYNOLDS, an individual;
WAYNE A. PEDERSEN, an individual; and
26 Relief Does 1 through 10, inclusive,

27 Relief Defendants.
28

Case No. 37-2019-00049151-CU-MC-CTL

**NOTICE AND EX PARTE
APPLICATION FOR AN ORDER
CANCELLING ESCROWS FOR
RANCH AND GALILEO PARCELS;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION
OF EDWARD CHANG IN SUPPORT
THEREOF**

IMAGED FILE

Date: August 11, 2020
Time: 8:30 a.m. [Via CourtCall]
Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

Action filed: September 9, 2019
Trial Date: None Set Yet

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 11, 2020, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard via CourtCall, in Department C-73 of the above-referenced court,
4 located at 1100 Union Street, San Diego, California, Thomas W. McNamara, as Receiver for
5 Defendants Silver Saddle Commercial Development, LP; Silver Saddle Ranch & Club, Inc.; and
6 The Galileo Commercial Property Owners Association, Inc., will and hereby does apply for an
7 order approving the immediate cancellation of escrows for Silver Saddle Ranch and Club Resort
8 and the Galileo Project parcels without penalty and return of deposits to Kevin Feterik (the
9 “Application”).

10 This Application is made pursuant to California Rules of Court, Rules 3.1200, *et seq.*
11 Good cause exists for the relief sought because a delay in canceling the escrows will, in turn,
12 result in a delay in the Receiver’s ability to reopen the sales process to seek best and final offers
13 from all potential purchasers of the Silver Saddle Ranch and Club Resort (the “Ranch”) which is
14 on the real property located at 20751 Aristotle Drive, California City, CA 93505, APN 457-020-
15 12 and 457-020-27 (the “Property”). As the Receiver has previously set forth, the Receivership
16 Estate here is small and every delay in presenting a new and sound offer to the Court for its
17 consideration will result in further, unnecessary expenses for the Receivership Estate and
18 ultimately less to return to the investors.

19 The Receiver has made one prior *ex parte* application, to shorten time for a hearing on
20 the now-withdrawn Motion to Approve Sale of Real Property Owned by Silver Saddle Ranch &
21 Club, Inc.

22 Notice of this Application was given by e-mail on August 4, 2020. Counsel for Plaintiff
23 and counsel for Defendants Thomas M. Maney, Silver Saddle Commercial Development, LP,
24 and Silver Saddle Ranch & Club, Inc. were advised of this Application via telephone on July 31,
25 2020. Counsel for Kevin Feterik was advised of this Application via telephone on August 3,
26 2020. Mr. Feterik opposes this Application.

27 ///

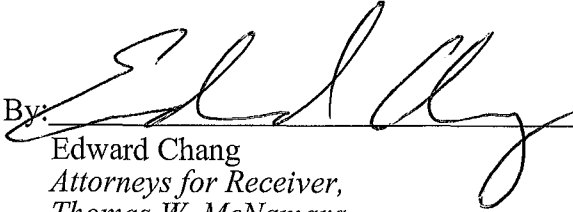
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1 The application is based on the attached Memorandum of Points and Authorities, the
2 attached Declaration of Edward Chang, the pleadings and other records on file herein, and on
3 such other and further argument as may be presented at the time of hearing.

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Dated: August 5, 2020

MCNAMARA SMITH LLP

By: 
Edward Chang
Attorneys for Receiver,
Thomas W. McNamara

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Receiver seeks a Court order approving the immediate cancellation of escrows for
4 the Ranch (owned by Receivership Defendant Silver Saddle Ranch & Club, Inc.) and the Galileo
5 Project parcels (approximately 1,022 acres of vacant desert land, in which thousands of investors
6 hold undivided, fractional interests), without penalty to the Receivership Estate and with return
7 of the \$100,000 deposit to Kevin Feterik. This relief will permit the Receiver to reopen the sales
8 process and solicit best and final offers from all potential purchasers of the Ranch. Relief is
9 needed on an *ex parte* basis in order to avoid further expense to the Receivership Estate.

10 **II. BACKGROUND**

11 Shortly after the Receiver accepted an offer to purchase the Ranch presented by Kevin
12 Feterik, an individual by the name of Rick Jones, who had also presented an offer, contacted the
13 Receiver to complain about the sales process and his interaction with the real estate broker. Mr.
14 Jones expressed a concern that he did not have a full and fair opportunity to pursue an offer
15 which he provided to the broker. The Receiver took this claim seriously, his team exchanged
16 correspondence with Mr. Jones, and he convened conference calls with the brokers. Ultimately,
17 the Receiver believed the Court would not approve Mr. Feterik's offer given Mr. Jones' claim
18 and determined that it is necessary to reopen the sales process and allow all interested parties to
19 present their best and final offers. This will ensure the sales process is healthy and will
20 maximize the sales price, which is in the best interest of the Receivership Estate.¹ However,
21 before this can occur, Mr. Feterik's escrows must be canceled.

22 For more than a week, the Receiver has tried to work cooperatively with Mr. Feterik to
23 cancel the escrows and return his deposit. Despite several telephone calls with Mr. Feterik, his
24 assignee/partner Lee Krelle and Mr. Feterik's counsel, Mr. Feterik has refused to join the
25

26 ¹ The real estate brokers and Mr. Jones have sharply contrasting descriptions of the sales
27 process. In taking this action, the Receiver is not concluding Mr. Jones' characterization of
28 events is accurate. Instead, the Receiver has concluded that Mr. Jones' claims call the process
into question and, as such, it is best to reopen the sales process so the Court has a clean
transaction to evaluate and approve (if the Court finds it appropriate).

1 Receiver in cancelling the escrows. Without an instruction signed by both parties, the escrow
2 company² can only cancel escrow and return the deposit in accordance with a Court order. The
3 Receiver thus seeks a Court order approving cancellation of the escrows without penalty and
4 return of the deposits to Mr. Feterik.

5 After cancellation of the escrows, the Receiver intends to reopen the sales process in
6 which all interested parties (including Mr. Feterik) will have one week to submit their best and
7 final offer for the Ranch real property directly to the Receiver.³ All the parties will be provided
8 certain due diligence materials (*e.g.*, preliminary title report, seller disclosures, etc.) and given
9 another opportunity to tour the property. The Receiver will review the best and final offers,
10 focusing primarily on the tendered purchase price, but he will also consider the offeror's ability
11 to complete the sale (*e.g.*, offeror's liquidity and whether offeror needs financing) and whether
12 the offeror has expressed interest in the Galileo Project parcels. After completing this process,
13 the Receiver will select the best offer and will submit it to the Court for consideration.

14 **III. ARGUMENT**

15 California Rules of Court, Rules 3.1200, *et seq.*, set forth the requirements for an *ex parte*
16 application. Rule 3.1202(c) requires the applicant to show irreparable harm in the absence of *ex*
17 *parte* relief. Here, the Receiver asks the Court to enter an order approving the cancellation of
18 escrows for the Ranch and Galileo Project parcels and the return of Mr. Feterik's deposits to him.
19 The Receiver has sought this relief *ex parte* because if his request is heard on regular notice,
20 irreparable harm will occur, including the possible loss of the sale of the property. And, as
21 previously described by the Receiver, there are significant monthly expenses to maintain and
22 protect the Ranch which, if not stopped, will decimate the modest funds in the Receivership
23 Estate in short order.

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25 _____
26 ² Chicago Title Company, the escrow company, opened two escrows – one for the Ranch
27 (Escrow No. 00122878-022-PF1 with \$75,000 deposit from Mr. Feterik) and one for the Galileo
Project (Escrow No. 00131313-022-PF1 with \$25,000 deposit from Mr. Feterik). The Receiver
is requesting both escrows be canceled, and deposits returned.

28 ³ The Galileo Project parcels will be listed for sale at the same time.

1 Ethical guidelines propounded by the National Association of Realtors prevent property
2 from being marketed while it is under contract. Cancellation of the escrows will void the
3 contracts and allow the listings to become active. At that time, all interested parties, including
4 Mr. Feterik, can present their best and final offers. This will ensure all potential purchasers are
5 afforded a fair process. Doing so now, on an *ex parte* basis, will avoid unnecessary delay and
6 spare the Receivership Estate significant time and expense. For these reasons, good cause exists
7 to grant this *ex parte* application to approve the cancellation of the escrows without penalty and
8 to return Mr. Feterik's deposit.

9 The Receiver has given notice of this *ex parte* application in compliance with California
10 Rules of Court 3.1200-1207, as set forth in the attached Declaration of Edward Chang and shown
11 by the exhibit thereto.

12 **CONCLUSION**

13 For all the above reasons, the Receiver respectfully requests that the Court approve the
14 cancellation of the two Chicago Title Company escrows (Escrow No. 00122878-022-PF1 for the
15 Ranch and Escrow No. 00131313-022-PF1 for the Galileo Project) without penalty and return
16 the deposit of \$100,000 to Mr. Feterik.

17
18 Dated: August 5, 2020

McNAMARA SMITH LLP

19
20 By: 

Edward Chang
Attorneys for Receiver,
Thomas W. McNamara

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1 nicolasmorgan@paulhastings.com, briankaewert@paulhastings.com, and
2 aprilhua@paulhastings.com, respectively.

3 8. Counsel for Relief Defendant Wayne A. Pedersen are Jonah A. Toleno and Joseph
4 M. Mellano of Shustak Reynolds & Partners, P.C., located at 401 West "A" Street, Suite 2200,
5 San Diego, CA 92101. Their telephone number is 619-696-9500. Their email addresses are
6 jtoleno@shufirm.com and jmellano@shufirm.com, respectively.

7 9. Counsel for Relief Defendants Marian G. Dureux and Richard C. Huebner is
8 Orlando F. Cabanday of the Cabanday Law Group, located at 21221 South Western Avenue,
9 Suite 208, Torrance, CA 90501. His telephone number is 310-997-2558. His email address is
10 orlando@cabandaylawgroup.com.

11 10. Defendants The Galileo Commercial Property Owners Association, Inc. and
12 Relief Defendant Clifford J. Reynolds and Robert V. Kvassay are either unrepresented and/or
13 have not made an appearance in the case.

14 11. Defendant The Galileo Commercial Property Owners Association is
15 unrepresented. It is located at 3430 E. Flamingo Road, Suite 251, Las Vegas, NV 89121. Its
16 telephone number is 702-351-6560.

17 12. Relief Defendant Clifford J. Reynolds is unrepresented. He is located at 2525
18 North 20th Avenue, Pasco, WA 99301.

19 13. Relief Defendant Robert V. Kvassay is unrepresented. He is located at 565
20 Rancho Lindo Drive, Covina, CA 91724.

21 14. Counsel for Kevin Feterik is Stephen A. Scheck of Palmieri, Tyler, Wiener,
22 Wilhelm & Waldron LLP, located at 1900 Main Street, Suite 700, Irvine, CA 92614. His
23 telephone number is 949-851-7221. His email address is sscheck@ptwww.com.

24 15. On August 4, 2020 at 4:08 p.m., I provided notice of the *ex parte* application to
25 Mr. Lux and Ms. Arsova (representing the People), Mr. Hiraide (representing Mr. Maney and the
26 Silver Saddle defendants), Mr. Pertel (representing Ms. Maney), Mr. Morgan (representing SS
27 Purchco, LLC; Pahrump Valley Real Estate Co., LLC; and Accelerated Assets, LLC), Mr.
28 Toleno and Mr. Mellano (representing Mr. Pedersen), Mr. Cabanday (representing Ms. Ducreux

1 and Mr. Huebner), and Mr. Scheck (representing Mr. Feterik) via e-mail. A true and correct
2 copy of the e-mail that I sent is attached as Exhibit 1. I informed counsel for all parties that we
3 would seek an order approving the Receiver's immediate cancellation of escrows without penalty
4 and return of Mr. Feterik's deposit on an *ex parte* basis.

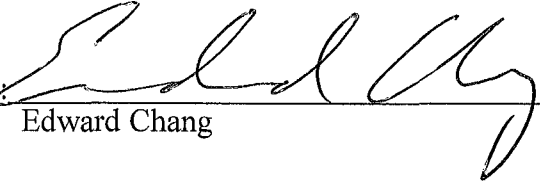
5 16. On July 31, 2020 and August 4, 2020, I spoke with Mr. Lux via telephone and
6 informed him of the Receiver's intention to file this Application.

7 17. On July 31, 2020 and August 3, 2020, I spoke with Mr. Hiraide via telephone and
8 informed him of the Receiver's intention to file this Application.

9 18. On August 3, 2020, I spoke with Mr. Scheck via telephone and informed him of
10 the Receiver's intention to file this Application. Mr. Scheck has informed me that Mr. Feterik
11 opposes this Application.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed August 5, 2020 at San Diego, California.

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16 By: 
17 Edward Chang

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EXHIBIT INDEX

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Exhibit

Page

1 Email re: Notice of *Ex Parte* Application (August 4, 2020)..... 1

From: [Edward Chang](#)
To: robert.lux@dbo.ca.gov; Boryana.Arsova@dbo.ca.gov; mth@msk.com; jpertel@yahoo.com;
nicolasmorgan@paulhastings.com; briankaewert@paulhastings.com; aprilhua@paulhastings.com;
jtoleno@shufirm.com; jmellano@shufirm.com; orlando@cabandaylawgroup.com; sscheck@ptwww.com
Cc: [Jill Jacobs](#)
Subject: DBO v. Silver Saddle Commercial Development, LP, et al. - Receiver's Ex Parte Application to Cancel Escrows
Date: Tuesday, August 4, 2020 4:08:27 PM

All,

I write in accordance with the California Rules of Court, section 3.1200 et seq., to inform you that the Receiver will file an *ex parte* application for an order cancelling the escrows for the Ranch and Galileo Project parcels. The matter will be heard before Judge Wohlfeil on Tuesday, August 11, 2020 at 8:30 a.m. via CourtCall. We expect to file the *ex parte* application tomorrow and we will provide a copy via email. We also took off calendar the August 19, 2020 hearing on the Receiver's Motion to Approve Sale of Real Property Owned by Silver Saddle Ranch & Club, Inc.

One of the potential purchasers of the Ranch claimed that he was not afforded a full and fair opportunity to pursue an offer for the property. After conferring with the potential purchaser and the brokers, the Receiver believes the Court would not approve the then-pending motion and determined that it is necessary to reopen the sales process and allow all interested parties to present their best and final offers. This will ensure a healthy sales process and maximize the sales price, which is in the best interest of the Receivership Estate. To do so, however, the pending escrows for the Ranch and the Galileo Project parcels must first be cancelled. The Receiver's *ex parte* application seeks entry of a Court order approving the cancellation of these two escrows and the return of Kevin Feterik's \$100,000 deposit. Relief is sought *ex parte* to avoid further delays and minimize expenses to the Receivership Estate.

Please let me know if you will appear to oppose the application. [Mr. Scheck, I am already aware of your client's opposition.] The hearing will be held remotely via CourtCall on August 11, 2020 at 8:30 a.m.

Ed

Edward Chang
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655 West Broadway, Suite 1680
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<http://mcnamarallp.com>

1 **PROOF OF SERVICE**

2 I, Jill Jacobs, declare as follows:

3 I am an employee of a member of the bar of this Court at whose direction was made in the
4 County of San Diego, State of California. I am over the age of 18 and not a party to the within
action; my business address is 655 West Broadway, Suite 1680, San Diego, California 92101.

5 On August 5, 2020, I served the foregoing document(s) described as:

- 6 • **NOTICE AND *EX PARTE* APPLICATION FOR AN ORDER CANCELLING
7 ESCROWS FOR RANCH AND GALILEO PARCELS; MEMORANDUM OF
POINTS AND AUTHORITIES AND DECLARATION OF EDWARD CHANG
8 IN SUPPORT THEREOF**

9 on interested parties in this action by sending the original true copy(ies) thereof as follows:

10 **By First Class Mail:** I am readily familiar with the firm’s practice of collection and
11 processing correspondence for mailing with the United States Postal Service. Under that
12 practice, it would be deposited with United States postal service on that same day with postage
thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope
was sealed and placed for collection and mailing on that date following ordinary business
practices.

13 **By Email:** I caused the documents to be sent to the persons at the email address(es) listed
14 below. I did not receive, within a reasonable time after the transmission, any electronic message
or other indication that the transmission was unsuccessful.

15 **VIA EMAIL & U.S. MAIL**

16 Robert R. Lux
17 Boryana Arsova
18 Department of Business Oversight
19 1350 Front Street, #2034
20 San Diego, CA 92101
Tel.: 619-525-3729
Fax: 619-525-4045
robert.lux@dbo.ca.gov
boryana.arsova@dbo.ca.gov
Attorneys for Plaintiff

VIA EMAIL & U.S. MAIL

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Los Angeles, CA 90067-3120
Tel.: 310-312-2000
Fax: 310-312-3100
mth@msk.com
*Attorneys for Defendants Thomas M. Maney;
Silver Saddle Commercial Development, LP;
and Silver Saddle Ranch & Club, Inc.*

21 **VIA EMAIL & U.S. MAIL**

22 Orlando F. Cabanday
23 Cabanday Law Group
24 21221 S. Western Avenue, Suite 208
25 Torrance, CA 90501
26 Tel.: 310-997-2558
27 Fax: 310-984-1735
28 orlando@cabandaylawgroup.com
*Attorneys for Relief Defendants, Marian G.
Ducreux and Richard C. Huebner*

VIA EMAIL & U.S. MAIL

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4 *Attorneys for Defendant Kelly A. Maney*

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nicolasmorgan@paulhastings.com
*Attorneys for Defendants SS Purchco, LLC;
Pahrump Valley Real Estate Co., LLC; and
Accelerated Assets, LLC*

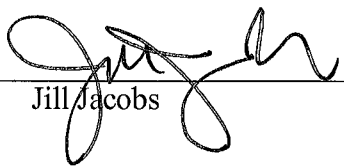
7 **VIA EMAIL & U.S. MAIL**
Robert V. Kvassay
8 565 Rancho Lindo Drive
Covina, CA 91724
9 Tel.: 626-252-1565
robertkvassay@yahoo.com
10 *Relief Defendant, In Pro Per*

VIA U.S. MAIL
Clifford J. Reynolds
2525 North 20th Avenue
Pasco, WA 99301
Defendant, In Pro Per

11 **VIA U.S. MAIL**
Galileo Commercial Property Owners
12 Association, Inc.
3430 E. Flamingo Road, Suite 251
13 Las Vegas, NV 89121
Tel.: 702-351-6560

15 (STATE): I declare under penalty of perjury under the laws of the State of California that the
16 above is true and correct.

Executed August 5, 2020, in San Diego, California.

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18 
19 _____
Jill Jacobs

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