

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

KEVIN B. MERRILL, et al.,)

Defendants.)

Case No.: 1:18-cv-02844-RDB

ORDER GRANTING IN PART RECEIVER GREGORY S. MILLIGAN'S
(i) MOTION TO APPROVE SALE PROCEDURES AND RETENTION OF SOTHEBY'S
INTERNATIONAL REALTY, INC. AND (ii) MOTION TO APPROVE SALE
PROCEDURES AND RETENTION OF PRESTIGE MOTOR CAR IMPORTS, LLC
(Related to Dkt. Nos. 107 & 108)

This matter is before the Court on the (i) Motion for Approval of Procedures for Sale of Real Property and Retention of Sotheby's International Realty, Inc. as Broker (Dkt. No. 107) (the "Sotheby's Motion") and (ii) Motion to Approve Procedures for Sale of Automobiles and for Order Authorizing Retention, Employment, and Compensation of Prestige Motor Car Imports, LLC as Broker (the "Prestige Motion") (the Sotheby's Motion and Prestige Motion are collectively, the "Motions") filed by Receiver Gregory S. Milligan (the "Receiver"), the Court-appointed Receiver in the above-captioned case. The Court, having considered the Motions and evidence submitted in support thereof, the Receiver's Supplemental Briefing in Support of Sale Motions (Dkt. No. 110), the Court's Agreed Order Granting in Part the Motions (Dkt. No. 137) (the "Agreed Order"), and the Certificate of Conference and Stipulation Regarding Sale Motions (Dkt. No. 257) (the "Stipulation"), responses or objections, if any, the arguments of counsel, and the pleadings on file, finds that the Motions should be, and hereby are, GRANTED IN PART.

It is therefore ORDERED that:

A. The Sotheby's Motion.

1. On April 29, 2019, the Court granted the Sotheby's Motion in part and authorized the Receiver to retain and employ Sotheby's International Realty, Inc. ("Sotheby's") as broker of the Merrill Real Property (as defined in the Agreed Order) pursuant to the Fee Proposal outlined in the Milligan Declaration. *See* Dkt. No. 137 at ¶ 2. The Court further approved the Real Property Sales Procedures set forth in the Sotheby's Motion and authorized the Receiver to sell the Merrill Real Property in accordance with the Real Property Sales Procedures. *See* Dkt. No. 137 at ¶ 3.

2. The Court did not authorize the Receiver to market and sell the following real property due to the Opposition to the Sale Motions (Dkt. 115) (the "Opposition") filed by Defendant Jay B. Ledford ("Ledford"):

- 9017 Grove Crest Lane, Las Vegas, Nevada 89134;
- 1132 Glade Road, Colleyville, Texas 76034;
- 1650 Cedar Hill, Dallas, Texas 75208; and
- 2308 Cedar Elm Terrace, Westlake, Texas 76262 (collectively, the "Remaining Real Property").¹

See Dkt. No. 137 at ¶ 18.

3. On December 18, 2019, the Receiver and Ledford filed the Stipulation, which withdraws and resolves Ledford's Opposition. *See* Dkt. No. 257 at ¶ 7.

4. Accordingly, the Sotheby's Motion is GRANTED IN PART with respect to the Remaining Real Property.

¹ The real property located at 2801 Paramount Boulevard, Amarillo, Texas 79109 (the "Paramount Property") was also excluded under the Agreed Order. *See* Dkt. No. 137. However, on October 24, 2019, the Court entered the Order Granting the Receiver's Motion for Authorization of Sale of Real Property Located at 2801 Paramount Boulevard, Amarillo, TX 79109. *See* Dkt. No. 229. Accordingly, the Paramount Property is not included within the Remaining Real Property that is the subject of this Order.

5. The Receiver is authorized to retain and employ Sotheby's as broker of the Remaining Real Property pursuant to the Fee Proposal outlined in the Milligan Declaration.

6. The Real Property Sales Procedures set forth in the Sotheby's Motion are hereby approved and the Receiver is authorized to sell the Remaining Real Property in accordance with the Real Property Sales Procedures.

7. Any party asserting a claim against the Remaining Real Property shall file its claim within thirty (30) days of the date of entry of this Order. To the extent that a claim is made to or against the Remaining Real Property, the claimant shall describe such claim in detail. The Receiver's response to any claim against the Remaining Real Property shall be due within fourteen (14) days of the date the claim was filed with the Court. If the Receiver fails to respond to the claim, the claim shall be deemed allowed and the Real Property shall be sold subject to the claim. If the Receiver files a response, the Court may thereafter determine whether a hearing is necessary to allow or deny the claim.

8. Any party asserting an objection to a Sale Motion² shall file its objection within thirty (30) days of the filing of the Sale Motion. In the event an objection is filed to a Sale Motion, such objecting party shall state why the proposed sale should not be approved by the Court and whether the objecting party has a proposed buyer who is willing to purchase the Remaining Real Property for an amount that exceeds the proposed sale price in the Sale Motion. The Receiver's response to any objection to a Sale Motion shall be due within fourteen (14) days of the date the objection was filed with the Court. If the Receiver fails to respond to the objection, the objection shall be granted and the Sale Motion shall be denied. If the Receiver files a response, the Court may thereafter determine whether a hearing is necessary to (i) approve

² The term "Sale Motion" herein shall have the same meaning as used in the Sotheby's Motion.

the sale, (ii) sustain the objection, or (iii) order a public auction with the proposed buyer and terms under the Sale Motion to act as a “stalking horse” bid, subject to higher and better offers.

9. Any commission or administrative fee to be paid to Sotheby’s for its brokerage services will be requested and approved as part of any Sale Motion and, if such Sale Motion is approved, Sotheby’s fees shall be paid as part of the closing of the real estate transaction.

10. The net proceeds of any sale of Remaining Real Property pursuant to a Sale Motion (the “Proceeds”) shall be held in an interest-bearing account maintained by the Receiver pending final resolution of this SEC Action³ or further Order of this Court.

B. The Prestige Motion.

11. On April 29, 2019, the Court granted the Prestige Motion in part and authorized the Receiver to retain and employ Prestige Motor Car Imports, LLC (“Prestige”) as vehicle broker of the Merrill Vehicles (as defined in the Agreed Order) pursuant to the Consignment Agreement attached to the David Declaration as Exhibit 1. *See* Dkt. No. 137 at ¶ 10. The Court further approved the Vehicle Sales Procedures set forth in the Prestige Motion and authorized the Receiver to sell the Merrill Vehicles in accordance with the Vehicle Sales Procedures. *See* Dkt. No. 137 at ¶ 11.

12. The Court did not authorize the Receiver to market and sell the following vehicles due to the Opposition filed by Ledford:

- 2015 Bentley Flying Spur, VIN No. SCBET9ZA7FC042592;
- 2018 Land Range Rover, VIN No. SALGS2RE6JA501496;
- 2016 Ferrari 488 Coupe, VIN No. ZFF79ALA3G0217973; and
- 2016 Tesla Model, VIN No. 5YJSA1E49GF155262 (collectively, the “Remaining Vehicles”).

³ The term “SEC Action” herein shall mean the civil action styled *Securities and Exchange Commission v. Kevin Merrill, et al.*, Case No. 18-cv-02844-RDB, in the United States District Court for the District of Maryland.

See Dkt. No. 137 at ¶ 18.

13. On December 18, 2019, the Receiver and Ledford filed the Stipulation, which withdraws and resolves Ledford's Opposition. *See* Dkt. No. 257 at ¶ 7.

14. Accordingly, the Prestige Motion is GRANTED IN PART with respect to the Remaining Vehicles.

15. The Receiver is authorized to employ Prestige as vehicle broker for the Receiver with respect to the Remaining Vehicles pursuant to the Consignment Agreement attached to the David Declaration as Exhibit 1.

16. The Vehicle Sales Procedures set forth in the Prestige Motion are hereby approved and the Receiver is authorized to sell the Remaining Vehicles and all other vehicles that may subsequently be discovered in accordance with the Vehicle Sales Procedures.


17. Prestige is authorized to receive a commission from the sales proceeds of each Remaining Vehicle in an amount equal to 5.0% of the purchase price without need of further application or Court approval.

18. Prestige is authorized to receive the pre-approved costs incurred for transportation, maintenance, repair, and sale from the sales proceeds of each Remaining Vehicle or, in the event of termination of the Consignment Agreement, from the Receiver.

19. The United States Marshals Service is authorized and ordered to turn over the Remaining Vehicles to Prestige or its authorized agent, on a mutually agreeable date and time. The Receiver is authorized and ordered to pay the storage, maintenance, and other costs incurred by the United States Marshals Service for the Remaining Vehicles.

20. The net proceeds of any sale of the Remaining Vehicles (the "Proceeds") shall be held in an interest-bearing account maintained by the Receiver pending final resolution of this SEC Action or further Order of this Court.

IT IS SO ORDERED, this 12th day of December, 2017.



HON. RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE