

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

**RECEIVER GREGORY S. MILLIGAN’S**  
**MOTION FOR AUTHORIZATION OF SALE OF REAL PROPERTY LOCATED AT**  
**2308 CEDAR ELM TERRACE, WESTLAKE, TEXAS 76262**

This Motion for Sale of Real Property (“Sale Motion”) seeks authorization to sell real property located at 2308 Cedar Elm Terrace, Westlake, Texas 76262. If you oppose the sale identified in this Sale Motion, you should immediately contact the undersigned counsel for Receiver Gregory S. Milligan (the “Receiver”). If you and the Receiver cannot agree, you must file a written objection to the proposed sale within thirty (30) days of the filing of this Sale Motion. Your objection must state why the proposed sale should not be approved by the Court and whether the objecting party has a proposed buyer willing to purchase the Real Property for an amount that exceeds the Purchase Price set forth below. If no party files a timely objection, the proposed sale may be approved by the Court without a hearing, thereby authorizing the Receiver to close the sale as soon as practicable.

Receiver Gregory S. Milligan respectfully files this Sale Motion for authorization to sell the real property located at 2308 Cedar Elm Terrace, Westlake, Texas 76262 (the “Real Property”), pursuant to the approved procedures for the sale of the residential real property held by the Receiver. See Dkt. Nos. 137, 258. The facts and circumstances supporting this Sale Motion are set forth in the Declaration of Gregory S. Milligan (the “Milligan Declaration”), which is attached hereto as **Exhibit A**. The Securities and Exchange Commission (the “SEC”) and the Office of the United States Attorney (the “U.S. Attorney’s Office”) do not oppose the relief sought by this motion. In further support of this Sale Motion, the Receiver states as follows:

## I. BACKGROUND

### A. Court authorized the Marketing of the Real Property.

1. On March 8, 2019, the Receiver filed the Motion for Approval of Procedures for Sale of Real Property and Retention of Sotheby's International Realty, Inc. as Broker (the "Sotheby's Motion") to obtain Court approval to market and sell the real property in the Receivership Estate. *See* Dkt. No. 107.

2. Defendant Jay Ledford ("Ledford") opposed the Sotheby's Motion. *See* Dkt. No. 115.

3. Defendant Kevin B. Merrill ("Merrill") and Relief Defendant Amanda Merrill ("Amanda Merrill") consented to the Sotheby's Motion. *See* Dkt. Nos. 116 and 117.

4. On April 23, 2019, the Court entered an Agreed Order on the Sotheby's Motion (the "Agreed Order"), which granted Sotheby's Motion with respect to certain real property owned or purchased by Merrill and/or Amanda Merrill. *See* Dkt. No. 137 ¶¶ 17-18. The Court did not grant any relief as to the property subject to Ledford's opposition, including the Real Property. *See* Dkt. No. 137 ¶¶ 17-18. The Agreed Order established the procedures for the sale of the Merrill Real Property. *See* Dkt. No. 137.

5. On December 18, 2019, the Receiver and Ledford filed a stipulation that resolved and withdrew Ledford's opposition to the Sotheby's Motion ("Ledford Stipulation"). *See* Dkt. No. 258 ¶ 3. On December 18, 2019, the Court granted the stipulation and established the procedures for the sale of the remaining real property (the "Real Property Sales Procedures"). *See generally* Dkt. No. 258. The Court ordered that the Real Property Sales Procedures shall apply to the remaining real property, including the Real Property. *See id.* ¶¶ 2-4.

**B. The Buyer's Accepted, No Contingencies Offer.**

6. Pursuant to the Real Property Sales Procedures, the Receiver retained Sotheby's International Realty, Inc. ("Sotheby's") and began marketing the Real Property for sale. *See* Milligan Declaration at ¶ 8.

7. The listing price for the Real Property was \$1,750,000.00. *See id.* at ¶ 9.

8. Sotheby's received eight offers for the Real Property. Six of the offers exceeded the list price. The Receiver accepted a cash offer from Thomas A. Tierney ("Buyer") for \$2,060,000.00 (the "Purchase Price"), subject to this Court's approval. *See id.* at ¶ 10. A copy of the Residential Contract of Sale (the "Contract") is attached as **Exhibit 1** to the Milligan Declaration.

9. The Purchase Price is not contingent upon an inspection or the sale of any current home owned by the Buyer. *See id.* at ¶ 11.

10. Pursuant to the Real Property Sales Procedures, the Receiver believes a private sale of the Real Property pursuant to the terms of the Contract will yield a higher return than a public auction. *See id.* at ¶ 12.

11. Pursuant to 28 U.S.C. Section 2001, the Receiver obtained three appraisals of the Real Property from disinterested appraisers. *See id.* at ¶ 13.

12. The first appraisal was performed by Kyle H. Hertel of Hertel & Company (the "Hertel Appraisal"), which concluded the present market value of the Real Property was \$1,875,000 as of April 29, 2022. *See id.* at ¶ 14. A copy of the Hertel Appraisal is attached as **Exhibit 2** to the Milligan Declaration.

13. The second appraisal was performed by Scott Burdette of Northstar Valuation Group, Inc. (the "Northstar Appraisal"), which concluded the present market value of the Real

Property was \$1,650,000 as of May 12, 2022. *See id.* at ¶ 15. A copy of the Northstar Appraisal is attached as **Exhibit 3** to the Milligan Declaration.

14. The third appraisal was performed by Robert C. Tottel, of Totten & Company (the “Totten Appraisal”) (the Hertel Appraisal, Northstar Appraisal, and Totten Appraisal are collectively, the “Appraisals”), which concluded the present market value of the Real Property was \$1,400,000 as of May 17, 2022. *See id.* at ¶ 16. A copy of the Totten Appraisal is attached as **Exhibit 4** to the Milligan Declaration.

15. The Purchase Price for the sale proposed by the Receiver exceeds the appraised values for all of the Appraisals. *See id.* at ¶ 17. The amount by which the Purchase Price exceeds the Appraisals ranges from \$185,000-\$660,000. *See Contract; Appraisals.*

16. The Receiver believes that the sale of the Real Property to the Buyer at this time pursuant to the terms of the Contract is in the best interest of the Receivership Estate,<sup>1</sup> and consistent with the Receiver’s obligation to maximize the recovery and preserve Receivership Assets. *See id.* at ¶ 18.

17. If approved by the Court, the proposed 6% commission of \$123,600.00 (the “Commission”) would be paid out of the Purchase Price at closing to Sotheby’s, which acted as both the Receiver’s Broker and the Buyer’s broker.<sup>2</sup> *See id.* at ¶ 19.

18. Additionally, if approved by the Court, Sotheby’s would also receive an administrative fee of \$495.00 (the “Administrative Fee”) to be paid out of the Purchase Price at closing. *See id.* at ¶ 20.

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<sup>1</sup> Capitalized terms herein shall have the same meaning as used in the First Amended Order Appointing Temporary Receiver (the “Receivership Order”) (Dkt. No. 62) unless otherwise noted.

<sup>2</sup> Sotheby’s represents the Buyer and the Receiver. The offer submitted by the Buyer exceeded the next best offer by \$110,000. Of the eight offers that were submitted, two came from the Receiver’s broker.

19. The Real Property is part of a homeowner's association, and certain homeowner's assessments have not been paid. *See id.* at ¶ 21. If the sale of the Real Property is approved by the Court, the outstanding homeowners assessments will be paid out of the Purchase Price at closing in the total amount of \$25,150 through April 2022. *See id.* at ¶ 21.

20. If the sale is approved by the Court, the 2022 property taxes will be prorated and paid in the approximate amount of \$15,110.97. *See id.* at ¶ 22.

21. The Real Property is also subject to a first lien deed of trust in favor of Wells Fargo Bank, N.A. and second lien deed of trust in favor of Thomas A. Preston, III ("Preston"). *See* Ex. B, Wells Fargo Deed of Trust; Ex. C, Preston Deed of Trust. The amount to satisfy the first lien deed of trust through April 12, 2022, was \$982,517.00. This lien will be satisfied from the Purchase Price at closing. *See id.* at ¶ 23.

22. The Receiver and Preston disputed the amount owed under the Preston Deed of Trust, and whether the Receiver had a viable fraudulent transfer claim against Preston and his related entities. *See* Mot. to Compromise, Dkt. 403 at ¶¶ 3-4. To resolve the disputes, the Receiver and Preston entered into a settlement agreement in which they agreed that upon the sale of the Real Property, that the first \$204,477.92 that Preston would otherwise receive shall be paid to the Receiver, which was approved by the Court on March 8, 2021. *See* Settlement Agreement, Dkt. 403-2, at ¶ 4 (the "Settlement Agreement"); Order, Dkt. 410. The Receiver and Preston further agreed that after the Receiver had been paid \$204,477.92, that Preston shall retain the remainder of the proceeds up to the remaining amount owed to pay off the Preston Deed of Trust, or \$695,522.08. *Id.* Pursuant to this Agreement, it is estimated that the Receiver will receive \$204,477.92 from the Purchase Price for the benefit of the Receivership Estate, and Preston will receive a portion of the Purchase Price. Milligan Declaration at ¶ 24.

23. Finally, if approved by the Court, the sale of the Real Property would also incur customary closing costs for taxes and other government fees in the approximate amount of \$703.00. to be paid at closing out of the Purchase Price. *See id.* at ¶ 23. A copy of the draft Settlement Statement is attached to the Milligan Declaration as **Exhibit 5**. It is anticipated that the Receivership Estate will receive no less than \$204,477.92 from the sale of the Real Property.

## II. REQUESTED RELIEF

24. The Receiver seeks Court authorization to sell the Real Property to the Buyer for the Purchase Price and pursuant to the other terms and conditions described in this Sale Motion. Pursuant to the Agreed Order, the Receiver also seeks Court authorization to pay the Commission, Administrative Fee, liens, homeowners' association assessments, and other customary closing costs out of the Purchase Price. *See* Dkt. No. 137 ¶ 6.

25. The Purchase Price for the sale proposed by the Receiver exceeds the appraised value of the Real Property for all of the Appraisals. *See* Milligan Declaration ¶ 17.

26. The Receiver believes a private sale of the Real Property will yield a higher sale price than a public auction. *See id.* ¶ 12.

27. In the Receiver's business judgment, the Commission and Administrative Fee proposed by Sotheby's is fair market value for such services and will result in a net benefit to the Receivership Estate and will reduce the administrative cost to the Receivership Estate. Pursuant to the Agreed Order, the Receiver seeks authorization to pay these fees in connection with the sale of the Real Property. *See id.* at ¶ 25.

28. Pursuant to the Real Property Sales Procedures, this Sale Motion will be served on all Known Parties of Interest. As used in this Sale Motion, the term "Known Parties of Interest" shall mean: (i) all counsel and/or pro se parties of record who have registered to receive electronic service; (ii) all parties of record in this matter who have not registered to receive electronic service;

and (iii) any individuals or entities who hold a recorded lien on the Real Property. Any Known Parties of Interest who have registered to receive electronic service shall receive a copy of this Sale Motion through the Court's CM/ECF filing system. All other Known Parties of Interest shall receive a copy of the Sale Motion through regular U.S. Mail. The Sale Motion will act as formal legal notice of the proposed sale and will require all Known Parties of Interest with objections to the proposed sale to timely respond to this Sale Motion or be deemed to consent to the sale. The Receiver will also post a copy of this Sale Motion and proposed order on the Receiver's website for this case, [www.merrill-ledford.com](http://www.merrill-ledford.com), to provide adequate notice to the public of the proposed sale.

29. Pursuant to the Real Property Sales Procedures, any party, entity, or person asserting an objection to this Sale Motion shall file its objection within thirty (30) days of the filing of the Sale Motion. In the event an objection is filed to this 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 Real Property for an amount that exceeds the proposed Purchase Price. The Receiver's response to any objection to this 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 this Sale Motion shall be denied. If the Receiver files a response, the Court may thereafter determine whether a hearing is necessary to (i) approve 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.

30. Pursuant to the Real Property Sales Procedures, if no objection is filed, or if the Court approves the sale subsequent to an objection, the Receiver's sale of the Real Property shall be free and clear of all liens, claims, and encumbrances, unless the Court orders that such liens,

claims, or encumbrances shall attach to the proceeds of such sale. All allowed claims shall attach to the proceeds of the sale of the Real Property without need for further Court order. If any party asserts a lien, claim, or encumbrance on the Real Property, such sale may still go forward to closing, with a determination of the extent, validity, and/or priority of the alleged lien, claim, or encumbrance to be made by the Court at a later date.

31. Pursuant to the Agreed Order, the net proceeds of the sale of the Real Property will be held in an interest-bearing account maintained by the Receiver pending final resolution of this SEC Action or further Order of this Court. Pursuant to the Agreed Order, all rights, reservations, claims, defenses, and objections of Amanda Merrill, the SEC, and the Receiver have been preserved with respect to distribution of the proceeds.

### **III. CONCLUSION**

WHEREFORE, the Receiver respectfully requests that this Court enter an Order: (i) granting this Sale Motion; (ii) authorizing the Receiver to sell the Real Property to the Buyer free and clear of liens, claims, and encumbrances (with such liens, claims, and encumbrances, if any, to attach to the sales proceeds) for the Purchase Price and pursuant to the other terms disclosed in this Sale Motion; (iii) authorizing Sotheby's to receive the Commission at closing from the Purchase Price, which will be shared equally with the Buyer's broker, plus the Administrative Fee; (iv) authorizing the Receiver to pay the outstanding homeowners assessments assessed against the Real Property, to satisfy the Wells Fargo Deed of Trust, to distribute amounts to the Receiver and Preston pursuant to the terms of the Settlement Agreement, and to pay other customary closing costs out of the Purchase Price at closing; and (v) granting such other relief as the Court deems just and proper.



Date: June 17, 2022.

Respectfully Submitted,

/s/ Lynn H. Butler

Lynn H. Butler, *pro hac vice*  
Jameson J. Watts, *pro hac vice*  
HUSCH BLACKWELL LLP  
111 Congress Ave., Suite 1400  
Austin, TX 78701  
Tel: (512) 472-5456  
Fax: (512) 479-1101  
[lynn.butler@huschblackwell.com](mailto:lynn.butler@huschblackwell.com)  
[jameson.watts@huschblackwell.com](mailto:jameson.watts@huschblackwell.com)

Brian P. Waagner, Fed. Bar No. 14954  
HUSCH BLACKWELL LLP  
750 17th Street, NW, Suite 900  
Washington, D.C. 20006  
Tel: (202) 378-2300  
Fax: (202) 378-2318  
[brian.waagner@huschblackwell.com](mailto:brian.waagner@huschblackwell.com)

Buffey E. Klein, *pro hac vice*  
HUSCH BLACKWELL LLP  
2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201  
Tel: (214) 999-6100  
Fax: (214) 999-6170  
[buffey.klein@huschblackwell.com](mailto:buffey.klein@huschblackwell.com)

*Counsel for Receiver Gregory S. Milligan*

**CERTIFICATE OF SERVICE**

On June 17, 2022, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the District of Maryland, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically through the Court's CM/ECF filing system for all parties who have registered to receive electronic service. Additionally, the foregoing document was served on the following parties not registered for Court's CM/ECF filing system as indicated below:

**Defendant Kevin B. Merrill (via U.S. Mail):**

Kevin B. Merrill, #64274-037  
FCI Allenwood Low  
Federal Correctional Institution  
P.O. Box 1000  
White Deer, PA 17887

**Defendant Jay B. Ledford (via U.S. Mail):**

Jay B. Ledford, #55055-048  
FCI Safford  
Federal Correctional Institution  
P.O. Box 9000  
Safford, AZ 85548

**Criminal Counsel for Defendant Kevin B. Merrill (via E-Mail and U.S. Mail):**

Elizabeth Genevieve Oyer  
Office of the Federal Public Defender  
100 S Charles St Ste 900 Tower II  
Baltimore, MD 21201  
liz\_oyer@fd.org

Maggie Grace  
Office of the Federal Public Defender  
100 S Charles St, Tower II, 9th Floor  
Baltimore, MD 21201  
maggie\_grace@fd.org

**Criminal Counsel for Defendant Jay B. Ledford (via E-Mail and U.S. Mail):**

Harry J Trainor , Jr  
Trainor Billman Bennett and Milko LLP  
116 Cathedral St Ste E  
Annapolis, MD 21401  
htrain@prodigy.net

**Criminal Counsel for Defendant Cameron R. Jezierski (via E-Mail and U.S. Mail):**

Joseph J Aronica  
Duane Morris LLP  
505 9th St NW Ste 1000  
Washington, DC 20004  
jjaronica@duanemorris.com

**Criminal Counsel for Relief Defendant Amanda Merrill (via E-Mail and U.S. Mail):**

Addy R. Schmitt  
Ian Herbert  
Miller & Chevalier Chartered  
900 16th St NW  
Washington, DC 20006  
aschmitt@milchev.com  
iherbert@milchev.com

**Baltimore County Office of Law (via E-Mail and U.S. Mail):**

Susan B. Dubin  
Baltimore County Office of Law  
400 Washington Avenue  
Towson, Maryland 21204  
sdubin@baltimorecountymd.gov

**Dundalk United Methodist Church (U.S. Mail):**

Dundalk United Methodist Church  
c/o Edward F. Mathus  
6903 Mornington Road  
Baltimore, Maryland 21222

**Lienholders, Tax Assessors, and Other Interested Parties (U.S. Mail):**

Florida Community Bank, N.A.  
2325 Vanderbilt Beach Road  
Naples, Florida 34109

Mortgage Electronic Registration Systems, Inc.  
PO Box 2026  
Flint, Michigan 48501-2026

Collier County, Florida Tax Assessor  
3291 Tamiami Trail East  
Naples, Florida 34112

Maryland Department of Assessments & Taxation  
301 W. Preston Street  
Baltimore, Maryland 21201-2395

Branch Banking and Trust Company,  
A North Carolina Banking Corporation  
PO Box 1290  
Whiteville, North Carolina 28472

Talbot County, Maryland Finance Office  
Talbot County Courthouse  
11 North Washington Street, Suite 9  
Easton, Maryland 21601

HSBC Bank USA, National Association, as trustee of  
J.P. Morgan Alternative Loan Trust 2006-A5  
c/o Howard n. Bierman, Trustee  
c/o Select Portfolio Servicing, Inc.  
3815 Southwest Temple  
Salt Lake City, Utah 84115

Clark County, Nevada Tax Assessor  
500 S. Grand Central Parkway  
Las Vegas, Nevada 89155

First Financial Bank, N.A. Southlake  
3205 E. Hwy. 114  
PO Box 92840  
Southlake, Texas 76092

Hunter Kelsey of Texas, LLC  
4131 Spicewood Springs Road, Bldg. J-1A  
Austin, Texas 78759

Frost Bank, f/k/a The Frost National Bank  
c/o Michael J. Quilling  
Quilling, Selander Lownds, Winslett & Moser, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201

The City of Colleyville, Texas  
c/o Victoria W. Thomas  
Nichols, Jackson, Dilard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

Tarrant County, Texas Tax Assessor  
100 E. Weatherford  
Fort Worth, Texas 76196

J Trust  
c/o Hillary RE. Badrow, Trustee  
2801 Paramount Boulevard  
Amarillo, Texas 79109

Dallas Central Appraisal District  
2949 N. Stemmons Freeway  
Dallas, Texas 75247-6195

Bozeman West  
PO Box 1970  
15632 West Main Street  
Bozeman, Montana 59771-1970

Neil A. Patel  
5308 Burgandy Court  
Colleyville, Texas 76034

TIB – The Independent Bankers Bank  
350 Phelps Court, Suite 200  
PO Box 560528i  
Dallas, Texas 75356-0528

Wachovia Mortgage, FSB  
PO Box 659548  
San Antonio, Texas 78265-9548

Denton County Tax Assessor  
1505 E. McKinney Street  
Denton, Texas 76209-4525

Potter County, Texas Tax Assessor  
900 South Polk, Suite 106  
Amarillo, Texas 79101

Wells Fargo Home Mortgage  
P.O. Box 10335  
Des Moines, IA 50306

Albertelli Law  
Attn: Coury M. Jacocks  
2201 W. Royal Lane, Suite 155

Irving, TX 75063  
Samuel I. White, P.C.  
5040 Corporate Woods Drive, Suite 120  
Virginia Beach, VA 23462

Stephen D. Graeff  
Dunlap Bennett & Ludwig  
8300 Boone Boulevard, #550  
Vienna, VA 22182

Kenneth C. Grace  
Lash Wilcox & Grace PL  
2202 West Shore Blvd.; Suite 200  
Tampa, FL 33607

David C. Mullin  
Mullin Hoard Brown LLP  
500 South Taylor, Suite 800  
Lobby Box #213  
Amarillo, Texas 79101

*/s/ Lynn H. Butler*

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Lynn H. Butler