

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

~~IN RE~~ ORDER GRANTING MOTION FOR ORDER APPROVING AND
CONFIRMING SALE OF REAL PROPERTY COMMONLY KNOWN AS 1833 PORT
BARMOUTH PLACE, NEWPORT BEACH, CALIFORNIA AND APPROVING
PUBLICATION AND OVERBID PROCEDURES

The Motion for Order Approving and Confirming Sale of Real Property Commonly Known as 1833 Port Barmouth Place, Newport Beach, California and Approving Publication and Overbid Procedures ("Motion") was brought by Temporary Receiver, Robb Evans & Associates LLC ("Receiver"). The Court, having read and considered the Motion together with all declarations and evidence filed in support of the Motion and all papers filed in opposition to the Motion, if any, due and proper notice of the motion having been given to the parties and other parties in interest, and good cause appearing therefore, it is

ORDERED, ADJUDGED AND DECREED:

1. The Motion shall be and is hereby granted in its entirety.
2. The Receiver is authorized to sell the real property commonly known as 1833 Port Barmouth Place, Newport Beach, California ("Property"), Assessor's Parcel No. 458-135-06, and legally described as:

Lot 95 of Tract No. 6622, in the City of Newport Beach, County of
Orange, State of California, as per Map recorded in Book 245 Page(s) 20

to 23, inclusive of Miscellaneous Maps in the Office of the County Recorder of Orange County, California.

Excepting therefrom; all oil, oil rights, natural gas rights, mineral rights, and other hydrocarbon substances by whatever name known, together with appurtenant rights thereto, without, however, any right to enter upon the surface of said land nor any portion of the subsurface lying above a depth of 500 feet, as excepted or reserved in Instruments of Record.

and discharge the proceeds in accordance with applicable law and the orders of this Court, including without limitation this Order. The sale of this Property is hereby confirmed under Title 28 U.S.C. § 2001(b).

3. The Receiver is authorized to complete the sale of the Property on an "as is" basis as more fully described in the sale contract documents by private sale either to (a) Bryan T. Goodman and Jamie S. Goodman ("Proposed Buyer"), an arm's length buyer, at a purchase price of \$3,400,000 pursuant to the California Residential Purchase Agreement and Joint Escrow Instructions dated March 13, 2019 and related sale contract documents, Counter Offer No. One dated March 14, 2019, including the Addendum No. 1 to Seller's Counter Offer 1, "AS-IS" Purchase addendum, and Additional Terms addendum, Contingency Removal No. 1 and Request for Repair No. 1, attached collectively as Exhibit 1 to the Declaration of Brick Kane in support of the Motion (collectively, the "Proposed Purchase Agreement"); or (b) to such higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted under the terms and conditions more fully set forth in this Order. The overbid procedures, terms and conditions which are hereby approved are the following:

A. The overbid session shall be conducted within 20 days of the date of entry of this Order. The overbid session shall be conducted at the offices of SRS Real Estate Partners, located at 610 Newport Center Drive, Ste. 1500, Newport Beach, California.

B. The Receiver shall cause to be published a notice of the proposed sale of the Property to a qualified bidder at the overbid session to be conducted under paragraph 3.A above, which notice shall state the date, time and place of the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below ("Overbid Notice"). The Receiver shall cause the Overbid Notice to be published in the Orange County Register two times prior to the date of the overbid session, with the first publication to be at least ten days prior to the date of the overbid session.

C. Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than two business days before the overbid session by delivering to the Receiver's office located at 11450 Sheldon Street, Sun Valley, California 91352: (a) notice in writing of the prospective overbidder's intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in its sole and absolute opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier's check in the sum of \$100,000 payable to Ecological Fox LLC et al. Receivership QSF, which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

D. Overbidders shall be deemed to have completed all inspections of the Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyer under the Proposed Purchase Agreement, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of

the Property and close escrow for the purchase of the Property within 20 days of the date of the overbid session, subject to any waiting period imposed by the title company as a requirement of its issuance of a policy of title insurance. The successful overbidder shall be required to execute a purchase agreement for the Property substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after conclusion of the overbid session and to otherwise generally perform in the manner provided in the Proposed Purchase Agreement, including without limitation depositing an additional \$580,000 into escrow within five days after the conclusion of the overbid session.

E. The initial overbid shall be in the amount of \$3,519,000, representing an amount that is 3.5% higher than the purchase price under the Proposed Purchase Agreement, and all subsequent overbids shall be in an amount at least \$25,000 higher than the preceding bid.

F. Pursuant to the Proposed Purchase Agreement and the Receiver's Residential Listing Agreement with its broker, a copy of which is attached as Exhibit 2 to the Declaration of Brick Kane, a sales commission in the amount of 1.25% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

G. The sale of the Property by private sale to the Proposed Buyer under the Proposed Purchase Agreement, or to the highest qualified overbidder at the overbid session conducted pursuant to the procedures set forth in this Order, shall be and is hereby approved and confirmed by this Order without further notice, hearing or additional order, and without the necessity of any subsequent motion for confirmation of the sale.

4. The Receiver is authorized to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the Property to the Proposed Buyer or the highest qualified overbidder, including but not limited to the deed conveying title to the Property to the Proposed Buyer or the highest qualified overbidder, as provided in this Order.

5. The sale of the Property to the Proposed Buyer or to the highest qualified overbidder at the overbid session conducted pursuant to the procedures set forth in this Order is being sold in an "as is" condition, without any warranties or representations, with all faults known and unknown, as more particularly set forth in the Proposed Purchase Agreement.

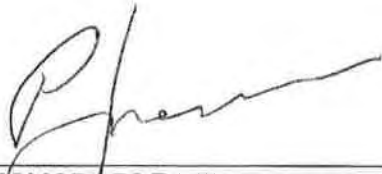
6. Any licensed title insurer and the Proposed Buyer or the highest qualified overbidder at the overbid session conducted pursuant to the procedures set forth in this Order may rely on this Order as authorizing the Receiver to transfer legal title to the Property free and clear of all liens and encumbrances.

7. The Receiver shall permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be paid pursuant to the terms of the Proposed Purchase Agreement by the Receiver from the proceeds of sale, the sales commission described above at paragraph 3.F, all real property tax liens and prorated real property taxes due up to the date of closing, and the balance due under the obligation secured by the deed of trust in favor of 5th Street Capital, Inc. and presently serviced by Select Portfolio Servicing, Inc.

8. The sale of the Property shall be free and clear of any claim of Alliance Trust Company, on behalf of and as Independent Trustee of the AAC Family HYCET Trust Dated October 7, 2015 ("Chittenden Trust"), any claim of the Chittenden Trust, and any claim of Angela Chittenden, and all net proceeds from the sale of the Property, after payment of the valid liens and encumbrances and costs of sale ("Net Proceeds"), as set forth above at paragraph 7, shall be paid to the Receiver on behalf of the receivership estate. The Receiver shall have the sole and exclusive right to all of the Net Proceeds from the sale, on behalf of the receivership estate, and the Net Proceeds shall become property of the receivership estate free and clear of all other liens and encumbrances, if any exist.

Dated:

5/15/19


HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE