

II. BACKGROUND

A. **The Receiver is charged with preserving the value of the Receivership Estate and minimizing expenses.**

On February 17, 2009, the Securities and Exchange Commission (the “Commission”) commenced a lawsuit in this Court against R. Allen Stanford, two associates (James M. Davis and Laura Pendergest-Holt), and three of Mr. Stanford’s companies (Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC) (collectively, the “Defendants”). *See* Compl. (Doc. 1). The Commission alleges, in its First Amended Complaint, that Defendants perpetrated a multi-billion-dollar fraudulent scheme by promising high returns on fraudulent “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks. *See* Am. Compl. (Doc. 48) at ¶¶ 3, 6. On the same date, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of the Defendants and all the entities they own or control. *See* Order Appointing Receiver (Doc. 10); *see also* Amended Order Appointing Receiver dated March 12, 2009 (Doc. 157) (the “Receivership Order”).

The Court has authorized the Receiver to perform several duties relevant to the sale of the Yacht:

As of the date of entry of this Order, the Receiver is specifically directed and authorized to perform the following acts and duties:

(a) Collect, marshal, and **take custody, control, and possession of** all the funds, accounts mail, and **other assets of**, or in the possession or under the control of, **the Receivership Estate**, or assets traceable to assets owned or controlled by the Receivership Estate . . . ;

...

(g) **Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate** in order to prevent any irreparable loss, damage, and injury to the Estate;

...

(j) **Preserve the Receivership Estate and minimize expenses** in furtherance of maximum and timely disbursement thereof to claimants[.]

Doc. 157 at ¶ 5 (emphasis added). The Receiver believes that this language authorizes him to sell assets in the Receivership Estate without the Court's approval when necessary to preserve the value of the Estate. However, out of an abundance of caution, the Receiver is seeking the Court's approval of the sale of the Yacht.

B. Proposed terms for sale of the Yacht.

The Receiver has identified and negotiated terms with a willing buyer for the Yacht. In June 2009, the Receiver executed a contract to sell the Yacht to R. Carlile Roberts or his assigns (the "Buyer"), subject to the Court's approval of the terms of the sale. *See* Purchase Agreement at App. 1, 4. The Buyer agreed to a purchase price of \$150,000. *Id.* at 1. The Buyer also agreed to purchase the Yacht "as is" and "where is," thereby reducing the Estate's transaction costs. *Id.* at 3. The Buyer is not requiring a survey or sea trial prior to closing. *Id.* at 4; Decl. of Craig Cadwalader at App. 5.¹

The Receiver is currently leasing the Yacht to the Buyer pending court approval of the proposed sale. The lease provides that all costs of possession and ownership and all risks are borne by the Buyer. The lease is only intended to temporarily transfer the right to use the Yacht to the Buyer until the Court approves the sale of the Yacht.

¹ The Receiver received one other offer to buy the Yacht, also for \$150,000. *See* Decl. of Craig Cadwalader at App. 5. But because that offer required a survey and sea trial, its terms were less favorable to the Estate than the offer made by the Buyer. *Id.*

III. ARGUMENT AND AUTHORITIES

A. **The Court has the power to authorize the Receiver's proposed sale of the Yacht.**

“It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *SEC v. Great White Marine & Recreation, Inc.*, 428 F.3d 553, 556 (5th Cir. 2005) (citation omitted). These powers are exercised “to safeguard the disputed assets, administer the property as suitable, and to . . . achiev[e] a final, equitable distribution of the assets if necessary.” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006).

Accordingly, “[t]he district court has wide discretion in judging whether a receiver’s sale is fair in terms and result and serves the best interests of the estate.” *Fleet Nat’l Bank v. H&D Entertainment, Inc.*, 96 F.3d 532, 540 (1st Cir. 1996); *see also Interstate Oil Co. v. Gormley*, 105 F.2d 431, 434 (9th Cir. 1939) (“The matter of confirming a sale of property in equity receivership lies in the sound discretion of the trial court.”). The Court’s discretion to approve a sale is not limited by statute. *See* 28 U.S.C. § 2004 (“Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, *unless the court orders otherwise.*” (emphasis added)).

B. **The Receiver's proposed sale of the Yacht preserves the value of the Receivership Estate and minimizes expenses.**

The Receiver’s proposed sale should be approved by the Court for three reasons. First, the purchase price represents the Yacht’s fair market value. A yacht broker hired by the Receiver has surveyed comparable yachts for sale in the Fort Lauderdale area, where the Yacht is docked. *See* Decl. of Craig Cadwalader at App. 6. The average asking price for comparable yachts is approximately \$192,000. *See id.* (listing asking prices). In the broker’s professional opinion, these yachts will sell for no more than 70% of the asking price. *See id.* Thus, the fair

market value of comparable yachts is approximately \$135,000 on average. The proposed sale of the Yacht for \$150,000 is clearly consistent with the Yacht's fair market value.

Second, the other terms of the proposed sale are equally favorable to the Estate. The sale is "as is-where is," which minimizes transaction costs. *Id.* The Buyer is not requiring a survey or sea trial before closing. *Id.* at 5–6; *see also* Purchase Agreement at App. 4. Moreover, the Buyer is willing to pay in cash—a "rare opportunity" in the present economic climate. Decl. of Craig Cadwalader at App. 5–6. Indeed, the Receiver is fortunate to find a buyer at all because "[t]he market is quite poor right now with few sales and banks are not readily lending for boat purchases except under special circumstances." *Id.* at 6.

Third, the benefit to the Receivership Estate of retaining the Yacht is outweighed by the cost. The monthly storage and upkeep costs for the Yacht are nearly \$4,000 a month. *See* Decl. of Harry Freyn at App. 7 (estimating monthly dockage and upkeep costs of "just under \$4,000 total"); Dockage Invoice at App. 13 (charging monthly dockage cost of \$3,451.04 for June 2009). This drain on the Receivership Estate cannot be justified by a speculative hope for higher profits in the future. *See* Decl. of Harry Freyn at App. 7–8 ("While this boat may sell for a higher price in a better economy, say two years from now, the cost to keep the boat does not make holding it that long worthwhile. I strongly recommend to the Court that the sale to Mr. Roberts at \$150,000 be approved.").

In sum, the Receiver's proposed sale both preserves the value of the Receivership Estate and minimizes the Estate's expenses. By maximizing the amount of funds ultimately available for distribution to victims of the Defendants' fraud, the proposed sale furthers the objectives of the receivership and should be approved.

IV. PRAYER

The Receiver requests that the Court grant this motion and enter an order directing that:

- (1) The proposed sale of the vessel "Little Eagle" to R. Carlile Roberts or assigns as set forth in this Motion and Appendix hereto is approved, and
- (2) The Receiver is authorized to take any steps necessary and appropriate to complete the proposed sale.

Dated: August 28, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler, Lead Attorney
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4078
Tel: 512.322.2500
Fax: 512.322.2501

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Suite 600
Dallas, Texas 75201-2980
Tel: 214.953.6500
Fax: 214.953.6503

**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

CERTIFICATE OF CONFERENCE

Counsel for the Receiver conferred with the parties to this case. Counsel for the Receiver conferred with David Reece, counsel for the SEC, who stated that the SEC is unopposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that Ms. Pendergest-Holt is unopposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that Mr. Stanford is opposed to this motion and the relief sought herein. Counsel for the Receiver attempted to confer with David Finn, counsel for James M. Davis, regarding this motion and the relief sought herein, but counsel for the Receiver was unable to reach Mr. Finn. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who is unopposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Manuel P. Lena, Jr., counsel for the U.S. D.O.J. (IRS) who stated that the IRS is unopposed to this motion and the relief sought herein. The motion, therefore, is opposed.

/s/ Kevin M. Sadler

Kevin M. Sadler

CERTIFICATE OF SERVICE

On August 28, 2009 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler

Kevin M. Sadler