

II. BACKGROUND

A. Complaint and Entry of Receivership Order.

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).

B. Sale of the Yacht is Necessary to Maximize the Value of the Estate and Minimize Expenses.

The sale of the Yacht pursuant to the procedures set forth herein is consistent with this Court's mandate to the Receiver and is in the best interest of the of the Receivership Estate. Allen Stanford purchased the Yacht in 1998 for \$3.9 million. Though he invested substantial sums to effect a complete renovation of the Yacht, he also made configuration changes to the Yacht, including but not limited to reducing the number of state rooms aboard the vessel, that substantially reduced the resale value. The Yacht requires a 24/7 crew aboard for insurance qualification, continuous air conditioning and water service, and costs the Receiver over \$25,000 per month just to keep it in dock.

The Receiver has retained Ardell Yacht Brokerage ("Ardell"), one of the preeminent brokers in the yacht and boat industry, and has devised the sales procedures herein after extensive consultation with Ardell. Ardell not only has extensive experience in selling yachts of this type, but has brokered sales of this very Yacht on two prior occasions, including the sale to Stanford in 1998. Both the Receiver and Ardell believe the procedures set forth herein are designed to maximize the value to the Estate that can be obtained through the sale of the Yacht while at the same time minimizing significant expenses.

III. ARGUMENT AND AUTHORITIES

A. Receiver's Power to Sell Property of the Receivership Estate.

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident

signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501).

Section 2004 of the Judicial Code requires any personalty sold under an order of a federal court to be sold in accordance with section 2001 of the Judicial Code, unless the court orders otherwise. Section 2001 of the Judicial Code, which otherwise governs sales of real property by a receiver, provides for sale by public auction or private sale. 28 U.S.C. § 2001. Section 2001(a) permits a public sale of realty in the district wherein the receiver was first appointed, at the courthouse of the county, parish or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish or city, as the court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts. *Id.* § 2001(a).

B. Proposed Sales Procedures

The Receiver seeks Court authorization to adopt the sales procedures proposed by this Motion and to sell the Yacht in accordance with such procedures. Implementation of the sales procedures will enable the Receiver to sell the Yacht in an orderly, efficient, and equitable manner and to maximize the proceeds received from such sale. The Receiver believes that adoption of the sales procedures and the sale of the Yacht pursuant thereto is in the best interests of the Receivership Estate. The Receiver’s proposed sales procedures consist of the following:

1. Stalking Horse Contract. The Receiver has negotiated a purchase and sale agreement with Neil Helliwell, Dubai, U.A.E. (the “Stalking Horse”), whereby the Stalking Horse has agreed to purchase the Yacht “as-is, where-is” for \$2.5 million, subject to higher and

better offers. The agreement provides for the payment of a break-up fee equal to 3% of the final purchase price (the "Breakup Fee") to the Stalking Horse, in the event the Yacht is sold to a third party and such sale is consummated. A true and correct copy of the Stalking Horse Contract is attached as the Appendix hereto.

2. Advertisement of the Sale of the Yacht. Ardell has published advertisements regarding the Yacht in two international yacht magazines. The Yacht is also listed for sale on Ardell's website (<http://www.ardell.com>). The Receiver will post a notice of the proposed sale on the Receivership website at <http://www.stanfordfinancialreceivership.com> throughout the Sale Period (as defined below). Ardell will also contact all of the persons or entities that it has identified as potentially interested in purchasing the Yacht. The Receiver, at his expense, is having a survey/sea trial of the Yacht performed and will make the results available to all bidders. Bidders may also inspect the Yacht at their own expense.

3. Competing Offers. Any entity that wishes to participate in the bidding process for the sale of the Yacht must make a competing offer (a "Competing Offer") on the terms and conditions substantially the same in all respects to the terms and conditions set forth in the purchase and sale agreement with the Stalking Horse and in accordance with the procedures set forth herein. Each bidder must also post a cash deposit in the amount of ten percent (10%) of their bid with Ardell. The Competing Offer must be at least \$250,000 (the "Minimum Increment") higher than the purchase price set forth in the Stalking Horse's purchase and sale agreement or any subsequent bid. Each bidder must also provide the Receiver with sufficient and adequate information to demonstrate, to the Receiver's sole and absolute satisfaction, that such bidder has a financial commitment and the ability to consummate the sale transaction.

4. Submission of Competing Offers. Competing Offers shall be submitted to the Receiver via Craig Cadwalader at Ardell (facsimile number: 954.527.1292; electronic mail: *craig@ardell.com*) for 60 days after Court approval of this process (the “Sale Period”). Competing Offers will be published on the websites of the Receiver and Ardell. Bidders may increase their Competing Offers by at least the Minimum Increment at any time, and as often as they wish, during the Sale Period. The Receiver, in his sole discretion and in consultation with his advisors, shall determine when a Competing Offer constitutes a “Qualifying Bid” based upon the totality of the circumstances, including, without limitation, the bidder’s ability to close.

5. Evaluation of Bids. The bidder that submits the highest and best Qualifying Bid, as determined by the Receiver in his sole discretion, by the end of the Sale Period shall be deemed the “Successful Bidder.” The Receiver shall announce the Successful Bidder within five days after the conclusion of the Sale Period. Immediately following the Receiver’s announcement, the Successful Bidder, if it has not already done so, shall complete and sign all agreement(s), contract(s), instrument(s) or other document(s) evidencing and containing the terms and conditions upon which the highest and best bid was made.

6. Closing the Sale and Payment of Breakup Fee. Upon his selection of the Successful Bidder, the Receiver shall, without need for further Court approval, proceed to close the sale with the Successful Bidder. If an entity other than the Stalking Horse is the Successful Bidder, immediately upon the Receiver’s consummation of a sale to the Successful Bidder, the Receiver shall be obligated to immediately use the first proceeds from such sale to pay the Breakup Fee to the Stalking Horse. Ardell will receive a 10% brokerage fee for brokering the sale; this fee is standard in the yacht brokerage industry. Except as provided in this paragraph with respect to the Stalking Horse, no other bidder or party-in-interest shall be entitled to any

expense reimbursement of its costs, expenses or professional fees or breakup, separation, termination or similar fee or payment.

7. Sales Free and Clear. The Receiver's sale of Yacht shall be free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances, if any, to attach to the proceeds of such sale.

8. Report of Sales Results. The Receiver shall, when reporting on the Estate generally, report on the results of the sale of the Yacht.

IV. CONCLUSION AND REQUEST FOR RELIEF

The Receiver requests that the Court grant this motion in all respects, and specifically (1) authorize the Receiver to adopt and follow the sales procedures described in this Motion; (2) authorize the Receiver to sell the Yacht, free and clear of liens, claims and encumbrances (with such liens, claims and encumbrances, if any, to attach to the sales proceeds), pursuant to the sales procedures, without need for further Court order; and (3) grant such other relief the Court may deem just and equitable.

Dated: September 22, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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**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 takes no position with regard 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 conferred with David Finn, counsel for James M. Davis, who stated that Mr. Davis is unopposed to this motion and the relief sought herein. 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 September 22, 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