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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 SECURITIES AND EXCHANGE
COMMISSION,

18 Plaintiff,

19 v.

20 MEDICAL CAPITAL HOLDINGS,
21 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
22 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
23 FIELD; and JOSEPH J.
LAMPARIELLO,

24 Defendants.
25

Case No. 8:09-cv-0818-DOC (RNBx)

**EX PARTE APPLICATION FOR
ORDER (A) AUTHORIZING THE
RECEIVER TO SELL
UNDEVELOPED NEWPORT BEACH
PROPERTY, (B) APPROVING
OVERBID PROCEDURES, AND
(C) APPROVING NOTICE OF SALE
PROVIDED BY RECEIVER**

Ctrm: 9D
Judge: Hon. David O, Carter

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for
2 Medical Capital Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"),
3 Medical Provider Funding Corporation VI ("MP VI"), and their subsidiaries and
4 affiliates, including 2100 Ventures, LLC (collectively, the "Receivership Entities"),
5 applies for an order (a) authorizing the Receiver to sell the undeveloped Newport
6 Beach property, (b) approving overbid procedures to be used in connection with the
7 sale, and (c) approving notice of the sale provided by the Receiver ("Application").

8 I. INTRODUCTION

9 In September 2007, Matthew Nunez, known to be affiliated with Edge Capital
10 and a friend of Joseph Lampariello, purchased residential real property located at
11 118 39th Street, Newport Beach, California ("Property") for \$1.2 million. At the
12 time, a small house was located on the Property. The purchase price was financed
13 by Medical Provider Financial Corporation IV, Series 2 ("MP IV.2") with a loan in
14 the total amount of \$1.49 million. In May 2008, Nunez deeded the Property to
15 2100 Ventures, LLC, an entity formed by MCH to hold title.¹ Sometime prior to the
16 Receiver's appointment, the small house was torn down. The Property remains
17 undeveloped.

18 Since October 8, 2009, the Receiver has marketed the Property for sale with
19 the assistance of broker Hom Real Estate Group ("Broker"). The highest and best
20 offer received was from David and Denise Hall ("Buyer"). Subject to Court
21 approval, the Receiver executed a Purchase and Sale Agreement with Buyer with a
22 purchase price of \$730,000 ("Agreement"). The Agreement is attached as Exhibit 1
23 to the Declaration of Thomas Seaman ("Seaman Declaration") in support of the
24
25

26
27 ¹ 2100 Ventures, LLC later executed a change of ownership, transferring title to
28 2100 Balboa Ventures, Inc., although it appears that the change of ownership
was never recorded. Therefore, title of record remains under 2100 Ventures,
LLC. Joseph Lampariello was a managing member of 2100 Ventures, LLC and
was the principal officer of 2100 Balboa Ventures, Inc.

1 Receiver's motion for approval of the sale ("Sale Motion").² The Sale Motion,
2 Seaman Declaration and other supporting papers have been filed concurrently
3 herewith, and are attached hereto as Exhibit A.

4 This Application seeks authority for the Receiver to sell the Property,
5 approval of procedures for other potential purchasers to submit overbids to the
6 Receiver, and approval of the notice provided by the Receiver. The Receiver seeks
7 this preliminary relief on an ex parte basis, and has requested approval of the sale by
8 way of a fully noticed Sale Motion set for hearing on January 11, 2010.

9 Pursuant to Local Rule 7-19.1, the Receiver circulated this Application by e-
10 mail to counsel for the Securities and Exchange Commission ("Commission") and
11 Defendants Field and Lampariello shortly before filing. The Receiver was informed
12 by counsel that the Commission does not have any opposition. Counsel for
13 Defendants Field and Lampariello did not respond to the e-mail, and efforts to reach
14 counsel by telephone were unsuccessful.

15 II. PROCEDURAL BACKGROUND

16 On July 16, 2009, the Commission commenced an enforcement action against
17 MCH, MCC, MP VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
18 alleging various violations of securities laws. On the same day, the Commission
19 filed an Ex Parte Application for Temporary Restraining Order and Orders:
20 (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
21 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
22 Accountings; and Order to Show Cause Re: Preliminary Injunction and
23 Appointment of a Permanent Receiver.

24 On August 3, 2009, the Court entered the Temporary Restraining Order and
25 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
26 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show

27 _____
28 ² The timeline for seeking Court approval of the sale laid out in the addendum to
the Agreement has been amended by agreement of the parties consistent with the
timeline proposed herein.

1 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver,
2 appointing Thomas A. Seaman as temporary receiver for the Receivership Entities.
3 The Receiver filed his 10-Day Report to the Court on August 12, 2009. On
4 August 18, 2009, the Court entered a Preliminary Injunction and Order Appointing
5 A Permanent Receiver, making the Receiver's appointment permanent.

6 On September 8, 2009, the Receiver filed his Second Report to the Court. At
7 a hearing held the same day, the Court denied the motion by Defendants Field and
8 Lampariello to remove the Receiver, appoint a management committee and put the
9 Receivership Entities into bankruptcy. The Court instructed the Receiver to file
10 monthly reports. The Receiver filed his Third Interim Report on October 9, 2009,
11 and his Fourth Interim Report on November 10, 2009. The Commission filed its
12 First Amended Complaint on November 12, 2009. The Receiver filed his Fifth
13 Interim Report on December 10, 2009.

14 III. THE AGREEMENT

15 The Agreement is attached to the Seaman Declaration and its terms are
16 summarized in the Sale Motion (all of which are attached hereto as Exhibit A). This
17 Application does not seek approval of the sale, which is addressed in the Sale
18 Motion set for hearing on January 11, 2010. Rather, this application merely seeks
19 authority to sell the Property, approval of the proposed overbid procedures, and
20 approval of the notice of sale.

21 IV. PROPOSED OVERBID PROCEDURES

22 The Receiver requests that the following overbid procedures be approved.
23 These procedures are summarized as follows:

24 (a) **Qualified Bidders.** To be determined a qualified bidder, a prospective
25 purchaser must: (i) provide a fully executed purchase and sale agreement for
26 the Property in form substantially similar to the Agreement, (ii) provide
27 evidence, in the form of a bank statement, cashier's check, a deposit of
28 immediately available funds or an irrevocable letter of credit in favor of the

1 qualified bidder, that the qualified Bidder has the ability to pay at the amount
2 of their highest bid, (iii) provide an earnest money deposit by wire transfer or
3 cashier's check in the amount of \$15,000 payable to the Receiver, which
4 amount shall be non-refundable to the high bidder at the Auction if for any
5 reason (a) the high bidder fails to close the sale, or (b) the high bidder fails to
6 provide the balance of the purchase price to the Receiver one day prior to the
7 closing. Buyer is a qualified bidder. Each qualified bidder must provide the
8 executed Agreement and earnest money deposit to the Receiver no later than
9 January 6, 2010. Qualified bidders shall appear at the January 11, 2010
10 hearing/auction in person, or through a duly authorized representative. At that
11 hearing, the Court will conduct an auction of the Property among any
12 qualified bidders. The high bidder's deposit shall be applied to the purchase
13 price, if the sale is approved by the Court.

14 (b) **Due Diligence.** All prospective bidders shall have had the opportunity to
15 inspect the Property and any documentation relating thereto prior to the
16 auction. Prospective bidders may also request access to information about the
17 Property and obtain a form purchase and sale agreement.

18 (c) **Overbids.** The initial overbid shall be at least \$755,000 (3.4% over the
19 proposed sale price). Subsequent overbids shall be in increments of \$10,000.
20 If no Qualified Bidder submits a bid in the amount of the initial overbid or
21 higher, the Agreement will be submitted to the Court for approval in its
22 current form.

23 (d) **No Contingencies.** The sale to any qualified bidder shall not be subject
24 to any contingencies, including without limitation, for financing, due
25 diligence or inspection.

26 (e) **Break-Up Fee.** There shall be no break-up fee.
27
28

1 These procedures were formulated by the Receiver with the goal of obtaining
2 the highest and best price for the Property, and ensuring that the sale closes
3 promptly.

4 **V. NOTICE OF SALE**

5 The Receiver served the Sale Motion by mail on (i) the parties, (ii) Wells
6 Fargo Bank and Bank of New York Mellon, (iii) the Buyer and all known potential
7 bidders, and (iv) all known lienholders and claimants with respect to the Property.
8 The Receiver also posted the Sale Motion on his website
9 (www.medicalcapitalreceivership.com). Furthermore, as required by 28 U.S.C.
10 § 2002, the Receiver caused the following notice of the sale and the opportunity to
11 overbid to be published in the Orange County Register on December 19, 22 and 27,
12 2009, and January 3, 2010:

13 In the action pending in U.S. District Court for the Central
14 District of California, Southern Division, Case No. SA
15 CV09-0818 DOC (RNBx), Securities and Exchange
16 Commission v. Medical Capital Holdings, et al., notice is
17 hereby given pursuant to 28 U.S.C. § 2002 that the Court-
18 appointed Receiver has contracted to sell the real property
19 located at 118 39th Street, Newport Beach, California, for
20 the amount of \$730,000. Sale subject to overbid and
21 Court confirmation. Hearing set for January 11, 2010 at
22 8:30 a.m., courtroom of the Honorable David O. Carter,
23 United States Courthouse, 411 West Fourth Street, Santa
24 Ana, California. Minimum overbid is \$755,000.
25 Overbids must be received by 5:00 p.m. Pacific Standard
26 Time, January 6, 2010 by the Receiver at 3 Park Plaza,
27 Suite 550, Irvine, California in order to be considered. If
28 interested in submitting an overbid, please contact Jay
Horn at (949) 342-3622 or at jhorn@homgroup.com for
the form of Purchase and Sale Agreement and other
information.

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VI. ARGUMENT

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. See S.E.C. v. Elliot, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.; 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors."). Accordingly, this Court has broad equitable powers and discretion in formulating procedures, schedules and guidelines for administration of the receivership estate.

1 The Ninth Circuit has confirmed a district court's broad authority to approve a
2 sale of assets under the control of an equity receiver. SEC v. American Capital
3 Investments, Inc., 98 F.3d 1133, 1143-1145 (9th Cir. 1996) abrogated on other
4 grounds by Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998);
5 Gockstetter v. Williams, 9 F.2d 354, 357 (9th Cir. 1925) ("In authorizing the sale of
6 property by receivers, courts of equity are vested with a broad discretion as to price
7 and terms."); see also Mellen v. Moline Malleable Iron Works, 131 U.S. 352 (1889)
8 (under its general equity authority, the court has the power to order a sale of
9 property); Broadway Trust v. Dill, 17 F.2d 486 (3d Cir. 1927) (in a receivership
10 proceeding, the court has both the power and jurisdiction to order a sale of the
11 property).

12 Here, the Property has been marketed by the Receiver through the appropriate
13 channels with the assistance of the Broker since October 8, 2009. A buyer has been
14 identified and sale terms have been negotiated. The sale price is within the range of
15 the appraisals obtained by the Receiver and qualified overbids will be accepted.
16 Accordingly, moving forward with the sale is in the best interests of the receivership
17 estate.

18 The proposed overbid procedures are designed to (a) induce Buyer to act as
19 the initial "stalking horse" bidder, (b) allow qualified bidders to overbid, (c) ensure
20 that the sale closes in a timely manner, and (d) generate the highest and best price
21 for the Property. The Receiver requests that the procedures be approved and that the
22 Receiver be authorized to sell the Property to the Buyer or the highest qualified
23 bidder at the January 11 auction hearing.

24 The notice of sale and Sale Motion provided by the Receiver by mail and
25 publication is reasonable and should be approved. Further mailing and publication
26 of notice imposes significant costs on the receivership estate with little or no
27 corresponding benefit to creditors.

28

1 As noted above, the Application was circulated to counsel for the
2 Commission and counsel for Defendants Field and Lampariello shortly before filing.
3 Counsel for the Commission advised that the Commission does not oppose the
4 Application. Counsel for Defendants Field and Lampariello did not respond to the
5 e-mail, and efforts to reach counsel by telephone were unsuccessful.

6 **VII. CONCLUSION**

7 WHEREFORE, the Receiver requests entry of an order authorizing him to
8 sell the Property, approving the overbid procedures described herein, and approving
9 the notice of sale provided by the Receiver.

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Dated: December 18, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

Ted Fates
Attorneys for Receiver
Thomas A. Seaman