

CAUSE NO. D-1-GN-24-001018

SAJID MAQSOOD, TRUSTEE OF THE SAJID	§	IN THE DISTRICT COURT
& JOAN M. MAQSOOD REVOCABLE TRUST,	§	
ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
PRIDE OF AUSTIN HIGH YIELD FUND I, LLC,	§	
ET AL.,	§	
	§	
Defendants.	§	201ST JUDICIAL DISTRICT

**RECEIVER'S MOTION TO AMEND ORDER GRANTING
RECEIVER'S MOTION TO APPROVE THE SALE OF CERTAIN
REAL PROPERTY AND RELATED IMPROVEMENTS IN CANTON, TEXAS**

Gregory S. Milligan, in his capacity as the Court-appointed receiver (“**Receiver**”) for Pride of Austin High Yield Fund 1, LLC (“**POA**”), files this *Motion to Amend Order Granting Receiver’s Motion to Approve the Sale of Certain Real Property and Related Improvements in Canton, Texas* (the “**Motion**”) and would respectfully show the Court as follows:

1. On October 1, 2024, this Court entered its *Order Granting Receiver’s Motion to Approve the Sale of Certain Real Property and Related Improvements in Canton, Texas* (the “**Order**”). The Order authorizes the Receiver to sell certain real property located in Canton, Texas (the “**Canton Property**”).

2. Prior to commencement of the receivership, certain members of POA obtained judgments on account of their equity interests in POA. After obtaining the judgments, these members filed abstracts of judgment in certain Texas counties in which POA owned real property (the “**Abstracts of Judgment**”). One such county was Van Zandt County where the Canton Property is located.

3. Because the Abstracts of Judgment created a lien on the Canton Property, the Receiver requested that the holders of the Abstracts of Judgment (the “***Abstract Parties***”) agree that the sale to the proposed buyer of the Canton Property be consummated free and clear of such liens. In return, the Receiver agreed that all of the net proceeds from the sale of the Canton Property (*i.e.*, after the payment of any property taxes, commissions and other closing costs) would be released to the Receiver and deposited into a separate account used solely to hold the proceeds from the sale of the Canton Property. That is, the Abstract Parties’ liens on the Canton Property would be converted into a lien on the net proceeds of the sale of the Canton Property. The Receiver further agreed that he could not spend or otherwise distribute those proceeds without further order of this Court. This arrangement between the Receiver and the Abstract Parties was incorporated by agreement in the Order.

4. To be clear, the Receiver is not admitting or agreeing that the Abstract Parties are ultimately entitled to the proceeds of the Canton Property by virtue of their Abstracts of Judgment. The Receiver may attack such liens at a later date and seek to have the Abstract Parties, all of whom obtained judgments on account of their equity interests in POA, treated as other POA equity holders, and not as creditors simply because they won the “race to the courthouse”. However, in the event that the Abstract Parties are treated as judgment creditors and not as equity investors in POA, the proceeds from the sale of the Canton Property will be undisturbed because they are segregated, and therefore the Abstract Parties are not harmed by the sale of the Canton Property.

5. Even though the Order reflected this arrangement, the title company issuing the title policy on the Canton Property believes the order should have also specifically released the liens of the Abstract Parties against the Canton Property and attached such liens to the net sale proceeds and has requested that the Abstract Parties execute a release of lien *as to the Canton Property*. The

title company has communicated that it wants clarity that the Abstract Parties do not think they have the ability to foreclose on the Canton Property by virtue of the Abstracts of Judgment after title has transferred to the buyer as approved by the Court.

6. In an attempt to avoid consuming further time of the Court, on October 16, 2024, counsel to the Receiver sent an email to counsel for the Abstract Parties explaining the situation and requesting the Abstract Parties execute releases of liens as to the *Canton Property*. A copy of that email is attached as Exhibit A. Counsel to the Receiver specifically reconfirmed that all of the Abstract Parties' rights related to the *proceeds* of the sale are preserved under the Order and cannot be used by the receiver without further order of the Court.

7. Counsel to the Abstract Parties did not respond to the October 16, 2024 email, and on October 20, 2024, counsel to the Receiver sent a follow up email to counsel for the Abstract Parties. Counsel to the Abstract Parties did not respond to that email either. On October 29, 2024, counsel to the Receiver sent a final email informing counsel to the Abstract Parties that the Receiver would be filing this motion, and once again requesting an agreement on the issue. Copies of the October 16, 20, and 29 emails are attached hereto as Exhibit A. After the October 29 email was sent, counsel to the Receiver communicated with counsel to the Abstract Parties. The Abstract Parties have communicated that they will not agree to the Receiver's request, which, again, leaves them in no worse spot than they sit today because their lien on the real property is replaced with a lien on the cash, and the Abstract Parties and Receiver reserve all rights.

8. The Abstract Parties' position, taken to its logical conclusion, would mean that the Receiver could not sell any property in any county in which an abstract of judgment is recorded against the Fund. Under the *Order Granting Receiver's Motion to Approve (I) Proposed Claims Verification Procedures, and (II) Claims Bar Date* (the "*Claims Order*"), the Abstract Parties are

specifically enjoined from “enforcing against the Receiver or the Receivership Estate a judgment obtained before the entry of [the Claims Order]”. Claims Order, ¶ 2(a). If title companies will, understandably, not write title policies given the existence of liens on the property to be conveyed, then the Receiver will not be able to sell any property on which an abstract of judgment has been recorded, even though the Abstract Parties are enjoined from collecting the proceeds of a sale on account of their judgment liens. *Id.* Given this quagmire, the Receiver has specifically agreed that the Abstract Parties liens on the *property* will be extinguished and immediately replaced with a lien on the *proceeds of the sale*, with all parties reserving rights. If the Receiver is unable to make such conveyances, he will be forced to put the Fund into a chapter 11 proceeding where he can unequivocally make such conveyances under 11 U.S.C. § 363.

9. The Receiver cannot close the sale of the Canton Property without either (a) an agreement by the Abstract Parties – a request to which they have not substantively responded; or (b) an amended order from this Court that, the Receiver believes, simply clarifies the terms of the Order, and does not change the Abstract Parties’ substantive rights. As detailed in the Receiver’s declaration filed in connection with the *Motion to Sell the Canton Property*, a sale of the Canton Property is in the best interest of the Receivership Estate. Further, as explained to the Court and counsel to the Abstract Parties, the Canton Property sustained storm damage that makes it susceptible to further water intrusion. Given the delays to closing caused by the lack of responsiveness by counsel to the Abstract Parties which have delayed closing, the Receiver has been required to spend additional receivership estate funds to address property conditions prior to closing. The filing of this motion will also cause the receivership estate to incur additional and unnecessary costs to the ultimate detriment of allowed investor victims.

10. “Rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver, and to the powers of a court regarding receivers, to the extent that they are not inconsistent with applicable statutory provisions or with the general laws of the state.” Tex. Civ. Prac. & Rem. Code § 64.004. Equitable remedies are within the discretion of the trial court and will not be disturbed on appeal unless the record reveals a clear abuse of discretion. *Aubin v. Territorial Mortgage Co. of America*, 640 S.W.2d 737, 742 (Tex. App. -- Houston [14th Dist.] 1982, no writ); *see also Citizens Bldg. Inc. v. Azios*, 590 S.W.2d 569, 573 (Tex. Civ. App. -- Houston [1st Dist.] 1979, writ ref’d n.r.e.). “The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Greater Fort Worth v. Mims*, 574 S.W.2d 870, 872 (Tex. Civ. App. -- Fort Worth 1978, writ dism’d w.o.j.). “Courts of equity may adjust the equities; they have both the power and obligation to fashion their remedies to the necessities of the case.” *Perry v. Perry Bros., Inc.*, 753 S.W.2d 773, 778 (Tex. App. – Dallas, 1988) (J. Howell, dissenting).

11. Here, because the Receiver has been unable to get the Abstract Parties to respond or agree to the additional clarifying language requested by the title company that, upon the sale of the Canton Property, the Abstract Parties’ lien on the Canton Property will be extinguished, and substituted with a lien on the proceeds of the sale of the Canton Property¹, the Receiver requests that the Court amend the Order and order such relief so that the Receiver can sell the Canton Property. A copy of the proposed amended order is attached hereto as Exhibit B².

¹ Any rights of the Receiver to attack the Abstract/Judgment Parties liens on the net proceeds from the sale of the Canton Property are expressly preserved. All defenses of the Abstract/Judgment Parties to any such attack by the Receiver are expressly preserved.

² Exhibit B is a redline against the original Order.

WHEREFORE, the Receiver requests that upon final consideration of this Motion, the Court enter an order consistent with the foregoing requested relief and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Dated: October 30, 2024.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Trip Nix

William R. "Trip" Nix
Texas Bar No. 24092902
Nicholas R. Miller
State Bar No. 24125328
Hannah M. Maloney
State Bar No. 24125336
100 Congress Ave., Suite 1800
Austin, TX 787071
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nick.miller@hklaw.com
hannah.maloney@hklaw.com

ATTORNEYS FOR GREGORY S.
MILLIGAN, RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that, on October 30, 2024, a true and correct copy of the foregoing Motion was served electronically upon all counsel of record via eFileTexas. The Motion will, as soon as practicable, be served on all known POA investors via the methods set forth above.

/s/ Trip Nix

Trip Nix

EXHIBIT A

From: Nix, Trip (AUS - X26476) <Trip.Nix@hklaw.com>
Sent: Tuesday, October 29, 2024 3:56 PM
To: John Ferguson <john@fergusonlawpractice.com>; David Dunham <david@dunhamllp.com>; trobinson <trobinson@abdmlaw.com>; Isabelle Antongiorgi <isabelle@dunhamllp.com>
Cc: Maloney, Hannah M (AUS - X24391) <Hannah.Maloney@hklaw.com>; Sage Billiot <sage@dunhamllp.com>
Subject: RE: POA - Canton Sale Order

David and John,

I have not heard from either of you on this. We are going to lose the sale on Canton if we do not get something on this that satisfies the title company. So, we are going to file a motion to amend the order and ask that it be heard on an expedited basis.

I do not think there is any change in the deal that we reached pre-motion. The property will be sold. Your clients' judgment liens on the real estate are extinguished and are converted into a judgment lien on the cash proceeds of the sale. The receiver reserves all rights to challenge those liens in the future and your clients reserve all defenses. I am attaching the revised order that we are going to ask the Court to sign.

We plan to file the motion later today or in the morning, so let me know if you would like to discuss.

Trip Nix | Holland & Knight

Partner

Holland & Knight LLP

98 San Jacinto Boulevard, Suite 1900 | Austin, Texas 78701

Phone 512.685.6476 | Fax 512.472.7473

trip.nix@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Nix, Trip (AUS - X26476)

Sent: Sunday, October 20, 2024 9:35 PM

To: 'John Ferguson' <john@fergusonlawpractice.com>; 'David Dunham' <david@dunhamllp.com>; 'trobenson' <trobenson@abdmllaw.com>; 'Isabelle Antongiorgi' <isabelle@dunhamllp.com>

Cc: Maloney, Hannah M (AUS - X24391) <Hannah.Maloney@hklaw.com>; 'Sage Billiot' <sage@dunhamllp.com>

Subject: RE: POA - Canton Sale Order

David and John,

Following up on the below. Please let me know if you all are good with the below as requested by the title company. If you all want to set a time to discuss, let me know, I am generally around the next couple of days.

Trip Nix | Holland & Knight

Partner

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trip.nix@hklaw.com | www.hklaw.com

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From: Nix, Trip (AUS - X26476)

Sent: Wednesday, October 16, 2024 3:03 PM

To: John Ferguson <john@fergusonlawpractice.com>; David Dunham <david@dunhamllp.com>; trobinson <trobenson@abdmllaw.com>; Isabelle Antongiorgi <isabelle@dunhamllp.com>

Cc: Maloney, Hannah M (AUS - X24391) <Hannah.Maloney@hklaw.com>; Sage Billiot <sage@dunhamllp.com>

Subject: RE: POA - Canton Sale Order

David and John,

We are trying to get the sale of the Canton Property closed. The title company is requesting that the AJ holders execute a release of lien *as to the property* to issue title insurance. They want it to be clear that the judgment holders do not think they have the ability to foreclose on the property after the sale has closed and title has transferred. Obviously all of your clients' rights related to the *proceeds* of the sale are preserved under the sale order and cannot be

used by the receiver without further order of the receivership court.

Please let me know if you are OK with executing a release as to the *property* to satisfy the title company so that we can get the sale closed.

Happy to discuss if you would like.

Trip Nix | Holland & Knight

Partner

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From: John Ferguson <john@fergusonlawpractice.com>

Sent: Monday, September 30, 2024 11:35 AM

To: Nix, Trip (AUST - X26476) <Trip.Nix@hklaw.com>; David Dunham <david@dunhamllp.com>; trobinson <trobinson@abdmlaw.com>; Isabelle Antongiorgi <isabelle@dunhamllp.com>

Cc: Maloney, Hannah M (AUST - X24391) <Hannah.Maloney@hklaw.com>; Sage Billiot <sage@dunhamllp.com>

Subject: Re: POA - Canton Sale Order

[External email]

Yes sir.

From: Trip.Nix@hklaw.com <Trip.Nix@hklaw.com>

Sent: Monday, September 30, 2024 11:29 AM

To: David Dunham <david@dunhamllp.com>; trobinson <trobinson@abdmlaw.com>; John Ferguson <john@fergusonlawpractice.com>; Isabelle Antongiorgi <isabelle@dunhamllp.com>

Cc: Hannah.Maloney@hklaw.com <Hannah.Maloney@hklaw.com>; Sage Billiot <sage@dunhamllp.com>

Subject: RE: POA - Canton Sale Order

David –

These revisions are fine with us, and Greg is OK putting the money in a separate account.

Tanya and John, are you good with them?

Trip Nix | Holland & Knight

Partner

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From: David Dunham <david@dunhamllp.com>
Sent: Monday, September 30, 2024 10:35 AM
To: Nix, Trip (AUST - X26476) <Trip.Nix@hklaw.com>; trobinson <trobinson@abdmllaw.com>;
john@fergusonlawpractice.com; Isabelle Antongiorgi <isabelle@dunhamllp.com>
Cc: Maloney, Hannah M (AUST - X24391) <Hannah.Maloney@hklaw.com>; Sage Billiot
<sage@dunhamllp.com>
Subject: RE: POA - Canton Sale Order

[External email]

Trip,

Per our discussion, here is my proposed revision of the Canton Property Order. If we can reach agreement, the Judgment/Abstract Parties and the Receiver would sign it indicating that it is an agreed order and submit it to Court. In the interest of time, I am sending this now. Tanya and John have not seen this and may have revisions or a different take altogether.

Thanks,

David

David E. Dunham
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From: Trip.Nix@hklaw.com <Trip.Nix@hklaw.com>

Sent: Tuesday, September 24, 2024 8:55 PM

To: trobinson <trobinson@abdmllaw.com>; john@fergusonlawpractice.com; David Dunham <david@dunhamllp.com>; Isabelle Antongiorgi <isabelle@dunhamllp.com>

Cc: Hannah.Maloney@hklaw.com

Subject: POA - Canton Sale Order

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Tanya, Isabelle, John, and David –

I believe that each of your clients may have abstracts of judgment against POA that relate to the property that is the subject of the Receiver's motion to sell, which is set for hearing on Tuesday. The Receiver does not plan to release that money to the judgment holders (I am not sure which of you are first in line) because (a) I believe it would violate the injunction contemplated in paragraph 2(a) of the claims order; (b) the Receiver wants to complete the claims process; and (c) get a distribution plan approved before any money is distributed to any creditors or equity security holders. However, in an effort to make sure your clients are adequately protected, we have inserted language in the sale order that provides that the Receiver will earmark and segregate the net proceeds from the sale, and will not spend or otherwise distribute it for any purpose without further order of the Court. A copy of the proposed order is attached.

If any of you have issue with this language or other issues with the sale of the Canton property, please let me know and we can set a time to discuss.

Thanks.

Trip Nix | Holland & Knight

Partner

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Our Austin office will have a new address on or about October 7th:

98 San Jacinto Boulevard, Suite 1900 | Austin, Texas 78701

Our phone numbers and email addresses remain the same.

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EXHIBIT B

CAUSE NO. D-1-GN-24-004236

GREGORY S. MILLIGAN, in his capacity as	§	IN THE DISTRICT COURT
the court-appointed receiver for PRIDE OF	§	
AUSTIN HIGH YIELD FUND I, LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CCG CAPITAL GROUP, LLC,	§	
CCG DEVELOPMENT, LLC, AND	§	
ROBERT BUCHANAN,	§	
	§	
<i>Defendants.</i>	§	419TH JUDICIAL DISTRICT

**ORDER GRANTING RECEIVER’S MOTION TO APPROVE THE SALE OF CERTAIN
REAL PROPERTY AND RELATED IMPROVEMENTS IN CANTON, TEXAS**

On this day, the Court considered the Receiver’s Motion to Approve the Sale of Certain Real Property and Related Improvements in Canton, Texas (the “*Motion*”).

The Court takes note that there are members and/or former members of Pride of Austin High Yield Fund I, LLC (“*POA*”) who judgments against POA and other parties, as well as filed abstracts of those judgments (“*Judgment/Abstract Parties*”).

The Court further takes note of and finds that the Receiver and the Judgment/Abstract Parties have reached agreement through their counsel that all claims, rights and defenses of the Receiver and the Judgment/Abstract Parties pertaining to the Canton Property Sale and the proceeds from that sale are expressly preserved, not waived and will be adjudicated at a later date but prior to any distribution of the proceeds from the Canton Property Sale from the Receiver’s account.

After reviewing the Motion, hearing argument from counsel, and reviewing any evidence in support of the Motion, the Court further finds that the Receiver’s sale of the Canton Property in

accordance with the terms of the Canton Property Contract would be in the best interest of the Receivership Estate. Therefore, it is hereby:

ORDERED that the Motion is granted, it is further

ORDERED that the Receiver is granted authority to sell the Canton Property pursuant to the terms of the Canton Property Contract attached to the Motion as Exhibit A.; it is further

ORDERED that all of the net proceeds (*i.e.*, after the payment of any property taxes, commissions and other closing costs) from the sale of the Canton Property shall be released to the Receiver and deposited into a separate account used to solely to hold the proceeds from the Canton Property Contract; it is further

ORDERED that any lien of the Judgment/Abstract Parties in the Canton Property created by virtue of their abstracts of judgment are hereby extinguished, and upon the sale of the Canton Property is immediately converted into a lien on the net proceeds from the sale of the Canton Property¹:

ORDERED that the Receiver shall earmark and segregate by accounting such net proceeds from the sale of the Canton Property and not spend or other^{wise} distribute the same for any purpose without further order of this Court.

SIGNED this _____ day of October, 2024.

HONORABLE AMY CLARK MEACHUM

¹ Any rights of the Receiver to attack the Abstract/Judgment Parties liens on the net proceeds from the sale of the Canton Property are expressly preserved. All defenses of the Abstract/Judgment Parties to any such attack by the Receiver are expressly preserved.

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