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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>SECURITIES EXCHANGE COMMISSION, Plaintiff, Plaintiffs, vs. MANAGEMENT SOLUTIONS, INC., a Texas Corporation; WENDELL A. JACOBSON; and ALLEN R. JACOBSON, Defendant.</p>	<p>RESPONSE TO HOLBROOK PARTIES' BRIEF IN SUPPORT OF USING THE BUYER ALLOCATION TO ALLOCATE PROCEEDS FROM THE CORTLAND SALE Case No. 2:11-cv-01165 Honorable Bruce S. Jenkins</p>
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Eric D. Bishop, Inc. and Adams Bay Lighthouse Investment, L.L.C (collectively “Bishop”), by and through counsel, hereby responds to the Holbrook Parties’ Brief in Support of Using the Buyer Allocation to Allocate Proceeds From the Cortland Sale ([Docket No. 2159](#), filed October 10, 2014).

INTRODUCTION

Bishop owns a 15.2% undivided interest in certain real property (“Property”), in which the Receiver holds an 84.8% interest as a tenant in common with Bishop. The entity that owned the Receiver’s interest prior to this action was Tuscany Gardens, Ltd., now a receivership entity. Since approximately April 2013, Bishop and the Receiver have negotiated for the purchase of Bishop’s 15.2% interest in the Property. Bishop and the Receiver agree that they are close to reaching an agreement regarding the sale of Bishop’s interest in the Property. However, the Hobrook Parties’ argument that the allocation of proceeds from the Cortland Sale should be changed from the method approved by the Court in its Liquidation Plan Order ([Docket No. 1277](#), dated September 23, 2013) threatens consummation of this agreement.

ARGUMENT

As Bishop understands the Liquidation Plan Order, the Court authorized the allocation method proposed by the Receiver, to wit, “[t]he net proceeds from the sale of the properties . . . will be allocated to the individual properties pro rata based upon the Receiver’s median appraised value of each property . . .” Liquidation Plan, at 15 ([Docket No. 1226](#), filed August 26, 2013). Bishop and the Receiver have conducted their negotiations and have nearly reached an agreement as to price for the purchase of Bishop’s interest in the Property in reliance on this allocation method.

The Holbrook Parties (“Holbrook”) now argue that a different allocation method should be applied, based not on the Receiver’s Allocation method but instead based on what it calls the “Buyer Allocation.” Bishop objects to this argument on the basis that it would be unfair and unduly prejudicial to Bishop and any other party similarly situated, and is without evidentiary support.

As set forth in the Receiver's Notice Regarding Status of Multifamily Properties..., filed September 17, 2014 (Docket No. 2121), Bishop and the Receiver are near the point where Bishop could consent to the sale of the Property. *Id.*, p.2. However, Bishop can confirm the Receiver's statement that any such "consent is contingent on the Court confirming its earlier approval of the Receiver's Allocation Method." *Id.*, p. 3. "In other words, [Bishop] will not consent to the sale if the Court rules in favor of the [Holbrook Parties] and compels the Receiver to adopt the Buyer's Allocation Method." *Id.*

While Holbrook now complains that the Receiver's approved allocation method will adversely affect any amounts it might collect if it is ultimately successful in its separate litigation, it is known that Bishop, whose ownership and tenant-in-common interests are not in dispute, will see the value of the Property drop more than two million dollars if Holbrook's allocation method is now adopted. As set forth in Exhibit 3 to the Receiver's Motion to Confirm a Private Sale..., dated March 14, 2014 (Docket No. 1650-1), the Receiver's approved allocation method results in 7.44% of \$338,500,000, or \$25,184,400, while the Buyer Allocation is \$23,000,000. Holbrook provides no explanation as to why Bishop should suffer such a dramatic reduction. Changing the court-approved allocation at this point would be to the unfair detriment of Bishop and any other party in a similar situation.

Moreover, Holbrook fails to provide an evidentiary basis for its request. Holbrook's entire argument appears to rest on an incorrect premise. In the section entitled "Statement of the Issue," Holbrook asks, "For each individual property included in the Cortland Sale, is the Buyer Allocation, which is the value agreed to by the Receiver and the purchasers of each property after the purchasers' consideration of [various factors] a better indication of fair market value than the Receiver Allocation, which is based solely on the median appraised value . . . ?" Holbrook Mem, p.

“v.” Holbrook sets forth no evidence that the Buyer Allocation is the “value agreed to by the Receiver and the purchasers of each property.” To the contrary, the Receiver made clear, both in its Reply in Support of Motion to Confirm a Private Sale..., dated April 18, 2014, p. 4 ([Docket No. 1832](#)) and in the Michael Altman Declaration (attached to Holbrook’s Mem. as Ex. 5), that the Buyer Allocation does *not* represent the value agreed to by the buyer and seller. Absent evidence to support this argument, it is without foundation and should not be the basis for changing the Court-approved method of allocation.

The basis for the Receiver Allocation method, on the other hand, is the median appraised value of the Property, which appraisals do not appear to be challenged by Holbrook and which is the appropriate manner of valuation under the applicable statute, 28 U.S.C. § 2001(b) (“No private sale shall be confirmed at a price less than two-thirds of the appraised value.”).

For each of these reasons, Bishop objects to the Holbrook Parties’ Brief and requests that the Court confirm its prior ruling that the Receiver’s Allocation method prevail herein.

DATED this 17th day of October, 2014.

COHNE, RAPPAPORT & SEGAL, P.C.

/s/ Jeffrey L. Silvestrini

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2014, I caused a true and correct copy of the foregoing to be served by CM/ECF upon the counsel listed therein and by first-class mail, postage prepaid, to:

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