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AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS
CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT
MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK; BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

RECEIVER’S MOTION TO ABANDON ALL
RIGHT, TITLE, AND INTEREST IN
CERTAIN TANGIBLE PERSONAL
PROPERTY OF MOTOLEASE FINANCIAL,
LLC



LOCAL RULE 7-1 CERTIFICATE

On June 10, 2022, counsel for the Receiver circulated to the approximately 60 counsel of record, via email, copies of this motion, the supporting declaration and proposed form of order, all in substantially the same form as the filed versions. The conferral requested that counsel respond by 12:00 noon Pacific Time on June 17, 2022, as to whether their clients object or consent to the motion. As of the time of filing this motion, the undersigned had received two consents and no objections.

MOTION

Ronald F. Greenspan, the duly appointed Receiver (“Receiver”) for the Receivership Entity,¹ hereby moves this Court for an order pursuant to paragraph 26 of the Final Order Appointing Receiver (the “Final Order”) authorizing the Trustee to abandon certain motorcycles titled in name of Motolease Financial LLC, which the Receiver has estimated to be approximately 846 motorcycles (the “Motolease Tangible Property”), nunc pro tunc to December 31, 2021. This motion is supported by the Declaration of Ronald F. Greenspan (“Greenspan Decl.”) submitted herewith, and the following memorandum.

I. Procedural and Factual Background

On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (“Individual Defendants”).

On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr.

¹ Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 (Dkt. No. 156) (“Final Receivership Order”) or the Receiver’s Court-approved Distribution Plan (Dkt. Nos. 787 and 813).

Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (Dkt. No. 30) (“Interim Receivership Order”). On April 14, 2016, pursuant to the Final Receivership Order, Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (Dkt. No. 156) (“Final Receivership Order”). The Receiver, Receivership staff, and agents have diligently worked to locate assets and distribute proceeds from those assets to the Claimants that hold Allowed Claims, as approved by various orders of this court. (Greenspan Decl., ¶¶ 2-3)

During the course of the Receivership, the Receiver has discovered that a large number of motorcycles are still titled in the name of Motolease Financial, LLC (“Motolease Financial”), notwithstanding that the motorcycles cannot be located. Potentially, there may also be other circumstances with additional motorcycles where the title still appears under Motolease Financial LLC (which is a Receivership Entity), but where Motolease Financial should otherwise have been removed from the title. (Greenspan Decl., ¶ 4). The Receivership does not have possession of any of these motorcycles and the servicer of the Motolease Financial portfolio, Autopay Services, LLC (the “Servicer”), has searched for, but has not been able to locate them. (Greenspan Decl., ¶ 5).

Based on information from the Servicer, once an account went into default, the Servicer undertook and pursued recovery of the collateral pursuant to its standard repossession process. (Greenspan Decl., ¶ 6). Efforts to resolve the default or obtain the collateral continued until the account reached 30 days past due, including utilizing various contact attempt times and locations. (Greenspan Decl., ¶ 7). If initial efforts were unsuccessful, the account was escalated to a late-stage collection agent for review and further attempted resolution. (Greenspan Decl., ¶ 8).

When an account was determined to require collateral recovery, various national vendor agencies were available and utilized within the repossession and liquidation process, with a combined network of over 1500 active repossession companies. (Greenspan Decl., ¶ 9). Assignments were monitored for efficiency and if an initial assignment for recovery was unsuccessful, the Servicer moved the repossession account to a different vendor. Skip tracing was also utilized in an attempt to locate the account holder and/or the collateral. (Greenspan Decl., ¶ 10).

The policies and procedures utilized by the Servicer resulted in over 1800 repossessions within the Motolease Financial portfolio. (Greenspan Decl., ¶ 11).

Continued ownership of the Motolease Tangible Property is burdensome to the Receivership as certain of the Motolease Tangible Property continues to be assessed personal property taxes, even though it is unknown whether any Motolease Tangible Property is actually located within the jurisdiction of those certain taxing authorities. (Greenspan Decl. ¶ 12). The Motolease Tangible Property is of inconsequential value and provides no benefit to the Receivership Estate. (Greenspan Decl., ¶ 13). Even if located, the Motolease Tangible Property has limited if any value, given that the cost to find, repossess, and liquidate the Motolease Tangible Property far exceeds any reasonable estimated recovery value. As the Receivership has not received any cash collections related to the underlying motorcycle contracts since at least December 31, 2020, the Receiver requests that abandonment is established and effective retroactive to December 31, 2021, such that the Receivership shall have no liability for taxes, penalties, interest, costs or attorneys' fees otherwise arising after December 31, 2021, based on the Receivership's ownership of the Motolease Tangible Property as the Motolease Tangible Property is of inconsequential value, burdensome to the estate, and provides no benefit to the

Receivership Estate. (Greenspan Decl., ¶ 14).

II. Points and Authorities

Courts may authorize a Receiver to abandon property of the estate under its broad equitable power in receivership cases. *Quilling v. Trade Partners, Inc.*, No. 1:03-CV - 0236, 2011 U.S. Dist. LEXIS 122350, at *8 (W.D. Mich. Sep. 30, 2011). Paragraph 26 of the Final Order authorizes the Receiver to “abandon or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Entity.” The Final Order also authorizes the Receiver to abandon Receivership Property outside the ordinary course of business, but only with Court approval after reasonable notice and an opportunity for interested parties to be heard. *Id.* Here, the court need only ensure, based on all of the facts and circumstances, that the Receiver is acting in accordance with his fiduciary duty to maximize the value of the estate. Given that there is no applicable local rule, the court should refer to the bankruptcy code and the Oregon Receivership Code for guidance.

Under both the bankruptcy code and the Oregon Receivership Code, a trustee (or receiver) may abandon any property of the estate which is either burdensome to the estate or is of inconsequential value and benefit to the receivership estate. 11 U.S.C. § 554(a); ORS § 37.280. Property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case” unless a specific exception under the bankruptcy code provides. 11 U.S.C. § 541(a)(1). Upon a showing by the Receiver that the property at issue is burdensome to the estate or of inconsequential benefit and value, then the court may order abandonment. *Johnston v. Webster (In re Johnston)*, 49 F.3d 538, 539 (9th Cir. 1995). The court should make its determination based on the Receiver’s business judgment made in good faith and upon a

reasonable basis. *In re Wilson*, 94 B.R. 886, 888 (E.D. Va. Bankr. 1989).

The burdensome prong of Section 554 is satisfied in this instance. Property is burdensome where the expected cost to administer the asset would exceed the expected benefit. *In re Sullivan & Lodge, Inc.*, No. C 03-00588 CRB, 2003 U.S. Dist. LEXIS 14616, at *13 (N.D. Cal. Aug. 19, 2003). The court will look at “the big picture” to ensure that abandoning the asset will bring about a better result for creditors than administering it. *Id.* For example, courts have held property is burdensome where selling the property would incur expensive litigation, where a trustee was unable to sell real property of the estate, and where business records required expensive storage with little chance to realize value. *See Slovak Republic v. Loveridge (In re EuroGas, Inc.)*, 755 F. App'x 825 (10th Cir. 2019); *Johnston v. Webster (In re Johnston)*, 49 F.3d 538 (9th Cir. 1995), *Joy v. Schwarz Publ'g Inc. (In re Schwarz Publ'g, Inc.)*, 398 F. App'x 321, 321 (9th Cir. 2010).

Here, the Receiver is aware of a number of motorcycles, which have not been found and are of inconsequential value, even if they could be located. (Greenspan Decl., ¶ 15). Despite the efforts undertaken by the Servicer these motorcycles cannot be located and are deemed to be unrecoverable. (Greenspan Decl., ¶ 16). In the exercise of the Receiver’s business judgement, the continued administration of these assets is burdensome to the estate, as the motorcycles are of inconsequential value. (Greenspan Decl., ¶ 17). Further, given that it is unlikely to the motorcycles can be found, there is very little chance of Receivership Claimants receiving any benefit from the Motolease Tangible Property. (Greenspan Decl., ¶ 18). Given that the expected recovery and administration costs exceed the liquidation value, if any, the Receiver requests that the Court approve the Receivership’s abandonment of the Motolease Tangible Property. (Greenspan Decl., ¶ 19). This will satisfy the policy of paragraph 26 of the Final Order and

Section 554, which emphasize maximizing the value of the estate for the benefit of the Claimants.

In addition, the inconsequential benefit and value prong is also satisfied. This prong is straightforward and based simply on the valuation of the asset and the Receiver's duty to maximize the value of the estate. *See* 11 U.S.C. § 554(a); *In re Sullivan & Lodge, Inc.*, No. C 03-00588 CRB, 2003 U.S. Dist. LEXIS 14616, at *11 (N.D. Cal. Aug. 19, 2003). This prong is commonly implicated where a debtor has no equity in an asset. *See In re Air Vt., Inc.*, 41 B.R. 486 (Bankr. D. Vt. 1984). Here, the Receiver has established that there is no value in the asset, even if they could be located and liquidated. At present, the Motolease Tangible Property provides no value whatsoever and causes the Receivership to incur additional costs. Abandonment is necessary to maximize value, by minimizing costs.

III. Conclusion

In accordance with paragraph 26 of the Final Order Appointing Receiver, the Receiver requests the Court's authority to abandon the Motolease Tangible Property, including all title associated with the Motolease Tangible Property or any other motorcycles that may, but should not still be titled in the name of Motolease Financial, LLC, nunc pro tunc to December 31, 2021, and further that the Receivership shall have no liability for taxes, penalties, interest, costs or attorneys' fees otherwise arising after December 31, 2021, based on the Receivership's ownership of the Motolease Tangible Property as the Motolease Tangible Property is of inconsequential value, burdensome to the estate, and provides no benefit to the Receivership Estate.

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Dated this 21st day of June, 2022.

SCHWABE, WILLIAMSON & WYATT, P.C.

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