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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

CASE NO. 3:22-cv-2118-X

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SECURITIES & EXCHANGE COMMISSION,

Plaintiffs,

v.

TIMOTHY BARTON, et al.,

Defendants.

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TRANSCRIPT OF THE HEARING
BEFORE THE HONORABLE BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

Dallas, Texas
March 20, 2023
2:03 p.m.

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1 - P R O C E E D I N G S -

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3 THE COURT SECURITY OFFICER: All rise.

4 THE COURT: Thank you.

5 You can be seated.

6 Okay. I'm calling for a hearing in Case
7 No. 3:22-CV-2118-X. That is Securities and Exchange
8 Commission versus Barton, et al.

9 Let's go ahead and do appearances, first
10 for the Receiver.

11 MS. KOONCE: Good afternoon, your Honor.
12 Charlene Koonce for the Receiver, Cort Thomas.

13 THE COURT: Thank you.

14 And how about for Mr. Barton?

15 MR. EDNEY: Good afternoon, your Honor.

16 Michael Edney and Ted Huffman from the
17 Hutton Andrews Kirth form for Mr. Barton.

18 THE COURT: Okay. Thank you, Mr. Lindy
19 (sic).

20 And is anyone here on behalf of the
21 Commission?

22 MR. BERNSTEIN: Yes, your Honor. Keefe
23 Bernstein on behalf of the SEC.

24 THE COURT: Thank you, Mr. Bernstein for
25 standing up and speaking loudly. I appreciate that.

1 Does anyone else here want to make an
2 appearance?

3 MS. CHANDLER: Corinna Chandler, here on
4 behalf of judgment creditor, David Ramolia.

5 THE COURT: Okay. Thank you.

6 And anyone else?

7 Okay. So y'all know I set this hearing to
8 address the issue of whether or not to approve the
9 sale of property that is the Marigold Suites at
10 13636 Goldmark Drive in Dallas, Texas, so I issued
11 an order earlier today on some of the predicate
12 issues on the sale of the property.

13 So really, we are here to do a couple of
14 things. One, to figure out if there is any
15 competing bid that is at least 10 percent higher
16 than that current bid that we are considering; and
17 two, determine whether that sale of the property is
18 in the best interest of the receivership; and three,
19 if so, to approve the sale.

20 So with that, I will turn it over to the
21 Receiver to hear what we have as an update as far as
22 competing offers and whether or not you are think it
23 is in the best interest.

24 MS. KOONCE: Thank you, your Honor.

25 My recollection is your okay with us

1 standing at the podium?

2 THE COURT: What I will say is you can
3 either sit at the table or stand at the podium, but
4 if you sit -- if you stand at the table, then you
5 are far away from the microphone.

6 MS. KOONCE: I can't address a judge
7 without standing. Sorry.

8 THE COURT: It is fine. It is fine. No
9 worries.

10 MS. KOONCE: As the Court has requested an
11 update, we did not receive any competing offers on
12 the Marigold property, so the only contract that we
13 had to consider is the one that was presented with
14 the motion, Docket 167.

15 The Receiver did comply with the governing
16 statute, which is 28 U.S. 2001 by publishing notice
17 of this hearing more than 10 days in advance of the
18 hearing. We submitted the proof of publication with
19 the Reply and that was at Docket 194.

20 The property was marketed through a
21 brokerage firm and the offer that we received is the
22 only offer. In addition, it exceeds the average
23 appraised value by more than \$1 million.

24 With respect to the sale being in the best
25 interests of the estate, I think the issue that is

1 most prevalent or probably most pressing on the
2 Court right now is why now, why sell this property
3 now?

4 Obviously, the price is in excess of what
5 is required by the statute and it is, again, the
6 best price.

7 The reason this property needs to be sold
8 now, your Honor, is that it is losing money every
9 single month. It has from the minute Mr. Thomas was
10 appointed as the Receiver. The property is in poor
11 condition. The buyer is going to substantially
12 renovate, if not completely demolish and start
13 again.

14 We had property insurance, commercial
15 coverage was canceled before our appointment and the
16 property insurance that we got in place is \$14,000 a
17 month and it is necessary. We have already had a
18 claim exist on that policy.

19 In addition, there are continuing repairs
20 for heating, air conditioning, for windows. We
21 cannot ever obtain a full occupancy unless there are
22 substantial renovations and the estate does not have
23 the assets or the time to supervise those repairs.

24 Additionally, as I said, taxes are
25 continuing to come due. We've paid the taxes to

1 Dallas County, but there are additional taxes that
2 are owed to Richardson Independent School District.

3 As the Court is aware, there is one lien
4 on the property. And the Receivership has not been
5 paying the mortgage on that property based on the
6 stay included in the Receivership order, but
7 nonetheless, the amounts are that owed to that
8 lender continue to accrue.

9 And if we don't sell the property at some
10 point, what is owed to them the mortgagor will eat
11 up the equity, or at least continue to erode the
12 equity that would otherwise be obtained by the
13 receivership estate, if we sell the property.

14 In short, your Honor, there is no reason
15 not to sell this property now. In other words, it
16 will also fund necessary expenses for the
17 Receivership including a forensic accounting, which
18 assumes that we at some point obtain the access to
19 the entity's accounting records, which will be
20 necessary for that.

21 But these funds are needed to continue
22 operating this estate and a sale now preserves
23 assets rather than wasting he them.

24 I'm happy to address any more specific
25 questions, if the Court has any.

1 THE COURT: You've covered everything on
2 my mind, Ms. Koonce, so thank you for your
3 presentation.

4 Okay. And I suppose we should hear from
5 Barton next, so you can speak to me either from the
6 table sitting down or from the podium standing up.
7 Your call.

8 MR. EDNEY: I appreciate that, your Honor.
9 Thank you.

10 THE COURT: You bet. Thank you, Mr.
11 Lindy.

12 MR. EDNEY: It is Edney.

13 THE COURT: I'm sorry.

14 MR. EDNEY: Edney. E-D-N-E-Y.

15 THE COURT: Got it. You can butcher my
16 name anytime you want, Mr. Edney.

17 MR. EDNEY: Oh, that is a hard one. It is
18 a hard name to butcher.

19 THE COURT: It is a single symbol; it is
20 hard to mess up.

21 MR. EDNEY: Well, thank you very much,
22 your Honor, from hearing from us today. I want to
23 speak briefly about this particular property.

24 This property was purchased more than 10
25 years ago, well before the 2017 commencement of the

1 alleged activities in this case. It has been fully
2 revenue producing and a functioning property during
3 that period and has not been a drain on other Barton
4 corporate resources. As a matter of fact, it has
5 been a net contributor.

6 This property, in our view, is not
7 properly part of the Receivership estate under the
8 Janvey v. Adams standard, which is something that we
9 have presented to your Honor in the past.

10 But, you know, we have had these debates
11 about other properties, where they have been
12 significantly developed during the time the lender
13 funds were coming in after 2017, that they were
14 purchased during that period that time. This is not
15 one of those properties.

16 And this property has been around for
17 quite some time and is really out there in the outer
18 orbit in the Barton corporate family, far away from,
19 I think any legitimate allegations of commingling.
20 It is not a defendant in this case; it is not a
21 relief defendant.

22 And your Honor, I don't think that there
23 has been anybody competent evidence that it received
24 lender funds.

25 I want to turn to the evidence or the

1 assertions that have been put forward on that point.
2 And I think they fall into two categories. One is
3 that page 10 of the SEC's Hahn declaration, the
4 September 26th, 2022 submission. There, there is a
5 one-bullet sentence suggesting that Goldmark
6 Hospitality, the corporate entity here, received
7 commingled lender funds.

8 And then the other basis is page 8 and 9
9 of the Receiver's reply brief, which tries to put
10 some detail on this. And I think -- I think what it
11 shows is the attenuation of this asset from the
12 allegations in this case.

13 If you trace it through on page 8, and I
14 will note that there is no affidavit here, there is
15 no documentary evidence, there is not even a
16 verified brief that we usually see from the
17 receiver; these are just assertions.

18 But they assert there was a \$2.2 million
19 payment out of the Wall entities; these are the
20 entities receiving lender funds in August 2018; a
21 \$600,000 payment to JMJ Development, which is Mr.
22 Barton's main development entity, that month; and
23 then two months later, almost two months later, in
24 September 29, 2018, they traced this payment of
25 \$200,000 to Goldmark in order to fund the

1 installation of some solar panels on top of the
2 building.

3 We don't see, even in this kind of
4 asserted description, any evidence of how much money
5 JMJ was receiving from other sources during this
6 period much less whether these payments were
7 illegitimate or not properly earned. And that is
8 the type of analysis that the Fifth Circuit's
9 decision in Janvey v. Adams looks for.

10 Now, Judge, whatever the merits were of
11 relying on these kind of SEC assertions in the Hahn
12 declaration, the assertions and briefing to put
13 properties like this into the receivership estate in
14 the first place and safeguard them, make sure we
15 knew where they were, make sure we knew what was
16 happening to them, make sure we knew where they were
17 going.

18 Whatever the merits of that, you know,
19 this is really where the rubber hits the road,
20 because here this property is going to be sold and
21 you are already hearing from the Receiver what he
22 plans to do with the proceeds, which is to use it
23 for general receivership purposes, really its
24 investigation.

25 And frankly, in our view, we think it is

1 now time for that Janvey evidentiary hearing to
2 occur before confirming the sale of this property,
3 but even if you allow the sale to go forward, before
4 any of the proceeds of this sale are released for
5 general receivership purposes.

6 Again, this is -- this is Pluto. This
7 is -- this is not even a planet, Judge. It is --
8 Pluto is not a planet anymore, I guess.

9 THE COURT: I know. We were all taught it
10 was a planet. We have got an estoppel claim against
11 it being declassified.

12 MR. EDNEY: I mean, this is -- I
13 understand there is a theory that in this case that
14 there is a lot of gravitational forces of the sun
15 here and the sun is the -- is these lender proceeds
16 that occurred in 2017 through 2019. You know, we
17 disagree with that thesis, but even accepting it for
18 a moment, you know, there was other stuff going on
19 in the Barton universe and this was one of those
20 other things.

21 I mean, this is a property that -- that
22 was born well before the -- the Chinese lender funds
23 came in and it was -- it was a self-sustaining
24 property, a property that was a net contributor to
25 the Barton corporate families, not certainly --

1 certainly not a drain or an opportunity to syphon
2 off funds from any of these Chinese lender. We are
3 not saying that happened in any case, but here --
4 here it is way out in outer orbit.

5 So in this particular case, I mean, I
6 don't want to sound like I'm kind of beating a dead
7 horse or raising this argument every time we come
8 into this courtroom, but you are going to hear it
9 with regard to this and you are going to hear it
10 with regard to the kind of on hold apartment
11 transactions.

12 Because these are -- these are -- these
13 are purchases and projects that started before the
14 alleged lender funds came in. They are -- they --
15 the evidence, we believe, will show that -- that
16 they -- they were siloed off and -- and it is
17 self-operating and not a drain. And these are the
18 type of resources -- these are the types of assets
19 that we really think are on the outer perimeter, way
20 out there, and shouldn't be in the receivership
21 estate.

22 And Judge, you know, for better or for
23 worse, Mr. Barton -- Mr. Barton has, you know, has
24 kind of his entire net worth plunged into these real
25 estate projects and this is one of them.

1 And he's facing criminal charges that we
2 are contesting, but he's not going to have the
3 resources to contest those. And it is properties
4 like this, and either retaining them for ourselves,
5 or -- or -- or selling them ourselves and having --
6 having the proceeds available for the defense of
7 this case, or the Court maintaining the proceeds of
8 the sale of this property and having them available
9 for the defense of this case is really going to be
10 crucial to his due process rights.

11 Because you know, the reality is, I know
12 there is a public defenders out there and CJA
13 lawyers and they do great jobs. But this is a case
14 with terabytes and terabytes of documents that are
15 coming in from the Government. It is a case where a
16 white collar criminal defendant could end up rolling
17 over whether or not he's responsible or guilty for
18 the charges because he simply doesn't have the
19 commensurate resources with the FBI and the federal
20 government to defend it.

21 And one of the reasons, if that happens,
22 that he will not be able to do so is because outer
23 orbit assets like this have been taken by the
24 receivership estate and not made available for the
25 defense of this matter.

1 Your Honor, turning back to -- that is an
2 important question about what happens to the
3 proceeds, but as a matter of property rights, the
4 people that own and control this property, including
5 Mr. Barton's son and, you know, Mr. Barton does have
6 a hand in controlling its management, although not
7 its ownership.

8 They would not sell this property but-for
9 the receivership intervention. This is a property
10 that was functioning. We dispute what the Receiver
11 is saying about its self-sustainability. And we would
12 have done what people do with properties like this,
13 is when tenants move out, we -- we turn the unit, we
14 paint it, put carpet in it, and re-rent it out.

15 And I understand the Receiver doesn't want
16 to engage in that process. That is what we would
17 have done and at the appropriate time, these folks
18 would have redeveloped this property, you know, as a
19 much more significant profit than the five and a
20 half million in gross proceeds or the two and a half
21 million dollars in net proceeds that are here today.

22 We are -- we are very interested in making
23 sure that the value of this property is maximized,
24 whether it is for purposes of compensating whoever
25 thinks they need to be compensated for the

1 receivership or otherwise. We want to this to have
2 its highest value.

3 Judge, we also have concerns about whether
4 this property was marketed in a manner that is
5 consistent with the best interests of the
6 receivership estate.

7 Mr. Barton has pressed potential sellers
8 to go to the receiver with higher offers. I'm a
9 little surprised to hear that none of those came to
10 fruition. But one thing we don't see in the record
11 here, Judge, is a suggestion that this was
12 professionally marketed.

13 They said they hired a broker. But we --
14 we looked. And you know, I wish I could put some
15 documents before you to show the absence of
16 evidence, but we looked at the traditional places
17 where one would market a property like this. And
18 the real estate professionals tell me that that is
19 the Loop Net Internet site, that is the Co-Star
20 Internet site. That would even be the Internet site
21 of the alleged broker in this case, Dunlop Walker.
22 And there is not a reference to this property
23 anywhere on those websites.

24 So you know, we have a concern without
25 further evidence put forward by the Receiver that a

1 real professional process was run here.

2 Now, did the Receiver get the three
3 appraisals? Absolutely. Is it higher than the mean
4 of those appraisals? It is.

5 Has there been a notice in the back in the
6 Dallas Morning News that this it property is going
7 to be sold in 10 days? There was.

8 But the additional inquiry are we
9 proceeding here in a manner that is consistent with
10 the best interests of the receivership estate. And
11 again, I think your Honor should look to the
12 Receiver for some evidence of a more professional
13 marketing effort here.

14 And we say that, I think, regardless about
15 what happens to this property. We think this
16 property should be retained by us. We don't think
17 it should be part of the receivership estate. We
18 think if it is sold, its proceeds should be
19 maintained for Mr. Barton for use in defending him
20 against the Government's charges.

21 But even if the proceeds are used to
22 compensate those who say they need to be compensated
23 through the receivership, Mr. Barton has every
24 interest in making sure that that -- that value is
25 as high as possible. We have serious concerns that

1 the process run here isn't leading to that result.

2 But, Judge, this doesn't need to be a -- a
3 secret process. And I know it is not secret, in the
4 sense that here we are in open court, albeit behind
5 two layers of security guards for everybody to come
6 in and see and to participate, if they want.

7 But that is now how commercial real estate
8 is marketed in this city. I mean, commercial real
9 estate is marketed through a process that involves
10 publicity. And these properties have been marketed
11 a little bit in the shadows, notwithstanding the
12 notice in the newspaper. You know, you have got
13 to -- you have got to market these properties and
14 advertise them. And we don't see any indicia of
15 that in the traditional ways.

16 And, you know, I think you are going to
17 see it when it comes to the apartment properties,
18 you know, where much more money is at stake, you
19 know, more serious offers are coming in. Perhaps
20 that didn't happen in the 10 days available here,
21 but I think -- I think -- I think it is worth asking
22 those questions of the Receiver about -- about
23 whether that rigorous process has been gone through
24 and perhaps hit the pause button on this. Hit the
25 pause button on it to make sure it has been properly

1 marketed.

2 And Judge, going back to my original
3 point, hitting the pause button to make sure that we
4 have the Janvey v. Adams showing with regard to this
5 property.

6 Because whatever you think of the other
7 properties, this property -- this property was born
8 well before the allegations this case. And I think
9 kind of the traditional indicia would suggest that
10 this is something that -- that is kind of way out
11 there and further removed from the allegations in
12 this case than many of the other things that we may
13 be discussing at later times.

14 So your Honor, I would be happy to -- I
15 know that is a mouthful that I just put out there.
16 It is -- it does track our position papers, but I
17 would be happy to answer any questions that your
18 Honor might have. You know, just to be clear about
19 what we are asking here, we are asking for Janvey v.
20 Adams evidentiary hearing before confirmation of the
21 sale.

22 Barring that, Judge, if you confirm this
23 sale, we are asking for that hearing to occur before
24 any distribution of proceeds are released from this
25 Court from the sale and we are asking for, you know,

1 a harder in inquiry here as to whether this has been
2 professionally marketed in a manner that maximizes
3 value for the estate.

4 THE COURT: Thank you, Mr. Edney.

5 I don't have any specific questions beyond
6 what you already addressed.

7 I will channel a couple of your questions
8 back to counsel for the Receiver, Ms. Koonce.

9 So thank you.

10 MR. EDNEY: I appreciate that, your Honor.

11 Thank you very much.

12 THE COURT: Okay.

13 Ms. Koonce, the two questions that I
14 wanted to let you have a chance to answer were, was
15 it marketed only on the dark web or in the shadows,
16 as that framing was? So describe the marketing
17 procedures. And two, any need for an evidentiary
18 hearing before sale or before distribution of the
19 proceeds?

20 MS. KOONCE: Thank you, your Honor.

21 No. It was not marketed on the dark web.
22 We retained a listing broker. I'm going to defer to
23 Mr. Thomas because we have siloed some of the work
24 on these matters and he interacted with the broker.
25 He can speak more to the marketing.

1 But I would like to say, like Mr. Barton,
2 it is absolutely in the estate's best interest to
3 maximize the value of every property. We don't have
4 any interest in doing this on the down-low or doing
5 this in a way that would minimize the amount that is
6 recovered. So I think we are aligned there, and
7 this is the best offer that we received following
8 the marketing that Mr. Thomas can address.

9 THE COURT: You can stay wherever you are
10 at and go wherever you want to. That is fine.

11 MR. THOMAS: For space purposes, I will
12 stay here, your Honor.

13 THE COURT: Okay.

14 MR. THOMAS: So we hired Walker Dunlap to
15 market the property. They began soft marketing it
16 before it went to market while they were preparing
17 their pitch dec, essentially, their materials.

18 In the interim, we received the three
19 appraisals that appraised the property at four and a
20 half million. We received several offers around or
21 slightly below that four-and-a-half-million-dollar
22 number.

23 And then we have this buyer, who is very
24 interested and was willing to pay \$1 million over
25 the appraised value. So rather than going to

1 market, potentially losing that buyer, we decided it
2 was in the best interest of the receivership estate
3 to go ahead and do that deal. That's what the
4 broker advised us, was what we should do and it was
5 the best offer he believed that we would receive.

6 So that is what we pursued.

7 THE COURT: Understood.

8 And just as final confirmation, I know we
9 heard from counsel for Barton, that they reached out
10 to different prospects they had.

11 You have not received any competing
12 officers from those leads, have you?

13 MR. THOMAS: We received lots of
14 communications; no one was ultimately willing to
15 submit an offer.

16 THE COURT: Understood.

17 Okay. So I think you have answered my
18 question on marketing. So now my question is,
19 evidentiary hearing. Do we need one? Do we need
20 one before the sale? Do we need one before the
21 distribution of the proceeds?

22 MS. KOONCE: No, your Honor. We don't
23 need another hearing on this, certainly not an
24 evidentiary hearing.

25 As the Court is aware, Goldmark

1 Hospitality is an entity that was named in the
2 original receivership order based on the limited
3 amount of tracing that the SEC was able to do.

4 Mr. Edney here has referred to this planet
5 as being out on Pluto, but down here on Planet
6 Earth, what we are concerned about is satisfying the
7 investors for the losses that they have incurred and
8 the losses that are absolutely unrebutted that Mr.
9 Barton owes a minimum of \$26 million to these
10 investors.

11 And, again, down here on Planet Earth, the
12 only assets that are available to satisfy those
13 investors are the assets that have been placed in
14 receivership.

15 We don't have extensive tracing yet for
16 every single property, in large part because Mr.
17 Barton is holding the credentials to the accounting
18 information hostage. But what we do have is some
19 tracing that was performed by the SEC in advance of
20 the receivership order, that the Court relied on in
21 determining which entities were placed in
22 receivership.

23 And those entities include the entities
24 that are controlled by Mr. Barton. We have a
25 concession that Goldmark Hospitality is one of those

1 entities.

2 His liability at this point is absolutely
3 uncontested. There is no controverting evidence.
4 And in order to have even a hope of satisfying some
5 of those claims, most of those claims, and creditors
6 like Mr. Ramolia, we have to sell these properties.

7 It is in the best interest of the estate
8 to sell the property now. We don't need another
9 hearing. But I can tell the Court that we have
10 undertaken some analysis in advance of this hearing,
11 just based on the limited bank records that we have
12 been able to obtain and we have discovered
13 additional funds that were used to maintain this
14 property, not just the funds that were addressed in
15 the Reply.

16 We expect to continue finding that same
17 information based, in no small part, on the
18 extensive commingling that occurred between every
19 single entity that Mr. Barton operated.

20 Your Honor, all of the information that is
21 required by the statute, all of the information that
22 is necessary for the Court to consider this sale has
23 already been presented, not just in this motion, but
24 in prior documents where the receiver did submit
25 sworn information.

1 And there is no reason -- there is nothing
2 suspicion about us not verifying a reply because the
3 last reply that we submitted that that was verified,
4 we got a complaint and said that there was going to
5 be surreply, which has still not then provided.

6 So we didn't verify that, so that we
7 didn't have a complaint that we were providing
8 evidence in a reply.

9 But the Court has everything necessary
10 here, everything that is required by the statute,
11 everything that demonstrates why this sale is in the
12 best interest of the estate now and we ask that the
13 Court approve the sale.

14 THE COURT: Understood.

15 Commission. Should we hear from the
16 Commission on any topic?

17 Mr. Bernstein?

18 MR. BARTON: Your Honor, I will be brief.

19 The SEC does not oppose the motion. And I
20 will direct the Court back to Ms. Hahn's original
21 declaration in this case where she included Goldmark
22 Hospitality as one of the entities that benefited
23 from investor funds.

24 I don't believe that the property was
25 initially purchased with investor funds, but

1 investor funds went to Goldmark Hospitality to
2 benefit the property subsequent to the initial
3 purchase is my understanding from Ms. Hahn's
4 declaration.

5 And I'm also happy to answer any questions
6 the Court may have about the SEC's position on the
7 motion.

8 THE COURT: Understood.

9 Thank you for addressing that. So I think
10 you have covered everything you need to from my
11 perspective.

12 MR. BERNSTEIN: Thank you, your Honor.

13 THE COURT: Okay.

14 MR. EDNEY: May I be briefly heard for a
15 moment?

16 THE COURT: You've got one minute. But
17 normally I don't two rounds for a civil hearing; it
18 is their motion, their burden.

19 MR. EDNEY: I understand.

20 Your Honor, just three quick points.

21 First of all, you know, look, I think -- I
22 think you just heard from the Receiver that they
23 have received communications in recent days since
24 thing this has been out there in public notice of
25 the last 10 days of additional interest.

1 I think it would be in the best interest
2 of the estate to let though communications come to
3 fruition and see whether they mature into a serious
4 offer. I mean, this is moving pretty quick in real
5 estate sale purposes, terms. And you know, I
6 think -- I think you heard about a soft marketing
7 campaign. You know, I think what you are hearing is
8 that this thing didn't really go to market. And I
9 think it is in the best interest of the estate to
10 make sure it does.

11 Second, liability in this case is not
12 un rebutted. I think Ms. Koonce has just got this
13 thing all the way backwards, okay?

14 She needs to show, if she wants to take
15 property, that that property received investors
16 funds. She can't just say that Mr. Barton owes
17 these folks a bunch of money. You know, if he does,
18 let the SEC come and prove it. And when it does and
19 they obtain a judgment, they can try to enforce that
20 judgment against Mr. Barton and his assets.

21 But until that time, they can't just
22 willy-nilly, you know, suck in everything Mr. Barton
23 has and say, well, if he touches it or if it belongs
24 to him, it belongs to the receivership estate.

25 No. To do that prejudgment under

1 Janvey v. Adams, you need to establish that that
2 corporate entity received investor funds. It is the
3 race, it is the property that matters, not the
4 liability. And I think -- I think what you heard
5 from Ms. Koonce in a nutshell demonstrates some of
6 the problems with the scope of this receivership and
7 in this why a Janvey v. Adams hearing in this
8 particular property would matter.

9 Third, and finally, I want to clear up
10 something about this accounting database. We do not
11 have access to the accounting database. We don't
12 know what the credentials are, we don't know how to
13 get into it.

14 There is an accountant. I understand that
15 Mr. Thomas is trying to get in touch with him. You
16 know, we are not -- we are not permitted to go out
17 and talk to potential witnesses. We have conditions
18 of release that says that we can't do that. I don't
19 know what they want us to do, Judge.

20 But -- but they need to stop using the
21 accounting database as an excuse to say that they
22 are not making their case and kind of blaming us for
23 it. Because that is not where the blame belongs on
24 that particular issue.

25 Thank you, your Honor.

1 THE COURT: Thank you, Mr. Edney.

2 I need to make some findings.

3 First is more formulaic. Based on what we
4 have heard here today, I find that there is not a
5 competing bid that is at least 10 percent higher
6 than the current contract price.

7 The second finding is more complicated.
8 That is whether or not the sale is in the receiver's
9 best interest. I believe it is, as a whole. I
10 believe the value of the asset is depreciating,
11 rather than appreciating, given the monthly costs on
12 financing and property insurance and the condition
13 of the property, needing repair in order to regain
14 full occupancy.

15 Is it part of the receivership estate?

16 I believe that it is. I believe they have
17 made their showing, pages 8 and 9 of the reply and
18 the Hahn affidavit, of commingling of funds, of use
19 of the investors funds at issue to continue to
20 maintain the property.

21 So I believe they made the showing that
22 they need to. Do we need an evidentiary hearing?
23 In my view, not yet.

24 If we needed an evidentiary hearing, I
25 would make your client take the stand, too, and I

1 don't think I can make him overcome his Fifth
2 Amendment right.

3 So I think what I have seen in the reply,
4 page 8 and 9, and for the Hahn declaration is
5 sufficient to show that this property is properly
6 subjected to the receivership estate, and that its
7 sale at this point in time is in the best interest
8 of the estate.

9 I get your argument that waiting for a
10 longer period of time could be beneficial to the
11 value of any sale, but the statute imposes the
12 deadlines and the publication requirements that it
13 does. And I think setting a new floor that the
14 statute doesn't set is not really something I'm
15 interested in doing.

16 So I will say those two things. One,
17 there is no competing offer that is 10 percent
18 higher or more; and two, I believe the sale of this
19 property is in the best interest of the
20 receivership.

21 Based on those findings, I will go ahead
22 and approve the sale.

23 So I understand you will still make an
24 argument before there is a distribution of proceeds,
25 that we should come back for an evidentiary hearing

1 and I think you can make that argument. I don't
2 think I have to reject that argument right now, but
3 the sale is hereby approved.

4 All right. Thank you for being here.

5 Does anyone else have anything else to
6 flag for me?

7 Okay. Thank you for being here and court
8 is now in recess.

9 THE COURT SECURITY OFFICER: All rise.

10 (Proceedings concluded at 2:33 p.m.)

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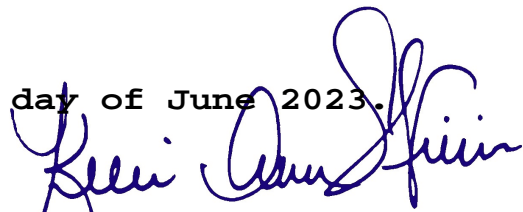
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C E R T I F I C A T E

I, Kelli Ann Willis, RPR, CRR, CSR
certify that the foregoing is a transcript from the
record of the proceedings in the foregoing entitled
matter.

I further certify that the transcript
fees format comply with those prescribed by the
Court and the Judicial Conference of the United
States.

This 8th day of June 2023.



s/ Kelli Ann Willis
Official Court Reporter
The Northern District of Texas
Dallas Division

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