

For the first time in its final Reply brief, the Receiver revealed that the buyers will not be obligated to close the sales until after the Defendant's appeal of the Receiver's authority, pending in the United States Court of Appeals for the Fifth Circuit, is resolved. Dkt. 528 at 8. Exhibit A. The Receiver's Reply also explicitly concedes that the purchase price is discounted because of Barton's appeals. Dkt. 500 at 4 (stating that Amerigold was initially contracted to be sold for \$5,500,000, prior to Barton's appeal).

These new revelations confirm that the proposed sales are not in the best interest of the receivership estate and that this scheduled hearing is a waste of the Court's and the parties' time. The Court's consideration and approval of the sales would be unnecessary if Barton's appeal succeeds. And the discount the Receiver proposes to accept on these properties, solely due to continued legal uncertainty regarding the Receiver's authority to sell them arising from the pending appeal, is also unnecessary. After all, the Receiver has now revealed that the sales *will not close until after the appeal is concluded*. And if the appeal somehow fails, the properties can then be sold—at about the same time as the proposed sales—without the discount arising from the appeal and its attendant legal uncertainty. The only benefit, the Receiver suggests, would be to save a couple months of due diligence and closing activities after the appeal is concluded. But where is the evidence that any expense from those saved couple months would be greater than the discount the Receiver is admittedly factoring on the proposed property sale now? The Receiver has not done that work. And, at this stage, the proposed hearing is poised solely to diminish the sale price of these properties with the transactions set to close after the appeal and to waste the limited resources of the Receiver and run up its expenses to be charged to the estate.

The better course is to adjourn this hearing until 15 days after the Fifth Circuit's mandate is issued. If the appeal is successful, the hearing can be cancelled. If the appeal fails, the whole

point of 28 U.S.C. § 2001 hearings can be fulfilled: To draw in buyers from the public offering superior terms for a sale to be closed after the appeal and without the discounts associated with the legal uncertainty of that appeal.

CONCLUSION & PRAYER

For the forgoing reasons, the Defendant respectfully requests that the Court adjourn the hearing currently scheduled for July 23, 2024 at 10:00AM, until 15 days after a mandate is issued by the Fifth Circuit in the pending appeal.

Dated: July 19, 2024

Respectfully submitted,

By: /s/ Michael J. Edney

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2024, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court for the Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system will need to send “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept the Notice as service of this document by electronic means.

By: /s/ Michael J. Edney

Michael J. Edney

Barton will have to repay the accrued interest, or, abandon properties to lenders who will otherwise, at some point, be entitled to foreclose, as many continually seek to leave to do even now.¹⁰

1. Approval Now Preserves Receivership Estate Value

As Barton is well aware, his serial (and improper) appeals of sale orders have dissuaded title companies from issuing title policies on prior Court-approved sales. Even assuming Barton will appeal Orders approving the instant sales and assuming new title companies will be unwilling issue title policies until such appeals are resolved, by seeking approval of these sales now, however, the Receiver seeks to run the due diligence periods related to each property sale concurrently with the Fifth Circuit's consideration of the appeal, such that the sales will close shortly after resolution of the appeal. This expedient timeline seeks to avoid accrual of hundreds of thousands of dollars in interest and related expenses (and potential loss of the sales) if the diligence period does not begin until after the appeal is resolved.

With respect to the TC Hall property, as discussed in the Motion, as of April 29, 2024, the balance on the loan encumbering the property was \$4,653,655.88, **and interest at the extremely high rate of 9.009%, accrues at \$1,023 per day**, eroding equity at the same rate.¹¹ Converting the value of this property to cash thus preserves the value of the receivership estate at the rate of more than \$1,000 per day.

The Amerigold Suites drains receivership assets and time, interest on the loan encumbering the property erodes its value at \$13,254 per month,¹² **and the property's value has decreased by**

¹⁰ See Dkts. 245, 311, 321, 349, 498, 505.

¹¹ Dkt. 502 at 6. Further, in his email conference with Barton before filing the Motion, the Receiver sought Barton's agreement to the proposed sale (again, because of the extremely high interest rate) and offered to hold the sale proceeds in an escrow account during the pendency of the appeal. Barton, however, did not respond to that email.

¹² As discussed in the Motion, the lender has also sought permission to foreclose, twice, and has agreed to submit its claim for interest at a higher "default rate" in a claims process. See Motion, p. 5; see also Dkt. 409.