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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 SECURITIES AND EXCHANGE
COMMISSION,

18 Plaintiff,

19 v.

20 MEDICAL CAPITAL HOLDINGS,
21 INC.; MEDICAL CAPITAL
CORPORATION; MEDICAL
22 PROVIDER FUNDING
CORPORATION VI; SIDNEY M.
23 FIELD; and JOSEPH J.
LAMPARIELLO,

24 Defendants.
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Case No. 8:09-cv-0818-DOC (RNBx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER
(A) APPROVING SALE OF CASTLE
HILL PROPERTY FREE AND
CLEAR OF LIENS,
(B) AUTHORIZING THE RECEIVER
TO PAY CERTAIN LIENS AND
CLAIMS FROM THE SALE
PROCEEDS, AND (C) APPROVING
THE REAL ESTATE BROKER'S
COMMISSION**

Date: October 26, 2009
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for
2 Medical Capital Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"),
3 Medical Provider Funding Corporation VI ("MP VI"), and their subsidiaries and
4 affiliates (collectively, the "Receivership Entities"), submits this Memorandum of
5 Points and Authorities in Support of his Motion for Order (a) Approving Sale of the
6 Castle Hill Property Free and Clear of Liens, (b) Authorizing the Receiver to Pay
7 Certain Liens and Claims from the Sale Proceeds, and (c) Approving the Real Estate
8 Broker's Commission ("Motion").

9 I. INTRODUCTION

10 At the time the Receiver was appointed, the Receivership Entities had
11 marketed the property located at 3575 North Moorpark Road, Thousand Oaks,
12 California, known as the Castle Hill Retirement Village (the "Property") for sale
13 with the assistance of real estate broker, Lee & Associates, Inc. ("Broker"). The
14 Receivership Entities had executed a Purchase and Sale Agreement with proposed
15 buyer WSL Castle Hill Retirement, LLC ("Buyer"), with a purchase price of
16 \$14,400,000. Buyer had deposited \$500,000 into escrow.

17 The Receiver reviewed the Purchase and Sale Agreement, appraisals and
18 other documents relating to the Property, and determined that the proposed
19 transaction is in the best interests of the receivership estate. Therefore, subject to
20 Court approval, the Receiver and Buyer entered into an Amended and Restated
21 Purchase and Sale Agreement ("Agreement").¹ The terms of the transaction are
22 largely the same (including the \$14,400,000 purchase price), but the sale is now
23 subject to Court approval. The sale is also subject to the overbid procedures laid out
24 in Article 15 of the Agreement and summarized in the concurrently filed Ex Parte
25 Application for Order (a) Authorizing Receiver to Sell Castle Hill Property, and
26

27 _____
28 ¹ The Agreement is attached to the Declaration of Thomas Seaman in support of
the Motion ("Seaman Declaration"). The terms of the Agreement are
summarized below.

1 (b) Approving Overbid Procedures ("Ex Parte Application"). The Ex Parte
2 Application seeks approval of the Receiver's proposed overbid procedures, which he
3 contemplates using in connection with an auction of the Property to be held at the
4 hearing on this Motion.

5 Any sale of the Property, whether to the Buyer or the highest overbidder, is
6 on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver
7 makes no representations or warranties regarding the condition of the Property. The
8 Receiver requests that the sale of the Property be free and clear of all liens, claims
9 and encumbrances, with such liens, claims and encumbrances attaching to the sale
10 proceeds. Further, the Receiver requests authority to pay from the proceeds of sale
11 the valid liens, taxes and any other claims on the Property, subject to any objections
12 to such liens, taxes or claims by the Receiver.

13 The Receiver believes that the Agreement, obtained through the commercially
14 reasonable and customary method of listing the Property with a broker and
15 conducting arm's length negotiations with Buyer, reflects the fair market value for
16 the Property. However, to ensure that the highest and best price is obtained, the sale
17 to Buyer is subject to overbid by potential purchasers that qualify themselves as
18 bidders. The overbid procedures are discussed in further detail in the Ex Parte
19 Application. The Receiver, with the assistance of the Broker, has continued to
20 market the Property with the goal of promoting active overbidding at the auction.

21 Finally, the Receiver requests authority to pay the Broker a commission in the
22 amount of 2.5% of the final purchase price. Based on his extensive experience in
23 real estate transactions, the Receiver believes that such commission is commercially
24 reasonable and in line with real estate industry standards.

25 **II. PROCEDURAL BACKGROUND**

26 On July 16, 2009, the Commission commenced an enforcement action against
27 MCH, MCC, MP VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),
28 alleging various violations of securities laws. On the same day, the Commission

1 filed an Ex Parte Application for Temporary Restraining Order and Orders:
2 (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the
3 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring
4 Accountings; and Order to Show Cause Re: Preliminary Injunction and
5 Appointment of a Permanent Receiver.

6 On August 3, 2009, the Court entered the Temporary Restraining Order and
7 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting
8 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show
9 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver
10 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the
11 Receivership Entities. The Receiver filed his 10-Day Report to the Court on
12 August 12, 2009. On August 18, 2009, the Court entered a Preliminary Injunction
13 and Order Appointing A Permanent Receiver, extending the provisions of the TRO
14 and making the Receiver's appointment permanent.

15 On September 8, 2009, the Receiver filed his Second Report to the Court. At
16 a hearing held the same day, the Court denied the motion of Defendants Field and
17 Lampariello to remove the Receiver, appoint a management committee and put the
18 Receivership Entities into bankruptcy. The Court instructed the Receiver to file
19 monthly reports. The Receiver will file his report for the month of September on
20 October 9, 2009.

21 III. THE CASTLE HILL PROPERTY

22 In September 2005, MCC, as administrator for Medical Provider Funding
23 Corporation II ("MP II"), issued loans in the amount of approximately \$21 million
24 to SMB King Properties, Inc. for the acquisition of the Property. After SMB King
25 defaulted on the loan, MCC accepted a deed in lieu of foreclosure and created a
26 special purpose entity, Castle Hill Investors, Inc., ("CHII") to hold title to the
27 Property. CHII entered into a lease and a management agreement with Autumn
28 Senior Living, Inc. ("ASLI"), under which ASLI operates the Castle Hill retirement

1 facility. The lease and the management agreement with ASLI each expire according
2 to their respective terms on October 31, 2009.

3 Buyer intends to continue operation of the Property as a retirement
4 community with minimal interruption of services to its existing residents and clients.
5 It is critical, therefore, that the sale close on or before November 1, 2009, such that
6 Buyer can take possession and continue operations immediately upon termination of
7 the existing lease and management agreements with ASLI.

8 IV. THE SALE

9 The Agreement is attached to the Seaman Declaration. Its terms are
10 summarized as follows:²

11 **Court approval.** All aspects of the Agreement and the sale are subject to
12 approval by the Court.

13 **Purchase Price.** \$14,400,000.

14 **Closing Date.** The later of October 29, 2009, or three (3) business days
15 following entry of an order confirming the sale.

16 **Deposit.** Buyer has deposited \$500,000 into escrow.

17 **As Is Purchase.** Buyer purchases the Property on an "AS IS," "WHERE IS,"
18 and "WITH ALL FAULTS" basis, and the Receiver makes no representations or
19 warranties regarding the condition of the Property.

20 **Overbid Procedures.** The sale is subject to the overbid procedures laid out
21 in Article 15 of the Agreement and summarized in the concurrently filed Ex Parte
22 Application. Pursuant to those procedures, if Buyer is not the highest qualified
23 bidder at the auction, Buyer's deposit will be returned to it and Buyer shall be paid a
24 \$100,000 break-up fee.

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² The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 *Id.* (citations omitted); *see also* *Commodities Futures Trading Comm'n. v. Topworth*
2 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
3 to the court's supervisory role, and 'we generally uphold reasonable procedures
4 instituted by the district court that serve th[e] purpose' of orderly and efficient
5 administration of the receivership for the benefit of creditors.").

6 Accordingly, the Court has broad equitable powers and discretion in
7 formulating procedures, schedules and guidelines for administration of the
8 receivership estate and disposition of receivership assets.

9 **A. The Sale Subject to Overbid**

10 It is generally conceded that a court of equity having custody and control of
11 property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v.*
12 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
13 and wide discretion to determine relief in an equity receivership). "The power of
14 sale necessarily follows the power to take possession and control of and to preserve
15 property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
16 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
17 (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed.
18 1992) (*citing* *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of
19 equity orders property in its custody to be sold, the court itself as vendor confirms
20 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of
21 Receivers § 487).

22 "A court of equity, under proper circumstances, has the power to order a
23 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
24 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
25 Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a
26 federal court is not limited or deprived of any of its equity powers by state statute.
27 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
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1 (state statute allowing time to redeem property after a foreclosure sale not applicable
2 in a receivership sale).

3 Generally, when a court-appointed receiver is involved, the receiver, as agent
4 for the court, should conduct the sale of the receivership property. *Blakely Airport*
5 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
6 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
7 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
8 Clark, Treatise on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
9 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
10 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
11 354, 357 (9th Cir. 1925).

12 The Receiver has reviewed documents and financial statements relating to the
13 Property and the Castle Hill retirement community. He has reviewed the efforts by
14 the Receivership Entities, with the assistance of the Broker, to market and sell the
15 Property, and the offers that were received. He has consulted with the Broker and
16 continued to market the Property to potential purchasers to promote active
17 overbidding. As noted above, the Receiver has also advertised the sale and the
18 opportunity to overbid on three (3) separate days in the Los Angeles Times.

19 Based on this investigation and analysis, the Receiver believes that the
20 proposed sale to Buyer, subject to overbids at the auction, will generate the highest
21 and best recovery for the receivership estate from the Property. Accordingly, the
22 Receiver requests approval of the Agreement, or a sale on the same terms (other
23 than purchase price) to the high bidder at the auction.

24 **B. Additional Relief**

25 Pursuant to its broad equitable powers with respect to the administration of
26 receivership assets, the Receiver requests that the Court authorize him to pay from
27 the proceeds of sale of the Property, the valid liens, taxes, and any other claims on
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1 the Property, subject to any objections to such liens, taxes, or claims by the
2 Receiver.

3 Finally, the Receiver requests authority to pay the Broker a commission in the
4 amount of 2.5% of the final purchase price. Based on his extensive experience in
5 real estate transactions, the Receiver believes that such commission is commercially
6 reasonable and consistent with real estate industry standards.

7 **VI. CONCLUSION**

8 WHEREFORE, the Receiver requests entry of an order (a) approving the sale
9 of the Property to Buyer or the highest bidder free and clear of liens, claims and
10 encumbrances, with such liens, claims and encumbrances attaching the sale
11 proceeds in the sale validity and priority that they had with respect to the Property;
12 (b) authorizing the Receiver to pay from the proceeds of sale of the Property, the
13 valid liens, taxes, and any other claims on the Property, subject to any objections to
14 such liens, taxes, or claims by the Receiver; and (c) authorizing the Receiver to pay
15 commission of 2.5% of the final purchase price to the Broker.

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17 Dated: October 2, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ Ted Fates

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TED FATES
Attorneys for Receiver
Thomas A. Seaman

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