

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
vs.) Case No. 15-CV-00191-S-LDA
)
PATRICK CHURCHVILLE,)
CLEARPATH WEALTH MANAGEMENT, LLC,) <u>EMERGENCY PETITION</u>
) TO APPROVE, CONFIRM AND
Defendants,) RATIFY PUBLIC AUCTION SALE
) FREE AND CLEAR OF LIENS,
and) CLAIMS AND ENCUMBRANCES
) AND DIRECT RELEASE OF TITLE
CLEARPATH MULTI-STRATEGY FUND I, L.P.,)
CLEARPATH MULTI-STRATEGY FUND II, L.P.,)
CLEARPATH MULTI-STRATEGY FUND III, L.P.,)
HCR VALUE FUND, L.P.,)
)
Relief Defendants.)
)

Stephen F. Del Sesto, Esq., the Court-appointed Receiver for and over the Estates of Patrick Churchville (“Churchville”), ClearPath Wealth Management, LLC, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., ClearPath Multi-Strategy Fund III, L.P. and HCR Value Fund, L.P. (collectively the “Receivership Entities”), submits this **Emergency Petition to Approve, Confirm and Ratify Public Auction Sale Free and Clear of Liens, Claims, and Encumbrances and Direct Release of Title** (the “Petition”) in accordance with the Order of this Court which directs the Receiver to “transfer, compromise, or otherwise dispose of any Receivership [personal] Property...on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership [personal] Property.” See “Order Appointing Receiver” (the “Appointing Order”) at Paragraph 37. The purposes of this Petition are to (1) advise the Court and all interested parties of the results of the Receiver’s public auction sale of

Defendant Churchville's 1998 thirty-foot Doral fiberglass powerboat (the "Boat"); (2) seek an order from this Court approving, confirming and ratifying the Receiver's public auction sale free and clear of liens, claims and encumbrances; and (3) seek an order from this Court directing the Boat lien holder to release the title to the Receiver so that he may properly transfer title to the Boat to the public auction purchaser.

I. INTRODUCTION

At the time of the Receiver's appointment, Defendant Churchville was the owner of the Boat which was being dry-dock stored at Brewer's Cove Haven Marina (the "Marina") located in Barrington, Rhode Island. Initially, the Marina asserted a federal maritime lien pursuant to 46 USCS § 31342 & seq. against the Boat and refused to release it to the Receiver. However, following discussions with counsel to the Marina, the Marina eventually agreed to release the Boat to the Receiver subject to a full reservation of its and the Receiver's rights relative to its asserted maritime lien.¹ In addition to the Marina's asserted maritime lien, records show that Defendant Churchville obtained a boat loan from KeyBank headquartered in Cleveland, Ohio ("KeyBank"). The Receiver has notified KeyBank of this proceeding and has made several attempts to contact KeyBank regarding this boat loan and the public auction; but, to date, has not received any response or other communication. According to a KeyBank billing statement dated April 23, 2016, the outstanding principal on the boat loan was \$30,119.98.

II. COURT ORDERED REQUIREMENTS FOR SALE OF REAL ESTATE

Pursuant to Paragraph 37 of the Appointing Order the Receiver, "without further Order of this Court [can] transfer, compromise, or otherwise dispose of any Receivership [personal] Property...on terms and in the manner the Receiver deems most beneficial to the Receivership

¹ The Receiver disputes that the Marina has taken any steps to properly assert its lien. Enforcement of a maritime lien requires the filing of a complaint in Federal Court, naming the vessel itself as a defendant and arresting the vessel pursuant to a warrant of arrest issued by the court. The US Marshal then serves the warrant on the vessel's master, posts the warrant of arrest on the vessel's mast, and takes the vessel into custody, placing a keeper aboard. Once the vessel is arrested, its owner must file a claim of ownership. To secure release of the vessel, the vessel owner must post security in an acceptable form which can be either a bond, cash, or letter of guarantee in an amount set by the court which is usually the amount of the lien plus interest and costs. If the vessel owner does not file a claim to the vessel, the vessel will be sold to satisfy the liens. The sale of a vessel by the vessel owner in the ordinary course does not extinguish the maritime liens against it. The sale of a vessel by the US Marshal pursuant to court order, extinguishes all liens that are not satisfied from the sale proceeds. To date, the Receiver has not been provided with any evidence that the Marina took any steps required to enforce its asserted maritime lien.

Estate, and with due regard to the realization of the true and proper value of such Receivership [personal] Property.” While the Appointing Order specifically states that no further Court approval is required for the sale or transfer of personal property, the Receiver believes that KeyBank’s failure to respond to the Receiver warrants and requires an Order of this Court approving, confirming and ratifying the public auction sale free and clear of liens, claims, and encumbrances and directing KeyBank to release the Boat title to the Receiver so that he can finalize the sale.

With regard to the sale of the Boat, the Receiver engaged the services of Irving Shechtman & Co., Inc. (the “Auctioneer”) to appraise and conduct a private auction of the Boat. As stated above, the purpose of this Petition is to formally seek this honorable Court’s approval, confirmation and ratification of the public auction sale free and clear of liens, claims, and encumbrances and to order KeyBank to release the Boat title to the Receiver so that he can finalize the sale.

III. SUMMARY OF RECEIVER’S SALE EFFORTS

As stated above, Paragraph 37 of the Appointing Order authorizes the Receiver, “without further Order of this Court” to transfer, compromise, or otherwise dispose of any Receivership personal property on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of that property. At the time of the Receiver’s appointment the Boat was being dry-dock stored at the Marina. Prior to the Marina’s release of the Boat and to potentially enhance the value of the Boat at auction, the Receiver engaged the Marina to install the Boat’s two outdrive units that had been previously removed and stored by the Marina for security purposes. The Receiver also obtained two (2) independent appraisals for the Boat which identified a current condition market value of approximately \$12,000 to \$15,000.²

Once moved from the Marina, the Receiver then directed the Auctioneer to prepare and publish a public auction sale advertisement. A copy of the Public Auction Sale Advertisement (the “Ad”) is attached hereto as Exhibit “A”. The Ad was published twice in the Providence Journal on April 7, 2016 and April 10, 2016. In addition to publication in the Providence

² Both appraisers indicated that the Boat value would be approximately \$30,000.00 if in perfect condition; however, further indicated that the Boat needed approximately \$15,000.00-\$20,000.00 of repairs in its current condition.
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Journal, the Auctioneer featured the Boat on its website, caused electronic mail “blasts” to southeastern New England marinas and boat Brokers on April 11, 2016 and April 14, 2016, placed signage on the Boat and at the Nayatt Road, Barrington, RI location where the Boat was stored, caused the posting of multiple Craigslist listings, and engaged in directed telemarketing efforts. The Boat was shown several times to various interested parties prior to the public auction. Additionally, parties had a 60 minute period prior to the auction to inspect the Boat and ask questions.

The public auction was ultimately held on April 16, 2016 at 121 Nayatt Road in Barrington, RI and approximately 15 parties qualified to bid at the public auction. To assure that the Boat sold for a reasonable, fair market amount, the Receiver set an undisclosed \$10,000.00 “reserve” at the public auction. Following several rounds of spirited bidding, ultimately the winning bid of \$13,500.00 was submitted by Mr. Jose Couto (the “Buyer”). Due to the need for a title to register the Boat, the Buyer’s bid was subject to obtaining clear title from the Receiver. The Buyer has tendered the full bid amount to the Auctioneer pending receipt of the title.

As stated above, the Receiver has attempted to contact KeyBank on several occasions to discuss the loan, to advise of the public auction and in an effort to obtain the title to the Boat or discuss other options. A copy of the April 14, 2016 Notice of Public Auction Sale provided by the Receiver to KeyBank is attached hereto as Exhibit “B”. KeyBank has never contacted the Receiver nor responded to the Receiver’s inquiries.

IV. RECEIVER’S RECOMMENDATION REGARDING SALE

The Receiver and the Auctioneer aggressively marketed and advertised the public auction for the Boat through the Providence Journal, the Auctioneer’s website and other websites and direct marketing efforts. The Receiver’s and Auctioneer’s efforts and marketing resulted in several showings prior to the public auction and the receipt of a fair value bid for the Boat at auction.

It is important to note that the winning bid from the public auction will not fully satisfy the KeyBank or, if valid, the Marina’s asserted maritime lien against the Boat. In addition to multiple attempts to contact KeyBank, the Receiver specifically provided notice to KeyBank of the public auction sale.

Notwithstanding the lien deficiencies that will remain if the Receiver's public auction sale is confirmed, approved and ratified, the Receiver believes that the marketing efforts and public auction process were conducted in a manner that the Receiver deems beneficial to the Receivership Estate and the winning bid amount represents the true and proper value of the Boat. The winning bid of \$13,500.00 is subject only to the Receiver's ability to convey a title free and clear of liens, claims and encumbrances.

Based upon the information available to and obtained by your Receiver and the sale efforts undertaken with regard to the Boat, it is your Receiver's opinion that the public auction sale of the Boat and the transfer of the Boat title free and clear of all liens, claims and encumbrances is consistent with the terms of the Appointing Order, is commercially reasonable, that the winning bid price and the public auction terms are fair and reasonable, that the public auction sale was made in good faith, that the Buyer is a bona fide, good faith purchaser and that such public auction sale is in the best interest of all investors, creditors and other interested parties of the Defendants, wherever located.

The Receiver recommends that the Court enter an order:

(a) granting this Petition and confirming, approving and ratifying the Receiver's public auction sale and all related marketing efforts;

(b) directing KeyBank to deliver title to the Boat along with any required notation or documentation indicating that the KeyBank lien has been released as to the Boat;

(c) directing that KeyBank, the Marina and any other parties who claim any interest, lien, claim, or encumbrance against the Boat to execute and deliver to the Receiver within fourteen (14) days of the entry of this Order any and all lien or claim releases, UCC financing termination statements, in the usual and customary form, and any and all other documents that the Receiver deems, in his sole discretion, reasonably necessary to effectuate the release and discharge of such interests, claims, liens, or encumbrances, with the execution and delivery of the same to be without prejudice to or waiver of any such interests, claims, liens or encumbrances against the sale proceeds; and

(d) declaring that all interests, claims, liens and encumbrances asserted by those parties with recorded liens against the Boat in the Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island or any unrecorded liens be declared to be released and discharged upon consummation of the sale of the

Boat to Buyer; and, that the recording of such Order with Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island shall constitute evidence of such release and discharge.

V. CONCLUSION

WHEREFORE, the Receiver prays: (a) that the within Petition be immediately set down for Hearing before this Honorable Court; (b) that this honorable Court confirm, approve and ratify the Receiver's public auction sale of the Boat free and clear of interests, claims, liens and encumbrances, to the Buyer; (c) that all interests, claims, liens, and encumbrances against the Boat be transferred to the sale proceeds in the same priority as prior to such transfer; (d) that all persons or entities who claim an interest, lien or encumbrance against the Boat, be directed to execute and deliver to the Receiver, within fourteen (14) days of the entry of the Court's order, lien releases and/or UCC Financing Termination Statements, in the usual and customary form, and all other documents that the Receiver deems, in his sole discretion, to be reasonably necessary to effectuate the release and discharge of such interests, claims, liens and encumbrances, with the execution and delivery of the same to be without prejudice to or waiver of any such interest, claims, liens or encumbrances against the sales proceeds; (e) that all interests, claims, liens and encumbrances asserted by those parties alleging such an interest be declared to be released and discharged upon consummation of the sale of the Boat, and that the recording of such Order with the Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island shall constitute evidence of such release and discharge; (f) KeyBank be directed to deliver title to the Boat to the Receiver along with any notation or documentation required to confirm and evidence release of KeyBank's lien against the Boat no less than one (1) week following the entry of this Court's order; and, (g) that the Receiver be granted such other and further relief as this Court shall deem proper.

Respectfully submitted,

/s/ Stephen F. Del Sesto, Receiver

Stephen F. Del Sesto, Esq. (Bar #6336)
*Receiver for Patrick Churchville, ClearPath
Wealth Management, LLC, ClearPath Multi-
Strategy Fund I, L.P., ClearPath Multi-
Strategy Fund II, L.P., and ClearPath Multi-
Strategy Fund III, L.P., and not individually*
Donoghue Barrett & Singal, P.C.
One Cedar Street, Suite 300
Providence, RI 02903
401-454-0400
401-454-0404
sdelsesto@dbslawfirm.com
Dated: May 20, 2016

CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 22nd day of May, 2016, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Stephen F. Del Sesto

EXHIBIT A



RHODE ISLAND FEDERAL DISTRICT COURT APPOINTED
RECEIVER'S SALE BY

PUBLIC AUCTION

1998 30 FT. DORAL EXPRESS CRUISER BOAT

**TO BE SOLD ON: SATURDAY, APRIL 16, 2016 @ 11:00 AM
ON THE PREMISES: 121 NAYATT ROAD, BARRINGTON, RI**

**TERMS OF SALE: TWO THOUSAND (\$2,000.00) DOLLARS IN CASH,
CERTIFIED OR BANK CHECK AT TIME OF SALE. PLEASE VISIT US FOR
ADDITIONAL TERMS, COMPLETE DESCRIPTION AND PHOTOS ONLINE.**

**SALE BY ORDER OF RECEIVER:
STEPHEN F. DEL SESTO, ESQ.
DONOGHUE, BARRETT & SINGAL, PC
ONE CEDAR STREET, SUITE 300
PROVIDENCE, RHODE ISLAND 02903
401-454-0400
sdelsesto@dbslawfirm.com**

INSPECTION: 10:00 AM DAY OF SALE.

SALE CONDUCTED BY AND FOR FURTHER INFORMATION CONTACT:

IRVING SHECHTMAN & CO., INC.

PROFESSIONAL AUCTIONEERS & APPRAISERS
141 POWER ROAD, PAWTUCKET, RI 02860

M.C. PONTE, JR. & SONS

RI LIC. # 2113 MA LIC. # 658 NH LIC. #2484

TEL: 401-728-9100 FAX: 401-728-9103

Visit Our Web Site www.AuctionsRI.com

EXHIBIT B



April 14, 2016

NOTICE

**RECEIVER'S PUBLIC AUCTION SALE
OF 1998 30' DORAL EXPRESS CRUISER
HULL IDENTIFICATION # QJA07065A898**

You have been previously notified of Stephen F. Del Sesto, Esq.'s appointment as Receiver by the Rhode Island Federal Court for the District of Rhode Island on July 30, 2015. You are receiving this notice because, based upon my review of Defendant Patrick Churchville's books and records, KeyBank may hold a financial interest in the above referenced vessel.

Stephen F. Del Sesto, Esq. in his capacity as the Court-appointed Receiver for Patrick Churchville, ClearPath Wealth Management, LLC, *et. al.* in Case No. 15-CV-00191-S-LDA, pending in the United States District Court for the District of Rhode Island, hereby posts, pursuant to 28 U.S.C. § 2004, this notice of his intention to sell one 1998 30' Doral Express Cruiser (the "Vessel") at a public auction sale to be held on April 16, 2016, at 121 Nayatt Road, Barrington, Rhode Island at 11:00 am (EST). **PLEASE BE ADVISED**, that this public auction will include the sale of the Vessel which KeyBank may hold a financial interest.

If you believe that the Vessel should not be sold by the Receiver via the scheduled public auction you must contact the Receiver immediately.

For any additional information please feel free to contact Stephen F. Del Sesto, Esq., Receiver, at c/o Donoghue Barrett & Singal, PC, One Cedar Street, Suite 300, Providence, Rhode Island 02903, 401-454-0400 or clearpathreceiver@dbslawfirm.com.