

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

SECURITIES AND EXCHANGE  
COMMISSION,

Case No. 2:13-cv-01658-JCM-CWH

## ORDER

Plaintiff,

V.

EDWIN YOSHIHIRO FUJINAGA, et al.,

## Defendants.

14 Presently before the court is Robb Evans & Associates LLC's, the court-appointed  
15 receiver, motion for an order authorizing the receiver to list and market for sale the real property  
16 located at 150 E. Harmon and granting relief from local rule 66-5 pertaining to notice to creditors.  
17 (Doc. #307). Defendant has not filed a response and the deadline to do so has passed.

18        The receiver requests an order authorizing it to engage a broker to list and market for sale  
19 the real property located at 150 E. Harmon Street, Las Vegas, Nevada, 89109 (the “Harmon  
20 property”). It is identified by the Clark County Assessor as parcel no. 162-21-202-004. The  
21 receiver further requests authority to enter into a purchase and sale agreement of the Harmon  
22 property, providing such purchase and sale agreement is contingent upon subsequent court  
23 approval. (Doc. #307).

24 As explained in greater detail in the receiver's motion, the Harmon property consists of the  
25 former Harmon Medical Center, which is a two-story structure containing a total area of  
26 approximately 25,741 square feet built upon a 1.62-acre site, title to which is held in the name of  
27 HMC Service Center, LLC. The property currently has a single tenant who recently served notice  
28 of its intent to terminate its tenancy when its lease expires on December 31, 2016. Thereafter, the

1 property will no longer generate income and may be subject to increased risk of damage,  
2 vandalism, and theft. The receiver has determined in its business judgment that the interests of the  
3 estate and its creditors would best be served by engaging a broker to list and market Harmon  
4 property for sale.

5       Edwin Fujinaga previously opposed any sale of the Harmon property based upon his  
6 contention that certain third parties own a portion of HMC Service Center, LLC. The receiver  
7 states that it has verified that Mr. Fujinaga directly or indirectly owns seventy percent of HMC  
8 Service Center, LLC but has been unable to confirm the rightful owner of the remaining thirty  
9 percent interest. The receiver continues its efforts to determine whether these are bona fide claims.  
10 In the interim, however, the receiver submits that the estate would be best served by undertaking  
11 efforts to sell the Harmon property now, without waiting until the claims of the minority members  
12 are fully and finally resolved.

13       Pursuant to Local Rule 7-2, an opposing party must file points and authorities in response  
14 to a motion and failure to file a timely response constitutes the party's consent to the granting of  
15 the motion. See LR IB 7-2(d); United States v. Warren, 601 F.2d 471, 474 (9th Cir. 1979).  
16 Defendant has not filed any response in opposition to this motion and the deadline to do so has  
17 passed.

18       Having reviewed the substantive merits, the court grants the receiver the authority to list,  
19 market, and enter into a contingent purchase and sale agreement, with the understanding that  
20 should a sale be ultimately approved by the court upon subsequent motion, the receiver will hold  
21 thirty percent of the net sale proceeds pending resolution of the minority members' claims, if any.

22       The receiver next requests an order deeming notice of this motion to be sufficient under  
23 Local Civil Rule 66-5. (Doc. # 307). Local Rule 66-5 provides that unless the court otherwise  
24 orders, the receiver shall give all interested parties and creditors at least fourteen (14) days' notice  
25 of the time and place of hearings on applications for fees of the receiver. LR 66-5(d). The court  
26 has not scheduled a hearing on the instant motion, and finds that it is unnecessary to do so.

27       However, to the extent that Local Rule 66-5 applies here, the court finds that the receiver  
28 has given sufficient notice to creditors under the rule. The receiver filed the instant motion on the

1 public CM/ECF docket in this case. The court set response deadlines for the motions. These  
2 deadlines have now passed and no response or other objection has been filed by any party.

3 Good cause appearing, the court will grant the motion in its entirety.

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Robb Evans &  
6 Associates LLC's motion for an order authorizing the receiver to list and market for sale the real  
7 property located at 150 E. Harmon and granting relief from local rule 66-5 pertaining to notice to  
8 creditors be, and the same hereby is, GRANTED.

9 DATED THIS 25<sup>th</sup> day of April 2016.

10   
11 JAMES C. MAHAN  
12 UNITED STATES DISTRICT JUDGE

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28