

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 DAYTON DIVISION

ALTERNA MORTGAGE INCOME)	CASE NO. 12-cv-00252
FUND, LLC)	
)	(Judge Timothy S. Black)
Plaintiff,)	(Magistrate Sharon L. Ovington)
)	
vs.)	
)	
GS HOLDINGS-BROOKSIDE, LTD., et al)	
)	
Defendants.)	

ORDER GRANTING MOTION OF RECEIVER FOR APPROVAL OF (1) SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND INTERESTS; BY AUCTION; (2) FORM OF PURCHASE AGREEMENT; AND (3) OTHER RELATED RELIEF

This Matter is before the Court pursuant to the Motion filed by April Rose, the court-appointed Receiver (“Receiver”) of the GS Holdings Brookside, Ltd. (“Debtor”), by her attorney, for the entry of an order authorizing the Receiver to sell substantially all of the assets of the Debtor free and clear of liens, claims and encumbrance and other interests, through a sealed bidding procedure, and approving the form of purchase agreement (the “Sale Motion”). [Doc. # 60] The Court hereby finds the following:

1. This Court has jurisdiction because complete diversity is present as required by 28 U.S.C. § 1332. Because the subject property is located in the Southern District of Ohio substantive provisions of Ohio Rev. Code §§ 2735.01 et seq. apply.

2. The Debtor owns a mobile home park, which includes real property, improvements, fixtures, personal property, options to buy certain mobile home within the park, and other assets, located in Clark County, Ohio, at the address of 1962 Mahar Road, South Vienna, Ohio 45369. Alterna Mortgage Income Fund (“Alterna”) has a first and best security

interest in the real property, improvements, fixtures, and other assets in connection with the business (collectively “Assets”) of the Debtor.

3. The Debtor is in unequivocally in default on its obligations to first mortgage holder and prime secured creditor Alterna, and Alterna filed a foreclosure action in the instant case. The Court entered default judgment against Debtor GS Holdings Brookside on February 25, 2013, in the amount of \$2,908,250, plus prejudgment interest and post judgment interest. (Doc. 47). Alterna also motion for the appointment of April Rose as receiver.

4. On November 1, 2012 [Doc. # 33], the Court entered an Order (“Appointment Order”) which appointed April Rose the Receiver of Debtor and its assets. The Appointment Order under paragraph 4 authorized the Receiver to immediately and exclusively possess and control the Property, and under paragraph 13 authorized the Receiver to effectuate the sale of the Assets free and clear of all liens, claims, and encumbrances.

5. The Debtor has marketable title to the Assets and, accordingly, the transfer of the Assets by the Receiver as contemplated by the Purchase and Sale Agreement (the “Agreement”) (a) is a legal, valid, and effective transfer of the property of the Debtor’s receivership estate to the Successful Buyer; and (b) will vest in the Successful Buyer all right, title, and interest of the Debtor in and to all of the Assets, free and clear of all liens, claims, encumbrances, and other interests of any other party/creditor in and to the Receivership Assets.

6. Since being appointed by the Court, the Receiver has taken control of the Assets and operated the mobile home park. The Receiver has brought the mobile home park through a difficult period, and has instituted measures that have stabilized the park’s operations.

7. The Receiver has enlisted the assistance of real estate broker John Blain in Clark County, Ohio (the “Broker”). Prior to contacting the Broker, the Receiver made numerous inquiries and had numerous discussions with players active in the mobile home park market, to

determine interest in locating a purchaser of the Assets. Such efforts produced a viable purchaser (the “Stalking Horse Buyer”) which represents that it is ready, willing, and able to enter into a purchase agreement with Receiver to purchase the Assets for the amount of \$2,100,000.00. This represents the highest and best offer the Receiver received prior to commencing the marketing campaign. The Receiver and Buyer have agreed to enter into the Sale and Purchase Agreement attached to the Motion as Exhibit A.

8. Through consultation with the Receiver and at her direction, the Broker developed and implemented a plan to market the Assets on a national level, which plan was designed to produce as many prospective bidders for the Assets. The Buyer agreed to serve as the stalking horse bidder, i.e., the opening bidder, subject to certain bidding protections described and approved herein. The marketing activity was designed to achieve the Receiver’s goal of meeting or exceeding the standard of commercial reasonableness in locating the highest and best bidder for the Assets.

9. The Broker engaged in an extensive, multi-media marketing campaign, commencing on or before the date of the Sale Motion. The Broker listed the Assets for sale in the Multiple Listing Services for the following seven counties: Clark, Champaign, Logan, Miami, Mercer, Auglaize, and Shelby. The Broker also listed the Assets for sale through internet sources known to be widely viewed nationally by players in the mobile home park arena, including LoopNet.com, the largest commercial real estate service online, MobileHomeParkStore.com, a well-known and active internet site for buying selling mobile home parks, and other sites specializing in commercial real estate sales, CoStar.com and GlobeSt.com. The Broker further listed the Assets for sale in the local Springfield News and Sun. The Broker also listed the assets in the Wall Street Journal, the Cincinnati Enquirer, and the Cincinnati Business Courier. Forthcoming are ads to be placed in business journals and

newspapers in Columbus and Cleveland. Moreover, the Receiver or Broker contacted approximately ten major players in the mobile park business within the region, to advise them of the sale of the Assets.

10. To date, the marketing campaign has generated between 35 and 40 leads, and 26 informational summaries have been provided to prospective bidders. The Broker and Receiver are still in the process of receiving inquiries and will continue to do so until the August 16, 2013 bidding deadline. The marketing plan for the sale of the Assets is thorough and exhaustive, and the Receiver thereby (a) is adequately and effectively soliciting potential purchasers of the Assets and marketing the Assets for sale; and (b) providing potential purchasers of the Assets with adequate information concerning the Assets together with a full and fair opportunity to conduct due diligence concerning the same.

11. The Motion was served on all creditors and interested parties for whom counsel has filed a notice of appearance via the Court's electronic service mechanism, as well as by regular U.S. Mail on the parties to the action not filing a notice of appearance.

12. On July 26, 2013, the Court entered a Notation Order providing a deadline of August 5, 2013, 4:00 p.m. for filing memoranda in response to the Sale Motion. The Receiver has not received service of any memoranda in response to the Sale Motion, nor does the Case Docket indicate that any memoranda were filed. The Court's July 26, 2013 Notation Order also required that proposed orders concerning the Sale Motion be sent to the Court and the parties by August 6, 2013, 4:00 p.m. This Order is timely furnished.

13. The sale approved herein between the Receiver and the Stalking Horse Buyer is a non-collusive, arms' length transaction that resulted from negotiation between and among the Receiver, the Stalking Horse, and Alterna, the consideration bargained for and exchanged by the

parties provided reasonably equivalent value to each party, and the Stalking Horse Buyer is a good-faith purchaser. It is in the best interest of the Receivership estate that she be authorized to enter into the Agreement.

14. The Stalking Horse Buyer is the opening bidder in a sale process designed to produce the highest and best offer for the Assets. The due diligence and bidding procedures are set forth in full in the Addendum attached to the Exclusive Right To Sell Contract for the sale of the Assets and provided with the Sale Motion, Upon executing a confidentiality agreement, interested parties have received and will receive a summary sheet summarizing basic pertinent information about the Assets. Parties wishing to proceed further have had and will have the opportunity to pre-qualify as bidders, which will and has enabled them to receive a due diligence packet that will contain additional information about the Assets. To pre-qualify, prospective bidders will make a deposit of \$10,000.00 (which is the same amount the Stalking Horse Buyer has made) and provide the Receiver with information verifying their financial ability to close on the purchase of the Assets. Qualified Bidders will also be given an opportunity to tour the real property, including the mobile home park. The sale will be a cash sale.

15. The Sale Motion complies with all applicable laws and rules with regard to the sale of assets free and clear of liens, claims, and encumbrances, and that the sale of the Assets free and clear of liens, claims, and encumbrances is in the best interest of the Debtor, its estate, and the creditors.

For the reasons set forth in the Motion and for good cause shown, the Motion is hereby GRANTED pursuant to its terms, and the following is hereby ORDERED:

1. The Receiver is authorized, pursuant to the Appointment Order, to sell the Assets to the Stalking Horse Bidder.

2. The Motion complies with all applicable laws and rules with regard to the sale of assets free and clear of liens, claims, and encumbrances, and that the sale of the Assets free and clear of liens, claims, and encumbrances is in the best interest of the Debtor, its estate, and the creditors. The sale of the Assets is hereby APPROVED. On the closing date the Assets shall be sold, conveyed, granted, assigned, transferred and delivered by the Receiver to the Successful Purchaser under the Agreement free and clear of any and all encumbrances, claims, liens, mortgages, security interests, pledges, taxes or tax claims arising since the entry of the Receivership Order or that arose prior to the commencement of this case, whether direct or indirect, fixed or contingent, matured or unmatured, disputed or undisputed, all claims arising out of pending litigation and all potential or contingent claims or causes of action relating to goods sold (collectively, "Interests").

3. All parties to the sale and their agents, employees, and assigns are hereby authorized to take any act necessary to effectuate the terms of the approved sale and this Order. The Receiver is authorized and directed to execute, deliver and perform under the Agreement and all other documents contemplated thereby and to consummate the transactions contemplated thereby; the execution, delivery, and performance by the Receiver of the Agreement and all other documents contemplated thereby, and the consummation of the transactions contemplated thereby, have been duly authorized. Further, no consents or approvals, other than those expressly provided for in the Agreement or this Order, are required to consummate the sale of the Assets.

4. The Agreement and any related agreements, documents, or other instruments may be waived, modified, amended or supplemented by the parties thereto in accordance with the

terms thereof in a manner that has no material adverse effect upon any lienholder not specifically consenting thereto without further order of this Court.

5. Except as may be expressly permitted by the immediately preceding paragraph or the Agreement, or Paragraphs 8 and 10 of this Order, all persons and entities holding any Interests or adverse claims of any kind and nature against the Assets, the Receiver, or the Debtor are enjoined, stayed and barred from asserting such Interests or adverse claims against the Stalking Horse Buyer, the Successful Buyer (if different from the Stalking Horse Buyer), the Receiver, their successors and assigns, or against the Assets.

6. Any applicable right of redemption, whether equitable or statutory, is hereby terminated and barred effective on the date this Order is entered.

7. The provisions of this Order authorizing the sale of the Receivership Assets free and clear of the Interests are self-executing and neither the Receiver nor the Successful Buyer shall be required to execute or file satisfactions, releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the foregoing provisions hereof; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Agreement.

8. This Order (a) shall be and hereby is, effective as a determination that, upon the closing date, except as otherwise provided herein or in the Agreement, the Interests shall attach to the proceeds and the proceeds shall be distributed according to applicable laws governing the priority of the Interests, but only with the same validity, force, and effect that they had against the Assets immediately prior to the sale and that the conveyances and assignments authorized herein have been affected; and (b) shall be, and hereby is, binding upon and governing the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title

companies, recorders of mortgages, recorders of deeds, administrative agencies and governmental departments and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments respecting conveyance of the Assets.

9. The sale will be conducted by the Receiver through a sealed bid process via telephone. The deadline for Qualified Bidders to submit sealed bids will be August 20, 2013. On August 21, 2013, the Receiver will telephonically convene all of the Qualified Bidders who submit sealed bids, and inform them of the highest bid. At that time, those Qualified Bidders who submitted sealed bids will have the opportunity to make final bids orally shortly after which the Receiver will announce the highest and best bid.

10. The Assets are subject to the first-priority mortgage liens and blanket security interests in favor of Alterna, subject only to the real estate taxes and assessments due and owing to the Clark County, Ohio Treasurer and/or Auditor. The sale proceeds shall be distributed first to pay such real estate taxes (whose amount will be liquidated by agreement among the Receiver, the County, and Alterna, or by Court order). The remaining proceeds shall then be distributed first to Alterna, and thereafter to any other such creditors and parties holding Interests pursuant to applicable law.

11. The marketing campaign described herein is commercially reasonable.

12. The bidding and sale procedures set forth in the Addendum attached to the Exclusive Right To Sell Contract (i.e. the listing) and the Sale Motion are commercially reasonable and are hereby approved. The sale will proceed as follows:

a. The Broker will continue the marketing program discussed above until August 16, 2013, the deadline to become a Qualified Bidder.

b. Interested bidders who demonstrate sufficient financial wherewithal, in the absolute discretion of the Receiver, which would include but not be limited to paying an Initial Earnest Money Deposit in the amount of \$10,000.00 (“Qualified Bidders”), shall be given a due diligence packet and allowed to tour and inspect the properties (i.e. the Assets).

c. Prior to the auction, Qualified Bidders will obtain due diligence materials and review the Agreement, which is approved pursuant to this Order.

d. Qualified Bidders will submit sealed bids to the Receiver at the Debtor’s location—1962 Mahar Road, South Vienna, Ohio 45369—no later than August 20, 2013, at 4:00 p.m. EST. On that date, bidding will be closed. The announcement by the Receiver of the highest and best bid and final opportunity to bid by those submitting sealed bids will occur by telephone the next day August 21, 2013, at 10:00 a.m. A call-in number will be provided to those submitting timely sealed bids wishing to participate in the call.

e. The minimum opening bid will be \$2,200,000.00, i.e. only sealed bids at least in that amount will be considered. Open bidding by telephone by those submitting timely sealed bids shall be allowed in increments not less than \$100,000, with the first such bid exceeding the highest and best bid announced by the Receiver by no less than \$100,000.

f. If there are no timely bids, the Receiver will close the contract with the Stalking Horse Buyer according to the terms set forth therein.

g. The Winning (i.e. Successful) Bidder would be irrevocably bound until closing, which will be scheduled to occur no later than August 26, 2013.

13. Alterna is hereby authorized in its absolute discretion to credit bid in the amount of its secured claim.

14. The Court hereby approves the form of the Agreement, attached as Exhibit A to the Motion and incorporated herewith, as the template for the final agreement between the Receiver and the Successful Bidder. Upon a Buyer being determined to be the Winning Bidder, which decision shall be made by the Receiver in her absolute discretion, the Buyer shall be required to execute the Agreement substantially in the form as the Exhibit A Agreement, subject to changes or modifications as may be negotiated between the parties consistent with the Receiver’s business judgment.

15. Immediately after the sale, the Receiver will promptly move the Court to confirm the sale, supported by a detailed affidavit regarding the efforts undertaken to market the property in advance of the sale, as well as at least one appraisal performed by a disinterested person permitted to appraise the value of property pursuant to applicable law. The Receiver shall also submit a proposed entry confirming the sale to the Court. Said motion and proposed entry, along with supporting materials, shall be served on all interested parties, who shall submit any objections to this Court within 7 days of receipt.

16. The Stalking Horse Buyer's protections proposed in the Sale Motion are hereby approved, as follows: (1) The Stalking Horse Buyer is hereby entitled to a Break-Up Fee in the Amount of \$15,000 in the event it is not the Successful Buyer (i.e. if it is outbid—the Stalking Horse Buyer is not entitled to the Break-Up Fee if it is found to be in breach of the Agreement or any of the provisions of this Order; further, the Stalking Horse Buyer will forfeit its deposit in the event of any such breach); and (2) In the event that bidding occurs, bid increments shall be in the amount of \$100,000.00, i.e. that the first sealed bid must be at least \$2,200,000.00 and each successive bid at the telephonic sale be in increments of at least \$100,000.00.

17. The sale approved herein is commercially reasonable in all respects.

18. The service of the Motion was sufficient and appropriate, and satisfies all due process requirements under applicable law.

IT IS SO ORDERED.

Date: August 8, 2013

s/ Timothy S. Black

Timothy S. Black
United States District Judge

Submitted by:

//s/EricM.Sommer

Eric M. Sommer (0066363)
Strilecky Law Office, LLC
8 North Limestone Street, Suite B
Springfield, Ohio 45502
Phone: (937) 325-5001
Fax: (937) 325-0456
e-mail: esommer@bizhow.rr.com
Counsel for Receiver, April Rose