

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**BRENDA SMITH, BROAD
REACH CAPITAL, BROAD
REACH PARTNERS, LLC, and
BRISTOL ADVISORS, LLC, et
al,**

Defendants.

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: **C. A. No. 2:19-cv-17213 (MCA)**
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**ORDER CONFIRMING SALE OF RECEIVERSHIP REAL PROPERTY IN
LOUISIANA OWNED BY BRENDA SMITH**

THIS MATTER has come before this Court upon the Motion of Receiver, Kevin Dooley Kent, Regarding the Confirmation and Advertisement of the Sale of Receivership Real Property Owned by Brenda Smith, filed on November 12, 2021 (“the Motion”). (ECF No. 136). On December 9, 2021, this Court entered an Order Granting the Receiver, Kevin Dooley Kent’s Motion Regarding the Confirmation and Advertisement of the Sale of Receivership Real Property in Louisiana Owned by Brenda Smith (“the Order”). (ECF No. 145). The Receiver filed a Notice of Publication of Advertisement of Sale of Receivership Real Property in Louisiana Owned by Brenda Smith on December 27, 2021 (“Notice of Publication”). (ECF

No. 152). The Receiver filed a Notice of Submission of Timely and Qualifying Competing Bids on Receivership Real Property in Louisiana Owned by Brenda Smith on January 3, 2022 (“Notice of Bid”). (ECF No. 154). A Confirmation Hearing took place on January 10, 2022.

The property in question, which is located at 17091 Highway 1064, Tickfaw, Louisiana 70466, and consists of two parcels (Tangipahoa Parish Assessment Nos. 5615305 and 6157491) (the “Property”), is a Receivership Asset, under the complete control of the Court, and owned by Defendant Brenda Smith.

In the Motion, and pursuant to 28 U.S.C. § 2001, the Receiver, as an agent of the Court, sought permission to sell the Property to Vista Quercia Ranch LLC for a total sum of \$305,000.00, in accordance with the Louisiana Residential Agreement to Buy or Sell attached as Exhibit “C” to the Motion (“the Proposed Sale”). However, after publishing notice of the Proposed Sale in accordance with the Order and 28 U.S.C. § 2001, the Receiver received timely, competing bids, in the form of bona fide offers of \$351,000.00 for the purchase of the Property, subject to no contingencies, which guaranteed at least a 10 per centum increase over the price offered in the Proposed Sale. After one of the bids was withdrawn, the Receiver now seeks permission to accept the Bid submitted by Nicholas Muscarello (“the Bid”), and confirmation of the sale of the Property to Mr.

Muscarello, or his entity, Vista Quercia Ranch LLC, for \$351,000.00, pursuant to 28 U.S.C. § 2001.

The Receiver has full power and authority to execute an Agreement of Sale with Nicholas Muscarello and/or Vista Quercia Ranch LLC and all other documents contemplated thereby, and to consummate the transaction contemplated by the Bid. The terms and conditions set forth in the Bid are fair and reasonable under the circumstances. Neither Nicholas Muscarello nor Vista Quercia Ranch LLC, nor their affiliates have any relationship with the Receiver or the Defendants other than as a potential purchaser of the Property. They are a bona fide purchaser for value and would be purchasing the Property in good faith, and will be acting in good faith in closing the transaction contemplated by the Bid.

Before seeking confirmation of the sale of the Property, the Receiver retained, with Court approval and without objection from any party, three independent appraisers to value the Property, thereby complying with the requirements of 28 U.S.C. § 2001.

As required by 28 U.S.C. § 2001 (b), the Bid price for the Property is greater than two-thirds ($2/3$) of the average value placed on the Property by the three independent appraisers that the Receiver retained with Court approval, and constitutes fair value for the Property.

As further required by 28 U.S.C. § 2001 (b), the terms of the Proposed Sale of the Property were advertised in newspapers of general circulation, which advertisements provided instructions for the submission of competing bids on the Property.

The transaction contemplated by the Bid constitutes the highest and best consideration offered for the Property, in that it is \$46,000.00 higher than the purchase price agreed-upon in the Proposed Sale.

The Receiver has conducted a fair and open marketing and sale process as set forth in the Motion, the Notice of Publication, the Notice of Bid, and as demonstrated at the Confirmation Hearing, and permitting the Receiver to accept the Bid and consummate the sale of the Property to Nicholas Muscarello and/or Vista Quercia Ranch LLC according to the terms contained in the Bid—with freedom to adjust the execution date and other necessary terms, as needed—is in the best interest of the Receivership, creditors of the Defendants, their estates, and other parties in interest.

This Order shall be a “final order” within the meaning of 28 U.S.C. §§ 158 and 1291, and to the extent necessary under Rule 54 (b) of the Federal Rules of Civil Procedure, the Court expressly finds that there is no just reason to delay the implementation of this Order.

It is now, on this 11th day of January, 2022, **ORDERED** that that the Receiver's Motion is:

1. **DENIED IN PART**, in that Receiver is not permitted to proceed with the Proposed Sale of the Property to Vista Quercia Ranch LLC under the terms set forth in the original Louisiana Residential Agreement to Buy or Sell attached as Exhibit "C" to the Motion ("Original Agreement of Sale"), due to the Receiver's receipt of a timely, qualifying bid in the form of a bona fide offer which guarantees at least a 10 per centum increase over the price offered in the Proposed Sale.

2. **GRANTED IN PART**, in that the Receiver is permitted to enter into a Louisiana Residential Agreement to Buy or Sell with Nicholas Muscarello and/or his entity Vista Quercia Ranch LLC and proceed with the sale of the Property for \$351,000.00 to Nicholas Muscarello and/or Vista Quercia Ranch LLC. The ultimate purchaser of the Property, whether Nicholas Muscarello, Vista Quercia Ranch LLC, or both, shall hereinafter be referred to as "the Purchaser".

It is **FURTHER ORDERED** that:

3. The Receiver has complied with all requirements of 28 U.S.C. § 2001.
4. The Receiver is released from all obligations set forth in the original Agreement of Sale he entered into with Vista Quercia Ranch LLC, given that this Court has declined to confirm the Proposed Sale, and 28 U.S.C. § 2001 (b) prohibits confirmation of the Proposed Sale, and this Court's December 9, 2021

Order pertaining to the Proposed Sale to Vista Quercia Ranch LLC (ECF No. 146) is hereby withdrawn and replaced with this Order.

5. The sale of the Property to the Purchaser for \$351,000.00 is in the best interests of the Receivership Estate and shall constitute a legal, valid and effective transfer of the Property to the Purchaser, which shall vest the Purchaser with good and indefeasible title to the Property.

6. As an agent of the Court, the Receiver is hereby authorized to sell, transfer and convey the Property to Nicholas Muscarello and/or Vista Quercia Ranch LLC for \$351,000.00.

7. The Receiver is hereby authorized to execute and deliver and any all documents as may be necessary to sell, transfer and convey the Property to the Purchaser, including but not limited to a Deed of Bargain and Sale transferring title to the Property and a Bill of Sale transferring title to all fixtures, appliances and other personal property to be included in the Sale of the Property.

8. All entities in possession of some or all of the Property are directed to surrender possession to the Purchaser upon closing of the sale or at such other time thereafter as the Purchaser may request, and all entities are directed to execute such documents and take all other actions as may be necessary to release any lien and/or claim against the Property, if any, as such liens or claims may have been recorded or may otherwise exist.

9. Upon closing of the sale of the Property to the Purchaser, title to the Property shall transfer to the Purchaser, free and clear of all liens, including but not limited to mortgages, security interests, conditional sale or other title retention agreements, claims of governmental entities (including but not limited to claims for taxes, real estate taxes, interest and/or penalties) and any other interests that purported to give any party a right or option to effect any forfeiture, modification or termination of the Purchaser's interest in the Property (collectively, the "Interests") with all such liens and Interests released, terminated and discharged as to the Property. Upon the closing of the sale of the Property to the Purchaser, holders of all such liens and Interests against the Property shall be permanently enjoined from asserting such liens or Interests against the Property or the Purchaser, and all such liens and Interests on the Property shall attach to the proceeds of its sale with the same extent, validity, and priority as they had with respect to the Property prior to the closing.

10. The transfer of the Property shall not subject the Purchaser to any liability by reason of such transfers under the laws of the United States, any state, territory or possession thereof or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability, and all creditors and parties-in-interest are prohibited from asserting such claims against the Purchaser.

11. Defendant, Brenda Smith, her heirs, and assigns are hereby permanently enjoined from interfering in any manner with the sale and transfer of the Property to the Purchaser.

12. Defendant, Brenda Smith, her heirs, and assigns are hereby enjoined from the date and hour of closing until the end of time from interfering in any manner with the quiet title and quiet enjoyment of the Property of the Purchaser and his or its successors, assigns and transferees.

13. This Order is and shall be binding upon and govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, 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, or who may be required to report or insure any title or state of title in any of the Property.

14. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement of Sale, the related agreements and this Order.

15. This Court shall retain jurisdiction to interpret and enforce the provisions of the Bid and any future Louisiana Residential Agreement to Buy or Sell entered into between the Receiver and the Purchaser (“Future Agreement of Sale”), any related agreement to which the Receiver is party, and this Order, including, without limitation, jurisdiction to (a) protect the Purchaser against any claims or other liabilities related to the transactions contemplated by the Bid, the Future Agreement of Sale, or otherwise, in accordance with the provisions of the Bid or the Future Agreement of Sale, (b) resolve any and all objections to or disputes among the parties to the Future Agreement of Sale and (c) compel delivery of the Property to the Purchaser.

16. This Order shall be effective immediately upon entry of same and the fourteen (14) day stay as provided for in Fed. R. Civ. P. 62 shall be, and hereby is, waived without further notice.

17. The reversal or modification on appeal of this Order shall not affect the validity of the sale of the Property to the Purchaser, whether or not the Purchaser is aware of the pendency of the appeal, unless the sale of the Property is stayed pending appeal.



HONORABLE MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE