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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

COMMODITY FUTURES TRADING COMMISSION, and STATE OF UTAH DIVISION OF SECURITIES, through Attorney General Sean D. Reyes Plaintiffs, v. RUST RARE COIN INC., a Utah corporation, and GAYLEN DEAN RUST, an individual, DENISE GUNDERSON RUST, an individual, JOSHUA DANIEL RUST, an individual, Defendants; and ALEESHA RUST FRANKLIN, an individual, R LEGACY RACING INC, a Utah corporation, R LEGACY ENTERTAINMENT LLC, a Utah limited liability company, and R LEGACY INVESTMENTS LLC, a Utah limited liability company. Relief Defendants.	**MOTION TO CONFIRM APPOINTMENT OF APPRAISERS FOR LAYTON PROPERTY** Civil No. 2:18-cv-00892-TC Judge Tena Campbell

Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion to Confirm Appointment of Appraisers for the Layton Property.

INTRODUCTION

The Receiver is the owner of a property located at 2815 West Gordon Avenue, Layton, Utah, that includes approximately 7.774 acres of land and improvements, identified as Davis County parcels 121090365 and 121090366 (the "Property"). The Receiver requests an order confirming the appointment of three independent commercial appraisers as required by 28 U.S.C. § 2001 to assist the Court and the Receiver in valuing the Property for potential sale. As with other commercial properties sold by the Receivership, the Receiver proposes that two of the appraisers will provide restricted appraisals and the third will provide a standard appraisal report. Once this Court has agreed to the appointment of the appraisers and their respective appraisals are completed, the Receiver will file a notice of the proposed sale of the Property and will subsequently submit a motion for a hearing to confirm the proposed sale of the Property consistent with 28 U.S.C. § 2001.

MEMORANDUM

This Court's November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt. No. 54 (the "Order"), authorizes and directs the Receiver to take control of Defendants' assets and provides: "Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property to the Receivership Estates." (Order, Dkt. No. 54, at 15 ¶ 38). The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

> To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

(Order, Dkt. No. 54 at 5 ¶ 8(F)).

Title 28, Section 2001(b) of the United States Code authorizes a court to order the sale of real property at a private sale if the court finds that the sale is in the best interest of the estate after considering the evaluation of three appraisers appointed by the court (the sale may not be less than two-thirds of the appraised value) and after providing notice of the hearing at least 10 days before the hearing confirming the same.

> (b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

The Receiver has identified three professional and disinterested appraisers to provide an appraisal to assist the Court and the Receiver in evaluating the reasonableness of the private sale. These appraisers include: Chad Rigby, MAI, Rigby & Company, 1466 North Highway 89, Suite #220, Farmington, UT 84025, (801) 451-9888; Darrin Liddle, MAI, Integra Realty Resources, 5107 South 900 East, Suite 200, Salt Lake City, Utah 84117, (801) 631-3319; and Matthew Limpert, Van Drimmelen & Associates Inc., 774 East 2100 South, Salt Lake City, Utah 84106,

(801) 536-6476. The retention letters for each appraiser are attached hereto as Exhibits A, B, and C.

As part of this Motion, the Receiver also requests that the Court authorize the Receiver's use of both standard and restricted appraisal reports for the Property. This Court has previously approved the use of restricted appraisal reports for several other commercial properties within the Receivership Estate. Dkt. No. 148. As set forth in more detail in the Receiver's *Motion to Approve Use of Broker's Price Opinions, Comparative Market Analyses, Restricted Appraisal Reports, or Similar Valuation Procedure, in Appraisal of Certain Commercial Properties*, a restricted appraisal report is a valuation of property similar to a standard appraisal report but the information that forms the basis of the appraisal is not included within the document itself. *See* Dkt. No. 130. The Receiver is confident that the use of restricted appraisal reports in conjunction with a full appraisal report will provide this Court with information sufficient to assess what constitutes a fair price for the Property, consistent with 28 U.S.C. § 2001(b), while at the same time saving the Receivership Estate at least $3,050 by avoiding the higher premiums charged for standard appraisal reports.[1] Accordingly, the Receiver requests that the Court authorize the Receiver to engage one of the appraisers to provide a standard appraisal report and two of the appraisers to provide restricted appraisal reports.

CONCLUSION

Based on the foregoing, the Receiver requests that the Court grant this motion by entering an order confirming the appointment of the three appraisers and authorizing the Receiver to

[1] A more extensive analysis of this issue is set forth in the Receiver's *Motion to Approve Use of Broker's Price Opinions, Comparative Market Analyses, Restricted Appraisal Reports, or Similar Valuation Procedure, in Appraisal of Certain Commercial Properties*. Dkt. No. 130.

utilize restricted appraisal reports for two of the three appraisals of the Property. A proposed Order is attached hereto.

DATED this 24th day of March, 2021.

PARR BROWN GEE & LOVELESS

/s/ Claire M. McGuire
Joseph M.R. Covey
Cynthia D. Love
Claire M. McGuire
Attorneys for Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO CONFIRM APPOINTMENT OF APPRAISERS FOR VICTORIAN HOME** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on March 24, 2019, which sent notice of the electronic filing to all counsel of record; (2) posted on the Receiver's website (rustrarecoinreceiver.com); and (3) emailed to all those on the master mailing matrix maintained by the Receiver.

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/s/ Claire M. McGuire