

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

Civil Action No. 1:19-CV-08454

TODAY’S GROWTH CONSULTANT, INC. :
(dba THE INCOME STORE) :

and :

KENNETH D. COURTRIGHT, III, :

Defendants. :

_____ :

RECEIVER’S MOTION TO APPROVE SALE OF ESTATE ASSETS
EXPEDITED RELIEF REQUESTED

Melanie E. Damian, Esq., as Receiver (“Receiver”) of Defendant Today’s Growth Consultant, Inc d/b/a the Income Store (“TGC”) moves this Court to approve the Receiver’s liquidation sale of TGC’s remaining assets and all related rights thereto free and clear of all liens, claims, interests and encumbrances, including beneficial interests (the “Assets”) and in support thereof, the Receiver states as follows:

SUMMARY OF RELIEF REQUESTED

By this Motion, the Receiver requests that the Court: (1) approve the Receiver’s proposal to hold an online auction sale of the Assets to be conducted by the professional brokerage company, Right of the Dot, LLC (“Broker”); (2) approve the form of notice to be provided to interested parties and all known claimants for the auction sale; and (3) approve the Receiver’s sale of the Assets to the winning bidder (“Buyer”).

BACKGROUND

On December 30, 2019, this Court entered a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief [ECF No. 20] (“TRO”) and an Order Appointing Receiver [ECF No. 19] (“Appointment Order”) in this enforcement action (“SEC Enforcement Action”). The TRO ordered the freezing of all assets of Defendants TGC and Kenneth D. Courtright, III (“Courtright”) to preserve the *status quo*. See ECF No. 20 at pp. 6-7. Further, the Appointment Order authorized and directed the Receiver to exercise full power and control over TGC including all of its assets and specifically authorized and directed the Receiver to “take such action as necessary and appropriate for the preservation of the Assets or to prevent the dissipation or concealment of Receivership Assets.” *Id.* at p. 4.

The primary asset of TGC is a domain portfolio made up of more than 3,000 website domains.¹ TGC’s assets also include trademarks, affiliate marketing accounts with Amazon, Walmart, and AdSense, etc., as well as electronics and office furnishings.

ONLINE AUCTION SALE TERMS AND TIMELINE

The Receiver has determined that the best method to sell the Assets is through a competitive online auction sale.

The proposed Broker, Right of the Dot, LLC, a company that offers domain brokerage and online auction sale services, will facilitate an online auction sale of the Assets.² Broker will assist

¹ In her Initial Status Report, the Receiver reported that TGC owned 3,130 domains. See ECF Nos. 45, 45-3. However, the total number of domains in the portfolio will be reduced by the number of websites that are being transferred to eligible claimants with allowed claims as part of the Court-approved Claims Process. See ECF No. 109. The Receiver anticipates that once all transfers are completed the total number of domains remaining in TGC’s portfolio will be approximately 3,100.

² A copy of the Broker’s auction business license can be made available to the Court if necessary.

the Receiver in soliciting bids from potential buyers with a reserve price for a bulk purchase of all the Assets at two million dollars (\$2,000,000.00) (“Reserve Price”). The Receivership Estate is guaranteed the Reserve Price plus seventy-five percent (75%) of any sale proceeds above the Broker reserve commission which will be no more than twenty-five percent (25%) of the gross sale proceeds. The Receiver is authorized to negotiate a more favorable commission based on the offers presented.

For a period of ten (10) days after entry of an Order from this Court granting the instant Motion (“Initiation Phase”), the Receiver will work with the Broker to provide information to the Broker regarding the Assets and information related to the procedure for transfer of the Assets to the winning bidder, so that the Broker may advertise the auction sale and provide sufficient information for potential bidders to conduct due diligence regarding the Assets.³ For a period of thirty (30) days after the expiration of the Initiation Phase (*i.e.*, forty (40) days after entry of an Order granting this Motion) (“Bidding Phase”), the Broker will advertise the auction sale utilizing, among other methods, an international press release. During the Bidding Phase, the Broker will solicit bids from potential buyers who demonstrate their willingness to bid on the Assets at, or above, the Reserve Price. If a potential bidder demonstrates that it is ready, willing, and able to submit a bid for the Assets at or above the Reserve Price by posting an earnest deposit of fifty thousand dollars (\$50,000.00)⁴, such bidder will be considered a Qualified Bidder. During the Bidding Phase, if Broker receives a bid from at least one Qualified Bidder, Broker will hold an

³ Broker will establish a website for the auction sale that will host information and documentation regarding the Assets that the Receiver will provide. Potential bidders may visit this website to learn about the Assets and conduct their due diligence on same.

⁴The earnest deposit will be fully refundable if the bidder is not the winning bidder.

online auction sale for the Assets as one combined lot at the end of the Bidding Phase, forty (40) days after entry of an Order by this Court granting the instant Motion. If Broker does not receive a bid from a Qualified Bidder during the Bidding Phase, the Receiver will work with the Broker to separate the Assets into individual and separate lots to be auctioned off individually at an auction sale at a later date (“Individual Auction”). If deemed necessary by the Receiver, the Individual Auction will take place fifteen (15) days after the date for the original auction sale (of the one lot auction) at the end of the Bidding Phase. During this time period, the Broker will advertise the Individual Auction utilizing the same or substantially similar methods. The Receiver will work with the Broker and her IT professionals to value and set reserve prices or minimum bids for each individual asset to be sold separately at the Individual Auction.

The Receiver will present the results of the online auction(s) to Court in the subsequent Status Report that she files with the Court.

NOTICE

In order to encourage the participation of potential bidders, and in addition to the advertising to be performed by Broker, the Receiver will provide notice of the proposed auction sale in the form of the attached **Exhibit “A”** to all parties who have previously expressed an interest in purchasing the Assets and will also publish this information on the Receivership website, www.incomestorereceivership.com. The Receiver will also provide notice of the proposed sale and **Exhibit “A”** to all claimants and interested parties, and the Receiver and/or Broker will publicize the sale widely and, among other things, post it in a newspaper of general jurisdiction to provide broader outreach to potentially interested parties.

LEGAL AUTHORITY

By virtue of this Court's Appointment Order, the Receiver has been authorized and directed to "take control and possession of all Receivership Assets" and to "to take such action as necessary and appropriate for the preservation of Receivership Assets." ECF No. 19, pp. 3-4.

Receivers in SEC enforcement actions are frequently authorized to liquidate the assets of the receivership entities, subject to ultimate approval by the appointing court. See, e.g., *S.E.C. v. Bilzerian*, 378 F.3d 1100, 1101 (D.C. Cir. 2004) (describing receivership order authorizing receiver to liquidate any interest in any asset held by anyone on behalf of the defendant); *S.E.C. v. Malek*, 397 Fed. Appx. 711, 714 (2d Cir. 2010); *S.E.C. v. First Choice Mgmt. Servs., Inc.*, 66 Fed. Appx. 652, 653 (7th Cir. 2003); *S.E.C. v. TLC Invs. and Trade Co.*, 147 F. Supp. 2d 1031, 1035 (S.D. Cal. 2013).

Here, in order to maximize the potential recovery for the investors and creditors of TGC, and minimize the risk of market and business fluctuations while avoiding diminution in value of the domain portfolio due to increasing costs and unpredictable website traffic variations, the Receiver believes that the sale of the Assets as proposed herein is the best course of action and in the best interests of the Receivership Estate.

The Receiver respectfully submits that the marketing and sale procedures proposed by Broker are reasonable and appropriate and serve to foster broad and active participation in the sale process. Accordingly, the Receiver requests that the Court enter the attached proposed Order granting the instant Motion, approving the Receiver's proposed procedures for the sale of the Assets as outlined herein and any resulting sale of the Assets.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court enter an Order in the form of the attached **Exhibit “B”**: (1) approving the Receiver’s proposal to hold an online auction sale to liquidate the Assets to be conducted by the professional brokerage company, Right of the Dot, LLC, as outlined herein; (2) approving the form of notice of the proposed auction sale attached hereto as Exhibit “A” to be provided to all potential interested parties; and (3) approving the sale of the Assets to the winning bidder of the auction sale proposed herein.

CERTIFICATION OF CONFERENCE

The undersigned counsel certifies that prior to filing this Motion he conferred with counsel for Plaintiff Securities and Exchange Commission and Defendant Kenneth Courtright regarding the relief requested herein by sending a copy of this Motion by email correspondence and asking that they confirm whether or not they have any objections to such relief. Counsel for Plaintiff confirmed that they have no objection. Mr. Courtright did not confirm whether he has any objection to the requested relief as of the time the Receiver filed this Motion.

Respectfully submitted this 7th day of April, 2021.

Respectfully submitted,

/s/Kenneth Dante Murena

Kenneth Dante Murena, Esq.

Florida Bar No. 147486

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Counsel for Melanie E. Damian,

Court-Appointed Receiver

Admitted pro-hac vice and

General Admissions to the N.D. Ill.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on April 7, 2021 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena _____
Kenneth Dante Murena

**EXHIBIT “A”
NOTICE**

**NOTICE TO INVESTORS AND OTHER INTERESTED PARTIES
OF PROPOSED AUCTION SALE OF RECEIVERSHIP ASSETS**

On December 27, 2019 the SEC filed a complaint against Today's Growth Consultant, Inc. d/b/a The Income Store ("TGC") and Kenneth D. Courtright, III ("Courtright"). In connection with that Complaint the United States District Court Judge presiding over *Securities and Exchange Commission v. Today's Growth Consultant Inc. d/b/a The Income Store, et al.*, Civil Action No. 1:19-CV-0854 ("SEC Enforcement Action"), Judge Andrea R. Wood, appointed Melanie E. Damian as Receiver of TGC. The Court has specifically authorized and directed the Receiver to exercise full power and control over TGC including all of its assets and specifically authorized and directed the Receiver to take action as necessary and appropriate for the preservation of the Assets or to prevent the dissipation or concealment of Receivership Assets.

The primary asset of TGC is a domain portfolio made up of more than 3,000 website domains.¹ TGC's assets also include trademarks, affiliate marketing accounts with Amazon, Walmart, and AdSense, etc., as well as electronics and office furnishings (collectively, the "Assets").

The Receiver has determined that the best method to sell the Assets is a competitive bidding process to be conducted via online auction sale.

The Receiver has received Court approval to (i) retain the services of Right of the Dot, LLC, a company that offers domain brokerage and auction sale services, to conduct an online

¹ In her Initial Status Report, the Receiver reported that TGC owned 3,130 domains. See ECF Nos. 45, 45-3. However, the total number of domains in the portfolio will be reduced by the number of websites that are being transferred to eligible claimants with allowed claims as part of the Court-approved Claims Process. See ECF No. 109. The Receiver anticipates that once all transfers are completed the total number of domains remaining in TGC's portfolio will be approximately 3,100.

auction sale of the Assets, and (ii) sell the Assets to the winning bidder of the auction sale. The online auction will be scheduled by the Receiver and Right of the Dot, LLC to occur approximately forty (40) days after the United States District Court Judge presiding over the SEC Enforcement Action enters an Order on the Receiver's Motion approving the procedures for the auction sale. Right of the Dot, LLC will assist the Receiver in soliciting bids from potential buyers with a reserve price for a bulk purchase of all the Assets at two million dollars (\$2,000,000.00) ("Reserve Price"). The Receivership Estate is guaranteed the Reserve Price plus seventy-five percent (75%) of any sale proceeds above the Broker reserve commission which will be no more than twenty-five percent (25%) of the gross sale proceeds. The Receiver is authorized to negotiate a more favorable commission based on the offers presented.

The auction sale will be advertised to potential buyers which will include, among others, claimants of the Receivership Estate. Right of the Dot, LLC will provide sufficient information for potential bidders to conduct due diligence regarding the Assets and will establish a website for the auction sale that will host information and documentation regarding the Assets that the Receiver will provide. Potential bidders may visit this website to learn about the Assets and conduct their due diligence on same. Right of the Dot, LLC will solicit bids from potential buyers who demonstrate their willingness to bid on the Assets at, or above, the Reserve Price of two million dollars (\$2,000,000.00). If a potential bidder demonstrates that it is ready, willing, and able to submit a bid for the Assets at or above the Reserve Price by posting an earnest deposit of fifty thousand dollars (\$50,000.00)², such bidder will be considered a Qualified Bidder. If Right of the Dot, LLC receives a bid from at least one Qualified Bidder, an online auction sale will be held for the Assets as one combined lot at least forty (40) days after the United States District

²The earnest deposit will be fully refundable if the bidder does not win the bid.

Court Judge presiding over the SEC Enforcement Action enters an Order on the Receiver's Motion approving the procedures for the auction sale. If Right of the Dot, LLC does not receive a bid from a Qualified Bidder before the auction sale, the Receiver will work with Right of the Dot, LLC to separate the Assets into individual and separate lots to be auctioned off individually at an auction sale at a later date ("Individual Auction"). If deemed necessary by the Receiver, the Individual Auction will take place fifteen (15) days after the date on which the original auction sale (of the one lot auction) was to take place. During this time, Right of the Dot, LLC will advertise the Individual Auction utilizing the same or substantially similar methods.

Following the conclusion of the auction sale, the Receiver will present the results of the auction(s) to the District Court in the subsequent Status Report that she files with the Court.

Copies of the Receiver's Motion to Approve Sale of Estate Assets and the Court's Order granting such Motion are available on the Receivership website, at www.incomestorereceivership.com and can be obtained by sending a request to the Receiver, Melanie E. Damian, c/o Damian & Valori, LLP, 1000 Brickell Ave, Suite 1020, Miami, Florida 33131, or by email at IncomeStore@dvlp.com.

Additionally, in the Order granting the Receiver's Motion to Approve Sale of Estate Assets, the Court approved this Notice and authorized the Receiver to publish this Notice on the Receivership website.

EXHIBIT “B”
Proposed Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, :
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 Plaintiff, :
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 v. :
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 TODAY’S GROWTH CONSULTANT, INC. :
 (dba THE INCOME STORE) :
 :
 and :
 :
 KENNETH D. COURTRIGHT, III, :
 :
 Defendants. :
 :

Civil Action No. 1:19-CV-08454

**ORDER GRANTING RECEIVER’S MOTION
TO APPROVE SALE OF ESTATE ASSETS**

Melanie E. Damian, Esq., as Receiver (“Receiver”) of Defendant Today’s Growth Consultant, Inc d/b/a The Income Store (“TGC”), has filed a motion (the “Motion”) for this Court to approve the Receiver’s sale of the TGC’s assets and all related rights free and clear of all liens, claims, interests and other encumbrances, including beneficial interests to the highest bidder at online auction sale(s) to be scheduled by the Receiver and broker, Right of the Dot, LLC. The Court has considered the Motion, the representations of the Receiver therein, the attached Notice to interested parties and claimants, the record in this case, relevant authorities, and any objections filed, and makes the following findings and conclusions:

1. Adequate notice of the Motion has been provided to all parties in interest and/or will be provided pursuant to the additional notice approved by this Order. This Court has jurisdiction over this matter and the property of the Receivership Estate, including without limitation the Assets as defined in the Motion.

2. On December 27, 2019 the SEC filed a complaint against TGC and Kenneth D. Courtright, III (“Courtright”). *See* ECF No. 1. On December 30, 2019, this Court entered a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief [ECF No. 20] (“TRO”) and an Order Appointing Receiver [ECF No. 19] (“Appointment Order”) in the enforcement action (“SEC Enforcement Action”). The Appointment Order authorized and directed the Receiver to exercise full power and control over TGC including all of its assets and specifically authorized and directed the Receiver to “take such action as necessary and appropriate for the preservation of the Assets or to prevent the dissipation or concealment of Receivership Assets.” ECF No. 19 at p. 4.

3. The Receiver has reasonably and appropriately determined that the best method to sell TGC’s assets (“Assets”) is a competitive bidding process to be conducted via online auction sale. The Receiver’s selection of broker, Right of the Dot, LLC, and the accompanying terms of the online auction sale as outlined in the Receiver’s Motion are reasonable and appropriate to facilitate the online auction sale of the Assets.

4. The sale of the Assets is not precluded by or contrary to any prior Order issued by the Court and no further consents by any Person (including any Governmental Authority or holder of any beneficial interest) are required to convey the Assets to the highest bidder at the conclusion of the online auction sale.

5. The form and manner of the Notice of Sale of Receivership Assets (the “Notice”) to be provided to interested parties and all known claimants, as attached to and described in the Motion, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale and with ample opportunity to object to the sale, including to the free and clear nature of the sale.

6. The entry of this Order is in the best interests of the Receivership Estate.

In accordance with the foregoing, it is –

ORDERED as follows:

1. The Receiver's Motion to Approve the Sale of Estate Assets is hereby granted.

2. The Receiver is hereby authorized to retain Right of the Dot, LLC to facilitate the online auction sale of the Assets and the proposed terms of the online auction sale as outlined in the Receiver's Motion are approved by this Court.

3. The results of the auction sale(s) conducted by the Receiver and Right of Dot, LLC in accordance with the procedure set forth in the Motion and approved herein are hereby approved and such sale(s) shall be free and clear of all liens, claims, interests and encumbrances that may exist on the Assets, with any such liens, claims, interests or encumbrances attaching to the Receivership Estate's share of the proceeds of the sale(s).

4. The form and manner of the Notice to be provided to interested parties as attached to and described in the Motion, are approved.

5. The date for the online auction sale of the Assets as one combined lot shall be agreed upon and scheduled by the Receiver and Right of the Dot, LLC to occur at least forty (40) days after entry of this Order. If the Assets are not sold at such online auction, the online auction sale of the Assets as separate lots shall be held at least fifteen (15) days after the date on which the original auction sale (of the one lot auction) was to take place. Once the Receiver and Right of the Dot, LLC set the auction date(s), the Receiver shall incorporate same into the Notice.

6. The Receiver is authorized and empowered to take all steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and requirements established by this Order.

7. This Order shall become effective and enforceable immediately upon entry.

8. To the extent of a conflict in the terms of the Motion and this Order, the terms of this Order shall control.

DONE AND ORDERED in the Northern District of Illinois on _____, 2021.

HONORABLE ANDREA R. WOOD
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record