

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 06-81080 CIV-MIDDLEBROOKS/Johnson

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MERCER CAPITAL, INC.,
MERCER CAPITAL MANAGEMENT, INC.,
MERCER ASSET MANAGEMENT, LLC,
TRI-STATE ENERGY GROUP, LLC,
TRI-STATE ENERGY GROUP I, LTD.,
TRI-STATE ENERGY GROUP II, LTD., and
ROBERT FLICKINGER II.,

Defendants.

**RECEIVER'S UNOPPOSED MOTION TO AUTHORIZE THE SALE OF
OFFICE FURNITURE, SUPPLIES, EQUIPMENT AND A MOTORCYCLE**

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver ("Receiver") for MERCER CAPITAL, INC., MERCER CAPITAL MANAGEMENT, INC., MERCER ASSET MANAGEMENT, LLC, TRI-STATE ENERGY GROUP, LLC, TRI-STATE ENERGY GROUP I, LTD., AND TRI-STATE ENERGY GROUP II, LTD. (collectively "Mercer Entities"), by his attorneys, Broad and Cassel, hereby files an Unopposed Motion to Authorize the Sale of Office Furniture, Supplies, Equipment and a Motorcycle ("Motion"). In support of the Motion, the Receiver states the following:

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

1. On November 21, 2006, the Securities and Exchange Commission (“SEC”) initiated this action. That same day, the Court entered an Order Appointing Receiver which named Daniel S. Newman, P.A. as Receiver for the Mercer Entities (“Receivership Order”).

2. During the course of his investigation, the Receiver learned that the Mercer Entities operated businesses out of two separate locations, one in Florida (“Boca Office”), and the other one in Oregon (“Portland Office”) (collectively “Offices”). The Receiver also learned that Mercer Asset Management, LLC (“Mercer Asset”), was operating in an office adjacent to the Mercer Entities’ Portland Office.

3. On November 22, 2006, the Court granted the Receiver’s *Ex Parte* Emergency Motion to Expand Scope of Order of Appointed Receiver, to include Mercer Asset within the scope of the Receivership Order (“Expanded Order”).

4. According to the Receivership Order and the Expanded Order, the Receiver is obligated to take custody, control and possession of the Mercer Entities’ assets for the benefit of their defrauded investors. In order to assist the Receiver in his efforts to recover and take control of the Mercer Entities’ assets for the benefit of its defrauded investors, the Receivership Order permits the Receiver to

[t]ake immediate possession of all property, assets and estates of every kind of the defendants, including but not limited to all offices maintained by the Defendants . . . books, papers, data processing records, evidences of debt. . . **furniture, fixtures, office supplies and equipment, and all real property of the Defendants** wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order. . .

(emphasis added).

OFFICE FURNITURE, SUPPLIES, AND EQUIPMENT

5. On November 21, 2006, the Receiver and his counsel entered the Offices, secured the two locations, and assumed control over the Offices and their contents, including the business contents contained in Mercer Asset's office. The Receiver also took possession of any furniture, office supplies, and equipment found in each location.

6. Currently, the Mercer Entities' are not conducting business in the Boca Office, and the Mercer Entities and Mercer Asset are not conducting business in the Portland Office. The assets for the Mercer Entities and Mercer Asset that were located in the locations described in Paragraph 2 including, but not limited to office supplies, furniture, and equipment, have been relocated to storage facilities ("Stored Items").

7. On May 25, 2007, the Receiver requested this Court's permission to sell certain pieces of office furniture, supplies, and other equipment taken from the Boca office. On May 29, 2007, this Court granted the Receiver's May 25, 2007 request. As a result of the Receiver's sale of the office furniture previously held in the Boca Office, the only office furniture currently in storage is that which originated from the Portland Office.

8. The Stored Items from the Portland Office currently constitute a financial burden on the Receivership due to their high storage costs and depreciating value.

9. The Receiver submits that selling the Stored Items from the Portland Office through an auction or a direct private sale will eliminate the monthly expenses incurred in connection with the storage of the Stored Items from the Portland Office as well as generate additional funds to be distributed to the defrauded investors.

MOTORCYCLE

10. In addition to taking possession of the office equipment located in the Portland office, the Receiver also has identified a motorcycle ("Motorcycle") purchased by Flickinger using investor funds. Flickinger voluntarily surrendered the Motorcycle.

11. In an effort to avoid the financial burden of continuing to store the Motorcycle, the Receiver has placed several advertisements for the sale of the Motorcycle in various publications. The Receiver also has already attempted to find a purchaser for the Motorcycle by placing it for sale via an Internet auction through eBay.com.

12. A sale of the Motorcycle will not only curtail the expense of storing the Motorcycle, but also will generate additional funds for the benefit of the investors.

MEMORANDUM OF LAW

13. A receiver has the right to sell assets of a receivership. *FTC v. Peoples Credit First, LLC*, Case No.: 8:03-cv-2353-T-TBM, 2006 U.S. Dist. LEXIS 18299 (S.D. Fla. Apr. 11, 2006); *Fugazy Travel Bureau, Inc. v. State*, 188 So. 2d 842, 845 (Fla. 4th DCA 1966)

14. Moreover, a "district court has broad powers and wide discretion to determine relief in an equity receivership." *S.E.C. v. Kirkland*, Case No. 6:06-cv-183-Orl-28KRS, 2007 U.S. Dist. LEXIS 14917, at *4 (S.D. Fla. Feb. 22, 2007) (citing *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)). The *Kirkland* court goes on to explain that the Receiver also has the ability to sell property as required to protect the receivership estate. *Id.*

15. In the current situation, the Stored Items taken from the Portland Office and the Motorcycle are not only a financial burden to the Receivership due to their expensive storage costs, but also the Stored Items and the Motorcycle are depreciating in value everyday.

16. The Receiver is prepared to contact directly several retailers, consignment stores, and other sales groups in an effort to have potentially interested parties available for purposes of selling the Stored Items from the Portland Office and the Motorcycle by private sale.

17. In addition, counsel for the Receiver has established an online account with eBay.com in preparation for auctioning the Stored Items from the Portland Office and the Motorcycle once authorized to do so by this Court.

18. Counsel for the Receiver has conferred with counsel of record for Plaintiff and Defendants, and they do not oppose the relief requested in this Motion.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order authorizing the Receiver to sell the stored items taken from the Portland Office and the Motorcycle either through a direct private sale or through a public Internet auction, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY, that I have communicated with Scott Masel, Esq., Attorney for Plaintiff Securities and Exchange Commission, and James Sallah, Esq., Attorney for Defendant Robert Flickinger, and Jon Polenberg, Esq., Attorney for Defendant Mercer Asset Management, LLC, either on the telephone or via email regarding the substance of this Motion to Authorize the Sale of Certain Office Furniture, Supplies, and Equipment, and counsel for all parties have stated that they do not oppose this Motion.

By: s/ Gregory A. Deutch
Gregory A. Deutch, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel, parties of record, or interested parties in the subject of this Motion identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Gregory A. Deutch
Gregory A. Deutch, Esq.

SERVICE LIST

SEC v. MERCER CAPITAL, INC., et al.
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United States District Court, Southern District of Florida

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