

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.,
TRI-STATE ENERGY GROUP, LLC,
TRI-STATE ENERGY GROUP I, LTD.,
TRI-STATE ENERGY GROUP II, LTD., and
ROBERT FLICKINGER II.,

Defendants.

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

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver ("Receiver") for MERCER CAPITAL, INC., MERCER CAPITAL MANAGEMENT, INC., 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 his Emergency Unopposed Motion to Authorize the Sale of Certain Office Furniture, Supplies, and Equipment ("Motion"). In support of the Emergency Motion, the Receiver states the following:

1. On November 21, 2006, the Securities and Exchange Commission ("SEC") initiated this action. That same day, the Court entered its Order Appointing

BROAD and CASSEL

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Receiver which named Daniel S. Newman, P.A. as Receiver for the Mercer Entities (“Receivership Order”).

2. 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 Management, LLC, within the scope of the Receivership Order (“Expanded Order”).

3. 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).

4. 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”).

5. On November 21, 2006, the Receiver entered the Offices, secured the two locations, and assumed control over the Offices and their contents. The Receiver also took possession of the furniture, office supplies, and equipment found therein.

6. Currently, none of the Mercer Entities' businesses are being conducted from either the Boca Office or the Portland Office, and most of the Mercer Entities' assets located in the Offices including, but not limited to office supplies, furniture, and equipment, have been relocated to storage facilities ("Stored Items").¹

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

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

MEMORANDUM OF LAW

9. 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)

10. 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.*

¹ Some items are being stored free of charge at the offices of the Receiver.

11. In the current situation, the Stored Items are not only a financial burden to the Receivership due to their expensive storage costs, but the Stored Items also are depreciating in value everyday.

12. The Receiver has contacted directly several retailers, consignment stores, and other sales groups in an effort to be prepared to have potentially interested parties available for purposes of selling the Stored Items by private sale. No parties showed any interest in the items.

13. In addition, counsel for the Receiver has established an online account with eBay.com for purposes of auctioning the Stored Items once authorized by this Court. The items have been available for sale on eBay.com for almost two weeks yet there have been no serious inquiries for purchase.

14. As a result of the Receiver's efforts, the Receiver found a potential purchaser for the furniture and office supplies for the Boca Office. This purchaser has agreed to take all of the items for \$5,000.00. The purchaser has made it clear that time is of the essence with regard to his need for office furniture and that if a sale is not finalized immediately, he will look to other sellers.

15. After accounting for the time expensed in acquiring a sale, the cost of storing the items, and the constantly depreciating value of the items, the Receiver believes that it is in the best interest of the investors and the Receivership to sell the items from the Boca Office to the current prospective purchaser for the price of \$5,000.00.

16. 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 in a direct private sale, the stored items taken from the Boca Office, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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By: s/ Gregory A. Deutch
Gregory A. Deutch, Esq.
Florida Bar No. 0030835

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 May 25, 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.
CASE NO.: 06-81080 CIV—MIDDLEBROOKS/JOHNSON
United States District Court, Southern District of Florida

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