

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21CVS007997-590

WILMINGTON TRUST, NATIONAL
ASSOCIATION, SOLELY IN ITS
CAPACITY AS TRUSTEE FOR
STARWOOD RETAIL PROPERTY
TRUST 2014-STAR, COMMERCIAL
MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2014-
STAR,

Plaintiff,

v.

TM NORTHLAKE MALL, L.P.,

Defendant.

**ORDER ON MOTION TO
APPROVE SALE OF PROPERTY**

1. The receiver in this proceeding, Spinoso Real Estate Group DLS, LLC, has moved for approval to sell certain receivership property under N.C.G.S. § 1-507.46. For the following reasons, the Court **GRANTS** the motion.

2. **Background.** The events giving rise to this case are straightforward. In 2019, Defendant TM Northlake Mall, L.P. defaulted on a loan worth hundreds of millions of dollars. The loan was secured by Defendant's primary asset: a shopping center in Charlotte, North Carolina known as Northlake Mall. In May 2021, Plaintiff Wilmington Trust, N.A., as trustee for the noteholder, began this lawsuit and immediately moved to place Defendant into receivership. With the consent of Plaintiff and Defendant, the presiding judge appointed Spinoso as general receiver, with broad authority to manage Northlake Mall's operations and to advertise the mall for sale. Soon after, the case was designated to the Business Court. (*See* Compl. ¶¶ 9–11, 14, 16, 20, ECF No. 6; Consent Order Appointing Receiver, ECF No. 3.)

3. Since its appointment, Spinoso has aimed to stabilize tenancy at the mall and to position it for a potential sale. In recent months, Spinoso engaged Jones Lang LaSalle, a global real estate services company, to market and sell the mall. Jones Lang LaSalle identified over 11,000 potential buyers, provided information about the property to those that expressed interest, interviewed prospective bidders, and conducted three rounds of sealed bidding. When the bidding ended, Spinoso determined that a group of related entities (“Hull”) had made the highest and best offer. Spinoso and Hull then negotiated an Agreement of Purchase and Sale, contingent on court approval. The terms of the proposed sale include, among other things, a total purchase price of \$39 million, an upfront deposit of \$5 million, no due-diligence period, and a ten-day window after court approval to complete closing. (See Aff. D. Klaben ¶¶ 5, 6, ECF No. 61; Aff. J. Pittman ¶¶ 3, 4, 7, 13–17, ECF No. 75; *see also* Agrmt. Purchase & Sale, ECF No. 61.)

4. Joined by Plaintiff and Defendant, Spinoso now asks the Court to approve the proposed sale. They contend that the terms of the sale are fair, reasonable, consistent with current market conditions, and in the best interest of the receivership estate. They also ask the Court to order that the sale be free and clear of all liens under N.C.G.S. § 1-507.46(c). (*See generally* Consent Mot. Approve Sale, ECF No. 61.)

5. Following the motion, the Court received two objections. Ryan Investment Group, LLC claims to be interested in buying the mall but contends that it was not aware that the property was for sale until recently. It objects that Spinoso’s

marketing campaign was not thorough and that the proposed purchase price undervalues the mall. On that basis, it asks the Court to allow it thirty days to perform due diligence so that it can decide whether to make an offer. (*See* Ryan Invest. Grp. Obj., ECF No. 73.)

6. Bianca Brown and the Estate of Armani Spencer are plaintiffs in two ongoing lawsuits against the receiver, both claiming negligence and premises liability based on a shooting that occurred near the mall in 2022. They object that the proposed sale price is too low and that, as a result, the receivership estate will not have sufficient assets to compensate them if they succeed in securing a judgment on their tort claims. (*See* Brown/Spencer Obj., ECF No. 70.)

7. The motion and the objections are fully briefed. On 27 January 2025, the Court held a hearing, which was attended by counsel for the receiver, Plaintiff, Defendant, Ryan Investment Group, and Brown and Spencer's estate. These matters are ripe for decision.

8. **Discussion.** Receivers generally have broad authority to use or dispose of receivership property in the ordinary course of business. *See* N.C.G.S. § 1-507.28(b)(6). But a sale of receivership property "other than in the ordinary course of business" requires court approval following notice and a hearing. *Id.* § 1-507.46(b).

9. Section 1-507.46 is silent as to the standard that the presiding court must apply when deciding whether to approve a proposed sale of receivership property, and there does not appear to be any North Carolina appellate law on the subject. The

Court therefore looks to federal bankruptcy law for persuasive guidance. *See Nerko, LLC v. Blue Bridge Benefits LLC*, 2022 NCBC LEXIS 141, at *5 (N.C. Super. Ct. Nov. 28, 2022) (“In creating the Receivership Act, North Carolina took its cues from the Bankruptcy Code, and accordingly, the Bankruptcy Code’s framework in this area is instructive.”).

10. Bankruptcy law, much like North Carolina’s receivership law, allows a bankruptcy trustee to sell estate property other than in the ordinary course of business after notice and an opportunity for a hearing. *See* 11 U.S.C. § 363(b)(1). In deciding whether to approve a sale, the bankruptcy court applies “a business judgment test,” assessing only “whether the trustee’s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms.” 3 *Collier on Bankruptcy* ¶ 363.02[4] (16th ed. 2004). “If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction.” *In re MF Global Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012); *see also In re Chamberlain*, 545 B.R. 827, 844 (Bankr. D. Del. 2016) (“Where the trustee articulates a reasonable basis for the business decision, courts will generally not entertain objections.”).

11. The Court concludes that Spinoso’s judgment was reasonable and that a sound business justification supports the proposed sale. Spinoso retained Jones Lang LaSalle, an experienced broker, to market the property and identify potential buyers. This marketing campaign culminated in three rounds of sealed bidding, in which Hull

made the highest and best offer. Hull is not related to any party, and it is undisputed that Spinoso and Hull negotiated the sale contract at arm's length. In addition, Spinoso represents that the purchase price is fair given current market conditions for commercial real estate and that the proposed sale has unusually favorable terms (such as the absence of a due-diligence period). *See Blueprint 2020 Opportunity Zone Fund, LLLP v. 10 Acad. St. QOZB I LLC*, 2023 NCBC LEXIS 170, at *25 (N.C. Super. Ct. Dec. 15, 2023) (approving proposed sale based on similar factors).

12. It is striking that both Plaintiff and Defendant endorse the proposed sale. Plaintiff is the senior secured creditor and holds a first-priority lien on the property, and Defendant's debt runs into the hundreds of millions of dollars. These parties have every incentive to maximize the value of the property and the receivership estate. And they stand to lose the most from a below-market sale. Their endorsements of the proposed sale and the receiver's business judgment carry substantial weight.

13. By contrast, neither objection to the proposed sale is compelling.

14. Ryan Investment Group is a prospective buyer, not a creditor. Whether it has standing to object is doubtful. *See Stark v. Moran (In re Moran)*, 566 F.3d 676, 681–82 (6th Cir. 2009) (holding that “frustrated bidders do not have standing to object to the sale of property” in bankruptcy proceedings absent a showing that the sale “is tainted by fraud, mistake, or unfairness” (cleaned up)).

15. Even if Ryan Investment Group has standing, it offers no persuasive reason to set aside the proposed sale. It objects, first, that Spinoso's marketing efforts

weren't exhaustive. But the evidence shows that Spinoso, with the advice of Jones Lang LaSalle, designed a marketing campaign to fit the circumstances. Northlake Mall is a large, complex property, facing economic challenges that are common to shopping malls around the country. Spinoso and Jones Lang LaSalle, both of which have extensive experience in this area, reasonably chose to target over 11,000 potential buyers most likely to have the means and the interest to buy such a unique property.

16. Ryan Investment Group also objects that Hull's winning bid (\$39 million) is far less than Northlake Mall's tax value (\$162 million). As Spinoso observes, however, the mall's tax value is not an accurate measure of its market value. The reality is that brick-and-mortar malls—locally and nationally—aren't worth what they once were, having plummeted in value over the last decade. Here, the receiver, its broker, and the senior secured creditor all agree that the sale price is reasonable given current market conditions. This is especially true when considering the added value of the sale's other terms, including the \$5 million cash deposit, the absence of financing contingencies and further diligence, and a closing to occur just ten days after court approval. There is no reason to second guess the receiver's judgment.

17. Unlike Ryan Investment Group, Brown and Spencer's estate are potential creditors of the estate. They object that the proposed sale will not fully satisfy Plaintiff's secured claim, meaning that the receivership estate will not have sufficient assets to pay them and other unsecured creditors. Though true, that is no reason to set aside the proposed sale. Plaintiff's claim against the receivership estate is so large

that an offer ten times higher than Hull's would not make it whole. Thus, there is no realistic scenario in which a sale of the mall would yield enough money to pay all creditors of the estate. And in any event, as discussed, the receiver has reasonably concluded in its business judgment that Hull's offer fairly reflects the mall's true value given current market conditions. *See* N.C.G.S. § 1-507.46(c) (permitting sale of receivership property "regardless of whether the sale will generate proceeds sufficient to satisfy fully all liens" against the property).*

18. Accordingly, the Court overrules these objections. The proposed sale is reasonable, supported by a sound business justification, and in the best interest of the receivership estate.

19. **Conclusion.** For these reasons, the Court **GRANTS** the motion and **ORDERS** as follows:

- a. Spinoso is authorized to take all actions necessary and appropriate in its discretion to consummate the proposed sale to Hull under the Agreement of Purchase and Sale without additional hearing or approval by the Court;

* In reaching this conclusion, the Court need not and does not decide whether Brown and Spencer's estate have valid claims against the receivership estate, what the priority of their claims would be if valid, or whether they are or will be entitled to a recovery in any amount. Brown and Spencer's estate believe that Spinoso may have insurance coverage that could satisfy their claims and seek assurances to that effect. Those are questions for another day. Litigation of their claims is ongoing. And in this proceeding, the receiver has not yet made a recommendation concerning whether to allow or reject their claims, either through a formal claims process or ancillary to its final report. *See* N.C.G.S. § 1-507.37 (addressing receiver's final report and discharge); § 1-507.49 (addressing claims process); § 1-507.50 (addressing receiver's authority to object to claims or recommend allowance); § 1-507.51 (addressing the priority of allowed claims).

- b. Spinoso is authorized to enter into commercially reasonable modifications to the Agreement of Purchase and Sale that do not materially alter the terms thereof and that are approved by Plaintiff in writing;
- c. The sale of the property “is free and clear of all liens and all rights of redemption and claims of exemption of the debtor,” N.C.G.S. § 1-507.46(c);
- d. Any lien on the property extinguished by the sale “attaches to the proceeds of the [sale] with the same validity, perfection, and priority the lien had on the receivership property immediately before the [sale],” *id.* § 1-507.46(d);
- e. Following completion of the sale transaction, Spinoso shall file a notice with the Court that the sale has closed.

SO ORDERED, this the 31st day of January, 2025.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases