

8/19/15 RJD

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF: GUARDIANSHIP DIVISION

OLIVER BIVINS, FILE NO: 502011GA000006XXXXSB

Incapacitated.

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ORDER ON GLOBAL SETTLEMENT

THIS CAUSE coming before the Court on all adversary matters currently pending in this matter and the Petition for Authorization to Sell Ward's Real Property Located at 808 Lexington Ave., New York, New York, dated May 2, 2014, the Court having heard argument of counsel, having made a ruling on the settlement ("settlement") of these matters, and being otherwise fully advised, it is thereupon

ORDERED AND ADJUDGED as follows:

As to real property located at 808 Lexington Ave., New York, New York ("808")

1. 808 is currently titled in the Estate of Lorna Bivins ("Estate") and Oliver Bivins, Sr. ("the Ward") 50/50 as tenants in common.
2. The law firm of Ciklin Lubitz Martens & O'Connell is currently holding, in escrow, a fully executed deed for the transfer of ownership of 808 from Oliver Bivins, a/k/a Oliver Bivins, Jr. as Personal Representative of the Estate of Lorna Bivins a/k/a Lorna M. Bivins, and Stephen M. Kelly (the "Guardian"), as successor limited guardian of the person and property of Oliver Bivins, a/k/a Oliver Bivins, Sr., (a/k/a Oliver Bivins, III in connection with the deed on 808, (sometimes referred to herein as the "Ward"), parties of the first part, to Stephen M. Kelly, as successor limited guardian of the person and property of the Ward, party of the second part, and will hold the deed until further



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order of this Court, or as determined by the Parties. A true and correct copy of the fully executed deed is attached hereto as Exhibit "A".

3. The Guardian shall obtain an estoppel/payoff letter from Beachton Tuxedo, LLC, the holder of the only mortgage on 808, on or before October 31, 2014. The Guardian shall attempt to negotiate a reduction of the amount reported or claimed by Beachton Tuxedo, LLC as due to them pursuant to the mortgage.

4. Julian Bivins ("Julian") is authorized to purchase 808 "As Is" for Five Million Dollars (\$5,000,000.00) under the following terms, conditions and limited contingency:

a. On or before October 6, 2014, Julian shall deposit, by wire transfer to the law firm of Ciklin Lubitz Martens & O'Connell (Florida counsel for the Guardian and the Ward, and the "Escrow Agent" for purposes of holding the Deposit Amount), One Million Dollars (\$1,000,000.00) (the "Deposit Amount"), which shall be held by the Escrow Agent in a non-interest bearing account, as a good faith deposit toward the purchase of 808;

b. No later than 11:59 pm on November 19, 2014, Julian shall obtain, and provide to the Guardian, in writing from a lender of Julian's choice, a commitment for a loan in the amount of Four Million Dollars (\$4,000,000.00), for the purchase of 808 ("Financing Commitment");

c. The closing of the purchase by Julian of 808 will take place on or before December 16, 2014, and there shall be no extension to this date for any reason.

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d. TIME SHALL BE OF THE ESSENCE with respect to each of the dates stated in sections 5.a, 5.b and 5.c above.

e. If Julian has deposited the Deposit Amount and obtained and delivered the Financing Commitment as required by Sections 5.a and 5.b above, and a closing does not take place on or before December 16, 2014, Julian forfeits his One Million Dollar (\$1,000,000.00) deposit to the Guardian on behalf of the Ward, unless the lender is the reason he cannot close ("Lender Failure"), in which case the Deposit Amount shall be returned by the Escrow Agent to Julian; and in any event, Julian's right to purchase 808 is terminated, and any contract, agreement, or otherwise by and between the Guardian and Julian, is deemed null and void and of no further force or effect;

f. Further, if Julian does not comply with the deposit of the Deposit Amount and/or the obtaining of the Financing Commitment on a timely basis, then Julian forfeits all right to purchase 808, and any contract, agreement, or otherwise, is deemed null and void and of no further force or effect;

g. Julian's right to purchase 808 and any contract or agreement for such purchase of 808 is not assignable by Julian, except to an entity owned solely by Julian;

h. For the purposes of any sale to Julian, as provided herein, the purchase of 808 and the taking of title thereto by Julian to 808 is "As Is" and in its then existing condition, with all wear and tear and deterioration from the date of this Order until the closing accepted by Julian, and without any contingencies

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with respect to the condition of 808, or any governmental liens or impositions against 808, or its tenants, or any other aspect of 808, or otherwise;

i. A contract to purchase 808 will contain the terms of this order, and will be initially prepared by Julian's counsel and submitted to counsel for the Guardian, and shall be executed by both the Guardian and Julian on or before October 6, 2014. If the contract is not prepared, or otherwise fully executed, on or before October 6, 2014, this order shall continue to govern the obligations of the parties, however the parties shall be required to execute the contract as soon as practicably possible after October 6, 2014

j. If the Deposit Amount and/or the Financing Commitment and/or the closing provisions are not met, as specified in this order, then the Guardian is authorized to immediately sell 808 to the highest of three third party bidders, for an amount of at least Five Million Dollars (\$5,000,000.00) without any participation by Julian, or any further approval of the court, and Julian shall be deemed to have waived any rights, objections, or otherwise to any sale by the Guardian to any third party, so long as, in connection with the sale, the Guardian, its agents, and its counsel comply with their fiduciary duties to the Ward as provided for by Florida Law.

6. With respect to the sale of 808, whether to Julian for Five Million Dollars (\$5,000,000.00) or to a third party for that amount or greater, through Eastern Consolidated Properties, Inc., a New York real estate broker, acting through its sales agent, Lipa Lieberman ("Lieberman"), will be the exclusive broker for any sale

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effectuated by the Guardian, and will be paid a commission at a rate of 6% of the purchase price, unless another broker is involved in any sale to a third party, in which case the 6% shall be split with a participating broker. In no event shall real estate commissions exceed 6%.

7. This order shall operate as authorization for the Guardian to execute any documents, deeds, or the like to finalize the sale of 808, whether to Julian or to a third party buyer.

8. At the closing of 808 – the following shall be paid from the proceeds of the sale:

a. \$150,000.00 to Ciklin Lubitz Martens & O'Connell, as Escrow Agent with regard to any monies due to Levine & Susaneck pursuant to Settlement Agreement and Mutual Release, pending further Court Order;

b. Attorney fees and cost reimbursement to Julian Bivins, pursuant to Order dated May 23, 2014 awarding fees and costs to Perlman Bajandas Yevoli & Albright P.L. ("PBYA") in the amount of \$374,213.72 in attorney's fees, and \$59,076.87 in costs, which amounts have been paid by Julian Bivins to PBYA;

c. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014 awarding fees and costs to Ciklin Lubitz Martens & O'Connell, in the amount of \$444,571.90;

d. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014 awarding fees and costs to Ciklin Lubitz Martens & O'Connell, in the amount of \$19,087.50;

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e. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014 awarding fees and costs to Ciklin Lubitz Martens & O'Connell, in the amount of \$394,818.24;

f. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014, awarding fees and costs to Bill T. Smith, P.A., in the amount of \$128,843.89.

g. Attorney fees and cost reimbursement to the law firm of Beys Stein Mobargha & Berland, LLP pursuant to a court order entered on (last year)..

h. Guardian fees, pursuant to order dated May 23, 2014, (and outstanding amounts) awarding fees and cost to Stephen Kelly, Guardian, in the amounts of \$19,087.30 and \$22,990.88; and

i. Payment of any other court order awarding attorney's fees and costs and/or guardian's fee and expenses entered as of date of closing on sale of 808.

9. An additional \$125,000.00 will be withheld by the Escrow Agent from the closing proceeds, to be utilized for guardianship administration expenses, subject to court approval, provided the sale of 330 does not occur first and a holdback of \$125,000 from the proceeds of that sale has not occurred.

10. After payment and holdback of a. - h. and 9. above, the remaining balance will be transferred to the Oliver Bivins Management Trust in Amarillo, Texas.

As to real property located at 330 South Ocean Blvd., Palm Beach, Florida ("330")

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11. Within thirty (30) days of the Ward's relocation to Childers Place in Amarillo, Texas, Julian shall have the right to make a written election to purchase 330 for the price of One Million One Hundred Fifty Thousand (\$1,150,000.00) Dollars. The Ward's relocation date shall be evidenced by any written communication from the Guardian to Julian, and copied to his counsel of record, stating that the Ward is situated in Texas.

12. If Julian determines that he will purchase 330 for One Million One Hundred Fifty Thousand (\$1,150,000.00) Dollars, within the thirty (30) day period he will notify Brian M. O'Connell, Esq., of Ciklin Lubitz Martens & O'Connell via e-mail, at boconnell@ciklinlubitz.com and acrispin@ciklinlubitz.com, in writing, of his intention to purchase 330 as described above.

13. A fully executed contract to purchase will be submitted by Julian with the election and shall reflect these terms:

a. 330 will be purchased, in cash and "as is", without any warranties, contingencies, or representations as to condition. Julian shall have the right to inspect the premises within ten (10) days of the Ward residing in Texas, but such inspection period shall not extend his option to purchase period;

b. Closing must occur on or before forty-five (45) days from the date of the election. No extensions shall be granted, except as to any issue regarding title and closing that is not the result of any action or inaction on the part of Julian;

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14. This order shall operate as authorization for the Guardian to execute any documents, deeds, or the like to finalize the sale of 330, whether to Julian or to a third party buyer.

15. If any of the above referenced terms for the purchase of 330 are not met, Julian will have waived any rights, objections, or otherwise to any sale by the Guardian to a third party, so long as, in connection with the sale, the Guardian, its agents, and its counsel comply with their fiduciary duties to the Ward as provided for by Florida Law, and the Guardian may immediately sell to a third party for fair market value without further order of the court.

16. If not otherwise paid from the closing proceeds of 808, the following shall be paid from the closing proceeds of 330:

a. Attorney fees and cost reimbursement to Julian Bivins, pursuant to Order dated May 23, 2014 awarding fees and costs to Perlman Bajandas Yevoli & Albright P.L. ("PBYA") in the amount of \$374,213.72 in attorney's fees, and \$59,076.87 in costs, which amounts have been paid by Julian Bivins to PBYA;

b. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014 awarding fees and costs to Ciklin Lubitz Martens & O'Connell, in the amount of \$19,087.50;

c. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014 awarding fees and costs to Ciklin Lubitz Martens & O'Connell, in the amount of \$394,818.24;

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d. Attorney fees and cost reimbursement, pursuant to Order dated May 23, 2014, awarding fees and costs to Bill T. Smith, P.A., in the amount of \$128,843.89.

e. Attorney fees and cost reimbursement to the law firm of Beys Stein Mobargha & Berland, LLP pursuant to a court order entered on (last year).

f. Guardian fees, pursuant to order dated May 23, 2014, (and outstanding amounts) awarding fees and cost to Stephen Kelly, Guardian, in the amount of \$19,087.30 and \$22,990.88;

g. Payment of any other court order awarding attorney's fees and costs and/or guardian's fee and expenses entered as of date of closing on sale of 330.

17. Provided 330 closes before 808, An additional \$125,000.00 will be withheld by the Escrow Agent from the closing proceeds, to be utilized for guardianship administration expenses, subject to court approval. If 808 closes first, and \$125,000 was held back from the sale proceeds of 808, this holdback provision shall not apply.

18. After payment and holdback of 16. a. - g. and 17. above, if applicable, the remaining balance will be transferred to the Oliver Bivins Management Trust in Amarillo, Texas. If such payments were already made from the proceeds of the sale of 808, the proceeds from the sale of 330 will be transferred to the Oliver Bivins Management Trust in Amarillo, Texas.

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19. The Guardian shall forthwith, but in no event later than 10 days from the date of this Order, change the residence of the Ward from Florida to Amarillo, Texas and Julian consents to same.

a. This Order shall authorize the Guardian to change the residence of the Ward from Florida to Amarillo, Texas without further petition, action or court approval;

b. The Florida Guardian shall initiate proceedings in Potter County, Amarillo, Texas for the appointment of a third party professional guardian of the person (or the equivalent of same pursuant to Texas statutes) (the "Texas Guardian of Person") and a professional guardian shall always remain in that position;

c. The guardianship of the property of the Ward will remain in Florida until further order of this Court and the Florida Guardian shall continue to serve as the guardian of the property of the Ward until discharged by the Florida Court;

d. The Ward will initially reside at Childers Place located in Amarillo, Texas. Once moved to Childers Place, if the Texas Guardian of Person (or Florida Guardian, if a Texas Guardian of Person has not yet been appointed) shall determine that the Ward should be moved, the Ward may be moved to any other suitable facility agreed to by Julian and the Texas Guardian of Person (or Florida Guardian, if a Texas Guardian of Person has not yet been appointed);

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e. The Florida Guardian, and/or the Texas Guardian of Person, at such guardian's sole discretion, will establish nursing care, i.e. Certified Nursing Assistants, or similar qualified professionals, for 24 hours 7 days a week to care for the Ward in Texas and put into place any other care plan or employ any other professional reasonable to effectuate the Ward's transition and stabilization in Texas, any such care plan shall continue unless, and until, further court order is obtained;

f. The Ward will be transported to Texas by suitable method of transport selected by the Florida Guardian in concert with his physician(s) and with whatever medical equipment determined by the Florida Guardian and his physician(s) is reasonably available to ensure the safe transport of the Ward;

g. The cost and payment for the Florida Guardian to initiate any petition or motion in the Florida court to implement guardianship proceedings in Texas, and any costs in Texas for the implementation of a guardianship, including, but not limited to court costs and attorney's fees and costs will be promptly paid by the trustee of the Oliver Bivins Management Trust. If, due to the failure of the Oliver Bivins Management Trust, to advance, or pay for such expenses, or the expenses of the Ward's transport to, or care in Texas, the Florida Guardian shall seek court approval to pay for same from the holdback amount from the proceeds of the 808 or 330 sale, whichever, the case, or for authorization to hold back further proceeds from the sale of 808 or 330.

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General Provisions

20. All pending adversary matters between the Guardian and Julian will be dismissed or withdrawn with prejudice, except as to the motion to enforce-Oliver II to comply with settlement with respect to rent proceeds, and other aspects which pertain to his permission to allow Beachton to use premises, as it affects the payment of the \$150,000 to the Estate of Lorna Bivins, ~~and a set off against amounts owed to Beachton~~ ^{Ms/Ka}


21. The settlement, and all provisions of this order, are subject to the jurisdiction of this Court and this Court will retain jurisdiction until all the terms and conditions of this settlement have been met and this Court shall always retain jurisdiction and authority to enforce this settlement and order as well as any previous orders entered by this Court.

22. Julian Bivins and Stephen Kelly, as Guardian of Oliver Bivins, Sr., shall exchange mutual general releases of all claims that existed on or before September 19, 2014.

23. All parties agree that time is of the essence in complying with all provisions of the contract(s) to purchase and all provisions thereto, the settlement and this order.

DONE AND ORDERED in Delray Beach, Palm Beach County, Florida on the

19 day of August, 2015.



MARTIN H. COLIN
Circuit Judge

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