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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 In re

12 THE ZUERCHER TRUST OF 1999,

13 Debtor.
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Case No. 12-32747 HLB

Chapter 11

**REPLY TO THE OPPOSITIONS TO
MOTION FOR ENTRY OF ORDER
APPROVING SALE PROCEDURES AND
OVERBID PROTECTIONS FILED BY 1)
SEQUOIA MORTGAGE CAPITAL, INC.;
2) STERLING HEATLEY; AND 3)
DEBTOR, THE ZUERCHER TRUST OF
1999; DECLARATION OF REAGAN E.
BOYCE**

Hearing Scheduled

Date: August 5, 2014

Time: 10:00 a.m.

Place: Courtroom 23

235 Pine Street

San Francisco, CA 94104

Judge: Hon. Hannah L. Blumenstiel

24 **COMES NOW** Peter S. Kravitz, the duly appointed, qualified and acting chapter 11 trustee
25 (“**Trustee**”) for the bankruptcy estate of debtor, The Zuercher Trust of 199, (“**Debtor**”) and herein
26 replies to the Limited Opposition by Sequoia Mortgage Capital, Inc. (“**Sequoia**”); the Partial
27 Opposition by Sterling Heatley (“**Heatley**”); and the Opposition of the Debtor to the Trustee’s
28 Motion for Entry of an Order Approving Sale Procedures and Overbid Protections in Connection

1 with the sale of Certain Real Property located at 2400-2420 Bayshore Blvd., San Francisco, CA
2 (“*Bayshore Property*”) free and clear of all Liens, Claims, Encumbrances and Interests; and
3 Scheduling an Auction for and Hearing to Approve the Sale (“*Bid Procedure Motion*”).

4 **I. REPLY TO SEQUOIA MORTGAGE CAPITAL, INC.’S LIMITED OPPOSITION**

5 Sequoia’s Limited Opposition is based on Sequoia’s contention that the Trustee should have
6 addressed the treatment of Sequoia’s senior lien on the Bayshore Property in the Bid Procedure
7 Motion; and that Sequoia opposes the Trustee’s stated intent to seek an order authorizing the Trustee
8 to execute those documents necessary to accomplish the sale, including execution of documents on
9 behalf of any lien holders. Sequoia’s opposition is premature as the Trustee has not yet filed his
10 motion seeking approval for sale of the Bayshore Property. The treatment of each and every lien on
11 the Bayshore Property will be fully addressed in the forthcoming motion seeking approval to sell
12 Bayshore Property (“*Sale Motion*”). However, the Trustee will acknowledge that he intends for the
13 lien of Sequoia to be paid in full from the net proceeds of the Bayshore Property sale.

14 As for Sequoia’s second ground for objection, the Trustee contemplates that he will need
15 Court authority to execute a deed granting title to the new owner of the Bayshore Property. It is not
16 contemplated that any additional documents will require the Trustee’s execution, however, the
17 Trustee reserves his right to seek a court order authorizing the Trustee to execute any document
18 necessary to accomplish the sale contemplated by the forthcoming Sale Motion, including any lien
19 holder whose cooperation cannot be reasonably obtained.

20 **II. REPLY TO STERLING HEATLEY’S PARTIAL OPPOSITION**

21 Heatley raises multiple points upon which his partial opposition is based. The Trustee will
22 address each in turn.

23 The first point of “opposition” is actually a suggestion. Heatley suggests that the Trustee
24 market the “auction” on the same platforms as the Bayshore Property itself was marketed for sale.
25 As set forth in the bid procedure motion, the Trustee intends to notify all interested parties of the
26 auction details, once approved by the Court. The Trustee has no objection to including the auction
27 details on the MLS and loop.net listing for the time period between approval of the bid procedures
28 and the auction date.

1 The second point of “opposition” concerns the Trustee’s business judgment regarding the
2 amount of deposit required for an interested purchaser to qualify as a bidder for the auction. Heatley
3 would impose his own opinion in place of the business judgment of the Trustee. The Trustee has
4 conducted numerous auctions for property through the bankruptcy process and believes that a
5 deposit of 25% of the bid amount is the appropriate deposit for overbidders to make. The pre-auction
6 period is thirty days so any deposit will only be “tied-up” for a short period of time. By requiring the
7 25% of bid amount as a deposit, the Trustee seeks a sufficient demonstration of intent and ability by
8 any interested purchaser. The Court should not to substitute Heatley’s judgment for that of the
9 Trustee’s.

10 The third point of “opposition” is again Heatley merely offering his own opinion to replace
11 the Trustee’s business judgment. The requirement to prove financial ability as a condition of
12 qualification is absolutely necessary. If a potential purchaser is allowed to enter the auction process
13 and enter a bid that he/she/it is unable to perform on the auction date will not serve the interests of
14 the estate, the Debtor or Heatley. The Trustee obtained a qualified opinion on the potential for
15 financing to purchase the Bayshore Property back in January when the property was first listed for
16 sale. (See Declaration of Phil Boersma ¶2). The expert opinions obtained in January made clear that
17 financing would be next to impossible for any purchaser to obtain in light of the present condition of
18 the property, and therefore marketing efforts should concentrate on cash purchases only, a point
19 raised by Trustee’s counsel at the prior hearing. The Trustee remains of the opinion that financing
20 for the Bayshore Property would be difficult at best. Therefore, the requested pre-qualification from
21 any bidder that will seek financing for all or part of the purchase is both appropriate and necessary.
22 Again, the court should not substitute Heatley’s opinion for the Trustee’s business judgment. This
23 point should be overruled by the Court.

24 The fourth point of “opposition” simply seeks to substitute Heatley’s opinion - that \$50,000
25 is a better initial overbid amount - for the Trustee’s business judgment which requested an initial
26 overbid amount of \$100,000. Again, Heatley’s opinion should not be substituted for the Trustee’s
27 business judgment.

28 The fifth point of “opposition” also seeks to substitute Heatley’s opinion for the Trustee’s

1 business judgment. Heatley seeks to impose his own opinion as to a bidder's qualifications to
2 participate in the overbid process – a task that should remain solely within the purview of the
3 Trustee. This point should also be overruled by the Court.

4 The sixth point addresses the July 2013 stipulation wherein the Trustee acknowledged the
5 11.5% interest of Heatley in the Bayshore Property and Heatley provided his agreement for the sale
6 of the Bayshore Property. As of the date of this reply, the Trustee has no intention of bringing an
7 action to avoid and recover as possibly fraudulent or preferential the transfer of the Debtor's 11.5%
8 interest in the Bayshore Property to Heatley. However, the deadline to bring any such action is
9 September 26, 2014 and the Trustee reserves all rights to reconsider his position up to and including
10 that deadline. The Trustee is not required to waive his rights in this matter. While the Trustee has
11 some serious concern over the acquisition of the 11.5% interest obtained by Heatley and his inability
12 to explain how he came to own such title interest, the Trustee also acknowledges that Heatley has
13 now aligned himself with the Trustee's position in this case. Specifically, Heatley has taken
14 aggressive action to protect potential assets of the estate by his state court action to appoint a
15 receiver over another property in which the estate may have an interest – 376 Ellis Street. The
16 Estate's interest is in the sale proceeds of the 22nd Street/ Guerrero Property sold by SF Corners LLC
17 in December 2011 which were then used to pay, in part, for the Ellis Street property. This estate
18 asset is currently the subject of the Trustee's pending motion for summary judgment against SF
19 Corners LLC in the related adversary proceeding. In light of this action on the part of Heatley, the
20 Trustee has decided not to pursue a challenge to Heatley's claim of 11.5% ownership in Bayshore
21 Property at this time.

22 The seventh and final point of "opposition" raised by Heatley is another "request." Heatley
23 requests that a separate escrow be opened for his portion of the net proceeds from the sale of the
24 Bayshore Property. The Trustee intends to distribute the net proceeds according to title. Therefore,
25 the Trustee is willing to segregate Heatley's 11.5% interest in the net proceeds until either the
26 expiration of the deadline to bring an avoidance action expires or a court order directing the
27 disbursement of the funds. The Trustee is concerned that a separate "escrow" is not necessary and
28 would only create additional expense and confusion.

1 **III. REPLY TO THE OPPOSITION OF DEBTOR, THE ZUERCHER TRUST OF 1999**

2 The first problem with the Opposition of the Debtor and Monica Hujazi (“*Hujazi*”) is the
3 inclusion of Hujazi in the Opposition papers. Monica Hujazi’s joinder in the Opposition only serves
4 to highlight her on-going interference with the Trustee’s efforts to administer this estate. Hujazi has
5 no standing on the pending Bid Procedure Motion as she has no interest in the subject property. The
6 Debtor and Heatley are the record title owners of the property and the only interested parties who
7 have an interest in the outcome of the Bid Procedure Motion.

8 **A. Debtor is Only Interested in Obstructing the Administration of the Estate by Re-**
9 **Hashing Its Argument on Appeal of the Court’s Prior Sale Order of June 10,**
10 **2013 –An Appeal Which is Still Pending Before the BAP**

11 The second problem with the Opposition papers is the obvious desperation of the Debtor (as
12 controlled by Hujazi) to obstruct the Trustee’s efforts to administer the estate. Debtor’s continued
13 attempts to re-argue motions and rulings which have already been resolved by this Court is a waste
14 of the Court’ time and resources and is causing unnecessary expense to the Debtor’s estate in
15 requiring a response from the Trustee. Contrary to the Debtor’s repeated claims, it is not the Trustee
16 who is causing unnecessary motions and hearings in this case, but rather the Debtor as orchestrated
17 by Hujazi. This Court’s June 10, 2013 Order approving the sale of the Los Angeles properties was
18 granted and properly implemented by the Trustee. Despite the Debtor re-hashing its position on
19 appeal in its Opposition papers to the Bid Procedure Motion, the Bankruptcy Appellate Panel has not
20 ruled decisively on the mootness issue as evidenced by its most recent order indicating that the
21 Merits Panel will take the mootness issue “under advisement;” and has not found bad faith on the
22 part of the Trustee or the creditor who purchased the Los Angeles Properties because no decision has
23 been entered. In a nutshell, the Trustee was unable to convey clear title to Vista because of the cloud
24 created by Debtor’s filing of its appeal, and in fact did not convey clear title to Win Win Alexandria
25 Union LLC, who took the properties without title insurance, a condition to which Vista was unable
26 and unwilling to agree.

27 **B. Debtor’s Opposition Lacks Merit and Fails to Raise Any New or Relevant Issues**

28 The record in this and other cases filed on behalf of an entity controlled by Hujazi

1 demonstrate that Hujazi is never satisfied or willing to accept a ruling against her. Hujazi, through
2 her various entities, is currently involved in three separate appeals of this Court's orders which were
3 entered in favor of the trustee appointed in the respective case or matter. (See *Monica Hujazi v. n.*
4 *14-01030 (In re North Oxford Bright Horizons Group, LLC, debtor)*; [sic] *Uptown Sterling, LLC,*
5 *Monica Hujazi v. Kravitz 14-01372; The Zuercher Trust of 1999 v Kravitz, Win Win 13-01299*).
6 Hujazi, acting through the Debtor, has opposed every effort by the Trustee to bring cash into the
7 estate in order to facilitate payment of creditors. The Opposition filed by Debtor seeks only to rehash
8 prior issues raised and addressed by this Court, or which are currently pending before the BAP. The
9 Debtor's Opposition lacks merit and fails to raise any new or relevant issues pertaining to the bid
10 procedure motion.

11 **C. Debtor Ignores The Full Record Provided By The Trustee In His Monthly Status**
12 **Reports**

13 Debtor complains that the Trustee did not set forth a historical record of the marketing efforts
14 undertaken by the Trustee's brokers in the Bid Procedure Motion. This objection completely ignores
15 the entire record presented by the Trustee in his monthly status reports to the Court which were filed
16 with regularity on or about the 14th of each month between January 2014 and the end of the court
17 ordered marketing period – June 27, 2014. [See docket #441, 455, 488, 497, 507 and 519]. The
18 details regarding the number of tours, the number of offers received by the Trustee's brokers, and the
19 number of "hits" and "views" on Loopnet and the MLS were set forth in each monthly report. The
20 Trustee's efforts to market the property have been fully disclosed to anyone willing to read the
21 record available. Marketing of Bayshore has been thorough and extensive. (Declaration of Phil
22 Boersma ¶11.) The proposed purchase price is the true indicator of fair market value based on the
23 location, condition and type of building that is the Bayshore Property. (Declaration of Phill Boersma
24 ¶11.) Debtor's desire for a higher valuation is not based on facts. (Declaration of Phill Boersma ¶2-
25 10.) The proposed price set forth by the Trustee is based on the actual facts and conditions present.
26 (Declaration of Phill Boersma ¶11.)

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1 **D. Veritas Was Not Interested In Buying The Bayshore Property For A Fair**
2 **Market Price**

3 The Trustee did not disclose the details of the contingent contract with proposed purchaser
4 Veritas for good reason - opinions and demands by Veritas were not positive or conducive to
5 soliciting new or additional offers for Bayshore. In fact, the Trustee believes that certain positions
6 taken by Veritas were intended to drive the sale price down – a plan with which the Trustee did not
7 agree and hence no contract was finalized. However, all due diligence performed by Veritas has
8 been made available to any party interested in the Bayshore Property, including the current proposed
9 purchaser Mr. Zeidan. Veritas was unwilling to purchase Bayshore Property for a price above \$3
10 million in its current condition. While the Trustee and his brokers disagree with the Debtor's
11 valuation of the property, the Trustee on the advice of his brokers has always sought a sale price in
12 the \$3 to \$3.5 million range.

13 **E. Debtor Ignores The Actual Condition Of The Property And Insists On**
14 **Overvaluing The Property In An Idealized Condition Which Does Not Currently**
15 **Exist**

16 The Bayshore Property is what it is and the Trustee will not hide or ignore its actual
17 condition, unlike Debtor, Hujazi and the appraiser hired by Hujazi. The proposed sale price to Mr.
18 Zeidan reflects the fair market value for the Bayshore in an "AS-IS" condition. There is no money
19 available for the estate to remodel or repair the vacant commercial spaces. There is no money
20 available for the estate to repair any non-essential, non-safety issues with the property. Therefore,
21 the market value of the Bayshore Property is not in the unrealistic range that Debtor opines should
22 apply, but rather takes into account the actual condition of the property as it currently exists. The
23 condition of the Bayshore Property is set forth in the pictures attached hereto as exhibits 1-41. (See
24 Declaration of Reagan E. Boyce)

25 The Trustee did not obtain an appraisal as one was not necessary. The list price was
26 determined by the brokers based on their own research and investigation and long-standing
27 experience in the San Francisco real estate market, as well as the opinions of both a commercial
28 leasing expert and a financing expert both of whom evaluated the Bayshore Property in its actual

1 (not an idealized) condition and compared the property to true comparables, not the most high priced
2 and prosperous neighborhoods in San Francisco. (Declaration of Phill Boersma ¶2.) Debtor re-argues
3 that it has obtained an appraisal by Kenneth Matlin who gave a highly inflated value range of \$4.5
4 million to \$5.7 million. The problem with Debtor's argument and Matlin's appraisal is that it does
5 not compare the Bayshore Property to similar properties in similar condition in similar
6 neighborhoods. (Declaration of Phill Boersma ¶3-10.) Instead Matlin compares the Bayshore
7 Property (if it could be fully rented today – an impossible event) which is located in one of the most
8 depressed areas of San Francisco to similar type properties located in Nob Hill and The Cove – two
9 of the most expensive neighborhoods in San Francisco. Neither Debtor nor Matlin are in touch with
10 reality.

11 The inadequacy of the Matlin appraisal was set forth in the declaration of Matt Sheridan filed
12 in relation to the previous bid procedure motion filed in February. The errors and omissions of the
13 Matlin appraisal are again reviewed and discussed in the declaration of Phill Boersma, also of ARA
14 Pacific, filed in support hereof. (Declaration of Phill Boersma ¶3-10).

15 In addition, Debtor tries to disparage the Trustee by claiming that the Bayshore Property has
16 declined in condition since placed under the Trustee's control. The exact opposite is the truth. The
17 Trustee has managed to have two notices of violation completely removed, and has overseen
18 completion of work to remove two more, pending final inspections and some additional work to
19 repair non-life/safety issues which will have to wait for an adequate budget. (Declaration of Nicholas
20 Scarabosio ¶2.) In addition, the allegation that the Trustee has allowed graffiti to accumulate on the
21 Bayshore Property is ridiculous. Yes, the Bayshore Property has been the target of graffiti, but when
22 it has occurred – all of two occasions since the Trustee took over - it is immediately removed by the
23 Trustee's property manager. (Declaration of Nicholas Scarabosio ¶3.) The current "AS-IS" condition
24 of the Bayshore Property has been amply documented and supports both the Trustee's
25 representations and the proposed purchase price. (Declaration of Reagan E. Boyce, Esq. ¶2.)

26 **F. Debtor Does Not Have A Realistic Understanding Of Its Financial Condition**

27 As was made clear from the hopelessly inadequate "reorganization plan" recently filed by
28 Debtor, neither Debtor nor Hujazi have a realistic appreciation for the financial condition of the

Debtor. Debtor, under the control of Hujazi, has accumulated millions of dollars in debt consisting of defaulted mortgages, monetary judgments, and unpaid attorneys and accountants' fees. At the same time, Debtor, under the control of Hujazi, has allowed the assets of Debtor to fall into disrepair, and accumulate debt over and above their value, (for example the Alexandria and Union properties) thus depleting the resources available to pay creditors. As it currently stands, the Bayshore Property does not provide sufficient net income to finance a reorganization plan. Debtor and Hujazi, through their own actions, have made reorganization an impossibility, and the sooner they come to terms with that fact the sooner they will stop causing the estate to incur even more unnecessary expense to the detriment of its creditors. Liquidation of the Bayshore Property will be required as part of the resolution of this case. Whether it occurs now at the end of a successful marketing period, or is held over until a future date when the estate will have to expend additional time and resources to re-market the property, the Bayshore Property will have to be sold to pay creditors of the estate. A liquidation plan is currently under preparation by the Trustee, which will be filed before the Court ordered deadline of September 19, 2014.

IV. CONCLUSION

On a final note, the Trustee has had three different contingent buyers for the Bayshore Property, all of whom have backed out. The Bayshore Property is not a prime piece of real estate with a line of buyers fighting for the chance to purchase the property. Any contention otherwise is nothing more than wishful thinking. The condition of the property is "AS-IS WITH ALL FAULTS." However, the Trustee has a buyer under contract and willing to commit to the purchase of the property for a reasonable and fair market price in an "AS-IS" condition. If bid procedures are not approved, this sale will also fall through and the estate will be back at square one. The Trustee therefore asks the Court to approve bid procedures and allow this sale to move forward to the next stage in a timely manner.


For the reasons set forth herein, the Trustee respectfully requests that the Court overrule the Limited Opposition of Sequoia Mortgage Capital, Inc.; overrule the Partial Opposition of Sterling Heatley; overrule the Opposition of Debtor and Monica Hujazi; grant the Trustee's Motion; approve the proposed sale procedures and overbid protections; and set a hearing date for the Trustee's Sale

1 Motion and Auction.

2 Respectfully submitted.

3 DATED: July 31, 2014

EZRA BRUTZKUS GUBNER LLP

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5 By: 
6 Reagan E. Boyce
7 Attorneys for, Peter S. Kravitz,
8 Chapter 11 Trustee
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DECLARATION OF REGAN E. BOYCE, ESQ.

I, REAGAN E. BOYCE, declare:

1. I am an attorney in good standing duly qualified to practice before this Court and am an attorney with the law firm of Ezra Brutzkus Gubner, counsel of record for Peter S. Kravitz the duly appointed and acting chapter 11 trustee for the bankruptcy estate of debtor, The Zuercher Trust of 1999. I have personal knowledge of the following facts and if called as a witness to testify, I could and would competently so do.

2. On January 10, 2014 I was in San Francisco for the deposition of Monica Hujazi in relation to the adversary proceeding *Kravitz v Peninsula Commons, LLC, et al* proceeding number 13-03046-HLB. Following completion of testimony, I toured the Bayshore Property and took pictures of the building and property as they existed at that time. Attached hereto are a representative sample of the pictures I took. I understand from Nick Scarabosio, the Trustee's property manager that some of the conditions depicted that affected the life and safety of the tenants have now been corrected, but most of the conditions depicted, especially the vacant commercial spaces remain unchanged.

3. Exhibits numbered 1 through 4 depict the Bayshore residential portion of the property including the entrance and interior common areas.

4. Exhibits numbered 5 through 12 depict the Bayshore residential portion of the property including the exterior courtyard.

5. Exhibits numbered 13 through 16 depict the Bayshore commercial portion of the property, and specifically the incomplete and non-operating "laundry mat."

6. Exhibits numbered 17 through 19 depict the streetfront view of the property including the both Bayshore and Leland Avenues.

7. Exhibits numbered 20 through 25 depict the Leland Unit #5 commercial portion of the property, depicting interior, floor and ceiling views.

8. Exhibits numbered 26 through 30 depict the Leland Unit #7 commercial portion of the property, depicting interior, floor and ceiling views.

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9. Exhibits numbered 31 through 38 depict the Leland Unit #9 commercial portion of the property, depicting front entrance, interior, floor and ceiling views.

10. Exhibits numbered 39 through 40 depict the Leland Unit #11 and #13 residential portion of the property, depicting street front views.

11. Exhibit number 41 depicts the street front view of Leland #9 as of January 10, 2014 at the time the property manager was just commencing his duties. The sign was placed on the property presumably by Monica Hujazi on behalf of Bay Cities Properties, and left in place despite the Court's December 30, 2013 Order for contempt against Ms. Hujazi. I understand that the sign was thereafter removed by the property manager.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of July, 2014 in Woodland Hills, California.

Reagan E. Boyce, Esq.