

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

SHIRLEY WERNER KORNREICH

PRESENT:

KORNREICH J.S.C.

Justice

PART

54MOLINA, JUAN CARLOS, ETAL

-v-

JAMES CHLADEK

INDEX NO.

603763/06

MOTION DATE

MOTION SEQ. NO.

09

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

No(s). _____

Answering Affidavits — Exhibits _____

No(s). _____

Replying Affidavits _____

No(s). _____

Upon the foregoing papers, It is ordered that this motion is

granted as per the
hearing record and annexed order

Scanned to File on 4/28/15

Dated:

4/28/15SHIRLEY WERNER KORNREICH J.S.C.

1. CHECK ONE:

☒ CASE DISPOSED☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: MOTION IS:

☐ GRANTED☐ DENIED☐ GRANTED IN PART☐ OTHER

3. CHECK IF APPROPRIATE:

☐ SETTLE ORDER☐ SUBMIT ORDER☐ DO NOT POST☐ FIDUCIARY APPOINTMENT☐ REFERENCEMOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

ORDER-

At IAS Part 54 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse located at 60 Centre Street, New York, New York on the 11 day of April, 2015

PRESENT:

HON. SHIRLEY WERNER KORNREICH

Justice of the Supreme Court

-----X
JUAN CARLOS MOLINA,

Index No. 603763/2006

Plaintiff/Judgment Creditor,

**ORDER APPROVING SALE
BY COURT-APPOINTED
RECEIVER**

TOTALBANK,

Intervenor/Judgment Creditor,

-against-

JAMES CHLADEK,

Defendant/Judgment Debtor.

-----X

ANTHONY MURRAY ESQ., ("The Receiver") having moved this Court for an Order approving the sale of certain property of Defendant/Judgment Debtor JAMES CHLADEK, pursuant to the Order of this Court dated February 6, 2015 appointing ANTHONY MURRAY ESQ. Receiver nunc pro tunc as of July 11, 2014 under CPLR 5228 to enforce:

- [a] the Judgment entered in this action on October 9, 2008, in favor of Plaintiff/Judgment Creditor JUAN CARLOS MOLINA against Defendant/Judgment Debtor JAMES CHLADEK, in the sum of TWO MILLION, FIVE HUNDRED FORTY-THREE THOUSAND, SIX HUNDRED FIFTY-NINE DOLLARS AND THIRTY-FIVE CENTS (\$2,543,659.35), and

[b] the Judgment issued by the Circuit Court of the 11th Judicial Circuit in and for Miami- Dade County in the State of Florida on July 16, 2012 under Case No. CA09-93306 CA 04, and thereafter filed and docketed by the County Clerk of the County of New York on August 28, 2012 under Index No. 103644/2012, pursuant to CPLR section 5402 in favor of Intervenor/Judgment Creditor TOTALBANK against Defendant/Judgment Debtor JAMES CHLADEK in the sum of ONE MILLION, TWELVE THOUSAND, ONE HUNDRED THIRTY FIVE DOLLARS AND NINETY-FOUR CENTS (\$1,012,135.94); and

The Receiver, having been authorized and empowered by the aforesaid Order of this Court dated February 6, 2015, to take control over all broadcast licenses issued by the Federal Communications Commission ("FCC") to Judgment Debtor JAMES CHLADEK, nunc pro tunc as of July 11, 2014, including the following:

<u>CALL SIGN</u>	<u>LICENSE CLASS</u>	<u>LOCATION</u>	<u>FCC FACILITY ID #</u>
WPMF-CD	Class A	Miami, Florida	30129
WSCF-LP	TV Translator	Melbourne, Florida	15758
W05CJ	TV Translator	Key West, Florida	125642
W10CQ	TV Translator	Key West, Florida	125650

and to seek FCC permission to transfer any or all of the broadcast licenses, and to sell such licenses either individually or jointly, as well as any broadcasting equipment and broadcast facilities that are owned by the Judgment Debtor JAMES CHLADEK, for the best price or prices that the Receiver can obtain with the terms of any sale to be subject to the approval and further Order of this Court; and

The Receiver, having presented acceptable proof to this Court that the FCC, on or about February 23, 2015 granted the Receiver's application to transfer the four (4) broadcast licenses

identified above to the Receiver and duly transferred the broadcast licenses to the Receiver; and

On or about February 26, 2015 the Receiver entered into a binding contract, as amended on April 3, 2015 ("Letter Agreement") to sell the Class A broadcast license for station WPMF-CD in Miami, Florida, FCC Facility ID#30129 (the "License") to Purchaser Prime Time Partners, LLC, or its designated subsidiary or affiliate, having an address at 2520 NW 75th Avenue, Suite 229, Doral, Florida 33172 (the "Purchaser") for the agreed price of SEVEN MILLION DOLLARS (\$7,000,000.00) (the "Purchase Price"), subject to the approval of this Court and subject to the approval of the FCC; and

The Receiver having adequately marketed the License and having advised this Court that after reasonable and diligent efforts on the part of the Receiver, the Seven Million Dollar (\$7,000,000.00) Purchase Price was substantially more than the best offer that the Receiver obtained from all other parties who expressed interest in purchasing the license before the Receiver entered into the Letter Agreement with PTP, and the Receiver having advised the Court that the Purchase Price is fair and reasonable under the circumstances; and

The Receiver and Purchaser having proposed, negotiated and entered into the Letter Agreement for the sale of the Property without collusion, in good faith, and at arms'-length bargaining positions, and the Purchaser being a good faith purchaser; and

The Purchaser not being willing to purchase the License unless the License is sold free and clear of all liens, claims and encumbrances; and

The Receiver having provided adequate notice of the sale of the License to Juan Carlos Molina and TotalBank, both as judgment creditors, and to James Chladek, as the judgment debtor; and

The Purchaser, on March 4, 2015, having transferred into the Receiver's special escrow Receivership Account the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00), which is five percent (5%) of the Purchase Price that is required to be paid as a deposit under the terms of the Letter Agreement, and which sum the Receiver is holding in escrow pursuant to the terms of the Letter Agreement; and

The Purchaser having performed its due diligence and having advised the Receiver that it is ready, willing and able to proceed to finalize the purchase pursuant to the Letter Agreement;

NOW, upon reading and filing of the Order to Show Cause dated April 16, 2015, the supporting Affirmation of ANTHONY MURRAY, ESQ. dated April 14th, 2015, and the exhibits thereto consisting of;

EXHIBIT A – Order of this Court dated February 6th, 2015 and entered on February 10th, 2015 appointing the Receiver *nunc pro tunc*;

EXHIBIT B – Consent of the Federal Communications Commission of the assignment of the FCC Licenses to the Receiver dated February 23rd, 2015;

EXHIBIT C – The Letter Agreement between the Receiver and Prime Time Partners, LLC to sell the FCC License WPMF-CD, dated February 26th, 2015 as amended on April 3rd, 2015

and after hearing from the other parties,
Now, upon motion of the Receiver ANTHONY MURRAY, ESQ | it is,

ORDERED, that the motion to have this Court approve the sale of the License to the Purchaser, Prime Time Partners, LLC, or its designated subsidiary or affiliate, having an address at 2520 NW 97 Avenue, Suite 220, Doral, Florida 33172, for the price of SEVEN MILLION DOLLARS (\$7,000,000.00) and pursuant to the Terms and Conditions of the Letter Agreement, is granted in all respects and the sale is hereby approved; and it is further

ORDERED, that the Receiver is authorized, empowered and directed to take all necessary, appropriate and lawful actions to consummate the transaction set forth in the Letter Agreement, including obtaining approval from the FCC to transfer the License to the Purchaser; and it is further

ORDERED, that upon the FCC consent to the assignment of the License from the Receiver having become a Final Order, then pursuant to the Letter Agreement the Purchaser shall pay to the Receiver the balance of the Purchase Price in the sum of Six Million, Six Hundred and Fifty Thousand Dollars (\$6,650,00.00), pursuant to the terms of the Letter Agreement; and it is further

ORDERED, that the Receiver shall hold all funds received from the Purchaser in escrow pending an Order from of this Court directing the manner in which such funds shall be distributed; and it is further

ORDERED, that the transfer of the License to the Purchaser shall be free and clear of each and every claim of any kind or nature whatsoever, including but not limited to any pledge, assignment, security interest, encumbrance, lien, charge, hypothecation, deemed trust, cause of action, charge, option, warrant, right of possession, or restrictive covenant, whether direct or indirect, monetary or non-monetary, arising at law or in equity, contract or tort, absolute or contingent, matured or unmatured, voluntary or involuntary, liquidated or unliquidated, of, by or against the Judgment Debtor; and it is further

ORDERED, that the purchase of the License by the Purchaser shall not cause the Purchaser or its affiliates, successors or assigns or their respective properties to be deemed a successor in any respect of the Judgment Debtor within the meaning of any laws, rules or regulations relating to any tax, revenue, pension, benefit, ERISA, environmental, labor, employment, products liability or other

law, rule or regulation of any federal, state or local government; and it is further

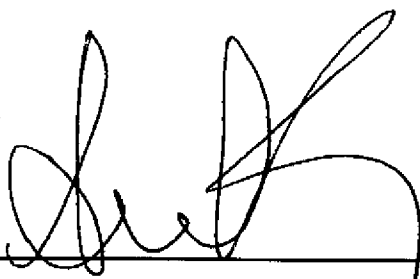
ORDERED, that any objections to the entry of this Order or to the relief granted and requested in connection therewith that have not been withdrawn, waived or settled at or before the before the entry of this Order are denied and overruled on the merits; and it is further

ORDERED, that to the maximum extent permitted by law, the Receiver, his agents, attorneys, consultants and employees shall be held harmless and exculpated from any damages or liability that may arise through the discharge of their duties performed in relation to the Letter Agreement and the sale to the Purchaser of the License which are the subject of that Letter Agreement; and it is further,

ORDERED, that this Order shall be binding on all creditors of the Judgment Debtor who have asserted or who may in the future assert claim or demands as against the License and/or the Assets; and it is further,

ORDERED, that the Judgment Debtor and all persons making any claim under or through the Judgment Debtor subsequent to July 11, 2014, the date of the appointment of the Receiver nunc pro tunc be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the License and Assets which are the subject of the Letter Agreement, and each and every part thereof.

ENTER:



SHIRLEY WERNER KORNREICH
Justice Supreme Court
SHIRLEY WERNER KORNREICH
J.S.C.

4/28/15