

Secured Creditor's Last-Minute Credit Bid Rejected at Receivership Auction

Description

By [Daniel E. Burgoyne](#)

Associate Justice Brian P. Stern of the Rhode Island Superior Court recently issued a notable decision arising from a receiver's sale of commercial real estate in Providence, Rhode Island. The Decision, entitled *Rialto Capital Advisors LLC v. Robert Day, LLC*, C.A. No. PC-2020-06964 (R.I. Super. Dec. 22, 2021, Stern, J.), is linked [here](#). The Decision explains the Court's rationale for rejecting an eleventh-hour motion by a secured creditor to authorize credit bidding on its collateral at a receiver's sale.

In support of its Decision, the Court cited the secured creditor's "inequitable conduct" in failing to comply with bid procedures established in an Order issued almost three weeks before the auction of which the secured creditor was fully aware. Those bid procedures included requirements to (i) submit any competing bid at least 7 days prior to the auction, (ii) tender a \$100,000 deposit, and (iii) execute a purchase agreement with the receiver. The secured creditor did not comply with any of these procedures.

Moreover, for reasons not explained in the Decision, the secured creditor did not seek authority to credit bid almost a year earlier when, in December 2020, it sought allowance of its \$19 million mortgage claim on the property. Secured creditors typically request authority to credit bid at the time that they seek allowance of their claim. Absent unusual facts or circumstances, courts routinely grant such requests.

At a hearing held on the morning of the auction, the Court rejected the secured creditor's last-minute motion, filed after 5 p.m. the prior evening, for authority to credit bid at the auction. The prevailing bid price at the ensuing auction was \$6.55 million. Then after the auction, the Court overruled the secured creditor's objection to the sale and rejected a further request to submit a post-auction credit bid which, at a price of \$9.5 million, substantially exceeded the prevailing bid. The Decision relied both on analogous decisions applying the U.S. Bankruptcy Code and common-law equitable principles inherent in receivership proceedings. To protect the integrity of the judicial system and the bidding process, which the Court found was conducted without reproach, the Court honored the prevailing bid, and rejected the proposed credit bid, even though the end result meant that less value was delivered into the receivership estate.

The Decision is notable for several reasons:

- Apart from calling out the secured creditor's untimely actions, the Decision contains a step-by-step outline of a marketing and auction process that is customary in Rhode Island receiverships, and is a useful guide to those interested in future receivership sales.
- According to the Decision, the Rhode Island Supreme Court has never addressed issues concerning credit bidding, late bidding, or how to determine the "highest and best offer" at a receivership sale. The Supreme Court may now get that chance. While no appeal has yet been filed, the deadline to appeal has not passed as of this writing.
- As for the Decision's guidance to secured creditors and their counsel in receiverships, always be prepared for potential disputes concerning collateral disposition, take timely action to obtain authority to credit bid, and be diligent to ensure compliance with any applicable court ordered bid procedures.

Partridge Snow & Hahn's [Commercial Restructuring, Workouts & Asset Recovery Team](#) is ready to answer questions regarding the implications of this decision. For more information, contact Attorney [Daniel E. Burgoyne](#).

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