

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX**

**ALEX BOYAR, et al.,**

**Plaintiffs,**

**v.**

**Civil Action No.**

**BLACKACRE 1031 EXCHANGE  
SERVICES, LLC, et al.,**

**Defendants.**

**ORDER APPOINTING RECEIVER**

THIS MATTER CAME ON motion by Plaintiffs Alex Boyar, Nancy Cohen aka Nancy Boyar, Anthill Capital Group LLC, Fells Point Bond LLC, and PS25 Investments LLC (collectively the "Plaintiffs"), by counsel, to appoint a receiver of the estate and assets of Defendant Blackacre 1031 Exchange Services, LLC ("Blackacre"); and

UPON CONSIDERATION of the arguments of counsel and the evidence presented by the parties; and

IT APPEARING that the appointment of a receiver in this action is consented to, and otherwise necessary and appropriate for the purposes of marshaling and preserving all assets—in any form or of any kind whatsoever—owned, controlled, managed, or possessed by Defendant Blackacre 1031 Exchange Services, LLC, directly or indirectly ("Blackacre's Assets").

**NOW THEREFORE, IT IS HEREBY ORDERED:**

1. The Court hereby takes exclusive jurisdiction and possession of Blackacre's Assets, of whatever kind and wherever situated.
2. Until further order of the Court, John. P. McGeehan, Esq. of McGeehan Pascale, PLC, 11211 Waples Mill Road, Fairfax, VA 22030, is hereby appointed to serve as receiver (the

“Receiver”) for the estate of Blackacre and of Blackacre’s Assets.

### I. Asset Freeze

3. Except as otherwise specified herein, all of Blackace’s Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any of Blackacre’s Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such assets. All persons and entities with direct or indirect control over any of Blackacre’s Assets are ordered to relinquish such control to the Receiver. This freeze includes, but is not limited to, Blackacre’s Assets that are on deposit with financial institutions such as banks, brokerage firms, and mutual funds.

### II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of Blackacre under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements, in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of Virginia Code §§8.01-582 et seq.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of Blackacre are hereby dismissed, and the powers of any general partners, directors, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to Blackacre’s operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of Blackacre and shall pursue and preserve all of its claims.

6. No person holding or claiming any position of any sort with Blackacre shall possess

any authority to act by, or on behalf of, Blackacre.

7. Subject to the specific provisions below, the Receiver shall have the following general powers and duties:

A. To use reasonable efforts to determine the nature, location, and value of all Blackacre's Assets, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, that Blackacre owns, possesses, has a beneficial interest in, or controls directly or indirectly;

B. To take custody, control, and possession of all of Blackacre's Assets and records relevant thereto from Blackacre; to sue for and collect, recover, receive, and take into possession from third parties all of Blackacre's Assets and records relevant thereto;

C. To manage, control, operate, and maintain Blackacre and hold in his possession, custody, and control all Blackacre's Assets, pending further order of the Court;

D. To use Blackacre's Assets for the benefit of Blackacre, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;

E. To take any action that, prior to the entry of this order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the Blackacre;

F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;

G. To take such action as necessary and appropriate for the preservation of Blackacre's

Assets or to prevent the dissipation or concealment of Blackacre's Assets;

H. To issue subpoenas for documents and testimony consistent with the rules and statutes of Virginia;

I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;

J. To pursue, resist, and defend all suits, actions, claims, and demands that may now be pending or that may be brought by or asserted against Blackacre; and,

K. To take such other action as may be approved by the Court.

### III. Access to Information

8. Defendant Robert Levenson and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the Blackacre, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, Blackacre and/or all of Blackacre's Assets; such information shall include, but not be limited to, books, records, documents, accounts, and all other instruments and papers.

9. Within seven (7) days of the entry of this order, Levenson and Blackacre shall file with the Court, and serve upon the Receiver and Plaintiffs's counsel a sworn statement, listing: (a) the identity, location, and estimated value of all of Blackacre's Assets; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of Blackacre; and (c) the names, addresses, and amounts of claims of all known creditors of Blackacre.

10. Within thirty (30) days of the entry of this order, the Defendants shall file with the Court and serve upon the Receiver and the Plaintiffs a sworn statement and accounting, with

complete documentation, covering the period from January 1, 2013 to the present:

A. of all of Blackacre's Assets, wherever located, held by, or in the name of, Blackacre, or in which it, directly or indirectly, has or had any beneficial interest, or over which it maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage, or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;

B. identifying every account at every bank, brokerage, or other financial institution: (a) over which Blackacre has signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, Blackacre;

C. identifying all credit, bank, charge, debit, or other deferred payment card issued to, or used by, Blackacre, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve (12) months;

D. of all assets received by Blackacre from any person or entity, including the value, location, and disposition of any assets so received;

E. of all funds received by Blackacre, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Plaintiffs' complaint. The submission must clearly

identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;

F. of all expenditures exceeding \$1,000 made by Blackacre, including those made on their behalf by any person or entity; and

G. of all transfers of assets made by Blackacre.

11. Unless the Court, on motion of Blackacre, orders otherwise, within thirty (30) days of the entry of this order, Blackacre shall provide to the Receiver and the Plaintiffs copies of Blackacre's federal income tax returns for 2013 to present, if filed, with all relevant and necessary underlying documentation.

12. Subject to any applicable rights under the Fifth Amendment to the United States Constitution and similar rights under Virginia's Constitution, Mr. Levenson and Blackacre's past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions that the Receiver may put to them and produce all documents as required by the Receiver regarding the business of Blackacre, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to Blackacre. If the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make his discovery requests in accordance with the rules and statutes of Virginia.

13. Blackacre and Levenson are required to assist the Receiver in fulfilling his duties and obligations. As such, subject to any applicable rights under the Fifth Amendment to the United States Constitution or similar rights under Virginia's Constitution, it must respond promptly and truthfully to all requests for information and documents from the Receiver.

## II. Access to Books, Records and Accounts

14. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books, and records and all other documents or instruments relating to Blackacre. All persons and entities having control, custody, or possession of any of Blackacre's Assets are hereby directed to turn over such property to the Receiver, including all information to electronically access online records of financial institutions including without limitation CapitalOne Bank, N.A. and MVB Bank, such as but without limitation login credentials, key fob/random number generators, passkeys, passwords, and challenge images or answers.

15. Blackacre, as well as its agents, servants, employees, attorneys, any persons acting for or on behalf of Blackacre, and any persons receiving notice of this order by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of Blackacre are hereby directed to deliver the same to the Receiver, his agents, and/or employees.

16. All banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of Blackacre that receive actual notice of this order by personal service, facsimile transmission, or otherwise shall:

A. not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of, or for the benefit of, Blackacre, except upon instructions from the Receiver;

B. not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control, without the permission of the Court;

C. within seven (7) days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Plaintiffs a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,

D. cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver, or at the direction of the Receiver.

### III. Access to Real and Personal Property

17. The Receiver is authorized to take immediate possession of all personal property of Blackacre, wherever located, including but not limited to, electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

18. Upon 24 hours' notice by the Receiver given via email to Defendant Robert Levenson at robert@blackacre1031.com, the Receiver is authorized to access any real property owned or occupied by Blackacre or Levenson, wherever located, including, but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this order by personal service, facsimile transmission, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing, or erasing anything on such premises.

19. The Receiver is authorized to open all mail directed to, or received by, or at the



offices or post office boxes of Blackacre, and to inspect all mail opened prior to the entry of this order, to determine whether items or information therein fall within the mandates of this order.

20. Upon the request of the Receiver, the Sheriff, is hereby ordered to assist the Receiver in carrying out his duties to enter into any property occupied by Defendant Levenson and take possession, custody, and control of, or to identify the location of, any assets, records, or other materials belonging to Blackacre.

#### IV. Notice to Third Parties

21. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of Blackacre, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

22. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Blackacre shall, until further ordered by the Court, pay all such obligations in accordance with the terms thereof to the Receiver, and his receipt for such payments shall have the same force and effect as if Blackacre had received such payment.

23. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and serve this order on, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of Blackacre. All government offices that maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this order upon the request of the Receiver or the Plaintiffs.

24. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail that is related, directly or indirectly, to the business, operations, or activities of any of

Blackacre (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, Blackacre. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. Blackacre shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of Levenson, and/or any mail appearing to contain privileged information related to Levenson, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business, or service, or mail courier or delivery service, hired, rented, or used by Blackacre. Blackacre shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this order, whether through the U.S. mail, a private mail depository, or courier service.

25. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to Blackacre shall maintain such service and transfer any such accounts to the Receiver, unless instructed to the contrary by the Receiver.

26. The Receiver is authorized to assert, prosecute, and/or negotiate any claim under any insurance policy held by or issued on behalf of Blackacre, or its officers, directors, agents, employees or trustees, and to take any and all appropriate steps in connection with such policies.

V. Injunction Against Interference with Receiver

27. Blackacre and all persons receiving notice of this order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, that would:

A. interfere with the Receiver's efforts to take control, possession, or management of any of Blackacre's Assets; such prohibited actions include, but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any Court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of, or interfering with or creating or enforcing a lien upon, any of Blackacre's Assets;

B. hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include, but are not limited to, concealing, destroying, or altering records or information;

C. dissipate or otherwise diminish the value of any of Blackacre's Assets; such prohibited actions include, but are not limited to, releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any of Blackacre's Assets, enforcing judgments, assessments, or claims against any of Blackacre's Assets or Blackacre, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by Blackacre or that otherwise affects any of Blackacre's Assets; or,

D. interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over Blackacre.

28. Blackacre and Levenson shall cooperate with and assist the Receiver in the performance of his duties.

29. The Receiver shall promptly notify the Court and the Plaintiffs' counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this order.

#### VI. Managing Assets

~~4~~ 30. For Blackacre, the Receiver shall establish one or more custodial accounts at a

federally insured bank to receive and hold all cash equivalent of Blackacre's Assets (the "Receivership Fund").

31. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Blackacre 1031 Exchange Services, LLC," together with the name of the action.

32. The Receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any of Blackacre's Assets, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to Blackacre, and with due regard to the realization of the true and proper value of such Blackacre's Assets.

33. Subject to paragraph 34, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property of Blackacre, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to Blackacre, and with due regard to the realization of the true and proper value of such real property.

34. Upon further order of this Court, pursuant to such procedures as may be required by this Court, the Receiver is authorized to sell, and transfer clear title to, all real property in Blackacre.

35. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of Blackacre, including making legally required payments to creditors, employees, and agents of Blackacre and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

#### VII. Investigate and Prosecute Claims

36. Subject to the requirement, in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to

investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in his discretion, and in consultation with the Plaintiffs' counsel, be advisable or proper to recover and/or conserve Blackacre's Assets.

37. Subject to his obligation to expend Receivership Funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of Blackacre were conducted and (after obtaining leave of the Court) to institute such actions and legal proceedings, for the benefit and on behalf of Blackacre, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from the Court as may be necessary to enforce this order. Where appropriate, the Receiver should provide prior notice to the Plaintiffs' counsel before commencing investigations and/or actions.

38. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by Blackacre. This paragraph does not apply to any applicable rights under the Fifth Amendment to the United States Constitution or similar Virginia constitutional provisions.

39. The Receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and Blackacre.

#### VIII. Bankruptcy Filing

40. The Receiver may seek authorization of the Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for Blackacre. If

Blackacre is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate Blackacre as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to paragraph 4 above, the Receiver is vested with management authority for Blackacre and may therefore file and manage a Chapter 11 petition.

41. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing Blackacre in bankruptcy proceedings.

IX. Liability of Receiver

42. Until further order of the Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

43. The Receiver and his agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and orders of this Court and shall not be liable to anyone for their own good faith and honest in fact compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

44. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

45. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Plaintiffs' counsel of record and the Court of his intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

## X. Recommendations and Reports

46. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation, if recommended, of all remaining, recovered, and recoverable Receivership Assets (the "Liquidation Plan").

47. As soon as practicable, the Receiver shall file an initial status report with the Court. The initial status report shall include a summary of receivership activities to date. It shall also include a proposed plan for administering the receivership going forward, and if a Liquidation Plan is contemplated. The Receiver's fees—including all fees and costs for the Receiver and others retained to assist in the administration and liquidation of Blackacre will be set by the Court after the Receiver submits the initial status report.

48. The Receiver is authorized and directed to file and serve a additional and periodic status reports of Blackacre, reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all of Blackacre's Assets, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of Blackacre, containing any such information deemed relevant to the Receiver and related to this Order and any recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

## XI. Fees, Expenses and Accountings

49. Subject to paragraphs 50 through 52 immediately below, the Receiver need not obtain Court approval prior to the disbursement of cash in the Receivership Fund for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state, or local taxes.

50. Subject to paragraph 51 immediately below, the Receiver is authorized to solicit

persons and entities to be Retained Personnel to assist him in carrying out the duties and responsibilities described in this Order. The Receiver may engage Retained Personnel without obtaining an order of the Court authorizing such engagement.

51. Subject to the limitations in paragraph 47 above, the Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from Blackacre agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

52. The Receiver shall apply to the Court for compensation and reimbursement from Blackacre's Assets and shall provide the Plaintiffs, Defendants, and all other interested parties who have requested notice of such applications with copies of such applications and pleadings associated with such applications.

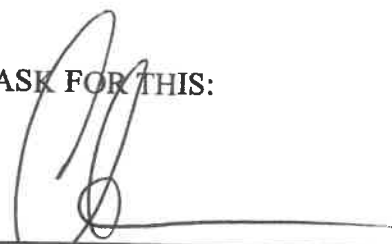
53. At the close of the Receivership, the Receiver shall submit a final report and final application for compensation and expense reimbursement.

IT IS SO ORDERED.

Entered this 29 day of October, 2019.

  
\_\_\_\_\_  
Judge, Circuit Court

I ASK FOR THIS:

  
\_\_\_\_\_  
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**Counsel for Plaintiffs**


A COPY TESTE:  
JOHN T. FREY, CLERK

BY: Elkshnaveni Tammireddy  
Deputy Clerk

Date: 10-29-2019  
Original retained in the office of  
the Clerk of the Circuit Court of  
Fairfax County, Virginia



SEEN AND Objected : For all reasons stated  
on the record.

  
\_\_\_\_\_  
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