

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 23-24903-CIV-ALTONAGA/Reid

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

RISHI KAPOOR; et al.,

Defendants.

**RECEIVER’S REPLY IN SUPPORT OF MOTION FOR APPROVAL OF
SETTLEMENT AND AUTHORITY TO CONSENT TO FORECLOSURE JUDGMENT**

Bernice C. Lee, as Receiver (“Receiver”) over the companies listed herein (each a “Receivership Company” and collectively, the “Receivership Companies”)¹ submits this reply in support of her Motion for Approval of Settlement and Authority to Consent to Foreclosure Judgment (DE#91), and in response to Defendant Rishi Kapoor’s Response thereto (DE#95):

Mr. Kapoor objects that the Receiver did not reference a \$16 million offer received “prior to Judge Fine’s liquidation management tenure,” claiming that offer represents a “higher achievable sale price with stability that can be provided by the Receiver’s powers.” (DE#95 at 1-2). Mr. Kapoor provides no meaningful information as to that offer (i.e., terms, deposit, conditions to closing, proof of funding), but it is self-evident that no transaction was ever consummated at

¹ The “Receivership Companies” or “Receivership Defendants” include: Location Ventures, LLC, URBIN, LLC, Patriots United, LLC; Location Properties, LLC; Location Development, LLC; Location Capital, LLC; Location Ventures Resources, LLC; Location Equity Holdings, LLC; Location GP Sponsor, LLC; 515 Valencia Sponsor, LLC; LV Montana Sponsor, LLC; URBIN Founders Group, LLC; URBIN CG Sponsor, LLC; 515 Valencia Partners, LLC; LV Montana Phase I, LLC; Stewart Grove 1, LLC; Stewart Grove 2, LLC; Location Zamora Parent, LLC; URBIN Coral Gables Partners, LLC; URBIN Coconut Grove Partners, LLC; URBIN Miami Beach Partners, LLC; and URBIN Miami Beach II Phase 1, LLC.

that price. Moreover, it is undisputed that in the nearly nine months since CG Office SPE, LLC (“CG Office SPE”) entered into a listing agreement with CBRE (a listing agreement which predated Mr. Kapoor’s removal from management), no offer close to that amount was submitted, and the highest offer, for \$14.5 million, was terminated during the due diligence period.

Mr. Kapoor objects that the Receiver “obviously was not aware of” the relationship of the mortgage holder to entities which own the adjacent 255 Alhambra property and says that he was in negotiations with their principals for a sale in early 2023. (DE#95 at 2). The Receiver in fact was aware of the relationship between the mortgage holder and the 255 Alhambra owners and considered it in connection with evaluating the settlement and the alternatives available. As Mr. Kapoor’s own motion recognizes, those parties discontinued their efforts to buy the 299 Alhambra property and instead acquired the mortgage, which the lender asserts went into default in July 2023. While they very likely pursued that strategy with the goal of minimizing the amount they would have to pay to acquire the Property, that does not change the facts that they now own the mortgage, the mortgage is in default, the debt is accruing default interest at a rate of nearly \$250,000 per month, and no better offer has been received after nearly nine months of marketing.

Mr. Kapoor further objects on the basis that the 299 Alhambra property was appraised as of September 29, 2022 as having an as-is value of \$18.5 million. (DE#95 at 3). While the Receiver cannot verify all of the information that may have been used in connection with that appraisal, or all of the changes that may have occurred both to the property and to the market over the following 1 ½ years, it is clear that no potential buyer during the nine months that the Property was marketed came close to offering that amount. The appraisal itself notes, as is customary, that the “appraisal may be unreliable if relied upon for a date different than the effective valuation date in the appraisal.” Further, “[u]nder industry standards, an appraisal that is over a year old is considered

stale and not a current valuation, particularly as it does not account for any deterioration in the condition of the property.” *In re Kelly*, 2013 WL 6536539, at *4 (Bankr. D. Mass. Dec. 13, 2013) The Receiver’s Motion recites the marketing history that the Receiver has considered in lieu of the time and expense of obtaining an updated formal appraisal (DE#91 at 6-7).

Mr. Kapoor objects that the sale price, “to the extent it can be currently calculated,” is \$13.7 million. (DE#95 at 3). His analysis misconstrues or disregards that the payoff figures provided by the Lender already applies the \$302,575.62 of lockbox rents collected for which the Lender holds an assignment of rents against the outstanding indebtedness. If the rents were not applied, then the outstanding indebtedness would be approximately \$14.2 million as of February 29, 2024, which continues to accrue interest at a per diem of \$7,833.33.

Mr. Kapoor objects that the Receiver is “sacrificing Mr. Kapoor and substantial equity” that could be recovered. (DE#95 at 3). Almost in the same breath, he objects that the settlement does not release him from his personal liability on a personal guaranty. These objections are mutually inconsistent: if Mr. Kapoor genuinely believes the Property is worth substantially more than the outstanding indebtedness, then a buyer should be prepared to bid at least the amount of the debt at a foreclosure sale, the Receivership estate will be entitled to receive any surplus, and any guarantee liability on a deficiency claim will be eliminated. Mr. Kapoor’s true concerns were revealed in his response to the Receiver’s efforts to confer on the Motion, when he advised that “We will withhold any objection if Rishi is fully released regarding any deficiencies as guarantor of the note.” (DE#91 at 12). Mr. Kapoor is not genuinely interested in preserving equity for the receivership entities’ investors: he is only concerned with mitigating his own personal exposure.

Mr. Kapoor asks that the Court defer approval of the settlement for 90 days, while letting Mr. Kapoor, an “acknowledged expert on effectively buying and selling properties in South

Florida,” run a sale process. (DE#95 at 3-4). To put it mildly, the S.E.C.’s Complaint and the financial condition of the Receivership Companies raise serious doubt as to whether Mr. Kapoor is an “acknowledged expert” on buying and selling properties in South Florida. A professional broker was already managing a listing since June 2023. The Receiver has invited Mr. Kapoor to put \$13.9 million into a trust account, together with the per diem interest and other charges that will be accruing under the loan, while he pursues a better offer.² Unsurprisingly, he has not responded to that invitation. He should not be entitled to shift that risk entirely to the receivership estate and the Receivership Companies’ investors while pursuing a “better offer” that has not surfaced in nearly a year.

Conclusion

The Receiver respectfully submits that Mr. Kapoor’s objections should be overruled and the Motion for Approval of Settlement and Authority to Consent to Foreclosure Judgment should be granted.

Respectfully submitted,

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² Mr. Kapoor claims that the Receiver has “tools to stop” the accrual of interest on the mortgage against the Property, “including the filing of a bankruptcy petition for CG Office SPE,” but provides no explanation for how a bankruptcy petition would stop the accrual of interest.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via CM/ECF upon all counsel of record this 5th day of March, 2024.

By: /s/ David L. Rosendorf
David L. Rosendorf