

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-24903-JB

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, *et al.*,

Defendants.

**DEFENDANT RISHI KAPOOR'S REPLY TO RESPONSES OF RECEIVER AND SEC
TO MOTION TO STAY STATE COURT PROCEEDINGS
AND PERMIT SALE OF ASSET SUBJECT TO ASSET FREEZE**

Defendant Rishi Kapoor, through undersigned counsel, hereby files his Reply to the Receiver's Response to Mr. Kapoor's Motion to Stay State Court Proceedings and Permit Sale of Asset Subject to Asset Freeze [ECF No. 98] and to the Securities and Exchange Commission's joinder therein [ECF No. 101].

1. The Receiver and the Commission object to Jennie Frank Kapoor, Mr. Kapoor's wife, acting as the listing associate or receiving any commission in connection with a sale of the Property. They argue that she is insufficiently experienced as she only recently obtained her real estate license. This ignores the facts that Boschetti Real Estate Group ("Boschetti")—the listing broker who would supervise, participate as co-listing agent, and profit from the marketing and sale of the Property—is very experienced, highly reputable, listed and sold the Property when it was purchased by the Kapoors, and has confidence in Mrs. Kapoor's training and aptitude to work with them. The Receiver and the Commission next contend that Mrs. Kapoor is an "insider with interests that may directly conflict with completing a sale for fair market value in a reasonable period of time." This makes no sense. As a co-guarantor of the mortgage note facing foreclosure, an owner of an undivided interest in the tenants by the entireties shares of the LLC that is the

ultimate owner of any equity in the Property, and a sales associate entitled to a commission, Mrs. Kapoor has every incentive to sell the Property in a reasonable period of time and at a fair market value—not to mention her desire to earn a living and establish a reputation as an honest and successful real estate agent. The suggestion that including her as the co-listing agent would be “an end-run on the Asset Freeze Order” is also misguided. A real estate commission on a private sale of the Property will be paid to someone, and the Receiver will have no claim to claw back that commission for the benefit of the Estate. Denying Mrs. Kapoor the opportunity to earn a portion of that commission does not impact any potential interest the Receiver might claim in the proceeds of the sale of the Property.

2. The Receiver and the Commission unreasonably question the \$8.495 M listing price in the Listing Agreement and request further “support” for it. The listing price was determined by Boschetti, an experienced real estate broker who is familiar with the relevant sales and market conditions and, beyond that, is well acquainted with the subject neighborhood and the Property, having listed and sold it in November 2021. The Receiver and Commission offer no basis for the counterintuitive suggestion that Boschetti would put aside its professional reputation and economic interest by listing the Property at an unsupported price.

3. Finally, the Receiver and the Commission suggest that the Court should require that all excess sales proceeds after payment of liens be “escrowed with Receiver’s counsel pending a determination of entitlement thereto.” This is neither necessary nor warranted. Mr. Kapoor’s suggestion that any proposed final offer to purchase the Property be submitted to the Court for pre-approval, together with a finding that the Asset Freeze Order applies to any proceeds from a sale that flow to Mr. Kapoor adequately protects any potential interest the Receiver might claim.¹ If

¹ Mr. Kapoor’s proposal was not an “attempted end-run on the Asset Freeze Order” as suggested by the Receiver. As explained in the Motion, Mr. Kapoor acknowledges that the Property is an “asset owned in part by Mr. Kapoor . . . subject to the Asset Freeze” despite the fact that the shares

and when a sale takes place, and if any proceeds flow to 7233 Los Pinos or Kapoor LLC, the parties and the Court can address the issue whether or to what extent, in light of *In re Romanogli*, 632 B.R. 807 (Bankr. S.D.Fla. 2021), the Receiver or the Commission can assert potential claims against proceeds ultimately owned by the Kapoors as tenants by the entirety.

Respectfully submitted,

SHAHADY & WURTENBERGER, P.A.

/s/ Fred A. Schwartz

Fred A. Schwartz, Esq.

fschwartz@swlawyers.law

Florida Bar No. 360538

200 East Palmetto Park Road, Suite 103

Boca Raton, FL 33432

Direct: (561) 910-3064

John J. Shahady, Esq.

JShahady@swlawyers.law

Florida Bar No. 998990

7900 Peters Road, Suite B-200

Fort Lauderdale, FL 33324

(954) 376-5958

RASKIN & RASKIN, P.A.

Jane Serene Raskin

jraskin@raskinlaw.com

Florida Bar No. 848689

2525 Ponce De Leon Blvd., Suite 300

Coral Gables, FL 33134

Attorneys for Defendant Kapoor

of 7233 Los Pinos LLC and Kapoor LLC are owned by the Kapoors as tenants by the entirety [ECF No. 94 at 1-2]. The same logic applies to any proceeds of the sale that flow to Los Pinos LLC or Kapoor LLC and Mr. Kapoor has no objection if the Court specifies that in its order.

CERTIFICATE OF SERVICE

I hereby certify that, on March 14, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Fred A. Schwartz
Fred A. Schwartz