

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 IN SUPPORT OF
MOTION TO DIRECT RECEIVER TO ADVANCE LEGAL FEES AND COSTS
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant Rishi Kapoor ("Kapoor"), through undersigned counsel, hereby files his Reply in Support of his Motion to Direct Receiver to Advance Legal Fees and Costs and in support states as follows:

INTRODUCTION

Bernice C. Lee, as Receiver ("Receiver") has filed an objection to Defendant Kapoor's Motion to Direct Receiver to Advance Legal Fees and Costs and Memorandum of Law in Support ("Response") (DE#115). However, the Response is based on a misstatement of facts and a failure to acknowledge the effect of any advancement on the Receivership. Without the advancement of legal fees, Kapoor will be unable to properly defend himself in these matters. This Court should grant the relief requested, and the Receiver should be directed to make this a priority claim to be funded immediately.

MEMORANDUM OF LAW IN SUPPORT

I. The Advancement of Legal Fees to Kapoor Should Be Treated as an Administrative Priority of the Receivership Estate

It is Kapoor's position that his entitlement to mandatory advancement of legal fees should receive administrative priority rather than be treated on par with the claims of other unsecured creditors and paid *pro rata* when the estate is liquidated—at which point the “advanced” funds will likely serve little purpose as the matters being litigated and investigated may well have concluded. Moreover, the right to an advancement of expenses under a partnership agreement is separate and distinct from his right to indemnification. Even the alleged likelihood that the indemnification will not be permitted at the end of the case is irrelevant to the right of advancement. This Court has discretion to consider the equities and determine that Kapoor's advancement claim should have administrative priority. Without these funds, Kapoor will be unable to properly defend himself in these matters. Kapoor has two lawyers and their law firms representing him which would be compensated from this advance: Fred Schwartz of Shahady & Wurtenberger, P.A. and Jane Raskin of Raskin and Raskin P.A. Mr. Schwartz is primarily responsible for the case brought by the SEC, and Ms. Raskin is primarily responsible for matters involving other agencies. However, both have skills to assist in the other arena.

II. Kapoor's Plan to Reimburse the Receivership Companies is Not Illusory

Here, as explained by the affidavit of Kapoor, which is attached to this Reply, there is no risk to the Receiver by advancing the funds to support the defense of these claims. The Receiver's reliance on the report and recommendation in *Sec. & Exch. Comm'n v. BKCoin Mgmt., LLC*, No. 23-CV-20719 (DE#115-2) is misplaced. There, the receiver denied a request for advancement because “ the only funds the Receivership [E]ntities possess are directly traceable to investor

funds” and “[could not] be considered Partnership assets” (DE#115-2@6). There are no investor funds at issue here and no risk to the Receiver.

WHEREFORE, Defendant Rishi Kapoor respectfully requests that this Court grant his request for advancement of attorney’s fees and costs, and any further relief this Court deems just and proper.

Respectfully submitted,

SHAHADY & WURTENBERGER, P.A.

/s/ Fred A. Schwartz

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Attorneys for Defendant Kapoor

CERTIFICATE OF SERVICE

I hereby certify that, on April 15, 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

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.

_____ /

**AFFIDAVIT OF RISHI KAPOOR IN SUPPORT OF
MOTION TO DIRECT RECEIVER TO ADVANCE LEGAL FEES AND COSTS**

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority personally appeared, RISHI KAPOOR, (“Affiant”), who, after having been first duly sworn under oath, deposes and says:

1. Affiant is the Defendant in the above-referenced matter and has personal knowledge of the facts and circumstances giving rise to this action .

2. Prior to the adoption of the Location Ventures LLC wind down plan in the summer of 2023, Rishi Kapoor made a request of the then appointed liquidation manager, Retired Judge Alan Fine, for advancement of legal fees for himself and other management. This was denied, believed wrongfully.

3. Similarly, Rishi Kapoor has made a request to the Receiver to advance legal fees as required per various operating agreements. He has spent between \$100,000 – 200,000 of his own money defending various company related matters prior to the Asset Freeze Order and is

requesting that the Receiver utilize only \$500,000 of the \$2,000,000 – \$4,000,000 in cash it is holding to advance legal fees for defense of exactly this type of proceeding per the requirements in the various company operating agreements cited.

4. The Receiver was to provide an accounting of assets and liabilities within 45 days of appointment, and we have not seen any accounting as of this date. The amount of cash it is believed to be holding on behalf of relevant company entities is \$2,000,000 – \$4,000,000.

5. Rishi Kapoor’s counsel has deferred the show case hearing not indefinitely as the Receiver claims, but solely because of the slow pace of receiving access to relevant company records that would aid in his defense, which to date, is still not complete as part of an ongoing good faith negotiation with the Receiver.

6. The Chapter 11 bankruptcy filed for 7233 Los Pinos LLC, the residence of Rishi Kapoor and Jennie Elizabeth Frank Kapoor (“the Kapoors”), was not paid with personal funds of Rishi Kapoor nor a personal credit card.

7. The Chapter 11 filing for 7233 Los Pinos LLC (the “residence”) was done in good faith and for legitimate purposes. Without divulging privileged information, this was discussed with bankruptcy counsel prior to filing. As to the Asset Freeze, we are merely adding another layer of protection as no sale would be consummated without the approval of both this Court and the bankruptcy court – assuming that this Court has not already determined that the tenants by the entirety (“TBE”) status of the residence precludes it from being taken for disgorgement or claw back.

8. The Receiver is citing a market value of the residence as determined by Miami-Dade’s property appraiser online, which is widely known to be below true market value. 7233 Los Pinos has a broker opinion of value (“BOV”) and a comparative market analysis (“CMA”)

providing pricing support for a listing price of \$8.495M with guidance for an expected sales range. The BOV and CMA are attached to this affidavit. This analysis was enthusiastically approved by both expert brokers contemplated to co-list and market the property.

9. Given the expected sales price, and liabilities owed to creditors of approximately \$5,500,000, this represents substantial net equity in the property available to guarantee the repayment of the advancement of legal fees.

10. The residence is not subject to the Receivership order nor is it Receivership property. The terms for sale are not for the Receiver to dictate. The Kapoors have been attempting to list the residence for sale for nearly two months, and it is the interchange with the Receiver that has required a motion to sell the residence, not the behavior of the Kapoors.

11. Rishi Kapoor and his forensic accountants can demonstrate that no disputed compensation nor company dollars went into the residence for its acquisition, improvements, nor operations. Therefore, the Receiver will have no claim to any net equity proceeds upon a sale of the residence. Further, the entity that wholly owns the residence is owned by the Kapoors as tenants by the entirety ("TBE"). Because of the strong presumption in favor of husband and wife, neither the Receiver nor the SEC will have the right to pursue any net equity proceeds upon a sale. Therefore, the substantial expected net equity shall unequivocally be available for repayment of the advancement sought should it be determined at the conclusion of the pending case that Rishi Kapoor was not entitled to indemnification.

12. 7233 Los Pinos LLC is currently negotiating with its lender to reinstate the interest rate at its face value and has Debtor in Possession ("DIP") financing lined up to make the lender current if deemed necessary. This DIP financing also will ensure that the residence is adequately

maintained, including for the payment of various insurances. This would eliminate any of the Receiver's concerns that the equity in the residence is substantially wasting nor at risk.


13. From the protected proceeds of the sale of the residence, the Kapoors are willing to escrow the \$500,000 sought as additional protection for any unlikely required repayment of the advancement. The Receiver is in a no-lose situation by advancing legal fees.

14. The proposed mortgage or otherwise structured enforceable claim in favor of the Receiver for the potential repayment of the advancement requested from the TBE proceeds of the sale of the residence is not illusory, but ironclad.


RISHI KAPOOR, Affiant

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 15th day of April, 2024, by RISHI KAPOOR, who is personally known to me or who has produced _____ as identification.


NOTARY PUBLIC, State of Florida
Print Name _____
Commission No. _____



Broker Opinion of Value and Comparative Market Analysis

Date: 03.19.24

Prepared by:

Jennie Frank Kapoor

Licensed Florida Real Estate Associate

Boschetti Realty Group

To Whom It May Concern:

Below please find an opinion of value based on a comparative market analysis prepared by myself and reviewed by my broker.

I. Subject Property

7233 Los Pinos Blvd

Coral Gables, FL 33143

II. Key Property Attributes

- Asking Price: \$8,495,000
- \$ / SF: \$1,399
- Year Built: 1983 and Renovated 2015 & 2024
- Bed & Bath: 5 / 6.5
- AC SF (Adjusted): 6,069
- Lot Size SF: 17,424.00 (0.40 of one acre)

III. Summary

Based on the following data, analysis and market expertise, we believe the subject property shall trade between a range of **\$7.833M – \$8.284M**.

This range was determined by the following analysis of imputed valuations from the Comparative Market Analysis (CMA) of Cocoplum neighborhood homes i) for sale; ii) under contract, and iii) sold (see “CMA Exhibit A”). There are a meaningful amount of relevant comps within the Subject Property’s neighborhood, with transactions inside the last two years, that analysis outside the neighborhood was unnecessary for prospective valuation purposes.

- 1) The most relevant sold comparable, 113 Gavilan Ave, suggests an imputed valuation of the Subject Property of:
 - a. \$8,025,403.

- 2) The price based on the average \$ / SF of the most relevant sold comps imputes a valuation of:
 - a. \$7,833,898.
- 3) And, the price based on the average \$ / SF of the most relevant active comps applied with a generously conservative 90% list to sales price ratio imputes a valuation of:
 - a. \$8,284,452.

Therefore, we believe a **list price of \$8,495,000** balances a realistic sales price with a signal to the market of an intent to sell.

IV. Analysis

Below please find discussion analyzing the most relevant comparables to the Subject Property. Each of the homes selected in the analysis represent a comparable, slightly better, or significantly inferior condition to that of the Subject Property. Select “new construction” or “fully renovated” homes are also included for context of valuations that would be superior to that of the Subject Property. Taken together, the confluence of analysis provided below and within the attached CMA is designed to help create a valuation range by creating a realistic valuation floor and ceiling for the Subject Property. Of course, homes in Cocoplum are not commodities, and each one carries its own unique characteristics that will yield incrementally higher or lower pricing in relation to its comp set – along with the impact of market conditions.

Sold

The most relevant comparable is 113 Gavilan Ave, which sold nearly a year ago (3/31/23) in inferior market conditions for \$1,322 / SF. The home is updated and on a smaller lot, and arguably contains a similar renovation level as the Subject Property on the similar waterfront conditions.

7220 Los Pinos Blvd is directly across the street from the Subject Property and is fully renovated, however, it is on a dry lot site. Adjusting in its favor for its level of renovation, yet, against for its lack of bay / ocean access likely results in a price of \$1,300 / SF that could reasonably be imputed for the Subject Property on the balance of attributes.

168 Paloma Drive is of smaller home size, with a comparable lot size, on the water with bay / ocean access, yet is of considerably dated condition. However, it yielded a price of \$1,296 / SF, which strongly supports a floor for the imputed valuation of the Subject Property.

Pending / Under Contract

7300 Los Pinos Blvd represents a fully renovated, but dry lot home, of slightly smaller size diagonally across the street from the Subject Property. While anticipated to close by the end of March, the property is believed to be under contract for approximately \$7.1M. Adjusting in its

favor as fully renovated, but to its detriment for not having access to the bay / ocean, we believe this represents a strong floor for the pricing of the Subject Property at \$1,284 / SF.

152 Paloma Dr is included for purposes of demonstrating the trading price of a fully renovated, waterfront comparable, with a contract price believed to be approximately \$11.2M (\$1,949 / SF) on a smaller lot.

7111 Los Pinos Blvd is included as it represents the pricing for a shell of a home contemplated for a full "gut job" renovation on a dry lot site (\$966 / SF). This is included for context only and not suggestive of direct valuation of the Subject Property.

Actives (Relevant Renovations)

When considering each of the attached active comparables in this category, we have isolated those properties of relevant renovation or pre-renovation condition to the Subject Property. The CMA Exhibit notes and links speak for themselves, and we believe we are pricing the Subject Property at a value compared to these properties.

As a whole, these properties average an asking price of \$1,517 / SF. If one were to assess a 10% discount of Listing to anticipated Sales price (suggesting a ratio of 90%) – which is generally considered conservative, as Realtors push for the highest ratio possible when attempting to accurately price and sell homes – this would yield an average expected price of \$1,365 / SF.

Such a price target would be reasonable to impute to the Subject Property above the average pricing of the sold comparables for the following reasons: i) improving macro-economic conditions for interest rates on loan financing compared to 2022 and 2023; ii) the incredible appreciation in equity and bond markets over the last year raising the purchasing power of many affluent buyers (see Wall Street Journal and Financial Times articles on point); and iii) very limited remaining "move-in" ready homes in the Cocoplum neighborhood that do not require substantial renovation nor fall into another price point (ie, \$18 – 20M+ for brand new homes).

Actives (New)

This category of homes are included for contextual purposes only. They represent homes that are of similar sizes and waterfront conditions (if not superior) to that of the Subject Property, but are what one would consider "fully renovated" or ground-up "new construction". This category would represent pricing / SF (\$2,802) and gross prices that are out of reach of the Subject Property, yet their inclusion is instructive for one to understand what pricing a buyer would need to budget for a completely new home in Cocoplum on the water.

V. Conclusion

The Subject Property represents somewhat of a “sweet spot” in pricing within the Cocoplum neighborhood. It is of similar size of many waterfront comparables with direct bay / ocean access; yet has a fully renovated second level along with many improvements throughout the remainder of the house – this renders the house in great “move-in” ready condition, saving valuable time and expense to potential homebuyers. Such houses that are “dated” trade at a discount, and, alternatively, those that are “fully renovated” or “new construction” trade at a significant premium to the suggested pricing of the Subject Property.

In consideration of all of the above, and within the attached analysis, it is our belief that the Subject Property will trade within a range of **\$7.833M – \$8.284M**. Giving some range for buyer negotiations, we are supportive of the listing price arrived at with the consultation of my broker of **\$8,495,000**.

Respectfully submitted,

Jennie Frank Kapoor
Licensed Florida Real Estate Associate
Boschetti Realty Group

As of 03/19/24

Comparative Market Analysis
Prepared by Jennie Frank Kapoor

Subject Property Address	Asking Price	\$ / SF	Year Built	Bed	Bath	AC SF	Outside SF	Total SF	Lot Size	Listed Date	Condition	Link	Notes
7233 Los Pinos Blvd	\$ 8,495,000	\$ 1,400	1983	5	7	6,069		6,069	17,424		Recently Renovated	7233 Los Pinos Blvd	On canal, 2nd floor fully renovated, 1st floor fully updated.
CMA Imputed Valuations													
7233 Los Pinos Blvd	\$ 8,025,403	\$ 1,322	1983	5	7	6,069		6,069	17,424		Recently Renovated	7233 Los Pinos Blvd	Price based on 113 Gavilan Ave comp
7233 Los Pinos Blvd	\$ 7,833,888	\$ 1,291	1983	5	7	6,069		6,069	17,424		Recently Renovated	7233 Los Pinos Blvd	Price based on average \$ / sf of sold comps
7233 Los Pinos Blvd	\$ 8,284,462	\$ 1,365	1983	5	7	6,069		6,069	17,424		Recently Renovated	7233 Los Pinos Blvd	Price based on average \$ / sf of relevant comps at 90% list to sales ratio.
Active (Relevant Reno)													
7801 Los Pinos Blvd	\$ 8,975,000	\$ 1,487	1991	6	7	6,034		6,034	32,670	3/17/24	Recently Renovated	7801 Los Pinos Blvd	Dry lot, 3/4 acre lot.
285 Costanera Rd	\$ 9,250,000	\$ 1,666	1986	6	7	4,957	917	5,874	16,117	1/22/24	Updated	285 Costanera Rd	On wide canal
430 Costanera Rd	\$ 11,500,000	\$ 1,541	1983	7	9	7,462		7,462	26,571	3/19/24	Delisted	430 Costanera Rd	On wide canal. No impact windows. Just over 1/2 acre.
322 Costanera Rd	\$ 7,900,000	\$ 1,450	1987	6	6	5,450	1,926	7,376	16,246	12/9/23	Updated	322 Costanera Rd	On canal. Partial impact windows
7333 Vistaomar St	\$ 6,750,000	\$ 1,239	1980	6	6	5,446	1,997	7,313	20,037	3/4/24	Updated	7333 Vistaomar St	Dry lot.
Active (New)													
284 Las Brisas Ct	\$ 14,900,000	\$ 2,848	2023	5	5	5,231		5,231	16,988	8/24/23	Fully Renovated	284 Las Brisas Ct	On waterway, no bridge to bay.
361 Los Pinos Pl	\$ 17,990,000	\$ 2,166	2023	5	8	8,305		8,305	23,522	3/6/24	New Construction	361 Los Pinos Pl	On wide canal
291 Costanera Rd	\$ 21,000,000	\$ 3,390	2024	6	8	6,194	3,668	9,862	16,117	11/6/23	New Construction	291 Costanera Rd	On wide canal. Under construction.
Pending / Under Contract													
7300 Los Pinos Blvd	\$ 7,450,000	\$ 1,347	1990	6	6	5,530	866	6,416	20,908	10/10/23	Fully Renovated	7300 Los Pinos Blvd	Contingent 2/14/24. Dry lot.
7111 Los Pinos Blvd	\$ 6,300,000	\$ 966	1994	7	10	6,521	2,186	8,709	19,602	9/27/23	Dated	7111 Los Pinos Blvd	Contingent 3/7/24. On canal.
152 Paloma Dr	\$ 11,995,000	\$ 2,087	1995	5	6	5,747		5,747	13,068	3/15/23	Fully Renovated	152 Paloma Dr	Under contract 3/1/24. On canal.
Sold													
113 Gavilan Ave	\$ 7,950,000	\$ 1,322	1995	5	6	6,012	2,483	8,495	14,016	2/15/00	Updated	113 Gavilan Ave	On canal. Sold 3/31/23.
168 Paloma Dr	\$ 6,750,000	\$ 1,286	1991	5	5	5,209	2,194	7,403	17,424	6/0/00	Dated	168 Paloma Dr	On canal. Sold 10/16/23.
7223 Monaco St	\$ 6,600,000	\$ 1,245	2001	5	6	5,302	2,065	7,367	21,760	2/16/00	Updated	7223 Monaco St	Dry lot. Sold 3/30/23.
7220 Los Pinos Blvd	\$ 8,900,000	\$ 1,300	2008	8	8	6,845	1,784	8,629	18,730	3/0/00	Fully Renovated	7220 Los Pinos Blvd	Dry lot. Sold 4/8/22.