

**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.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
RESPONSE IN OPPOSITION TO MARTIN I. HALPERN'S
VERIFIED MOTION TO INTERVENE**

Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) responds in opposition (the “Opposition”) to the Verified Motion to Intervene for the Limited Purpose of Seeking Relief from the Court’s Receivership Order (ECF No. 130 (“Motion to Intervene” or “Motion”)), filed by Martin I. Halpern, as Trustee of the Martin I. Halpern Revocable Trust and Trustee of the Halpern Family Trust (“Halpern” or the “Trusts”), and states:

I. INTRODUCTION

Halpern is not a mere creditor. He is also an investor who, personally, and through his Trusts, invested millions of dollars in several real estate projects¹ Defendant Rishi Kapoor (“Kapoor”) and others used to defraud investors and misappropriate millions of dollars as part of a complex real estate investment scheme that is the subject of the Commission’s enforcement action. See Complaint (ECF No. 1). The property Halpern claims “could be the subject of this

¹ Halpern’s loans and investment, individually, and through his Trusts, total as much as \$37.6 million.

Court's Stay Order" (Mot., p. 2) includes the URBIN Coconut Grove project,² in which Halpern is believed to have invested approximately \$4 million dollars and is one of the projects at the center of the scheme. Additionally, Halpern acted as Kapoor's benefactor of sorts, lending him \$2 million as an unsecured loan believed to be for the purchase of Kapoor's multimillion-dollar home in Coral Gables, Florida. Halpern's many loans and investments remain the subject of the Receiver's ongoing investigation.

Now, only four months into the receivership and without citing a single case involving either a Commission enforcement action or an equity receivership, Halpern moves to intervene to lift the stay as to URBIN Grove and to object to the Receiver's proposed sale of the Stewart Property.³ Halpern's Motion should be denied for several reasons. First, Halpern is statutorily prohibited from intervening in this enforcement action without the Commission's consent under Section 21(g) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 77u(g). Second, Halpern's interests (1) will not be impaired because a forum is available under the Receiver's proposed claim procedure, and (2) are adequately represented by the Receiver and the Commission in this case, thereby precluding mandatory intervention under Rule 24(a) of the Federal Rules of Civil Procedure. Finally, Halpern is not entitled to permissive intervention under Rule 24(b) because he does not share a common question of law or fact with the Commission's action.

² As alleged in his Motion to Intervene, Halpern acquired and modified certain loans in the amount of \$21 million with respect to Urbin Commodore SPE LLC, Urbin Commodore Residential I SPE LLC, Urbin Commodore Residential II SPE LLC, and Urbin Commodore Restaurant SPEC, LLC. These entities are owned by URBIN Grove, which is one of the Receivership Entities, as defined in Section II, below.

³ The Stewart Property is defined in the Receiver's Expedited Motion to Approve Sale Free and Clear and Related Settlement Agreement and Lien Claims Process (ECF No. 128).

While the Commission is sympathetic to the numerous investors and creditors that were defrauded by Kapoor and others, the Receiver was appointed to marshal assets quickly, fairly, and systematically for the benefit of all creditors. Allowing Halpern to intervene and interfere with that process would undermine the very purpose of this equity receivership. Halpern's Motion to Intervene should be denied.

II. BACKGROUND

On December 27, 2023, the Commission filed an emergency action against Kapoor, Location Ventures, LLC ("LV"), URBIN, LLC ("URBIN"), and its subsidiaries and affiliated companies⁴ (collectively, the "Defendants") for their operation of a real estate investment scheme in violation of the anti-fraud provisions of the federal securities laws.⁵ As alleged in the Commission's Complaint, from January 2018 through March 2023 (the "Relevant Period"), Defendants raised approximately \$93 million from more than 50 investors.

LV is a real estate development and investment company that Kapoor and others formed in 2016 to develop new luxury single-family homes, multi-family redevelopment projects, and

⁴ LV and URBIN's subsidiaries and affiliated entities named as defendants in the Complaint are 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. Patriots United, LLC, was also named as a defendant in Complaint. These entities, together with LV and URBIN, are collectively referred to as the "Company Defendants."

⁵ The Complaint alleges Kapoor, LV, and URBIN violated Section 17(a)(2) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5(b) [7 C.F.R. § 240.10b-5(b)]. Kapoor and the Company Defendants violated Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)], and Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a) and (c) [17 C.F.R. § 240.10b-5(a) and (c)]. Kapoor also, directly and indirectly, violated Exchange Act Section 10(b) and Rule 10b-5 thereunder as a control person of the Company Defendants under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

boutique condominiums. URBIN is an affiliate of LV that Kapoor and others formed in 2018 to develop communal live/work properties in Miami Beach, Coral Gables, and Miami's Coconut Grove neighborhood. Defendants offered passive investment opportunities in LV, URBIN, and their respective portfolios of real estate projects. Prospective investors could invest at the "company level" by purchasing membership units in LV and/or URBIN, which earned revenue from fees they charged their real estate projects.⁶ Prospective investors could also invest at the "project level" by purchasing membership units directly in the companies created to own the projects, which would pay investors upon the completion or sale of the projects, assuming they were profitable. These projects included URBIN Grove and Stewart Grove, which are the subject of Halpern's Motion to Intervene.

To induce investors, Kapoor and his partner claimed they made a \$13 million cash investment in LV through Defendant Patriot United, LLC ("Patriots United"), a company owned by Kapoor, his partner, and members of the Kapoor family. At no point during the relevant period, however, did Patriots United contribute any cash to LV. Kapoor's false claims about his investment was just one in a series of material misrepresentations and omissions Defendants made to investors. For instance, as part of the offering materials provided to prospective investors, Defendants included *pro forma* budgets that projected costs for each of the projects. Kapoor intentionally understated construction and other estimated costs used in the *pro formas* to represent higher returns to prospective investors. When actual costs for the projects greatly exceeded those forecasted in the *pro formas*, Kapoor withheld that and other information from investors, directed employees to revise or remove financial data from reports and meeting minutes, and, in some instances, continued to use the *pro formas* to raise additional capital.

⁶ In addition to earning fees, LV and URBIN owned an interest in each of their projects, such that an investment in LV or URBIN was an indirect investment in their respective projects.

In addition, Defendants represented to investors that LV, URBIN, and each of the projects were separate and distinct investments, possessing their own members, designated capital, and corporate identities. Defendants, however, regularly ignored corporate formalities and commingled investor funds. More than \$60 million in intercompany transfers occurred during the Relevant Period, which included a \$14 million transfer from LV to URBIN recorded internally as an intercompany loan. As Defendants shuffled investor funds among the various companies and accounts, Kapoor and other insiders misappropriated at least \$6 million of investor funds—\$4.3 million of which Kapoor misappropriated for himself.

On January 5, 2024, the Commission filed an Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief Against the Company Defendants (ECF No. 16), which the Court granted on January 12, 2024 (ECF No. 28 (“Receivership Order”)), appointing Bernice Lee as Receiver over the Company Defendants (the “Receivership Entities”). The Receivership Order includes a stay of litigation, including:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in her capacity as Receiver; (b) any Receivership Property, wherever located; (c) the Receivership Defendants, including subsidiaries and partnerships; or (d) any of the Receivership Defendants’ past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

Id. at ¶ 26. For a summary of the Receiver’s efforts since her appointment, the Commission directs the Court to the Receiver’s First Interim Report filed on April 30, 2024 (ECF No. 127).

On May 5, 2024, Halpern filed his Motion to Intervene, necessitating the filing of the Commission’s Opposition, the legal arguments for which are discussed in detail below.

III. ARGUMENT

A. SECTION 21(g) OF THE EXCHANGE ACT BARS INTERVENTION AS A MATTER OF LAW

Section 21(g) of the Exchange Act, 15 U.S.C. § 77u(g), bars third parties from intervening in enforcement actions by the Commission. Section 21(g) states:

Notwithstanding the provisions of section 1407(a) of Title 28, or *any other provision of law*, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

15 U.S.C. § 78u(g) (emphasis added).

Courts have interpreted Section 21(g) to extend beyond consolidation and coordination, barring intervention into actions initiated by the SEC. *See SEC v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1 (M.D. Fla. Sept. 24, 2009) (quoting *SEC v. Cogley*, No. 98CV802, 2001 WL 1842476, at *5 (S.D. Ohio Mar. 21, 2001) (“[A]fter reviewing the legislative history, and reviewing other cases that have discussed this issue, this Court comes to the inescapable conclusion that Section 21(g) bars intervention.”)); *SEC v. Univ. Lab Techs., Inc.*, No. 07-80838-CIV, 2009 WL 723243, at *3 (S.D. Fla. Mar. 18, 2009) (“[Allowing intervention] opens the door to a serious, substantial evisceration of Section 21(g).”).⁷

Congress enacted Section 21(g) to allow efficient resolution of Commission actions. *Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266, at *1; *Univ. Lab Techs., Inc.*, No. 07-80838-CIV,

⁷ *But see, SEC v. Flight Transp. Corp.*, 699 F.2d 943, 950 (8th Cir. 1983) (“[T]he purpose of [Section 21(g)] is simply to exempt the Commission from the compulsory consolidation and coordination provisions applicable to multidistrict litigation. It does not say that no one may intervene in an action brought by the SEC without its consent. It does not mention Fed. R. Civ. P. 24, nor does Rule 24 contain any clause giving special privileges to the SEC.”) and *SEC v. Callahan*, 2 F. Supp. 3d 427, 437 (E.D.N.Y. 2014) (“[T]here is no persuasive authority which suggests that section 21(g) ... bars intervention in all SEC enforcement actions.”).

2009 WL 723243, at *3; *Cogley*, No. 98CV802, 2001 WL 1842476, at *5. Allowing third parties to intervene in Commission enforcement actions drains agency resources with excessive tangential litigation costs and impedes the Commission’s mission, which is to protect all of the defrauded investors and the public at large. *See SEC v. Everest Mgmt. Corp.*, 475 F.2d 1236, 1240 (2d Cir. 1972); *Nadel*, No. 8:09CV-87-T-26TBM, 2009 WL 3126266, at *1. Indeed, when passing Section 21(g), Congress expressly referred to a case in which the Second Circuit Court of Appeals refused to allow intervention in a Commission enforcement action on policy grounds. S. REP. 94-75, at 76 (citing *Everest Mgmt. Corp.*, 475 F.2d at 1236). In denying the fraud victim’s motion to intervene, the court in *Everest Management* held that “the complicating effect of the additional issues and the additional parties outweighs any advantage of a single disposition of the common issues.” *Id.* at 1240. By citing an intervention case in the Senate report, Congress signaled that using 21(g) to bar intervention fulfills the law’s purpose and allows for speedy resolution of agency action.

Halpern’s intent to seek relief from the litigation stay to bring foreclosure actions against two of the Receivership Entities while the Receiver is in the preliminary process of marshalling the assets is a prime example of the “complicating effect” of additional issues and unnecessary encumbrances that Congress attempted to avoid by enacting Section 21(g). *Id.* As intervention in this SEC enforcement action is barred by Section 21(g) of the Exchange Act, the Motion to Intervene should be denied.

B. HALPERN DOES NOT HAVE A RIGHT TO INTERVENE

Halpern bring his Motion to Intervene as of right under Rule 24(a) of the Federal Rules of Civil Procedure. To intervene as of right, a party must establish that:

(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing *Athens Lumber Co. v. FEC*, 690 F.2d 1364, 1366 (11th Cir. 1982)). The movant has the burden to show that each of these four elements are met. *See CFTC v. Heritage Cap. Advisory Servs., Ltd.*, 736 F.2d 384, 386 (7th Cir. 1984). “Failure to satisfy even one of [Rule 24(a)’s] requirements is sufficient to warrant denial of a motion to intervene as a matter of right.” *Id.*

As a preliminary matter, Halpern fails to cite a single case allowing intervention in a Commission enforcement action or involving an equity receivership. This omission is significant because federal courts presiding over Commission enforcement actions where equity receiverships have been established typically deny motions to intervene.⁸ Concerns of efficiency, resources of all parties involved, and equity often preclude a creditor from intervening in those cases. As discussed below, Halpern does not have a right to intervene under Rule 24(a).

1. Halpern cannot show that disposition of this action may impair or impede his ability to protect his interest in receivership property.

Halpern cannot show that disposition of this action may impair or impede his ability to protect his interest because courts have repeatedly held that a receivership claims process is the appropriate forum for considering interests of creditors and shareholders. *See e.g., SEC v. Elliott*,

⁸ *See, e.g., CFTC v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d 584, 586 (10th Cir.1984); *CFTC v. Heritage Capital Advisory Servs.*, 736 F.2d 384, 386-87 (7th Cir.1984); *Everest Management*, 475 F.2d at 1239-40; *SEC v. Charles Plohn & Co.*, 448 F.2d 546, 549 (2d Cir.1971); *FTC v. Jordan Ashley, Inc.*, No. 93-2257-CIV-NESBITT, 1995 WL 792076, at *2-3 (S.D. Fla. June 15, 1995); *SEC v. Byers*, 109 F.R.D. 299, 302-03 (W.D.Pa.1985); *SEC v. Reed*, 97 F.R.D. 746, 748 (S.D.N.Y.1983); *CFTC v. Carter, Rogers & Whitehead & Co.*, 497 F.Supp. 450, 452-53 (E.D.N.Y.1980); *SEC v. Canadian Javelin, Ltd.*, 64 F.R.D. 648, 650-51 (S.D.N.Y.1974), *appeal dismissed*, 538 F.2d 313 (2d Cir.1976).

953 F.2d 1560 (11th Cir. 1992); *SEC v. Homa*, 17 Fed. App'x 441, 446 (7th Cir. 2001). In *Homa*, the court held that intervention as of right is not available where the proposed intervenor may pursue its claim before the receiver with the benefit of an appropriate procedure. *Id.* Citing to the court's prior decision in *CFTC v. Heritage Capital Advisory Services, Ltd.*, 736 F.2d 384, 386 (7th Cir.1984), it held:

In *Heritage Capital*, this court rejected a claim of intervention as of right because the party wishing to intervene could "assert [its] claim in the claims procedure established by the receiver and supervised by the district court." As noted in that case, "there is no question that [the proposed intervenor] may obtain district court review of any unfavorable decision of the receiver before the receiver disburses funds to other creditors." Likewise, Florida Construction's claim would not be impaired, because a forum is available under the Receiver's proposed claims procedure, with rights of appeal to the district court.

Homa, 17 F. App'x at 446 (internal citations omitted).

Aside from eliminating the burdensome need for each and every investor and creditor to intervene prior to the adjudication of a Commission enforcement action, the claims process and the Court's oversight of the Receiver ensure protection of Halpern and other creditors' interests.

2. Halpern's interests are adequately protected.

The Commission's and an equity receiver's adequate representation of all parties is *presumed* and must be rebutted by a proposed intervenor. *See CFTC v. Eustace*, No. 05-2973, 2005 WL 2862945, at *2 (E.D. Pa. Oct. 31, 2005) ("[O]nce a receiver has been appointed, and the parties seeking relief or intervention have the same goal, *i.e.*, protection of investors, there is a presumption that the receiver will adequately represent all parties."); *Ruthardt v. U.S.*, 303 F.3d 375, 386 (1st Cir. 2002) ("Adequacy is presumed, although rebuttably so, where a government agency is the representative party."). In *Byers*, the court denied intervention, finding that the attempted intervenors failed to show that the Commission and the federal receiver would not adequately represent their interests:

The Proposed Intervenors have not shown that the Receiver and SEC are not adequately representing their interests in this case. The position of the Proposed Intervenors is no different from that of the other creditors and victims in this case, and, as set forth in my Prior Decision,

[a]s a practical matter, it does not make sense to allow individual victims and creditors to intervene as parties. There are allegedly 1,400 victims who invested in approximately sixty securities offerings that raised more than \$250 million. There are dozens of creditors with divergent claims and interests. There is a complex web of some 120 Wextrust entities and affiliates operating throughout the world. In these circumstances, it would not be efficient or effective to permit individual creditors to intervene as parties.

No. 08-Civ.-7104(DC), 2009 WL 212780, at *1 (citations omitted); *see also Chilcott Portfolio*, 725 F.2d at 587 (“Like the district court, we believe the claims procedures set up by the receiver will permit [the intervenor] to protect his claimed interest in assets presently under the control of the Receiver.”); *SEC v. Behrens*, No. 8:08CV13, 2009 WL 2868221, at *1 (D. Neb. Sept. 1, 2009) (“[The intervenor] has not shown why the claims procedure instituted by the Receiver is insufficient to protect any legitimate interests she may have in the subject property. The Receiver is obligated to consider her claims as well as those of other claimants, including the investors allegedly defrauded by the defendants. Disbursal of the assets is subject to the Court’s approval.”); *CFTC v. Lofgren*, No. 02-C-6222, 2003 WL 21639118, at *3 (N.D. Ill. July 9, 2003) (denying third party’s motion to intervene).

Further, in *Lofgren*, the court analyzed the interests of the government agency, the receiver, and the proposed intervenor:

Two potential parties represent [the intervenor’s] interests, the CFTC and the Receiver. The CFTC’s goal is to *protect the public at large and to stop and deter the future violations of the law*. These goals differ slightly from [the intervenor’s] desire to *maximize his own recovery*. Thus, it would appear that the CFTC will adequately represent [the intervenor’s] interests insofar as they are primarily concerned with preventing defendants from further dissipating the funds. On the other hand, the Receiver’s interests could potentially conflict with [the intervenor’s]

goal of maximizing his own recovery. The Receiver [sic] is not concerned with maximizing [the intervenor's] individual recovery, but rather is concerned with *maximizing distribution to defrauded investors as a collective group*. In this sense it could be argued that the receiver will not adequately represent [the intervenor's] interests, particularly in this case, where the Receiver has indicated a hesitancy to distribute monies to [the intervenor].

2003 WL 21639118 at *3 (emphasis added). Importantly, the court found that “[t]his *potential* for inadequate representation *should not serve as sufficient grounds* for allowing intervention however.” *Id.* (emphasis added).

The “liens, legal actions and encumbrances” Halpern refers to in his Motion were filed against the URBIN Grove properties *prior* to the appointment of the Receivership. Mot. pp. 5-7. Those claimants, like Halpern, are subject to the litigation stay and cannot proceed against the properties without a lifting of the stay. Finally, despite Halpern’s contention, the Receiver is not “seeking to extinguish the Trusts’ mortgage interest [in the Stewart Property] without due process or just compensation.” Mot. at p. 16. The Receiver has proposed a Lien Claim Fund and Claims Process that will adequately address Halpern’s interests as a second mortgagee. *See Behrens*, No. 8:08CV13, 2009 WL 2378741 at *3 (“The court agrees with the [SEC] that [the intervenor] has not shown why the claims process instituted by the district court and the receiver are [sic] inadequate to protect her legitimate interests in the subject property. She has not shown why her claims should be treated any differently from the defendants’ other creditors, and is not entitled to intervention as of right under Fed. R. Civ. P. 24(a)(2).”).

The Receivership claims process will be proposed by the Receiver (with the ability of all potential claimants to file objections) and approved by the Court. The process will allow Halpern and other creditors to assert their claims, and will allow the Court to determine the value and priorities of those claims in a single, efficient process that comports with due process requirements. As Halpern’s interests are adequately protected, the Motion to Intervene should be denied.

C. HALPERN'S REQUEST FOR PERMISSIVE INTERVENTION SHOULD BE DENIED.

A district court may exercise its discretion to allow a third party to intervene if (1) a movant's claim or defense and the main action have a question of law or fact in common, and (2) the proposed intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b)(3).

Halpern's claims against the Receivership Entities for defaulting on mortgages due to non-payment (see Mot., p. 17) is **not** a claim or defense that has a common question of law or fact with the Commission's enforcement action. If it were, nearly every creditor in every SEC enforcement action would be entitled to permissive intervention.

Further, intervention would unduly delay or prejudice the adjudication of the rights of the parties in the Commission's case. If the Court were to grant intervention and allow Halpern to foreclose on his mortgages, numerous other creditors and lienholders would rush to the Court seeking similar relief, causing significant delay in the Commission's case and expense to the Receivership Estate. Indeed, in the short period of time since Halpern filed his Motion to Intervene, another creditor of URBIN Grove has moved to intervene to foreclose its lien, parroting Halpern's Motion (ECF No. 139). In addition, assuming he obtained his requested relief, Halpern would immediately sue URBIN Grove and Stewart Grove in state court to foreclose on his mortgages, requiring the Receiver to spend her limited time and resources defending against Halpern's foreclosure actions to the detriment of all of the investors and creditors who hope to recover some portion of the money they lost as a result of the fraud. For these reasons, the Court should deny Halpern's request for permissive intervention under Rule 24(b).

**D. THE FACTS AND PRINCIPLES OF EQUITY AND FAIRNESS
REQUIRE THE INJUNCTION REMAIN IN PLACE**

There are additional investors and creditors, some of whom have contacted the Commission's counsel, who also claim that Defendants' assets belong to them and seek to preserve their claims. These individuals should have an opportunity to present their claims, together with evidentiary support, to the Court for its evaluation. Allowing Halpern to intervene in this action and "jump the line" would set a dangerous precedent, especially because he has not demonstrated any basis for intervening and disrupting this Receiver's ongoing marshaling of assets. Halpern's and others' intervention would undermine the efficient administration of this receivership and divert resources and the Receiver's efforts from activities intended to benefit the entire Receivership Estate.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court enter an Order denying Halpern's Motion to Intervene.

Dated: May 16, 2024

Respectfully submitted,

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