

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

**CASE NO.: 23-24903-CIV-JB**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.

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**RECEIVER’S RESPONSE IN OPPOSITION TO HALPERN  
PARTIES’ VERIFIED MOTION TO INTERVENE**

Bernice C. Lee, as Receiver (“Receiver”) over the Receivership Companies,<sup>1</sup> responds to Martin I. Halpern, as Trustee of the Martin I. Halpern Revocable Trust and Trustee of the Halpern Family Trust Verified Motion to Intervene for the Limited Purpose of Seeking Relief from the Court’s Receivership Order (“Motion to Intervene,” ECF#130). The movants (the “Halpern Parties”) (1) have failed to establish a basis for intervention; and (2) have failed to establish a basis for relief from the Receivership Order. In response, the Receiver states:

**FACTUAL BACKGROUND**

**A. The SEC Complaint and Duties and Powers of the Receiver**

On December 27, 2023, the Securities and Exchange Commission (“SEC”) filed a

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<sup>1</sup> 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.

Complaint (unsealed at DE#14) and an Emergency Motion for Asset Freeze and Other Relief (“Asset Freeze Motion”) (DE#6) against Rishi Kapoor, Location Ventures, LLC, Urbin, LLC and several of their subsidiaries and affiliated companies, which asserted and evidenced that Mr. Kapoor used the companies to raise approximately \$93 million from more than 50 investors for investment in real estate projects through a series of material misrepresentations and omissions in violation of securities laws. The Asset Freeze Motion describes how Mr. Kapoor, among other things: (1) misrepresented his cash investment in Location Ventures LLC and the size of his real estate portfolio, and omitted material information about his prior business; (2) intentionally understated construction and costs and withheld information from investors; and (3) misappropriated at least \$4.3 million of investor funds. It further describes how he regularly commingled investor funds and transferred funds between entities despite representations that each entity and project was a separate and distinct investment, and often used funds for one project for the expenses of another project.

On January 12, 2024, the Court entered an order granting the SEC’s motion to appoint receiver (“Order Appointing Receiver”) (DE#28) finding that:

the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Company Defendants (“Receivership Assets”) that: (a) are attributable to funds derived from investors or clients of the Company Defendants; (b) are held in constructive trust for the Company Defendants; (c) were fraudulently transferred by the Company Defendants; and/or (d) may otherwise be includable as assets of the estates of the Company Defendants (collectively, the “Recoverable Assets”).

Order Appt. Rec. 2.

The Court included essential provisions to empower the Receiver to analyze and investigate assets, administer assets for the benefit of the receivership estate and harmed investors

and creditors, and develop a fair and reasonable liquidation plan. The Court directed and empowered the Receiver to, among other things:

To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Defendants, 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, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estates”), *id.* at 7.A;

To manage, control, operate, and maintain the Receivership Estates and hold in her possession, custody, and control all Receivership Property, pending further Order of the Court, *id.* at 7.C;

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 in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property, and as approved by the Court.

*Id.* at ¶ 32.

The Order Appointing Receiver further provides that the “Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property[.]” *Id.* at ¶ 46.

To provide the Receiver with the ability to fulfill her duties without being hindered or obstructed by creditor litigation against the Receivership Property, the Court entered an injunction against interference with the Receiver (the “Injunction”), and a stay of litigation (the “Litigation Stay”). *Id.* at ¶¶ 23-28. The Injunction protects the Receiver, Receivership Property, the Receivership Defendants and their subsidiaries from actions that would:

Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Property, enforcing judgments, assessments, or claims against any Receivership Property or the Receivership Defendants, attempting to modify, cancel, terminate,

call, extinguish, revoke, or accelerate (the due date) any lease, loan, mortgage, indebtedness, security agreement, or other agreement executed by the Receivership Defendants or which otherwise affects any Receivership Property; or,

Interfere with or harass the Receiver or interfere in any manner with the exclusive jurisdiction of the Court over the Receivership Estates.

Order Appt. Rec. ¶ 23.C – 23.D.

The Litigation Stay provides that the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further Order of the Court:

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").

#### **B. The Active Real Estate Projects**

This receivership involves twenty-two Receivership Companies and over twenty subsidiaries and related entities, seven active real estate projects, over twenty-five state and federal proceedings that were pending at the time the Court entered the Order Appointing Receiver, and a massive amount of records and documents relating to the companies and their operations and transactions, including with respect to forty bank accounts and thousands of transactions, several real estate projects, investors, lending transactions, and reservation and purchaser escrow deposits.

The Receiver is assessing all assets on a project-by-project basis to determine the best path forward for each property and its ability to produce a benefit for the receivership estate. Details of the Receiver's efforts are described in the Receiver's First Interim Report (DE#127), and include

the Court approved sale of a vacant lot on Minorca Avenue in Coral Gables owned by a subsidiary of Urbin Coral Gables Partners, LLC, and a proposed settlement with the secured lender for an office building at 299 Alhambra in Coral Gables owned by another subsidiary. The remaining active real estate projects are:

1. A luxury single family home constructed on real property located across two parcels in Coconut Grove (the “Stewart Property”) owned by Stewart Grove 1, LLC (“Stewart Grove”);
2. Real property and/or leasehold rights for real estate all located on Commodore Plaza in Coconut Grove (the “Coconut Grove Properties”) which are described below in Section E;
3. Two parcels in Miami Beach owned by Urbin Miami Beach Owner, LLC, a subsidiary of Urbin Miami Beach Mezzanine, LLC;
4. Four condominium units in a building located at 515 Valencia Ave in Coral Gables owned by 515 Valencia SPE, LLC, a subsidiary of 515 Valencia Partners, LLC; and
5. 12.37 acres in Columbia Falls, Montana owned by 7240 US Highway 2 SPE, LLC, a subsidiary of LV Montana Phase I, LLC.

**C. The Halpern Parties’ Involvement with the Receivership Companies, Receivership Property and Rishi Kapoor**

The Halpern Parties are intertwined with the Receivership Property and Rishi Kapoor through numerous transactions and arrangements as purported lenders, investors, and purchasers of condominium units. Based on the Receiver’s review of the books and records, which is ongoing and subject to updates: (1) Mr. Halpern was an investor in Location Ventures, LLC, (2) the Halpern Family Trust was an investor in Urbin LLC, Urbin Founders Group, LLC, Urbin Coconut Grove Partners, LLC and LV Montana Phase I, LLC, (3) the Halpern Family Trust recorded a mortgage on the Stewart Property, (4) the Halpern Family Trust and Martin I. Halpern Revocable Trust recorded mortgages on the Commodore properties, (5) the Halpern Family Trust entered into purchase agreements as the purchaser for various units in the 515 Valencia Ave condominium

building, including Units 802, 803, 1004 and 1104., and (6) in October 2021, the Martin I. Halpern Revocable Trust wired \$2 million dollars to Mr. Kapoor's personal account.

Shortly following the Receiver's appointment, on January 23, 2024, the Receiver's counsel contacted counsel for the Halpern Parties and scheduled an initial call for January 25, 2024, and since, the parties have had numerous discussions.

#### **D. The Stewart Property and Proposed Sale**

On May 2, 2024, the Receiver filed the Expedited Motion to Approve Sale Free and Clear and Related Settlement Agreement and Lien Claims Process (the "Stewart Sale Motion") (DE#128) ("Stewart Sale Motion"). As described in the Stewart Sale Motion, the \$17.5 million sale contract is the highest all cash offer received with significant favorable terms (including the buyer paying 50% of surtax and its broker, coordinating the buyer's broker's agreement attached as Exhibit L, and limited inspections), and the settlement with the first position lender (the "Lender") will provide a "carve out" of the Lender's secured position which has a value to the estate in excess of \$600,000 assuming the transaction closes within the next month, both of which took a significant amount of time to negotiate. The buyer has already commenced inspections, with the Receiver's office coordinating access on numerous occasions. The expeditious sale of the Stewart Property and payment to the Lender will end any additional claim to default interest, avoid deterioration and waste, maximize the value of the Stewart Property, and provide funds to the Receivership estate. If the sale cannot close expeditiously, the Receiver may need to pursue an alternative resolution, such as a settlement payment and deed in lieu, which would result in the continuation of the first position lender's foreclosure proceeding and reduction or elimination of possible recoveries for lien claimants.

The Stewart Sale Motion proposes to separately account for the remaining net sale proceeds

after payment to the Lender, carveout and closing costs, and funding of a fee and cost reserve, as the “Lien Claim Fund,” which the Receiver estimates will receive \$2.5 million (depending on the closing date), and proposes a lien claims process that includes the submission of a lien claim form and supporting documents, a determination by the receiver, and an opportunity to seek reconsideration and appeal to the Court. A number of subcontractors and other lien claimants have recorded liens on the Stewart Property. The Halpern Family Trust (“HFT”) purports to have provided Stewart Grove a loan in the amount of \$4 million secured by a junior mortgage on the Stewart Property on January 27, 2023. By late January 2023, a significant portion of the construction had already occurred, and \$4 million was not needed to complete the Stewart Property. The HFT and/or the Martin I Halpern Revocable Trust provided funds to a law firm as escrow agent, and on January 27, 2023, the law firm released \$3,959,242 with the memo note “proceeds from Marty’s 2<sup>nd</sup> position loan on Stewart Avenue” but wired the funds to Location Capital, LLC. The Receiver is continuing to investigate both the use of the funds and the extent of the lender’s knowledge or inquiry regarding their use.

#### **E. The Coconut Grove Properties**

The Coconut Grove Properties are owned by four subsidiaries of Urbin Coconut Grove Partners, LLC, and are a complicated assemblage of fee simple and tenant leasehold interests with various issues presented by the lack of funds for the project, Verizon cellular equipment on a partially demolished building, released purchaser escrow deposits for condominium units, and lender, landlords and other claimants’ interests. A number of parties have expressed interest in purchasing some or all of the Coconut Grove Properties. The Receiver is in the process of evaluating proposals, the possibility of a sale of some or all of the properties, or another course of action to administer the assets. The Receiver requires additional time to determine whether it is

feasible to monetize the Coconut Grove Properties in a manner that provides a benefit to the receivership estate. At the same time, the Receiver has had regular calls with the landlords for two of the ground leases, and discussions with Verizon, the City of Miami, and the Halpern Parties.

The Halpern Family Trust and/or Martin I. Halpern Revocable Trust have recorded mortgages for different loans on the Coconut Grove Properties:

1. For Urbin Commodore Residential SPE, LLC (fee simple owner of 29 condominium or retail units at 3162 Commodore Plaza), they recorded an amended and restated mortgage for a \$3.025 million loan on June 1, 2022, and a mortgage for a \$7 million loan on March 14, 2023 (the “Common Mortgage”),
2. For Urbin Commodore Residential II SPE, LLC (fee simple owner of 3170 Commodore Plaza, and tenant for 3166 Commodore Plaza), they recorded a mortgage for a \$2.4 million loan on June 1, 2022, and the Common Mortgage, and
3. For Urbin Commodore SPE, LLC (lessee under a ground lease for 3138 Commodore Plaza), and Urbin Commodore Restaurant SPE, LLC (lessee under a ground lease for 3120 Commodore Plaza), they recorded on February 21, 2023 a notice of future advance and mortgage modification agreement dated February 14, 2023 for a future advance loan of \$5 million in addition to the original loan of \$9.5 million for a total loan of \$14.5, and the Common Mortgage.

The movement of funds from the Halpern Parties is not straightforward. Funds were often provided to a law firm as escrow agent who disbursed funds from its account to various entities. For example, on February 14, 2023, the law firm released \$2,437,629.94 with the memo note “loan proceeds on Marty upsize at location commodore” but wired the funds to Location Capital, LLC. On February 15, 2023, Location Capital, LLC transferred the same amount (\$2,437,629.94) to Urbin Coconut Grove Partners LLC, Urbin Coconut Grove Partners LLC transferred \$2,437,629.94 to Urbin LLC, and Urbin LLC transferred \$2,437,629.94 to Location Capital, LLC. Again, the Receiver is continuing to investigate both the use of the funds and the lender’s knowledge or inquiry regarding the use of the funds.

**F. The Halpern Intervention Motion**

On May 7, 2024, the Halpern Parties filed the Motion to Intervene, in which they “seek to intervene in this case for the *sole* purpose of obtaining leave of this Court’s injunction order so it can protect its collateral by foreclosing on their interests in the Three Properties and the Stewart Grove Property”. (DE#130 at 2-3).

Specifically with regard to the Stewart Property, the Halpern Parties request leave to intervene to (1) file their objections to both the sale and process; and (2) for the court to lift the injunction so they may pursue a foreclosure of their lien on the Stewart Property. *Id.* at 8, 19-20. The SEC and the Receiver – while reserving objections to the request for intervention – have agreed that the Halpern Parties may submit their proposed objection to the Stewart Sale Motion so they may be considered by the Court.

With regard to the Coconut Grove Properties, the Halpern Parties request leave to intervene to seek relief from the stay in the Order Appointing Receiver and pursue foreclosure actions on the Coconut Grove Properties. *Id.* Alternatively, they seek an order requiring the Receiver to perform all financial obligations under the mortgages and ground leases, including curing all monetary and non-monetary defaults. *Id.* at 19. The Halpern Parties also seek a decree that the Coconut Grove Properties are not subject to the Receivership or the Stay Order. *Id.*

**DISCUSSION**

**A. The Coconut Grove Properties are Subject to the Receivership Order Stay**

As an initial matter, the Halpern Parties profess some confusion over whether the Coconut Grove Properties are subject to the Order Appointing Receiver, and seek a decree that the Coconut Grove Properties are not subject to the receivership stay. There is no reason for any confusion. The Order Appointing Receiver defines “Receivership Property” as including “all property interests ...

of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.” Order Appt. Rec., DE#28 at ¶7.A. The injunction against interference with the Receiver prohibits any interference with “the Receiver’s efforts to take control, possession, or management of any Receivership Property,” including “creating or enforcing a lien upon any Receivership Property” and “enforcing judgments, assessments, or claims against any Receivership Property”. *Id.* at ¶23.A, C. And the stay of litigation applies to “All civil legal proceedings of any nature, including, but not limited to ... foreclosure actions ... or other actions of any nature involving ... any Receivership Property.” *Id.* at ¶ 26.

Each of the loan documents attached to the Motion to Intervene is signed by URBIN Coconut Grove Partners, LLC – a Receivership Defendant – as Manager of the borrower. Accordingly, it is beyond question that the Receivership Defendants, through their management of the borrowers which directly own the Coconut Grove Properties, own, possess, have a beneficial interest in, or control directly or indirectly the Coconut Grove Properties, and that the properties and any action against them are therefore subject to the stay in the Order Appointing Receiver.

**B. The Halpern Parties are Not Entitled to Intervene**

The Halpern Parties seek to intervene under Fed. R. Civ. P. 24(a), which provides for intervention as of right upon consideration of four factors: (1) timeliness of the request; (2) an interest in the property or transaction that is the subject of the action; (3) whether the movant is so situated that disposing of the action may as a practical matter impair or impede the movants’ ability to protect that interest; and (4) whether existing parties adequately represent that interest. Fed. R. Civ. P. 24(a). They alternatively seek permissive intervention under Rule 24(b), under which a party who “has a claim or defense that shares with the main action a common question of law or fact” may intervene. Fed. R. Civ. P. 24(b).

### 1. Section 21(g) of the Securities Exchange Act Bars Intervention

Before even reaching Rule 24, however, there is a threshold issue that the Halpern Parties have completely failed to address. Section 21(g) of the Securities Exchange Act of 1934, codified at 15 U.S.C. § 78u(g), provides that “... [N]o 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.” The Receiver is advised that the SEC does not consent to the Halpern Parties’ intervention. And Section 78u(g) has been held to constitute a complete bar on intervention in an SEC case without the SEC’s consent. *Sec. & Exch. Comm’n v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266 (M.D. Fla. Sep. 24, 2009) (reaching the “inescapable conclusion Section 21(g) bars intervention”), citing *Sec. & Exch. Comm’n v. Cogley*, 2001 WL 1842476, \*5 (S.D. Ohio 2001) and *Sec. & Exch. Comm’n v. Homa, Inc.*, 2000 WL 1468726, \*2 (N.D. Ill. 2000). *See also Sec. & Exch. Comm’n v. Freedom Env’t Servs., Inc.*, No. 6:12-cv-1415, 2013 WL 12155837, \*2 (M.D. Fla. Feb. 1, 2013) (holding that intervention is barred by Section 21(g), that intervention under Rule 24 by private parties in SEC litigation “has generally not been granted,” and that appropriate relief is available through a claims process). *Compare Sec. & Exch. Comm’n v. BKCoin Mgmt., LLC*, No. 23-20719, 2023 WL 3250917, \*2 (S.D. Fla. May 4, 2023) (noting split of authority on whether Section 21(g) is an absolute bar to intervention in SEC enforcement actions).

In so holding, the *Nadel* court noted that permitting intervention would establish a “dangerous precedent” and “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.” *Id.* The *Nadel* court further noted, as have other courts, that the court would

“implement a claims procedure designed to afford all disaffected investors the process they are due under the law with regard to their claims interest in the estate’s assets consistent with the principles of *Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560 (11th Cir. 1992). For reasons discussed further below, the Receiver submits the same is entirely true with regard to the Motion to Intervene. Granting the motion would interfere with the Receiver’s performance of her duties to administer the receivership estate and would divert resources intended to benefit the entire receivership estate, and the Halpern Parties’ interests will be fully protected by the claims process to be administered by this Court.

## **2. Intervention Under Rule 24 is Not Warranted**

Even if intervention were not barred by Section 21(g), the Halpern Parties have failed to establish a basis for intervention under Rule 24. Notably, the Halpern Parties failed to cite a single case addressing intervention in the SEC receivership context. Particularly in consideration of the unique elements of an equity receivership, the Motion to Intervene fails to satisfy at least two of the four factors under Rule 24(a): timeliness, and the movant’s ability to protect their interest.

### **(a) Timeliness.**

Timeliness is determined from all the circumstances, including (1) the length of time the would-be-intervenor knew or reasonably should have known of their interest before petitioning to intervene; (2) the extent of prejudice to existing parties as a result of the failure to seek intervention sooner; (3) the extent of prejudice to the would-be-intervenor if intervention is denied; and (4) any unusual circumstances. *Sec. & Exch. Comm’n v. Marin*, 1:19-MC-20493-UU, 2019 WL 3428551, at \*3 (S.D. Fla. May 31, 2019), *report and recommendation adopted*, 2019 WL 13240985 (S.D. Fla. Sep. 30, 2019). In *Marin*, the court found that the timeliness requirement was not satisfied where the movant knew of the SEC case from its inception, but did not file his motion to intervene

until two months later.

With regard to the Stewart Property, while the Motion to Intervene was filed within days of the Receiver filed the Stewart Sale Motion, the Halpern Parties waited for nearly four months after the commencement of the receivership – after the Receiver had already invested substantial time and resources into negotiating a proposed sale of the Stewart Property and settlement with the Lender and preparing a lien claims process – to seek to intervene for the purported purpose of commencing a foreclosure action.<sup>2</sup> The Receiver will be substantially prejudiced if the Halpern Parties are able to upend and disrupt those efforts by instituting foreclosure proceedings after the Receiver has undertaken these substantial efforts to implement a transaction that will generate a positive result for the receivership estate and a substantial Lien Claim Fund to pay lien creditors – including, obviously, the Halpern Parties themselves to the extent they have valid, enforceable, unavoidable priority liens against the Stewart Property.

With regard to the Coconut Grove Properties, the parties have had prior communications regarding the Halpern Parties' proposed intervention and the Receiver agreed not to assert any lack of timeliness while such discussions were ongoing. However, the Receiver would submit that the timeliness of the Halpern Parties' substantive request – to obtain relief from the Order Appointing Receiver so they may commence foreclosure proceedings – must be judged by their failure to do so for several months prior to the commencement of the receivership case, despite the claimed defaults by the borrowers.

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<sup>2</sup> It is far from clear whether the Halpern Parties, even if granted relief by this Court, could properly proceed with a foreclosure action against the Stewart Property in state court. As the Stewart Sale Motion makes clear, the senior lender has already commenced a foreclosure action and the Halpern Parties, as a junior lienor, are already defendants in that action. And as a junior lienor, they would not have the ability to join the senior lender in their own foreclosure action, and could only, at most, foreclose junior interests in the property – subject to the senior lien.

**(b) Halpern Parties' Interests are Protected by the Claim Process**

Second, with regard to the Halpern Parties' ability to protect their interests, courts have repeatedly held that the interests of claimants in receivership property are appropriately addressed as part of the claims process approved by the court in an equity receivership case. The Halpern Parties assert that the proposed sale of the Stewart Property free and clear of liens would extinguish their junior lien "without due process." But it is well recognized that in an equity receivership, the due process interests of investors and creditors, including secured creditors, are typically dealt with through a claims process. *See, e.g., Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560 (11th Cir. 1992).

In *Elliott*, the Eleventh Circuit noted that "The district court has broad powers and wide discretion to determine relief in an equity receivership." *Id.* at 1566. It went on to describe how the government's and parties' interests in judicial efficiency "underlie the use of a single receivership proceeding," and that a summary proceeding "reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets." *Id.* Thus, the district court had discretion to establish a claims process and to establish the guidelines for that claim process, including with regard to secured creditors, and claimants "must demonstrate how particular proceedings violate their due process rights" to have a basis to object. *Id.* at 1571.

Consistent with *Elliott*, courts have repeatedly and properly held that a claimant is not entitled to intervene in an SEC action because a forum is available for them through the receivership claims process. *See, e.g., Sec. & Exch. Comm'n v. JCS Enters., Inc.*, No. 14-CV-80468, 2015 WL 13950381 (S.D. Fla. Nov. 3, 2015) (denying motion to intervene under Rule 24(a) and (b) by claimant who asserted a claim regarding a particular receivership estate asset); *Sec. & Exch. Comm'n v. Freedom Env't Servs., Inc.*, No. 6:12-cv-1415, 2013 WL 12155837, at \*2

(M.D. Fla. Feb. 1, 2013), citing *Sec. & Exch. Comm'n v. Homa*, 17 F. App'x 441, 446 (7th Cir. 2001) (holding intervenor's claim "would not be impaired because a forum is available under the Receiver's proposed claims procedure"); *CFTC v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d 584 (10th Cir. 1984) (same);

In denying intervention, the *JCS* court noted that "Courts have repeatedly held that a receivership claims process is the appropriate forum for considering interests of secured creditors and allowing secured creditors to protect their interest," *JCS*, 2015 WL 13950381 at \*1, citing *Elliott*, 953 F.3d at 1566, *Homa* 17 F. App'x at 446. The court further noted that it would not require the receiver to institute an immediate claim process with regard to the particular asset, as the receivership was still engaging in "extensive and complex financial reconstructions of dozens of financial accounts" which were required to permit the receiver to "allocate losses according to a Court-approved methodology and fairly evaluate claims during a claims process." *Id.* at \*2. It noted that "A receiver must be given a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant." *Id.*, citing *Sec. & Exch. Comm'n v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985). In a similar vein, the court in *Sec. & Exch. Comm'n v. Callahan*, 2 F. Supp. 3d 427 (E.D.N.Y. 2014) denied a lender the right to intervene to foreclose on receivership property where the SEC did not consent, the lender would suffer minimal prejudice, and intervention would interfere with the receiver's ability to administer the receivership estate and recover assets for investors. *Callahan*, 2 F. Supp. 2d at 437.

The Halpern Parties claim that if they are not granted leave to proceed with foreclosure, "their collateral will be subjected to additional intervening liens and further waste" – but as explained above, the stay provisions of the Receivership Order ensure that no party may assert or enforce any claims or liens against Receivership Property without relief from this Court. Indeed,

the Halpern Parties are only at risk of additional intervening liens if the Court were to grant them the relief they have requested, which would inevitably result in other parties similarly seeking leave to assert their claims and liens against Receivership Property. Granting leave to foreclose on either the Stewart Property or the Coconut Grove Properties would interfere with the Receiver's ability to administer the receivership estate and recover assets for the benefit of investors and all creditors. Further, with respect to the Stewart Property, the Receiver has proposed a specific lien claim process for the Stewart Property to expeditiously address lien claims and disburse net sale proceeds (ahead of any claims process for investors and other creditors), which includes a reconsideration and appeal process.

**(c) Permissive Intervention.**

For permissive intervention under Rule 24(b), the court “may permit anyone to intervene” who “has a claim or defense that shares with the main action a common question of law or fact.”<sup>3</sup> In assessing a request for permissive intervention, the court considers the delay or prejudice that will be caused to the original parties. *ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990). The Halpern Parties fail to provide any specific identification of a common question of law or fact between their intended foreclosure actions against the Stewart Property and Coconut Grove Properties, and the SEC action here. Indeed, in the same paragraph, they claim that they only seek to intervene “to address their rights in a real estate transaction that is not the subject of the SEC’s complaint.” The Receiver further notes that the Halpern Parties have failed to attach to their Motion to Intervene “the pleading that sets out the claim or defense for which intervention is sought,” as required by Fed. R. Civ. P. 24(c), which is itself an independent basis on which the motion should

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<sup>3</sup> The Halpern Parties have misquoted the rule by including the word “must” instead of “may.” DE#130 at 16. “Must” appears in Rule 24(a) (intervention as of right); “may” appears in Rule 24(b) (permissive intervention).

be denied.

The Halpern Parties argue that permitting them to intervene for the “requested *limited* purpose” of seeking relief to pursue foreclosure will not delay or prejudice the SEC. But it undoubtedly will prejudice the Receiver in fulfilling her duties under the Receivership Order to marshal, manage and liquidate Receivership Property for the benefit of all interested parties. Consistent with the Court’s suggestion, the Receiver and SEC have agreed to the Halpern Parties filing their proposed objection to the Stewart Sale Motion consistent with Fed. R. Civ. P. 24(c), while reserving their objections to intervention, which is not warranted here. The Court noted at the March 21, 2024 status conference that – without reaching the issue of intervention – she would consider creditors’ motion for leave to be heard on a case-by-case basis (*See* DE#114, P20 L3-4).

**C. The Receiver is Authorized to Sell the Stewart Property Free and Clear of Liens**

The Halpern Parties claim that the expedited approval of the Stewart Property sale “would result in a complete extinguishment of the Trusts [sic] perfected recorded liens” without permitting them to object. The claim is inaccurate in multiple respects. First, while the SEC and the Receiver oppose intervention under Rule 24, the Receiver has agreed to the Halpern Parties filing their proposed objection to the Stewart Sale Motion so they may be considered by the Court at the hearing scheduled for May 20, 2024.

But more substantively, the Stewart Sale Motion does not “extinguish” their liens; rather, their liens will continue to attach to the proceeds of the sale, with the same validity, extent and priority as they had in the property. Courts in equity receivership cases, as part of their broad equity powers, have repeatedly validated the authority of receivers to sell receivership property free and clear of liens, and to address the claims to the proceeds through a claims process rather than through foreclosure. *See, e.g., Miners’ Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir.

1933) (“A court of equity under proper circumstances has power to order a receiver to sell property free and clear of all incumbrances, and to deny the mortgagee the right to foreclose his mortgage.”); *see United States v. Brewer*, 2009 WL 1748504, at \*5 (M.D. Fla. June 19, 2009) (approving private sale and concluding buyer “shall hold good and clear title to the Property as against the world, free and clear of all liens, encumbrances, claims and interests of any kind”); *Sec. & Exch. Comm’n v. Champion-Cain*, No. 3:19-CV-1628-LAB-AHG, 2019 WL 6834661, at \*8 (S.D. Cal. Dec. 13, 2019) (authorizing receiver’s auction sale free and clear of lien asserted by objecting mechanics lien creditor, “whether or not the ... lien is valid”); *Sec. & Exch. Comm’n v. Capital Cove Bancorp LLC*, No. SACV 15-980-JLS, 2015 WL 9701154, at \*4 (C.D. Cal. Oct. 13, 2015) (“it has long been recognized that under appropriate circumstances, a federal court presiding over a receivership may authorize the assets of the receivership to be sold free and clear of liens and related claims”).

The *Champion-Cain* court noted that the receiver’s role, and the district court’s purpose in the appointment, is “to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets.” *Champion-Cain*, 2019 WL 6834661, at \*8, citing *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). If federal courts sitting in equity overseeing receiverships were required to first “permit interested parties to proceed in collateral state court proceedings to resolve their competing claims,” the “primary purpose” of the equity receivership proceeding “would be utterly defeated.” *Id.* The *Champion-Cain* court could not “locate any authority to support such an argument,” and the Halpern Parties have cited none here. That court further noted that the Receiver’s proposal to permit liens to attach to the proceeds of sale “is fair and reasonable and thus consistent with the goals of equity,” *Champion-Cain*, 2019 WL 6834661 at \*10, citing *Mellen v. Moline Malleable Iron Works*, 131 U.S. 352 (1889), and *Capital Cove*, 2015 WL 9701154, at \*8.

The sale of the Stewart Property free and clear of liens is authorized under the broad equity powers of this court in an SEC equity receivership, and is fully consistent with the Receiver's responsibilities and powers under the Order Appointing Receiver, and the Halpern Parties' interests are fully protected by their lien attaching to the proceeds and being addressed through the Receiver's proposed claims process.

**D. The Halpern Parties Have Not Shown a Basis for Relief on the Coconut Grove Properties**

The Halpern Parties claim that the Coconut Grove Properties are subject to waste, pointing to liens that have been placed on the properties and Unsafe Structure Notices from the City of Miami. But the Halpern Parties fail to clarify that all of those liens and notices were recorded and issued well before the Receiver was appointed. Indeed, the long list that takes up more than an entire single-spaced page references liens and notices that all date from between May 25, 2023 and August 24, 2023. (DE#140 at 5-7). Notably, the *last* of those liens was recorded nearly five months *before* the Receiver was appointed. During that period, the Halpern Parties did not take any action to foreclose on their liens against any of the Coconut Grove Properties. It is not clear that the Halpern Parties even issued a default notice to the borrowers. The Halpern Parties themselves allowed months to pass and liens to accrue without taking any action to pursue foreclosure prior to the Receiver's appointment.

Moreover, the stay provisions of the Order Appointing Receiver apply not only to the Halpern Parties, but also to any other party seeking to assert a claim against the Receivership Companies or their subsidiaries or a lien against Receivership Property. It prohibits any new lien to be asserted against the Coconut Grove Properties, and prohibits the enforcement of any existing liens. The Receiver has been in communication with the ground lessors to advise them of the Order Appointing Receiver and its effect of precluding any action to terminate the ground leases without

obtaining relief from the receivership stay. The Receiver has also been in contact with the City of Miami's Senior Assistant City Attorney regarding the Unsafe Structures Notices and advised counsel of the SEC action and receivership, and Order Appointing Receiver. There are not sufficient funds in the entities that own the Coconut Grove Properties for the Receiver to make current payment of the obligations under the various ground leases, but as the Halpern Parties recognize, the lenders have the right to make protective advances under their loan documents and include that amount in their debt.

Further, as discussed above, the Receiver has been engaged in discussions with multiple parties regarding a potential sale of some or all of the Coconut Grove Properties and evaluating potential sales or alternative courses of action, consistent with her responsibilities under the Order Appointing Receiver to administer assets in the manner the Receiver deems most beneficial to the Receivership Estate. Granting the Halpern Parties relief from the Receivership Order to pursue foreclosure would deprive and disrupt the Receiver's process, consistent with her responsibilities under the Receivership Order, to have an opportunity to seek to liquidate or otherwise administer Receivership Property for the benefit of the receivership estate and all of its investors and creditors.

**WHEREFORE**, the Receiver respectfully requests that the Court (1) deny the Halpern Parties' Motion to Intervene; and (2) enter an order granting the Receiver's Stewart Sale Motion.

Respectfully submitted,

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By: /s/ David L. Rosendorf  
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**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 16th day of May, 2024.

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