

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.

**NON-PARTY, 299 ALHAMBRA, LLC'S MOTION FOR LIMITED
INTERVENTION AND FOR RENEWED STATUS CONFERENCE REGARDING
RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT AND AUTHORITY TO
CONSENT TO FORECLOSURE JUDGMENT [DE: 91]**

Non-Party, 299 Alhambra, LLC (“Lender”), moves this Court for limited intervention and for renewed status conference regarding the Receiver’s motion for approval of settlement and authority to consent to foreclosure judgment (the “Receiver’s Motion to Approve Settlement”) [DE 91], as follows:

Preliminary Statement

The Receiver’s Motion to Approve Settlement was filed on February 28, 2024, seeking this Court’s approval for a payment of \$100,000 from Lender to the Receivership Estate, in exchange for a consent foreclosure judgment in Lender’s state court foreclosure proceedings against CG Office SPE, LLC (a Kapoor entity subject to the Receivership). At the March 21, 2024 status conference on the Receiver’s Motion to Approve Settlement, the Receiver, Lender, and Mr. Kapoor all waived oral arguments on the Motion and the Court took the matter under advisement. Lender requests a renewed status conference and ruling on the Receiver’s Motion to Approve Settlement.

Legal Authority/Memorandum of Law

Lender seeks intervention for the limited purpose of obtaining a renewed status conference on the Receiver's Motion to Approve Settlement. "To intervene of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure, 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." Fox v. Tyson Foods, Inc., 519 F.3d 1298, 1302-03 (11th Cir. 2008) (citation and internal quotation marks omitted); Fed. R. Civ. P. 24(a)(2). Here, Lender meets the requirements for intervention, as discussed below.

1. Timeliness

In considering whether a motion for leave to intervene is timely, courts will consider (1) the length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene; (2) the extent of prejudice to the existing parties as a result of the would-be intervenor's failure to apply as soon as he knew or reasonably should have known of his interest; (3) the extent of prejudice to the would-be intervenor if his petition is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. United States v. Jefferson County, 720 F.2d 1511, 1516 (11th Cir. 1983). "Timeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." JWR Constr., Inc. v. United States Fire Ins. Co., No. 23-CV-61761, 2023 U.S. Dist. LEXIS 218117 6* (S.D. Fla. Dec. 6, 2023) (citing McDonald v. E.J. Lavino Co., 430 F.2d 1065,

1074 (5th Cir. 1970)).

Lender meets the timeliness requirement. Lender's undersigned counsel attended the Court's initial status conference on the Receiver's Motion to Approve Settlement, and the Court and parties acknowledged formal intervention by Lender was unnecessary, as the Receiver was the moving party requesting the Court's approval of the Settlement. Lender's counsel was merely present at that March 21, 2024 status conference to confirm Lender's acceptance to the settlement terms outlined by the Receiver, and to answer any questions the Court may have. Given that the status conference was conducted over 60 days ago, with no order having been entered, Lender seeks limited intervention for the purposes of requesting this renewed status conference. No party would be prejudiced by the requested intervention, as it is sought for the extremely limited and narrow purpose of securing a ruling on the Receiver's Motion to Approve Settlement. Once a ruling is made on said Motion, Lender will have no interest in this pending case, and can resume its state court foreclosure proceedings against CG Office SPE.

2. An interest in the subject matter

To meet Rule 24(a)(2)'s requirement that a litigant has an interest in the subject matter, he must be a "real part[y] in interest in the transaction which is the subject of the proceedings." Chiles v. Thornburgh, 865 F.2d 1197, 1213-14 (11th Cir. 1989). Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc., 425 F.3d 1308, 1311 (11th Cir. 2005) ("[w]hat is required is that the interest be one which the substantive law recognizes as belonging to or being owned by the applicant"). Courts review this second element under a flexible approach, focusing on the particular facts and circumstances surrounding a motion to intervene. United States v. Perry Cnty. Bd. of Educ., 567 F.2d 277, 279 (5th Cir. 1978) (quoting United States v. Allegheny-Ludlum Indus., Inc., 517 F.2d 826, 841 (5th Cir. 1975)). Lender holds a mortgage encumbering the real estate at 299 Alhambra, Coral Gables.

FL, which is owned by CG Office SPE, a Kapoor entity. Lender is owed far in excess of \$13,000,000, with significant daily default interest accruing on the loan balance. Accordingly, Lender should be permitted intervention to protect its security interest in the subject collateral.

3. Disposition of litigation will impede said interest.

“Though the impairment must be 'practical' and not merely 'theoretical,' the [parties seeking to intervene] need only show that if they cannot intervene, there is a possibility that their interest could be impaired or impeded.” Brumfield v. Dodd, 749 F.3d 339 at 344-5 (5th Cir. 2014). Establishing impairment of an interest is a "minimal" burden, requiring the party to show only that impairment is possible. see Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union, Local 1199 v. Blackwell, 467 F.3d 999, 1007-08 (6th Cir. 2006). The bottom-line question to meet this element is whether a prospective intervenor can protect its interest absent intervention. See Chiles, 865 F.2d at 1214.

Lender’s failure to secure a Court order here will impede its interest to foreclose its mortgage in the state court foreclosure proceedings discussed above. Lender requires limited intervention for the sole purpose of securing this Court’s order on the Receiver’s Motion to Approve Settlement.

4. Interest is represented inadequately.

While "[t]here is 'a presumption of adequate representation where an existing party seeks the same objectives as the interveners [,]' . . . the 'presumption is weak and can be overcome if the [intervenors] present some evidence to the contrary.'" Hart Mech. Contractors, Inc., 2022 U.S. Dist. LEXIS 236946, 2022 WL 18465613, at *3 (S.D. Fla. Oct 14, 2022) (quoting Stone v. First Union Corp., 371 F.3d 1305, 1311 (11th Cir. 2004)). Once a prospective intervenor overcomes this presumption, the general rule is then "that adequate representation exists [1] if no collusion is

shown between the representative and an opposing party, [2] if the representative does not have or represent an interest adverse to the proposed intervenor, and [3] if the representative does not fail in fulfillment of his duty." Stone, 371 F.3d at 1311; See also Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist., 983 F.2d 211, 215 (11th Cir. 1993). "The Supreme Court has held that the inadequate representation requirement "is satisfied if the [proposed intervenor] shows that representation of his interest 'may be' inadequate" and that "the burden of making that showing should be treated as minimal." Chiles, 865 F.2d at 1214.

While Receiver and Lender do have the same objectives as it relates to the Receiver's Motion to Approve Settlement (approval of the agreement by this Court), Lender has pressing exigencies relating to the subject property that must be addressed. The property was and remains subject to a state court receivership action, and in order to protect against the erosion of the collateral's value, the state court foreclosure proceedings must progress timely. As the secured lender for the subject property, Lender has the right to intervene and obtain a ruling on the Receiver's Motion to Approve Settlement. Accordingly, Lender requests this Court grant Lender the limited intervention sought herein and for a renewed status conference for Receiver's Motion to Approve Settlement.

WHEREFORE, Lender, 299 Alhambra, LLC, moves this Court for limited intervention and for renewed status conference regarding the Receiver's Motion for Approval of Settlement [DE 91] and for any other relief the Court deems proper.

LOCAL RULE 7.1 CONFERRAL

The undersigned certifies that reasonable efforts were made to confer with the Receiver regarding the relief sought in the instant motion, via email dated May 22, 2024. The Receiver has not yet provided a stance on the requested relief. However, given the Receiver was the movant in DE 91 (Receiver's Motion to Approve Settlement), the undersigned reasonably believes that the Receiver would have no objection to the requested relief.

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By: /s/ Paul A. Humbert
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CERTIFICATE OF SERVICE

I certify that the foregoing was filed via CM/ECF on May 28, 2024, which will transmit an electronic copy of same to all counsel of record.

/s/ Paul A. Humbert
Paul A. Humbert