

**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.

RECEIVER’S SUPPLEMENTAL BRIEF ON STEWART SALE MOTION

Bernice C. Lee, as Receiver (“Receiver”) over the Receivership Companies,¹ submits this supplemental brief in support of Receiver’s Motion for Expedited Approval of Stewart Grove Property Sale (“Stewart Sale Motion,” DE#128) in accordance with the Court’s May 23, 2024 Order (DE#161). Specifically, the Court directed the parties to brief the impact, if any, of *Sec. & Exch. Comm’n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017) on the relief sought in the Stewart Sale Motion, including but not limited to paragraphs 10-13 of the Receiver’s proposed Order.

The Scope of the *Wells Fargo* Decision

As an initial matter, the Receiver notes that the *Wells Fargo* decision addressed one

¹ 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.

specific, narrow issue: whether the court could extinguish a secured creditor's lien interests in receivership property if it failed to timely file a proof of claim in accordance with court-approved claim procedures:

The sole issue in this appeal is whether the district court correctly determined that Wells Fargo's failure to file certain proofs of claim in accordance with the district court's procedures extinguished Wells Fargo's secured interest in the receivership properties.

Id. at 1343. By way of context, the district court in *Wells Fargo* had approved a claim administration process which required all potential claimants (both investors and creditors, and without distinction between secured and unsecured creditors) to file proof of their claims by a claims bar date. The order approving the claims process provided that any claims asserted after the deadline would be barred. *Id.* at 1341-42. Wells Fargo submitted a proof of claim as to a loan secured by one property, but did not submit a proof of claim with regard to claims secured by two other properties. *Id.* at 1342. One of those properties had already been sold in the receivership, the other was still held by the receiver. *Id.* The receiver filed a motion seeking (1) a determination that Wells Fargo's failure to file a proof of claim extinguished any interest in the receivership properties; and (2) authority to distribute the proceeds from the sold property without any payment to Wells Fargo on account of its lien interest. *Id.* The district court granted the motion.

The Eleventh Circuit held in *Wells Fargo* that the district court "does not have the authority to extinguish a creditor's pre-existing state law security interest, as the district court purported to do here." *Id.* at 1344. Accordingly, it reversed the order holding that Wells Fargo's lien claims against the properties were extinguished by its failure to file a proof of claim. *Id.* at 1345.

Wells Fargo Does Not Address the Receiver's Authority to Sell Receivership Property

Free and Clear of Liens

The Receiver notes, initially, that nothing in the holding of *Wells Fargo* restricts the

authority of an equity receiver in an SEC receivership to sell property of the receivership companies free and clear of any liens, claims or interests and to have those interests attach to the proceeds of the sale with the same validity, priority and extent that they had in the property, consistent with the authorities cited in the Receiver's earlier filings. The fact pattern of *Wells Fargo* reflects that at least one of the properties in which the lender asserted a lien was sold in the receivership case, and the appeal dealt solely with the lender's right to recover from the proceeds. Copies of the District Court's orders overruling Wells Fargo's objections to the sale of the property, denying its request for relief from the receivership injunction or to compel abandonment of the property, and authorizing the receiver's sale free and clear of liens with the liens attaching to the proceeds, are attached as Exhibits "A" and "B".

The authority of the receiver to sell encumbered property is in fact implicitly validated by the *Wells Fargo* court's citation to Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 646 (3d ed. 1959): "The appointment of a receiver does not invalidate liens existing at the time the receiver is appointed, *although it may affect or change the remedy or remedies which the lienholder may use to enforce his lien.*" (emphasis added). *Wells Fargo*, 848 F.3d at 1345.

The Wells Fargo Bankruptcy Analogy Must be Viewed with Caution

The Receiver also notes that the Eleventh Circuit's analogy to bankruptcy law must be viewed with some caution and with an eye to context. The Court states, in *dicta*, that "[i]n the bankruptcy context, a secured creditor's lien remains intact through the bankruptcy, regardless of whether the creditor files a proof of claim." *Id.* at 1344. While that may be an accurate statement in certain contexts, it is far from a universally applicable principle of law. The two cases cited by the Court – *In re Bateman*, 351 F.3d 821 (11th Cir. 2003) and *In re Thomas*, 883 F.2d 991 (11th

Cir. 1989) – are both Chapter 13 individual debtor payment plan cases, and deal specifically with the effect of certain provisions of Chapter 13 of the Bankruptcy Code when the debtor retains property subject to a lien.² Neither case involves scenarios where an encumbered property is sold free and clear of liens in the bankruptcy case with liens attaching to the proceeds, as is expressly authorized by Section 363(f) of the Bankruptcy Code. 11 U.S.C. § 363(f).

There are in fact a multitude of other ways in which a secured creditor’s rights may be altered in a bankruptcy case. See *Matter of Penrod*, 50 F.3d 459 (7th Cir. 1995). In *Penrod*, the Seventh Circuit held that where property subject to a lien is dealt with through a Chapter 11 reorganization, the secured creditor’s lien can be extinguished, even if the plan does not expressly say so. *Id.* In so ruling, the court addressed “the old saw that ‘liens pass through bankruptcy unaffected.’” *Id.* at 461. After running through roughly a half dozen examples of how lien interests may be altered in bankruptcy cases, the court noted, “By now it should be clear that like most generalizations about law, the principle that liens pass through bankruptcy unaffected cannot be taken literally.” *Id.* at 462. Similarly, in *Harmon v. U.S. through Farmers Home Admin.*, 101 F.3d 574 (8th Cir. 1996), the Eighth Circuit addressed “the conventional wisdom that liens pass through bankruptcy unaffected,” and noted that “this ‘old saw’ is actually far too broad, for there are many ways in which liens may be affected by bankruptcy proceedings.” *Id.* at 581. The *Harmon* court noted that “a lien may be removed from collateral and replaced by adequate protection if the trustee obtains permission to sell property free and clear of liens, ... or voided if the related claim is

² For instance, 11 U.S.C. § 1322(b) prohibits any modification of a homestead mortgagee’s rights through a Chapter 13 plan, even if the residential mortgage is undersecured (i.e., the debt is greater than the value of the property). And 11 U.S.C. § 1325(a) provides that a Chapter 13 plan may be confirmed only if, with regard to secured claims, (a) the secured creditor accepts the plan; (b) the plan provides that the secured creditor retain its lien and be paid the full amount of its allowed claim; or (c) the debtor surrenders the property securing the claim to the creditor.

disallowed, ... or avoided to the extent it impairs an exemption of the debtor, ... or avoided if it is the result of a preference or a fraudulent transfer.” *Id.* See also *In re Regional Building Systems, Inc.*, 254 F.3d 528, 530-31 (4th Cir. 2001) (where property is dealt with by Chapter 11 plan, any lien which creditor has on property is extinguished upon confirmation of the plan unless the lien is expressly preserved); *In re Barton Indus., Inc.*, 104 F.3d 1241, 1245 (10th Cir. 1997) (a confirmed Chapter 11 bankruptcy plan may extinguish a lien with adequate notice); *In re S. White Transp., Inc.*, 725 F.3d 494, 496 (5th Cir. 2013) (noting that “default rule” that secured creditor may ignore the bankruptcy proceeding and look to the lien for satisfaction of the debt only applies so long as the lien is not “invalidated by some provision of the Code.”)

Deciding the Stewart Sale Motion does not require this Court to dive into bankruptcy esoterica, however. The point is simply that the bankruptcy principle cited by *Wells Fargo* is clearly not one of universal application, and so the decision should be read narrowly and not as some broad pronouncement on the treatment of secured claims in receivership cases.

Wells Fargo’s Procedural Posture is Distinguishable

The Receiver further notes that the procedural posture of the *Wells Fargo* case is distinguishable from the instant case. In *Wells Fargo*, the court had already approved the claim procedures and the lender elected not to file a claim, but still asserted lien interests in the unsold property and in the proceeds of the sold property. Here, we do not know whether the Halpern Parties will file a claim or not, a decision which has consequences regardless of whether their lien rights are preserved. As the Eleventh Circuit noted, the failure to file a claim may validly extinguish a claimant’s right to receive a distribution from the general pool of receivership assets even if it does not extinguish their rights to their collateral. *Wells Fargo*, 848 F.3d at 1345, fn. 5. Moreover, here the Receiver has not proposed, as the receiver in the *Wells Fargo* case had done,

that proceeds from a sale of property be treated as general receivership assets without any payment to lienholders. To the contrary, the Receiver has proposed a Lien Claim Fund for the Stewart Property sale proceeds from which secured claims are to be paid, with a specific process for asserting and resolving such secured claims. In addition, the claim process at issue in the *Wells Fargo* case applied to all investors and creditors, without distinction among secured, unsecured claims, or investor claims, while here, the Stewart Sale Motion proposes only a limited claim process directed specifically to claims against the Stewart Property to be satisfied from the Lien Claim Fund. In this respect, the proposed process is not substantively different from that which would be followed in state court if the senior lender on the Stewart Property were to proceed with the foreclosure action in which the Halpern Parties are already joined as defendants, as noted in the Response of 3610 Stewart Acquisition, LLC (DE#144). In that event, the senior lender would proceed to judgment and sale, the junior lienors would be prohibited from seeking to foreclose out the senior lien, and the junior lenders' remedy upon sale would be to make a claim to any surplus proceeds. *See* Fla. Stat. §§ 45.031, 45.032.³

Nonetheless, to avoid potential issues in the event the Halpern Parties do not file a Lien Claim, the Receiver suggests some modifications to the proposed order she has submitted, which are discussed further below.

Suggested Modifications to the Proposed Order

In light of the holding of *Wells Fargo* and the possibility that the Halpern Parties may not

³ Under Fla. Stat. § 45.031(1)(a), a subordinate lienholder who fails to file a timely claim is barred from asserting any claim to the sale proceeds. The statute directs that foreclosure judgments provide: "IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS."

file a Lien Claim, the Receiver suggests certain modifications to the proposed order submitted in connection with the Stewart Sale Motion, which are reflected in redline attached as Exhibit “C,” with a clean version attached as Exhibit “D.” In substance, these modifications provide that (a) claimants asserting liens against the Stewart Property may, but are not required, to submit proofs of claim and supporting documentation by a date certain; (b) after such date has passed, the Receiver will file a motion setting forth her proposed distribution of the Lien Claim Fund; (c) all lien claimants known to the Receiver, and any persons filing proofs of claim, may object to the proposed distribution and be heard by the Court; (d) provisions in the order that would bar any claim against the Lien Claim Fund or the receivership companies for failure to submit a proof of claim have been deleted; and (e) the procedures for rejection notices, reconsideration and appeals for claims have been omitted. The Receiver has also attached hereto as Exhibit “E” a modified Proof of Lien Claim.

With these modifications, the Receiver respectfully submits that the relief requested in the Stewart Sale Motion is fully consistent with applicable authorities, including *Wells Fargo*, and should be granted.

WHEREFORE, the Receiver respectfully requests that the Court enter an order in the form attached hereto as Exhibit “D” granting in part the Receiver’s Stewart Sale Motion.

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, LLP
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Email: dlr@kttlaw.com

By: /s/ David L. Rosendorf
David L. Rosendorf
Florida Bar No. 996823

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 28th day of May, 2024.

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

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CASE NO: 8:09-cv-87-T-26TBM

ARTHUR NADEL; SCOOP CAPITAL, LLC;
and SCOOP MANAGEMENT, INC.,

Defendants,

SCOOP REAL ESTATE, L.P.;
VALHALLA INVESTMENT PARTNERS, L.P.;
VALHALLA MANAGEMENT, INC.;
VICTORY IRA FUND, LED.; VICTORY FUND, LED.;
VIKING IRA FUND, LLC; VIKING FUND, LLC;
and VIKING MANAGEMENT, LLC,

Relief Defendants.

ORDER

Pending before the Court is the Receiver's motion seeking this Court's approval of the sale of real property located in Graham, Alamance County, North Carolina on which a Rite-Aid drugstore sits.¹ The Securities and Exchange Commission does not oppose the motion. However, Wells Fargo has filed an objection to the motion and memorandum of law in

¹ See docket 823.

opposition.² After careful consideration, the Court concludes that the Receiver's motion should be granted and his proposed order be entered as the Court's order.

The Court agrees with the Receiver's position that the sale of the Rite-Aid property is necessary at the negotiated sale offer of \$2,400,000.00, even though Wells Fargo is a secured creditor and the amount of the indebtedness exceeds the purchase price. Wells Fargo submits that as of April 25, 2012, it was owed \$3,303,461.60, with interest accruing at \$397.61 per diem. Three appraisals have been submitted: \$2,400,000.00 by Skeahan, the appraiser to which both parties agreed; \$2,600,000.00 by Shiplett, suggested by the Receiver; and \$3,740,000.00 by Fortenberry, suggested by Wells Fargo.³ These appraisals satisfy the requirement of 28 U.S.C. § 2001(b) as performed by independent, disinterested appraisers, and the sale of the property has been published in accordance with 28 U.S.C. § 2001(b). The Receiver set forth the marketing history of the property which reveals that 1) a broker recommended by Wells Fargo has been used in the listing of the property; 2) current economic conditions for the real estate market, and in particular this area, are poor; 3) this Rite-Aid store performs in the bottom 5% of all stores; 4) the financial condition of Rite-Aid is not healthy; and 5) any further delay in the sale of the property will only result in a lower sales price. Thus, the speedy sale of the property is in the best interest of the defrauded investors and the receivership estate. Wells Fargo's specific claim with respect to the Rite-Aid property can and will be determined later.⁴ This decision therefore renders Wells Fargo's Motion (I) for Relief from Injunction or, in the alternative, (II) to Compel

² See docket 832.

³ The tax collector of Alamance County appraised the property at \$2,041,514.00 for the years 2009, 2010, and 2011.

⁴ The Court is ever mindful that the state lawsuit filed by the Receiver against Wells Fargo for participation in the Ponzi scheme is on-going.

the Receiver to Abandon the Property located at 841 South Main Street, Graham, North Carolina (Dkt. 719) moot.

DONE AND ORDERED at Tampa, Florida, on May 8, 2012.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants,

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants. /

ORDER

Before the Court is the Receiver's Verified Renewed Motion to Approve the Sale of Real Property Located in Graham, Alamance County, North Carolina (the "Motion") (Dkt. 823). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8) and the Orders Reappointing Receiver (Dkts. 140, 316 and 493), it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**.

The sale of the real property located in Alamance County, North Carolina pursuant to the Purchase and Sale Agreement attached as Exhibit 2 to the Renewed Motion is hereby approved. Any and all existing claims, liens, and encumbrances relating to the property located in Alamance County, North Carolina (the "Property"), including any held by Wells Fargo Bank, N.A. as successor to Wachovia Bank, N.A., arising from a loan provided to Scoop Real Estate, L.P., shall be transferred to the proceeds of the sale ordered herein, and the Property shall

become free and clear of any and all such existing claims, liens, and encumbrances. The Receiver is hereby directed to transfer free and clear of all claims, liens, and encumbrances to Trinet West, LLC, or assigns, by way of Receiver's Deed, pursuant to the Purchase and Sale Agreement attached as Exhibit 2 to the Renewed Motion, title to the Property, which bears the following legal description:

LYING AND BEING in Graham Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin (site bench mark with NC Grid coordinates of N: 839,090,546 feet, E: 1,881,775.383 feet, NAVD 88, elev: 593.21 feet, value published by National Geodetic Survey "OPUS" Solution on 09/11/03) on the western margin of the public right-of-way of NC Highway 87 (South Main Street) and in the northeastern corner of the land conveyed to Crescent Center Associates by instrument recorded in Deed Book 503, Page 66, Alamance County Public Registry, and running thence with the northern boundary of the Crescent Center Associates land (nor or formerly) S. 84-34-58 W. 242.92 feet to an existing iron pin in the southeastern corner of the land conveyed to ECMM Associates by instrument recorded in Deed Book 789, Page 658, Alamance County Public Registry; thence with the southern boundary of the ECMM Associates land (nor or formerly) N. 61-06-52 W. 18.19 feet to an iron rebar set; thence two new lines within the ECMM Associates land (nor or formerly) as follows: (1) N. 05-35-11 W. 189.62 feet to an iron rebar set; and (2) N. 84-34-01 E. 15.00 feet to an existing iron pin in the southern margin of the public right-of-way of Crescent Square Drive; thence with the southern margin of the public right-of-way of Crescent Square Drive N. 84-34-01 E. 231.52 feet to an iron rebar set in the western margin of the right-of-way of NC Highway 87 (South Main Street); and thence with the western margin of the right-of-way of NC Highway 87 (South Main Street) three (3) courses and distances as follows: (1) S. 04-50-25 E. 15.86 feet to a nail; (2) S. 49-50-25 E. 19.80 feet to a nail; and (3) S. 04-50-25 E. 169.95 feet to the point and place of BEGINNING, containing 1.18 acres, more or less, all as shown on survey prepared by Clinton B. Osborne, North Carolina Professional Land Surveyor L-3834, of Allied Associates, P.A., Job No. PA030608, Map No. GSDelta.dwg., and dated October 31, 2003, reference to said survey being made in aid of description.

Together with:

Easement rights in favor of the property, as set forth in Cross Access Easement Agreement recorded in Book 2108, Page 530, of the Alamance County Registry.

DONE and ORDERED in chambers in Tampa, Florida this 8TH day of May,

2012.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RISHI KAPOOR; *et al.*,

Defendants.

**ORDER GRANTING IN PART RECEIVER'S MOTION TO APPROVE
SALE FREE AND CLEAR AND RELATED SETTLEMENT
AGREEMENT AND CLAIMS PROCESS**

THIS CAUSE came before the Court upon the Receiver, Bernice C. Lee's Motion to Approve Sale Free and Clear and Related Settlement Agreement and Claims Process. ECF No. [128]. Upon due consideration of the Motion, and finding that good cause exists, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Receiver's Motion ECF No. [128] is **GRANTED** on a final basis as described herein.
2. The Receiver is authorized to enter the Sale Contract attached to the Motion as Exhibit J, and the Receiver, as the Receiver over Stewart Grove 1, LLC ("Stewart Grove"), is authorized to execute the deed, bill of sale and title affidavit attached to the Sale Contract, and other documents necessary for the proposed sale.
3. The sale of real property with a legal description Lot 1, Block 1, of the Plat of Stewart, according to the plat thereof, as recorded in Plat Book 171, Page 50, of the Public Records of Miami-Dade County, Florida, having folio no. 01-4128-051-

0010, and Lot 2, Block 1, of the Plat of Stewart, according to the plat thereof, as recorded in Plat Book 171, Page 50, of the Public Records of Miami-Dade County, Florida, having folio no. 01-4128-051-0020 (together, the “Stewart Property”), to Mimi Chough, as Trustee of the JWY Trust u/t/a dated 7/1/2021 (the “Buyer”), free and clear of all liens, claims and encumbrances, including, but not limited to, the liens described in the Receiver’s Motion and those asserted between April 8, 2024 through the closing date, is approved on an as-is, where-is basis, without representations or warranties from the Receiver.

4. Any licensed title insurer and the Buyer are authorized to rely on this Order as authorizing the transfer of legal title to the Stewart Property.
5. The Receiver is authorized to take any and all actions reasonably necessary to consummate the sale of the Stewart Property including, but not limited to, execute deeds, bills of sale, title affidavits, and closing statements reasonably required to consummate the sale of the Stewart Property in accordance with the terms of the Sale Contract.
6. The settlement agreement between the Receiver and 3610 Stewart Acquisitions, LLC (the “Lender”) set forth in the Motion is **APPROVED**.
7. The Receiver is authorized to pay at closing: (a) the Lender Payment (as defined in the Motion) consisting of \$13,923,238.49 for amounts owed through June 20, 2024, and \$3,978.57 per diem at the non-default interest rate of 12.875% for the period after June 20, 2024 through the date the sale of the Stewart Property closes, plus any additional amounts Lender was required to and did advance prior to closing under the Advance Agreement, and interest thereon in accordance therewith, (b)

traditional seller's fees and costs specified in the Sale Contract, and (c) the Carveout (as defined in the Motion) to the receivership estate consisting of a payment of \$651,407.28 plus \$3,743.72 per diem for the period after June 20, 2024 through the date the sale of the Stewart Property closes, for the benefit of the receivership estate. The Carveout funds will be free and clear of any liens, claims and encumbrances, and will constitute an unencumbered asset of the receivership estate, with any disbursement subject to the terms of the Receivership Order and future Court orders.

8. The Receiver is authorized to fund, at closing, a reserve of \$100,000 (the "Lender Fee Reserve") that will be held by the Receiver, and the Receiver is authorized to release amounts from the Lender Fee Reserve to the Lender for reasonable attorney's fees and costs incurred after April 26, 2024 for the Stewart Property that have been paid by the Lender, and to the extent there are excess funds in the Lender Fee Reserve after the payment of such fees and costs, such excess funds will be split 50% to the Lender and 50% for the Lien Claim Fund (defined below).
9. The Receiver will separately account for the remaining net sale proceeds after payment of the Lender Payment, Carveout and closing fees and costs, and funding of the Lender Fee Reserve (the "Lien Claim Fund").
10. The modified proof of lien claim form attached to the Motion as Exhibit DM to the Receiver's Supplemental Brief on Stewart Sale Motion (the "Proof of Lien Claim"), and ~~the modified submission procedure and administration procedures~~ set forth ~~in the Motion and~~ herein (the "Claims Process") are **APPROVED**, and all other relief relating to the lien claims process described in the Motion is denied.

11. ~~This Court hereby establishes 11:59 p.m. (prevailing Eastern Time) o~~On the date that is 60 days after the entry of this Order ~~as the deadline~~ (the “Lien Claim ~~Bar Submission~~ Date”), ~~for~~ any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, estates, trusts, and governmental units) (~~each a “Lien Claimant” and collectively, the “Lien Claimants”~~) who claims to have a right to payment or claim of any nature, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, that arose from the beginning of time through the present date, against Stewart Grove, Stewart Grove 2, LLC (~~“Stewart Grove 2”~~) and/or the Stewart Property secured by a lien against the Stewart Property (~~the “Lien Claim”~~) may to fully complete and submit the Proof of Lien Claim, signed under the penalty of perjury, with ~~all~~ supporting documents evidencing the amount, extent, validity, perfection and priority of their claim and lien, including, but not limited to, compliance with applicable state law requirements, ~~to the Receiver by.~~ ~~The Proof of Lien Claim must be submitted to the Receiver by~~ electronic mail to Bernice C. Lee at blee@kttlaw.com and David L. Rosendorf at dlr@kttlaw.com for the Receiver to consider in preparing the proposed distribution of the funds in the Lien Claim Fund so that the Proof of Lien Claim is actually received on or before the Lien Claim Bar Date.

~~12. The form and manner of notice of the Lien Claim Bar Submission Date described in the Motion is **APPROVED.**~~

~~13. Any Lien Claimant who fails to submit a Proof of Lien Claim in a timely manner~~

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~~or in the proper form: shall be forever barred, estopped, and enjoined from asserting, in any manner, any Lien Claim against Stewart Grove, Stewart Grove 2, the receivership estate and estate assets, and shall be denied any distributions from the Lien Claim Fund, and Stewart Grove, Stewart Grove 2, the receivership estate and estate assets will be discharged from any and all indebtedness or liability with respect to such Lien Claim.~~

~~14. Each Claimant will be required to establish the Proof of Lien Claim to the satisfaction of the Receiver through documentation and/or sworn statements that such Lien Claimant provided funds, goods and/or services that were provided to Stewart Grove or Stewart Grove 2, and is not an officer, director, or other insider of any Receivership Company or affiliate of any Receivership Company. If a Claimant cannot prove the foregoing factors, the Proof of Lien Claim may be disallowed (subject to the procedures described below) at the Receiver's discretion. The Receiver may consider, however, other factors in determining whether a Proof of Lien Claim should be an allowed lien claim, and notwithstanding the foregoing factors, the Receiver will analyze each Proof of Lien Claim individually and the circumstances surrounding each Lien Claimant's transactions with and relationship to the Receivership Companies and/or their affiliates.~~

~~15. After the Lien Claim Bar Date, the Receiver will approve or reject, in whole or in part, and determine the priority of, as necessary, all Proof of Lien Claims submitted by the Lien Claim Bar Date. In the event the Receiver rejects any Proof of Lien Claim, in whole or in part, the Receiver will apprise the Lien Claimant via first class mail and/or email of the rejection of the proof of claim, the basis for the~~

~~rejection (the "Rejection Notice"). Within 60 days after service of the Rejection Notice (the "Reconsideration Deadline"), any Lien Claimant whose Proof of Lien Claim is rejected by the Receiver, in whole or in part, may request that the Receiver reconsider that denial by sending the Receiver a letter seeking reconsideration of the Rejection Notice that states the basis of the Claim and response to the Rejection Notice (the "Reconsideration Letter"). The Reconsideration Letter must be actually delivered to the Receiver by electronic mail to Bernice C. Lee at blee@kttlaw.com and David L. Rosendorf at dlr@kttlaw.com. The Receiver shall have 60 days after receipt of a timely Reconsideration Letter to reconsider any request by any Lien Claimant whose proof of claim was initially rejected by the Receiver, and to apprise the Lien Claimant via first class mail and/or email of the reconsideration or rejection of the Claim (the "Final Determination Notice").~~

~~16. Within 30 days of service of the Final Determination Notice (the "Appeal Deadline"), any Lien Claimant whose proof of claim was finally rejected by a Final Determination Notice may appeal the Receiver's rejection of the Lien Claim to the Court by timely filing with the Court an Appeal of Final Determination Notice which must state the basis of the Lien Claim and the Claimant's response to the Final Determination Notice. The Receiver's Response to an appeal filed with the Court shall be due within 30 days after such appeal is filed. Following the time for the Receiver's response, the Court may make a final determination or may set the matter for hearing.~~

~~17. Any Lien Claimant who receives a Rejection Notice or Final Determination Notice, but fails to file in a timely manner or in a proper form a Reconsideration Letter by~~

~~the Reconsideration Deadline or a Final Determination Notice by the Appeal Deadline; shall be forever barred, estopped, and enjoined from asserting, in any manner, any Lien Claim against Stewart Grove, Stewart Grove 2, the receivership estate and estate assets, and shall be denied any distributions from the Lien Claim Fund, and Stewart Grove, Stewart Grove 2, the receivership estate and estate assets will be discharged from any and all indebtedness or liability with respect to such Lien Claim.~~

~~18.12. Following the Claims Process Lien Claim Submission Date, and a final determination of the allowance and disallowance of all Lien Claims, the Receiver will file an appropriate motion with the Court with to seek approve of to approve the proposed distribution of remaining the funds in the Lien Claim Fund, with notice to all known lien claimants. A lien claimant with a claim against the Lien Claim Fund may seek to be heard on such motion. In the event there are insufficient funds to provide for full payment of any allowed Lien Claims in their order of priority, the remaining amounts claimed will constitute unsecured creditor claims against the receivership estate. In the event there are excess funds after the payment of the allowed Lien Claims in their order of priority, such funds will constitute receivership estate funds and subject to further court order.~~

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DONE AND ORDERED in Miami, Florida this ____ day of _____, 2024.

JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE

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

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RISHI KAPOOR; *et al.*,

Defendants.

**ORDER GRANTING IN PART RECEIVER’S MOTION TO APPROVE
SALE FREE AND CLEAR AND RELATED SETTLEMENT
AGREEMENT AND CLAIMS PROCESS**

THIS CAUSE came before the Court upon the Receiver, Bernice C. Lee’s Motion to Approve Sale Free and Clear and Related Settlement Agreement and Claims Process. ECF No. [128]. Upon due consideration of the Motion, and finding that good cause exists, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Receiver’s Motion ECF No. [128] is **GRANTED** on a final basis as described herein.
2. The Receiver is authorized to enter the Sale Contract attached to the Motion as Exhibit J, and the Receiver, as the Receiver over Stewart Grove 1, LLC (“Stewart Grove”), is authorized to execute the deed, bill of sale and title affidavit attached to the Sale Contract, and other documents necessary for the proposed sale.
3. The sale of real property with a legal description Lot 1, Block 1, of the Plat of Stewart, according to the plat thereof, as recorded in Plat Book 171, Page 50, of the Public Records of Miami-Dade County, Florida, having folio no. 01-4128-051-

0010, and Lot 2, Block 1, of the Plat of Stewart, according to the plat thereof, as recorded in Plat Book 171, Page 50, of the Public Records of Miami-Dade County, Florida, having folio no. 01-4128-051-0020 (together, the “Stewart Property”), to Mimi Chough, as Trustee of the JWY Trust u/t/a dated 7/1/2021 (the “Buyer”), free and clear of all liens, claims and encumbrances, including, but not limited to, the liens described in the Receiver’s Motion and those asserted between April 8, 2024 through the closing date, is approved on an as-is, where-is basis, without representations or warranties from the Receiver.

4. Any licensed title insurer and the Buyer are authorized to rely on this Order as authorizing the transfer of legal title to the Stewart Property.
5. The Receiver is authorized to take any and all actions reasonably necessary to consummate the sale of the Stewart Property including, but not limited to, execute deeds, bills of sale, title affidavits, and closing statements reasonably required to consummate the sale of the Stewart Property in accordance with the terms of the Sale Contract.
6. The settlement agreement between the Receiver and 3610 Stewart Acquisitions, LLC (the “Lender”) set forth in the Motion is **APPROVED**.
7. The Receiver is authorized to pay at closing: (a) the Lender Payment (as defined in the Motion) consisting of \$13,923,238.49 for amounts owed through June 20, 2024, and \$3,978.57 per diem at the non-default interest rate of 12.875% for the period after June 20, 2024 through the date the sale of the Stewart Property closes, plus any additional amounts Lender was required to and did advance prior to closing under the Advance Agreement, and interest thereon in accordance therewith, (b)

traditional seller's fees and costs specified in the Sale Contract, and (c) the Carveout (as defined in the Motion) to the receivership estate consisting of a payment of \$651,407.28 plus \$3,743.72 per diem for the period after June 20, 2024 through the date the sale of the Stewart Property closes, for the benefit of the receivership estate. The Carveout funds will be free and clear of any liens, claims and encumbrances, and will constitute an unencumbered asset of the receivership estate, with any disbursement subject to the terms of the Receivership Order and future Court orders.

8. The Receiver is authorized to fund, at closing, a reserve of \$100,000 (the "Lender Fee Reserve") that will be held by the Receiver, and the Receiver is authorized to release amounts from the Lender Fee Reserve to the Lender for reasonable attorney's fees and costs incurred after April 26, 2024 for the Stewart Property that have been paid by the Lender, and to the extent there are excess funds in the Lender Fee Reserve after the payment of such fees and costs, such excess funds will be split 50% to the Lender and 50% for the Lien Claim Fund (defined below).
9. The Receiver will separately account for the remaining net sale proceeds after payment of the Lender Payment, Carveout and closing fees and costs, and funding of the Lender Fee Reserve (the "Lien Claim Fund").
10. The modified proof of lien claim form attached to the Motion as Exhibit D to the Receiver's Supplemental Brief on Stewart Sale Motion (the "Proof of Lien Claim"), and modified submission procedure set forth herein are **APPROVED**, and all other relief relating to the lien claims process described in the Motion is denied.
11. On the date that is 60 days after the entry of this Order (the "Lien Claim Submission

Date”), any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, estates, trusts, and governmental units) who claims to have a right to payment or claim of any nature, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, that arose from the beginning of time through the present date, against Stewart Grove, Stewart Grove 2, LLC and/or the Stewart Property secured by a lien against the Stewart Property *may* complete and submit the Proof of Lien Claim, signed under the penalty of perjury, with supporting documents evidencing the amount, extent, validity, perfection and priority of their claim and lien, including, but not limited to, compliance with applicable state law requirements, to the Receiver by electronic mail to Bernice C. Lee at blee@kttlaw.com and David L. Rosendorf at dlr@kttlaw.com for the Receiver to consider in preparing the proposed distribution of the funds in the Lien Claim Fund.

12. Following the Lien Claim Submission Date, the Receiver will file an appropriate motion with the Court to approve the proposed distribution of the funds in the Lien Claim Fund, with notice to all known lien claimants. A lien claimant with a claim against the Lien Claim Fund may seek to be heard on such motion.

DONE AND ORDERED in Miami, Florida this ____ day of _____, 2024.

JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 Case No.: 23-24903-CIV-JB

Securities and Exchange Commission v. Rishi Kapoor, et al.

[For Receiver’s use only]

Proof of Lien Claim No.

The United States District Court for the Southern District of Florida (the “Court”) has appointed Bernice C. Lee as the receiver (the “Receiver”) over Stewart Grove 1, LLC which owns real property located at 3620 Stewart Avenue, Miami, Florida 33133 (folio no. 01-4128-051-0010), and 3610 Stewart Avenue, Miami, Florida 33133 (folio no. 01-4128-051-0020) (the “Stewart Property”), and other companies as set forth in the Court’s Order [DE 28] entered January 12, 2024. The Court has entered the Order Granting Receiver’s Motion to Approve Sale Free and Clear and Related Settlement Agreement and Claims Process (“Sale Order”) [DE ___], which authorized the sale of the Stewart Property and the submission of this Proof of Lien Claim.

On the date that is 60 days after the entry of the Sale Order, any person or entity (including, without limitation, individuals, partnerships, corporations, joint ventures, estates, trusts, and governmental units) who claims to have a right to payment or claim of any nature, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, that arose from the beginning of time through the present date, against Stewart Grove 1, LLC, Stewart Grove 2, LLC and/or the Stewart Property secured by a lien against the Stewart Property *may* complete and submit a Proof of Lien Claim, signed under the penalty of perjury, with supporting documents evidencing the amount, extent, validity, perfection and priority of their claim and lien, including, but not limited to, compliance with applicable state law requirements, to the Receiver by electronic mail to Bernice C. Lee at blee@kttl.com and David L. Rosendorf at dlr@kttl.com for the Receiver to consider in preparing the proposed distribution of the funds in the Lien Claim Fund.

The information you provide in this Proof of Lien Claim will assist the Receiver to determine your distribution, if any, from the Lien Claim Fund. The Receiver has the right to dispute and/or verify any information you have provided and propose a distribution amount, if any, to which you may be entitled from the Lien Claim Fund. This Proof of Lien Claim will be submitted under the penalty of perjury as described below.

1. Lien Claimant Information (submit separate claims for each lien claimant and company):

Name: _____

Has this claim been acquired from someone else?

- No
- Yes. From whom? _____

2. Receivership Company with Whom Lien Claim was Incurred:

- Stewart Grove 1, LLC
- Stewart Grove 2, LLC
- Other _____

3. Where Should Notices and Payments to the Lien Claimant Be Sent?

Name: _____

Address: _____

City, State, Zip: _____

Telephone: _____

Email Address: _____

4. Total Amount of Lien Claim: \$ _____

Does this lien claim include interest or other charges?

- No
- Yes. Attach statement itemizing interest, fees, expenses, or other charges.

5. What is the basis of the lien claim? _____

6. If Legal Action Pending against any Receivership Company, Date Commenced, Court Name, and Case No.: _____

7. Is all or part of the lien claim secured?

- No
- Yes. The lien is secured by a lien on property. Describe nature of property _____

8. Is the lien claim perfected?

- No
- Yes. Describe basis for perfection of lien _____

You must attach copies of all documents, if any, that show evidence of perfection of your lien.

9. Do you have any other relationship with any of the Receivership Companies or Rishi Kapoor?

- No
- Yes. Describe nature of relationship(s) _____

10. Supporting Documentation: You may attach to your Proof of Lien Claim copies of all documents available to you that support your claim. **DO NOT SEND ORIGINAL DOCUMENTS.** If such documentation is not available, please attach a detailed explanation of why documents are unavailable.

11. Verification of Claims: All Proofs of Lien Claim are subject to review and verification by the Receiver, and the Receiver's proposed distribution will be subject to approval by the Court. It is important to provide complete and accurate information to facilitate this effort. Lien claimants may be asked to supply additional information to complete this process.

12. Consent to Jurisdiction and Waiver of Jury Trial: BY SUBMITTING YOUR PROOF OF LIEN CLAIM, YOU CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FOR ALL PURPOSES AND AGREE TO BE BOUND BY SUCH COURT'S DECISIONS, INCLUDING, WITHOUT LIMITATION, AS TO CLAIMS, OBJECTIONS, DEFENSES OR COUNTERCLAIMS BETWEEN YOU AND ANY RECEIVERSHIP ENTITY AND/OR THE RECEIVER. FURTHER, BY SUBMITTING YOUR PROOF OF LIEN CLAIM, YOU AGREE TO WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO YOUR PROOF OF LIEN CLAIM, AND ANY RELATED CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS.

13. Representations (check only those that are applicable):

I hereby represent the following:

- I am not an investor in the Receivership Companies, or their subsidiaries or affiliates.
- I have never been a director, officer, manager, member, investor, employee or agent of the Receivership Companies, or their subsidiaries or affiliates.

14. Signature:

(Attach a copy of power of attorney, death certificate, or other documents as relevant.)

I understand that an authorized signature on this Proof of Lien Claim serves as an acknowledgment that when calculating the amount of the lien claim, the claimant gave the Receivership Companies credit for any payments or other things of value received toward the debt.

I have examined the information in this Proof of Lien Claim, and have a reasonable belief that the information is true and correct. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and my supporting documentation provided is also true and correct.

Signature: _____

Executed on Date: _____

Printed Name: _____

Title (if applicable): _____

Address: _____

Contact Phone: _____

Email: _____