

**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 RESPONSE IN OPPOSITION TO
JOHN ABELL CORPORATION’S MOTION TO INTERVENE**

Bernice C. Lee, as Receiver (“Receiver”) over the Receivership Companies,¹ responds to John Abell Corporation’s Motion to Intervene for the Limited Purpose of Seeking Relief from the Court’s Receivership Order (“Abell Motion to Intervene,” ECF#139). The movant, John Abell Corporation (“Abell”) (1) has failed to establish a basis for intervention; and (2) has 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 Complaint (unsealed at DE#14) and an Emergency Motion for Asset Freeze and Other Relief

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.

(“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, 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").

Order Appt. Rec. ¶ 26. The parties to any Ancillary Proceedings are enjoined from commencing or continuing any such proceedings, and all such proceedings are stayed in their entirety. Order Appt. Rec. ¶¶ 27-28.

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 owned by Stewart Grove 1, LLC;
2. Real property and/or leasehold rights for five parcels of real estate all located on Commodore Plaza in Coconut Grove (the "Coconut Grove Properties") owned variously by Urbin Commodore Residential SPE, LLC, Urbin Commodore Residential II SPE, LLC, Urbin Commodore SPE, LLC, and Urbin Commodore Restaurant SPE, LLC;
3. Two parcels in Miami Beach (the "Miami Beach Property") owned by Urbin Miami Beach Owner, LLC ("Miami Beach Owner"), 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. Abell's Relationship to the Receivership Companies

In its Motion, Abell asserts that it was a supplier of building materials to Winmar Construction, Inc., which in turn is asserted to have contracted with Urbin Coconut Grove Partners, LLC and Urbin Miami Beach Owner, LLC to perform improvements to certain of the Coconut Grove Properties and the Miami Beach Property (collectively for purposes of this Response, the "Properties"). Attached to the Motion are (a) a Claim of Lien for \$9,194.08 asserted against Urbin Coconut Grove Partners, LLC recorded on August 1, 2023; (b) a Claim of Lien for \$5,618.68 asserted against Urbin Coconut Grove Partners, LLC recorded on June 13, 2023; and (c) a Claim

of Lien for \$423.62 asserted against Urbin Miami Beach Owner, LLC recorded on August 24, 2023. On February 5, 2024, Abell filed a Complaint in Miami-Dade County Circuit Court seeking foreclosure of its claim of lien, in violation of the Litigation Stay. Upon learning that Abell was attempting to serve process of the Complaint earlier this month, Receiver's counsel advised Abell's counsel of the Litigation Stay and provided a copy of the Order Appointing Receiver.

D. 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. As this Court is aware from a prior motion to intervene filed by the Halpern Parties (DE#130), the Halpern Parties assert that they hold mortgages against various of the Coconut Grove Properties securing asserted debts in excess of \$21 million in total, which were recorded prior to Abell's Claims of Lien. 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.

E. The Miami Beach Property

The Miami Beach Property consists of two adjacent parcels located at 1260 Washington

Avenue, which is primarily vacant land, and 1234 Washington Avenue, with has a vacant, gutted office building. A lender to Miami Beach Owner asserts that it holds a senior mortgage secured by the Miami Beach Property with a principal balance of \$14.85 million, and filed a foreclosure case in July 2021. The Receiver and her professionals have expended a substantial amount of time assessing these properties, including site visits, reviewing the loan transactions and funding for the property, evaluating options for its potential disposition, preparing a non-disclosure agreement for prospective buyers, negotiating with the secured lender, investigating the status of the permits and entitlements associated with the property, engaging a broker / auctioneer (DE#124), drafting a proposed “stalking horse bidder” purchase agreement, and communicating with interested parties regarding a potential sale. The Receiver hopes to sell the Miami Beach Property through a competitive bidding process, subject to Court approval.

F. The Abell Intervention Motion

On May 15, 2024, Abell filed its Motion to Intervene, in which it “seek[s] leave to intervene in the instant case for the sole purpose of protecting its interest [sic] lien interest by obtaining leave of this Court’s injunction and proceeding with its foreclosure action on the Urbin Properties.” (DE#139 at 4). Abell also claims that the potential sale of the Properties free and clear of Abell’s liens without permitting them an opportunity to object “would constitute a violation of its due process rights and a taking in violation of the Fifth Amendment of the United States Constitution.” *Id.* The Receiver will note that no sale of either the Coconut Grove Properties or Miami Beach Property is currently pending before this Court. The Receiver will further note that the Abell liens appear to come behind approximately \$21 million or more in debt on the Coconut Grove Properties and approximately \$14.85 million or more in debt on the Miami Beach Property.

DISCUSSION

A. Abell Is Not Entitled to Intervene

Abell seeks 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). Abell alternatively seeks 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 Abell has 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 Abell's 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*, 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 Abell 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 Abell’s interests will be fully protected by a process to be administered by this Court for distributing the proceeds of any receivership property subject to its liens.

2. Intervention Under Rule 24 is Not Warranted

Even if intervention were not barred by Section 21(g), Abell has failed to establish a basis for intervention under Rule 24. Notably, Abell fails 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.

Here, Abell claims not to have been aware of the receivership until it attempted to serve process in May 2024 after filing its complaint in February, and then promptly sought to intervene. The Receiver, however, nonetheless notes that Abell apparently waited for three months after filing its complaint to attempt to effectuate service. In the interim, the Receiver has devoted substantial time, expense and resources to investigating and pursuing potential disposition of the Properties, and will be substantially prejudiced if Abell is permitted to intervene in order to seek to foreclose on the properties. On the other hand, Abell will not be substantially prejudiced, because its construction liens appear to come behind several million dollars of senior debt on both the Coconut Grove Properties and the Miami Beach Property and it is hard to fathom how Abell will achieve any meaningful relief by proceeding with foreclosure.

(b) Abell's Interests Will be Protected.

Second, with regard to Abell's ability to protect its 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. Abell asserts that a potential sale of the proposed sale of the Properties free and clear of liens would extinguish their junior lien “without due process.” But there is no proposed sale presently before the Court for either the Coconut Grove Properties or the Miami Beach Property, so this assertion is premature and hypothetical.

Nonetheless, 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.

Here, Abell will not suffer meaningful prejudice if its request for intervention to pursue foreclosure is denied. Abell's asserted lien already appears to come behind several million dollars of debt on both the Coconut Grove Properties and the Miami Beach Property – senior debt which it has no ability to foreclose through a state court foreclosure proceeding, and which it is extremely

unlikely to pay off in order to attempt to recover on approximately \$15,000 in claims. And if the Receiver is able to negotiate a favorable sale of the Coconut Grove Properties or the Miami Beach Property, the Receiver will seek to establish a lien claim fund to address and pay, as appropriate, any valid, enforceable, unavoidable lien claims in accordance with their priority.

As explained in prior pleadings, a “free and clear” sale does not extinguish a secured creditor’s lien, it simply transfers the lien from the property to the proceeds of the sale so that the receiver is able to effectively liquidate receivership estate assets. 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 Receiver notes this court, in connection with the Receiver's Stewart Sale Motion (DE#128), inquired as to the impact of *Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017) as to the Receiver's proposed claim process for lien claims. The Receiver has clarified in connection with that motion, and will do so for future sale motions as well, that lien claimants will not be required to file a proof of claim in order to preserve their lien claims to sale proceeds, and the Receiver will seek approval of the proposed distribution of such proceeds based on all known lien claims regardless of whether they have filed proofs of claim. *See* DE#164.

(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." 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). Abell fails to provide any specific identification of a common question of law or fact between its intended foreclosure actions against the Properties, and the SEC action here, only speculating generally that “[i]t is likely that there will [be] some factual overlap in terms of the allegations concerning the fraud on the part of the Defendant, Rishi Kapoor, as claimed by the SEC and as suffered by Abell Corporation in connection with the outstanding debt.” (DE#139 at 11). The Receiver further notes that Abell has failed to attach to its 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 be denied (though this presumably would be its Complaint for foreclosure, which reflects nothing which substantively overlaps with the allegations in the SEC’s Complaint in this action).

Abell claims that permitting it to intervene for the limited purpose of enforcing its claims of lien in state court will not prejudice the Receiver. But forcing the Receiver to defend a state court foreclosure on approximately \$15,000 in junior liens on the Properties 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. The Receiver should be permitted to fulfill her duties to manage and dispose of the Properties without having to deal with claims or foreclosure proceedings in state court. That is precisely why the Court took exclusive jurisdiction over all receivership property, and why it stayed all ancillary proceedings against such property.

WHEREFORE, the Receiver respectfully requests that the Court deny the Abell Motion to Intervene.

Respectfully submitted,

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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 29th day of May, 2024.

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