

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

SECURITIES AND EXCHANGE  
COMMISSION,

CASE NO.: 1:23-cv-24903

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.

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**OBJECTION BY MEMBERS OF URBIN  
COCONUT GROVE PARTNERS, LLC, TO  
RECEIVER’S MOTION TO APPROVE SALE  
OF COMMODORE PROPERTIES FREE AND CLEAR  
OF LIENS, ENCUMBRANCES AND INTERESTS**

NOW COME CWL-CH, LLC (“CWL-CH”), ASJAIA, LLC (“ASJAIA”), and VIEDEN GROVE OZ, LLC (“VIEDEN GROVE OZ”) (collectively, “Interested Persons”), as holders of the claims that are evidenced by the Notices of Lis Pendens (as defined below) and as members of Defendant Urbin Coconut Grove Partners, LLC (“UCGPLLC”), and pursuant to 28 U.S.C. § 2001(b) and other applicable laws, file this objection to the Receiver’s Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests [D.E. 238], and state:

**INTRODUCTION**

The Interested Persons are innocent victims of the fraud that was perpetrated by Defendant Kapoor. Unfortunately, the Receiver’s proposed contract to sell the Commodore Properties would further victimize the Interested Persons; the sale amount and the sale procedures would severely prejudice the interests of the Interested Persons and not yield sufficient proceeds to cover their



claims. In effect, the proposed sale would deprive the Interested Person of their right to obtain relief in an action that they previously filed against Defendants Kapoor and UCGPLLC in Miami-Dade Circuit Court. Moreover, the proposed sale fails to conform to the procedures specified in Title 28, United States Code, Section 2001, and the Interested Persons have not joined in a waiver of those requirements. For these and other reasons, the Interested Persons respectfully request that this Court deny the Receiver's Motion.

### **BRIEF SUMMARY OF RELEVANT PROCEDURAL HISTORY:**

#### A. State Court Proceedings.

1. Defendant UCGPLLC is a single purpose Florida limited liability company that was formed for the purposes of developing real property in Miami Dade County.

2. Effective January 1, 2022, in accordance with Florida Statutes, each of the Interested Persons executed an Operating Agreement (the "UCGP-OA") with Defendant UCGPLLC and Defendant Urbin LLC ("ULLC"). Defendant Kapoor signed the Operating Agreement on behalf of those entities. In addition, Marty Halpern, as a Trustee of an unspecified entity or trust, also signed the Operating Agreement and became a member of UCGPLLC.<sup>1</sup> The Interested Persons are Class B Members of UCGPLLC.

3. In May 2022, Defendant UCGPLLC and/or related entities borrowed \$16 Million from entities affiliated with Marty Halpern.<sup>2</sup> Further, at that time ULLC caused Defendant UCGPLLC to record a mortgage on certain of its properties.<sup>3</sup>

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<sup>1</sup> From Exhibit A to the UCGPLLC Operating Agreement, it appears that the "Halpern Family Trust" was assigned a 4.67 % Membership interest in UCGPLLC and recognized as having made a \$500,000 capital contribution to that entity.

<sup>2</sup> Those entities include the Halpern Family Trust and the Martin I. Halpern Revocable Trust. On information and belief, 2EE, LLC, is also affiliated with the Halpern interests.

<sup>3</sup> Additional details regarding these and other significant transactions are detailed in the Interested Persons' Motion for Leave to File the First Amended Complaint, which is by this reference incorporated herein. *See* D.E. 58 in Docket of State Court Case. The affect properties are defined below as the "Commodore Properties".



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4. On December 19, 2022, the Interested Persons filed a two-count Complaint in Miami-Dade Circuit Case No. 2022-024051-CA-01 (the "State Court Case"). *See* State Court Case, Docket Entry No. 2. Therein, the present Defendants Kapoor and Defendant ULLC were named as defendants in the State Court Case.

5. In the State Court Case, among other things, the Interested Persons complained that Defendants Kapoor and ULLC violated the UCGP-OA when they purportedly caused UCGPLLC to borrow certain funds. More particularly, the Interested Persons complained that ULLC violated to UCGP-OA in May 2022 when ULLC caused UCGPLLC to borrow \$16 Million from the Halpern Revocable Trust. *See* State Court Case, Docket Entry No. 2, ¶ 18.

6. On October 5, 2023, the Interested Persons caused five (5) Notices of Lis Pendens to be recorded in the Public Records of Miami-Dade County (the "Commodore NLPs"). *See* D.E. 244-1, 244-2, 244-3, 244-4, and 244-5; *see also* State Court Case, Docket Entries No. 45, 46, 47, 48, and 49. The Commodore NLPs constitute public notice that the Interested Persons claim that certain properties described therein ("Commodore Properties") are the subject matter of the State Court Case. The Commodore Properties that are listed in the Commodore NLPs are included among the properties that are the subject of the Receiver's Motion for Sale.

7. On December 4, 2023, Defendant ULLC filed a motion to dissolve the Commodore NLPs. *See* State Court Case, Docket Entry No. 57.

8. On December 26, 2023, the Interested Persons filed their Motion for Leave to File their First Amended Complaint in the State Court Case (hereafter the "First Amended Complaint"). *See* State Court Case, Docket Entry No. 58.

9. On January 17, 2024, Counsel for ULLC filed a Notice of Filing Receivership Order in the State Court Case. *See* State Court Case, Docket Entry No. 62.



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10. On July 10, 2024, the State Court issued its Order of Dismissal without Prejudice. *See* State Court Case, Docket Entry No. 66. Therein, that Court stated as follows: “This Court reserves jurisdiction to vacate this Order should the issues in this [c]ase not get completely resolved through the receivership process and a request to vacate is filed.”

#### **B. Proceedings in the Present Case**

11. On December 27, 2023, Plaintiff Securities & Exchanges Commission filed the Complaint in the present action.

12. On January 12, 2024, this Court entered the Receivership Order [D.E. 28]. Section VIII of that order (the “Stay Provision”) includes a broadly worded stay provision. *See* ¶ 26. That section includes the following (arguably one-sided) paragraph:

28. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further order of this Court. Further, as to a cause of action accrued or accruing *in favor of the Receivership Defendants against a third person or party*, any applicable statute of limitations is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

(Emphasis added.)

13. On September 24, 2024, the Receiver filed her Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests [D.E. 238, hereafter the “Receiver’s Commodore Sale Motion”].

14. The Receiver served the Interested Persons with notice of the Receiver’s Commodore Sale Motion by electronic mail. However, the Receiver did not serve notice of the proposed sale with process in accordance with the requirements of Florida Statutes, Section 714.16(2) or Chapter 48.

15. On October 4, 2024, the Interested Persons filed their Expedited Motion for Relief from Stay of Ancillary Litigation and/or for Partial Vacation, Modification, or Clarification of Order Appointing Receiver and if Necessary to Intervene. [D.E. 244.] This motion was filed to preserve the



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Interested Persons' interests as reflected in Commodore Properties NLPs. Prior to filing this motion, the undersigned counsel was not able to meet and confer with counsel for the parties whose interests were affected by the motion.

16. On October 8, 2024, the Interested Persons filed their Motion for Extension of Time to Respond to the Receiver's Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests. [D.E. 249.] Prior to filing this motion, the undersigned counsel conferred with counsel for the Receiver and for Defendant Kapoor and determined that there was no objection to the requested enlargement.

17. On October 15, 2024, the undersigned counsel met and conferred via Zoom with counsel for the Receiver and counsel for the S.E.C. At that time, counsel for the Receiver, the S.E.C., and the Interested Persons were not able to reach an agreement regarding the subject of this objection.

#### **DISCUSSION OF POINTS AND AUTHORITIES:**

*A. The Wells Fargo Decision Precludes any Sale that would Extinguish Pre-existing Security Interests.*

In an order on a prior sale motion in this case (on a different property being the Stewart Property), this Court observed that:

Instructive is the Eleventh Circuit's decision in *Securities and Exchange Commission v. Wells Fargo Bank, N.A.*, 848 F. 3d 1339 (11th Cir. 2017). In *Wells Fargo*, the Eleventh Circuit held that "while a federal district court has wide-ranging authority to supervise a receivership . . . it does not have the authority to extinguish a creditor's pre-existing state law security interest." *Id.* at 1344.

*SEC v. Kapoor*, No. 23-cv-24903-JB, 2024 U.S. Dist. LEXIS 106961, at \*11 (S.D. Fla. June 17, 2024); *see also SEC v. Royal Bengal Logistics, Inc.*, No. 0:23-cv-61179-LEIBOWITZ, 2024 U.S. Dist. LEXIS 124832 (S.D. Fla. July 12, 2024). Here, the proceeds from the proposed sale amount would not be sufficient to cover all the pre-existing liens that have been asserted as to the Commodore Properties. As such, approval of the Commodore Properties sale would, effectively, extinguish those



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state law security interests that are not compensated by the proceeds from the proposed sale.<sup>4</sup>

Accordingly, because the proposed sale would effectively extinguish some state security interests, the *Wells Fargo* decision limits this Court's authority to approve the proposed sale.

In its June 24<sup>th</sup> decision, as to the holders of interests in the Stewart Properties, this Court reached a different conclusion on procedural grounds. Therein, the Court addressed an objection to the Stewart Property sale that had been interposed by the Halpern interests. However, as it disposed of the Halpern interests' objection, the Court observed that:

The Halpern Trusts received notice of the Stipulation and Section 2001 Order at the time each was filed, as its counsel previously filed a Notice of Appearance in this action on January 17, 2024. ECF No. [31]. Neither the Halpern Trusts nor any other non-party sought to file an objection to the Stipulation or otherwise dispute the Section 2001 Order.

2024 U.S. Dist. LEXIS 106961, at \*4. And:

After counsel for the Halpern Trusts appeared in this case, the SEC, Receiver, and Mr. Kapoor filed a Stipulation waiving the requirements of Section 2001(b) in connection with the sale of any real property sought by the Receiver. ECF No. [\*16] [48]. On January 24, 2024, the Court entered an Order approving the Stipulation and explicitly stated that "[t]he Receiver is excused from compliance with 28 U.S.C. section 2001 in connection with the sale of real property in this case." (the "Section 2001 Order"). ECF No. [51]. Despite receiving notice, the Halpern Trusts did not seek to file an objection to the Stipulation or otherwise dispute the Section 2001 Order.

2024 U.S. Dist. LEXIS 106961, at \*15-16. Thus, the Court's June 24<sup>th</sup> decision emphasized that counsel for the Halpern interests had failed to file a timely objection after they received notice of certain filings that pertained to the Stewart Property sale.

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<sup>4</sup> In the proposed order on the Commodore Properties Sale Motion, the Receiver included a listing of potential claimants. See D.E. 238-4, pages 9 – 14. That listing includes at least 34 potential liens. Only four of those potential claims state "original principal sum" amounts and those sums total \$21,550,000. However, one of the Halpern Interest's mortgages includes a Future Advances clause in the amount of \$25,000,000. See Interested Persons' Motion for Leave to File the First Amended Complaint, D.E. 58 in Docket of State Court Case, at page 214. Along with that, 2EE LLC recorded a mortgage on one or more of the Commodore Properties in the original principal amount of \$7,000,000. See Interested Persons' Motion for Leave to File the First Amended Complaint, D.E. 58 in Docket of State Court Case, at page 227. So, there is evidence that suggests that the liens on record greatly exceed the proposed \$28.2 Million purchase price.



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The circumstances of the presently proposed sale and objection differ completely from those of the Stewart Property sale. The undersigned counsel filed its limited appearance in this case on October 4<sup>th</sup>, less than two weeks after the Receiver filed the Commodore Properties Sale Motion. The undersigned had not appeared in this case when the Receiver entered the Stipulation and or obtained the Section 2001 Order. Nothing in those documents would suggest that the Receiver gave the Interested Persons notice before those documents were entered.<sup>5</sup> For that reason, the Interested Persons' objection to the Commodore Properties Sale Motion is timely and must be recognized.

*B. Florida and Federal law allow the Interested Persons to receive formal notice of and to object to the proposed sale.*

It is well settled that a Receiver who is appointed by a federal court remains subject to state law as she manages the Receivership Estate. According to 28 U.S.C. § 959(b):

Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

*See also In re Cusato Bros. Int'l, Inc.*, 750 F.2d 887, 889 (11th Cir. 1985).

Further, the Receiver's proposed sale of the Commodore Properties is governed by Florida Statutes, Section 714.16(2), which provides that:

(2) Before judgment is entered with respect to the receivership property in the action in which the receiver is appointed, with court approval after notice to all parties with an interest in the property, including all lienholders, and a hearing, a receiver may use or transfer by sale, lease, license, exchange, or other disposition receivership property other than in the ordinary course of business only if the owner of the property:

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<sup>5</sup> As is discussed below, for an extraordinary sale such as the one contemplated in the Commodore Properties Sale Motion, a receiver must give lienholders formal notice that conforms to the requirements of Florida Statutes, Chapter 48. Accordingly, even actual notice would be inadequate to implicate the Interested Persons' Commodore NLPs.



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(a) After the commencement of the action in which the receiver is appointed, expressly consents in writing to the receiver's proposed use or transfer of the receivership property, and the receiver notes the property owner's express consent in the motion to approve the proposed use or transfer;

\* \* \*

Service of notice to lienholders who are not parties to the action must be made as provided in chapter 48 for service of original process or, in the case of a financial institution lienholder, as provided in s. 655.0201. If service cannot be effectuated in such manner, upon authorization by court order, the receiver may effect service of notice on the nonparty lienholder pursuant to chapter 49 or as otherwise ordered by the court.

*Emphasis added.* Thus, even if an affected property owner consents to a sale by a receiver, Florida law requires a receiver to provide formal notice of a proposed sale to all lienholders.

Similarly, 28 U.S.C. § 2001(b) provides that:

*After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.*

*Emphasis added.*

Thus, both Florida and Federal law provide that the Interested Persons must be provided notice of the proposed sale. Because the present sale is to be conducted under the auspices of a receivership, under 28 U.S.C. §959(b) and Florida Stat., § 714.16(2), the Receiver must serve lienholders (such as the Interested Persons) formal notice of the proposed sale.



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Unfortunately, as of the date of this objection, the Receiver has not yet complied with Florida Stat., § 714.16(2). Therefore, until such time as the Receiver has complied with that requirement, the Court should not entertain the Receiver's motion to sell the Commodore Properties.

*C. Florida law required Formal and Prior Notice of the Receiver's Attempt to Waive the Section 2001 Sale Requirements.*

Here, as nonparty lienholders, the Interested Persons are amenable to formal service of notice of the sale in accordance with Florida Statutes, Chapter 48. Accordingly, before the Receiver could begin a proceeding to sell the Commodore Properties, Florida and federal law require the Receiver to serve them with notice through Florida's formal process. That formal notice requirement would extend to the Receiver's attempt to circumvent the public and private judicial sale procedures set forth in 28 U.S.C. § 2001. Accordingly, because the Receiver failed to provide the Interested Persons with formal notice of the Receiver's Stipulation on the Stewart Property Sale, this Court cannot extend that Stipulation or the related 2001 Sale Order to the proposed sale of the Commodore Properties.

*D. The Interested Person Object to Any Attempt to Circumvent the Mandatory Appraisal and Pricing Provisions of Section 2001(b).*

Again, the Interested Persons were not a party to any of the Receiver's communications that were directed toward obtaining a waiver of the provisions of 28 U.S.C. § 2001(b). Indeed, the Interested Persons object to any sale that does not conform to all the requirements set forth in that section.

Here, the Receiver seeks approval of sale terms even though there is no evidence that she has complied with the following:

Before confirmation of any private sale, the court shall appoint ***three disinterested persons to appraise such property*** or different groups of three appraisers each to appraise properties of different classes or situated in different localities.



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The Receiver's motion refers to one appraisal of the Commodore Properties. However, § 2001(b) requires an appraisal by three (3) disinterested persons. In addition, the Commodore Properties consists of different classes, i.e., condominium units, and leasehold interests. Each group or class must be appraised separately. Because it is not clear that the Receiver has met these requirements, the Court should not entertain the Receiver's motion at this time.

Under certain circumstances, the interested owners and lienholders may agree to waive some of the requirements of § 2001(b). *See SEC v. EB5 Asset Manager, LLC*, No. 15-62323-CIV-LENARD/GOODMAN, 2016 U.S. Dist. LEXIS 186858, at \*2-4 (S.D. Fla. Mar. 24, 2016). However, as the *EB5 Asset Manager* decision recognizes, some of the §2001(b) requirements are mandatory and cannot be waived:

The Receiver is correct that § 2001(b) contains discretionary language which permits courts to order the sale of realty "upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby." **However, subsection (b) also mandates the following: (1) the court "shall appoint" three appraisers, (2) "[n]o private sale shall be confirmed at a price less than two-thirds of the appraised value," (3) the sale "shall be published" in newspapers at least ten days before confirmation, and (4) the sale "shall not be confirmed" if a bona fide offer guaranteeing "at least a 10 per centum increase" is made. 28 U.S.C. § 2001(b). "The permissive language allowing the Court discretion to determine what is in the best interests of the estate is therefore limited by the minimum standards delineated by Congress of what satisfies the best interest standard. These standards cannot be waived by this Court."**

*Emphasis added.* Thus, before any sale of the Commodore Properties can be approved and confirmed, at least three appraisers must be appointed.

In short, the Receiver's proposed sale of the Commodore Properties fails to conform to the mandatory requirements and the minimum standards delineated by Congress of what satisfies the best interest standard. For that reason, among others, the Interested Persons object to the Receiver's motion.



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The Interested Person interpose this objection because, as proposed, the sale that the Receiver contemplates would effectively prevent them protecting the claims that they raised in the State Case. The Receiver proposes that the Commodore Properties be sold free and clear of all liens, encumbrances, and interests. The Receiver also proposes that any such interests be transferred from the Commodore Properties to the Net Proceeds from the proposed sale. However, such a transfer of interests would completely ignore the claims that the Interested Persons presented in the State Case. Moreover, a sale conducted under the cloud of the challenged mortgages necessarily depresses the realizable value of the Commodore Properties.

In the State Case, the Interested Persons have stated sufficient allegations to show that the Defendants impermissibly and unlawfully allowed certain mortgage interests to attach to the Commodore Properties. This Court must not allow those unlawful interests to attach to the Net Proceeds, as that would inequitably allow the purported mortgage holder's interests to have primacy over those of innocent persons, such as the Interested Persons. The Interested Persons have reason to believe that the economics of Receivership Estate would be completely different if the Interested Persons had been allowed to proceed with the State Case. If the State Case had not been stayed, and the Interested Person had been allowed to obtain a judgment nullifying the purported mortgages, then UCGPLLC would have substantial equity in the Commodore Properties. In that event, there would be no need for a "fire sale" of this part of the Receivership Estate, such as the one proposed in the Receiver's present motion.

By allowing the sale to be driven by the interests of the fraudulent mortgagees, this Court deprives the Interested Persons of an opportunity to conduct a more orderly sale. The Interested Persons are entitled to a sale process that would yield Net Proceeds that are sufficient to cover their claims as alleged in the State Case. Unfortunately, the terms of the present motion are not adequate



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to safeguard those interests. For that reason, the Interested Person pray that the Commodore Properties be sold through an orderly process that is not unnecessarily clouded by the challenged mortgage interests.

### CONCLUSION:

**WHEREFORE**, CWL-CH, LLC, ASJAIA, LLC, and VIEDEN GROVE OZ, LLC, respectfully pray that the Court deny the Receiver's Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests, and grant the Interested Persons such further relief as is just and proper.

### **Certificate of Good Faith Conference Pursuant to S.D. Fla. L.R. 7.1(a)(3)**

Pursuant to Local Rule 7.1(a)(3), I certify that counsel for the S.E.C., for the Receiver, and for the Interested Persons were able to confer with via teleconference on October 15, 2024, at 5 PM, but were unable to agree to relief that is sought in the Receiver's Motion.

Dated: October 15, 2024.

Respectfully submitted,

**BARAKAT + BOSSA, PLLC**

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## **CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on October 15, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

By:     /s/ Brian Barakat      
**BRIAN BARAKAT**



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