

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

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.

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**RECEIVER’S REPLY TO CG INVESTORS’ RESPONSE TO MOTION TO  
APPROVE SETTLEMENT WITH HALPERN PARTIES**

Bernice C. Lee, as Receiver over the Receivership Defendants,<sup>1</sup> submits this reply in support of the Receiver’s Motion to Approve Settlement Agreement with the Halpern Parties Relating to the Commodore Properties and Distribution of Sale Proceeds and Back-Up Sale Contract (“Halpern Settlement Motion”) (DE#310), and in reply to the response filed by CW-CH, LLC, Asjaia, LLC and Vieden Grove Oz, LLC (the “CG Investors”) (DE#315).

**Summary of Halpern Settlement Motion**

As set forth in the Halpern Settlement Motion, the Halpern Parties hold several mortgages secured by the Commodore Properties as a result of their refinancing of certain pre-existing mortgage loans against the Commodore Properties and additional funding provided by the Halpern Parties secured by those mortgages. Specifically, the Halpern Parties hold:

- (a) a mortgage dated May 27, 2022 securing a note in the original principal amount of \$2,400,000 executed by Urbin Commodore Residential II SPE LLC in favor of The Halpern Family Trust and Martin I. Halpern Revocable Trust (the “Halpern

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<sup>1</sup> Capitalized terms not otherwise defined have the meanings given in the Halpern Settlement Motion.

Trusts”) recorded on June 1, 2022, a copy of which is attached to the Halpern Settlement Motion as Exhibit 1;

- (b) a mortgage dated September 28, 2018 securing a note in the original principal amount of \$6,000,000 executed by Urbin Commodore SPE, LLC in favor of PBVMF21, LLC (recorded October 1, 2018), as modified by the Mortgage and Loan Document Modification and Spreader Agreement dated June 28, 2019 (recorded July 5, 2019) executed by Urbin Commodore SPE, LLC and Urbin Commodore Restaurant SPE, LC in favor of PBVMF21, LLC to secure a gap promissory note in the amount of \$3,345,000, which combined with the original note increased the principal amount to \$9,345,000, which mortgages were acquired by the Halpern Trusts via an assignment of mortgage dated May 27, 2022 (recorded on June 1, 2022), and on May 27, 2022, Urbin Commodore SPE, LLC and Urbin Commodore Restaurant SPE, LLC executed an amended and restated mortgage in favor of the Halpern Trusts (recorded on June 1, 2022) to secure an amended and restated promissory note in the principal amount of \$9,500,000 which states *inter alia* that the outstanding principal balance of the existing mortgage is \$8,795,000, a copy of which is attached to the Halpern Settlement Motion as Exhibit 2, and after, additional funding was subsequently provided to increase the principal balance to \$14,500,000, secured by a second mortgage dated February 14, 2023 (recorded on February 21, 2023) (the “Upsized Mortgage”), a copy of which is attached to the Halpern Settlement Motion as Exhibit 3;
- (c) a mortgage securing a note in the original principal amount of \$6,150,000 executed by Urbin Commodore Residential SPE, LLC in favor of Pensam Logistics Partners CF5-III, LLC (recorded on September 18, 2019), which mortgage was acquired by the Halpern Trusts via an assignment of note and mortgage signed on May 24, 2022 (recorded on June 1, 2022), and on May 27, 2022, Urbin Commodore Residential SPE, LLC executed an amended and restated mortgage in favor of the Halpern Trusts (recorded on June 1, 2022) to secure an amended and restated promissory note in the principal amount of \$4,100,000 which states *inter alia* that the outstanding principal balance of the existing mortgage is \$3,025,000, a copy of which is attached to the Halpern Settlement Motion as Exhibit 4; and
- (d) a mortgage dated March 13, 2023 securing a note in the original principal amount of \$7,000,000 executed by Urbin Commodore SPE, LLC, Urbin Commodore Restaurant SPE, LLC, Urbin Commodore Residential SPE, LLC and Urbin Commodore Residential II SPE, LLC in favor of 2EE, LLC (record on March 14, 2023), and acquired by HFT Commodore LLC on or about August 22, 2023 via an assignment of note, mortgage, and other loan documents, a copy of the assignment is attached to the Halpern Settlement Motion as Exhibit 5.

As recited in the Halpern Settlement Motion, the records available to the Receiver reflect that the Halpern Parties on May 27, 2022 wired a total of \$16,000,000 to the Goodkind & Florio (“G&F”) law firm, which served as counsel to the Receivership Companies and in other capacities, to acquire and/or fund the notes and mortgages identified in (a) - (c) above. They further reflect that on February 14, 2023 and February 27, 2023, the Halpern Parties wired an additional \$5,000,000 to the G&F law firm, which the Halpern Parties represent was provided to G&F to provide additional financing through the Upsized Mortgage identified in (b) above. The Halpern Parties have represented that \$7,208,888.11 was wired on or about August 21, 2023 to the Alderman Law Firm to acquire the \$7,000,000 note and mortgage originally issued in favor of 2EE, LLC identified in (d) above.

In total, the Halpern Parties provided in excess of \$28 million to fund or acquire loans secured by the Commodore Properties, the principal balance of which, excluding any interest or other amounts asserted to be due thereunder, exceeds \$28 million. Those funds were all paid either to the G&F law firm which acted as the Receivership Companies’ counsel, or to counsel for the original lender in connection with the acquisition of the 2EE, LLC loan.

By the Halpern Settlement Motion, the Receiver seeks to approve an agreement with the Halpern Parties which addresses and resolves several issues: (1) the distribution of proceeds from the proposed sale of the Commodore Properties<sup>2</sup> in satisfaction of the Halpern Parties’ liens and claims against the Commodore Properties; (2) the Halpern Parties’ agreement to a \$600,000 carve-

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<sup>2</sup> In the Commodore Sale Motion (DE#238), the Receiver has sought approval of a proposed sale of the Commodore Properties, free and clear of liens, for \$28.2 million. The Commodore Sale Motion did not address the disposition of proceeds from the sale. The Halpern Settlement Motion now proposes to address that issue, as well as several others as described therein.

out from the proceeds of the sale of the Commodore Properties for the benefit of the receivership estate; (3) the Halpern Parties' agreement to pay the lease payments under the ground leases for certain of the Commodore Properties pending closing of the proposed sale, in order to avoid the ground lessors obtaining relief from the stay imposed by the Receivership Order and seeking to terminate the ground leases; and (4) the Halpern Parties' agreement to provide a "Back-Up Sale Contract" in the event the sale proposed by the Commodore Sale Motion does not close, with a \$27.4 million credit bid and an \$800,000 "carve-out" cash payment to the receivership estate.

Absent the proposed settlement, there is a substantial risk that the Receiver will lose the opportunity to sell the Commodore Properties because the Ground Lessors may be granted stay relief if the Halpern Parties do not agree to make the ground lease payments. And there is also a substantial risk, even if the ground lessors are not granted stay relief, that the Receiver would lose the benefit to the receivership estate of the carve-out agreed to by the Halpern Parties (\$600,000 under the sale proposed by the Commodore Sale Motion, and \$800,00 under the Halpern Parties' back-up sale contract), and would not receive any benefit from the sale, since the asserted amount of the debt held by the Halpern Parties exceeds the amount of the net sale proceeds, without even considering accrued interest and other amounts that may be claimed under the loan documents.

#### **The CG Investors' Objections**

The CG Investors invested \$2 million to acquire equity interests in Urbin Coconut Grove Partners, LLC ("CG Partners"), a Receivership Company which is the ultimate owner of the entities which own the Commodore Properties. Prior to the receivership, in December 2022, the CG Investors had commenced an action against Urbin, LLC, a Receivership Company which was the manager of CG Partners, asserting claims for breach of the CG Partners Operating Agreement

and injunctive relief. Nearly a year later, on October 5, 2023 they filed and recorded Notices of Lis Pendens against the Commodore Properties. On December 26, 2023, the CG Members filed a motion to amend their complaint, seeking to join certain of the Halpern Parties, 2EE, LLC, Vivian Bonet, Location Ventures, LLC and CG Partners as defendants and to add claims for breach of fiduciary duty, breach of contract, rescission of mortgages and to quiet title against the lenders. After the receivership was commenced, the state court entered an order of dismissal without prejudice, reserving jurisdiction to vacate the dismissal if the issues in the case are not completely resolved through the receivership process.

Initially, it is worth noting what is *not* addressed by the CG Investors' objection:

- They do not dispute that the Receiver has the authority to settle claims on behalf of the Receivership Companies or that the standard for approval is, as described in the Halpern Settlement Motion, whether the settlement is fair, adequate and within the range of reasonableness (*see* DE#310 at 17).
- They do not dispute that the Halpern Parties funded at least \$28 million in connection with the notes and mortgages secured by the Commodore Properties.
- They do not provide any substantive explanation, even assuming *arguendo* approval by members was required and not obtained for the loans and mortgages, for how the CG Investors, as equity investors in CG Partners, have a valid and enforceable ownership or lien interest in the Commodore Properties owned by the subsidiaries of CG Partners superior to the interests of recorded mortgages.<sup>3</sup>
- They do not provide any substantive explanation, even assuming *arguendo* approval by members was required and not obtained, for how the Receivership Companies could seek rescission of the Halpern Parties' loans and mortgages without returning to the Halpern Parties the benefit they had furnished (i.e., the funds provided through the loans).<sup>4</sup>

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<sup>3</sup> Notably, the Operating Agreement attached to the CG Investors' Response expressly states that "All assets owned by the Company, whether real or personal, tangible or intangible or mixed, shall be deemed to be owned exclusively by the Company as an entity, and no Member shall have any ownership interest in such assets." DE#315-1 at § 2.2.

<sup>4</sup> *See, e.g., Mazzoni Farms, Inc. v. E.I. DuPont De Nemours and Co.*, 761 So.2d 306, 313 (Fla.

**1. “Receiver’s New Motion Eliminates the Claims Process.”**

The CG Investors assert that the Commodore Sale Motion represented to the Court and creditors that the Receiver would “conduct a post-sale claims process,” which has now been eliminated by the Halpern Settlement Motion. It is correct that the Commodore Sale Motion did not address the disposition proceeds from the sale; but it is not correct to say that the Receiver abdicated her authority to propose a subsequent settlement of the disposition of proceeds. What the Commodore Sale Motion in fact said was:

The Receiver will separately account for the remaining net sale proceeds after closing (the “Net Sale Proceeds”) and will file an appropriate pleading to seek allocation and disbursement of the Net Sale Proceeds at a later date with notice to be provided to all lien claimants known to the Receiver who may object to the proposed distribution and be heard by the Court. Disbursement of the Net Sale Proceeds will be subject to Court approval, and the Receiver reserves the right to seek surcharge through an appropriate pleading.

(DE#238 at 12-13). That is precisely what has now been done through the Halpern Settlement Motion.

Moreover, while the CG Investors argue that “Neither the estate nor the expected beneficiaries of the estate stand to gain anything from giving the property to the Halpern Parties before the validity of these liens is established,” (DE#315 at 11), the benefits to the estate of the proposed settlement have been clearly set forth in the Halpern Settlement Motion: the estate will be able to satisfy the Halpern Parties’ claims and eliminate any potential deficiency claims for an

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2000) (“A prerequisite to rescission is placing the other party in status quo.”); *Barber v. America’s Wholesale Lender*, 542 Fed. Appx. 832, 836 (11th Cir. 2013) (mortgagors failed to state claim for rescission of mortgage where they failed to allege their return or offer to return any benefits from the loan).

amount that will be substantially less than the principal balance of the loans held by the Halpern Parties;<sup>5</sup> the estate will receive a meaningful carve-out (\$600,000 if the sale under the Commodore Sale Motion closes, \$800,000 if the Halpern Back-Up Contract closes); and the estate will have a source of funding for the ground lease payments, absent which the Receiver faces the risk of the Ground Lessors being granted stay relief to seek termination of the ground leases, which if successful would eliminate any meaningful prospect of recovery from the Commodore Properties.

**2. “Recitation of the Factual Background is Flawed and Incomplete.”**

The CG Investors argue that the Halpern Settlement Motion omits the facts alleged by the CG Investors in their state court complaint. Yet simultaneously, the CG Investors acknowledge that the Receiver is aware of those allegations and that they have already been presented to the Court, including in the CG Investors’ motion for stay relief (DE#244) and in the Commodore Sale Motion itself. The Receiver is well aware that the movement and ultimate disposition of the loan proceeds was not straightforward and that the law firm which received the loan proceeds (G&F, the Receivership Companies’ counsel) in some instances did not disburse them directly to the borrower entity, and that some funds may not have been used for the Commodore Properties. However, the CG Investors misstate the record when they assert that “the Lenders wired the funds

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<sup>5</sup> From the \$28.2 million of gross proceeds under the sale proposed by the Commodore Sale Motion, approximately \$1.5+ million will be paid for the carve-out to the receivership estate, taxes, and closing costs before the Halpern Parties receive any proceeds, yielding approximately \$26.7 million – approximately \$1.3 million *less* than the principal balance of the Halpern Parties’ loans, without including *any* accrued interest or other charges which might be asserted under the loans, such as the \$500,000+ in rental advance payments the Halpern Parties made from August 2023 through August 2024 and additional rental advance payments to be made under the settlement agreement. If the Receiver were to pursue rescission of the Halpern Parties’ loans and were required to restore the benefits provided by them, the Receiver would at a minimum have to repay the \$28 million principal balance funded by the Halpern Parties.

directly to Location Ventures.” The Halpern Settlement Motion describes the Receiver’s records and the Halpern Parties’ representations that all funds were wired either to G&F or to the Alderman Law Firm in connection with the acquisition of the 2EE, LLC loan. The Halpern Parties have further made representations and warranties in the settlement that they understood that the purpose of the loans the funds they provided was for the acquisition of existing loans that were reaching maturity, the refinancing of those loans, and the “upsizing” of the loans for the construction of the Commodore Properties.

For the reasons explained in the Halpern Settlement Motion and in this reply, the Receiver believes that the proposed settlement represents a fair and adequate settlement which is within the range of reasonableness, and that the substantial benefits to be received under the settlement outweigh the speculative potential benefits of pursuing rescission or invalidation of the loans.

**3. “This Sale Does Not Comply with 28 U.S.C. § 2001.”**

The Receiver has already addressed this objection in prior Court filings (DE#279 at pp. 5-10) and incorporates those arguments by reference here.

**4. “Receiver’s Proposed Settlement Would Violate this Court’s Interpretation of Wells Fargo.”**

The CG Investors assert that approval of the settlement would be inconsistent with *S.E.C. v. Wells Fargo Bank, N.A.*, 848 F.3d 1339 (11th Cir. 2017), and this Court’s interpretation of it in the Stewart Sale Order (DE#185) because (1) it would transfer all net sale proceeds to the Halpern Parties without any consideration given to other creditors; and (2) if the Halpern Back-Up Sale Contract is consummated, there would be a credit bid without any transfer of liens to the net sale proceeds. The issue addressed by the Court in the Stewart Sale Order was whether, under *Wells Fargo*, the Court could authorize a sale of property free and clear of liens, where those liens would



attach to the proceeds of sale. The Court held that such a sale was permitted under *Wells Fargo*, provided that such liens would be preserved regardless of whether the claimant filed a claim in the receivership estate. That is exactly what the Receiver has proposed to do in the Commodore Sale Motion, which as noted above did not address the disposition of proceeds.

But nothing in *Wells Fargo* or in this Court's application of it in the Stewart Sale Order precludes the Receiver from seeking to resolve by settlement the liens and claims asserted against Receivership Property. To the contrary, *Wells Fargo* specifically recognized that summary proceedings are an appropriate means of disposing of receivership estate property so long as notice and an opportunity to object are provided:

“[I]t is appropriate for [a] district court to use summary proceedings” to dispose of receivership property because it “reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.” *Elliott*, 953 F. 2d at 1566. Indeed, the Eleventh Circuit has held that “summary proceedings do not per se violate claimants’ due process interest.” *Id.* at 1571. Rather, to establish a due process violation, the claimant “must show how they were prejudiced by the summary proceedings and how they would have been better able to defend their interests in a plenary proceeding.” *Id.* The Halpern Trusts make no such showing. To be sure, “[s]ummary proceedings are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses.” *Id.* at 1567. That is not the situation here, as monies can only be distributed from the Lien Claim Fund upon court order following notice to all known lien claimants, including the Halpern Trusts, who will be given an opportunity to object. ... For these reasons, the proposed sale does not constitute an unauthorized act of the Receiver, or violate the Halpern Trusts’ due process or Fifth Amendment rights.

(DE#185 at 10-11). The CG Investors have been provided with notice of the proposed distribution of the proceeds from the sale of the Commodore Properties and an opportunity to object, consistent with this Court's ruling in the Stewart Sale Order.

**5. “A Challenged Lien Cannot Support Credit Bid.”**

Finally, the CG Investors object to the request for approval of the Halpern Back-Up Sale Contract, contending that “a challenged lien cannot support a credit bid in an SEC receivership case.” But by the Halpern Settlement Motion, the Receiver proposes to resolve and settle the lien challenge in exchange for the benefits to be received by the receivership estate under the settlement. The issue, for purposes of settlement approval, is whether that proposed resolution is fair, adequate and within the range of reasonableness. The Receiver respectfully submits that this standard has been satisfied.

None of the cases cited by the CG Investors support the proposition that the Receiver cannot resolve and settle a lien challenge. *See, e.g., In re Fisker Auto. Holdings, Inc.*, 510 B.R. 55 (Bankr. D. Del. 2014) (granting debtor’s request to limit lender’s credit bid to \$25 million where it was an uncontested fact that the lender purchased the debt for \$25 million); *In re Daufuskie Island Properties, LLC*, 441 B.R. 60, 63 (Bankr. D.S.C. 2010) (addressing trustee’s request to deny lender’s right to credit bid where trustee had filed adversary proceeding to invalidate and subordinate asserted mortgage and claim); *In re McMullan*, 196 B.R. 818 (Bankr. W.D. Ark. 1996), *aff’d sub nom. McMullan v. Nat’l Bank of Com.*, 162 F.3d 1164 (8th Cir. 1998) (stating lender could not bid any of its claimed liens because of unresolved issue as to law applicable to perfection); *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991) (addressing trustee’s request to deny bank’s right to credit bid where trustee had filed adversary proceeding to void mortgage, permitting bank to credit bid if it posts a letter of credit).

For the foregoing reasons, the Receiver respectfully requests that the Court grant the Halpern Settlement Motion and overrule the CG Investors’ objections.

Respectfully submitted,

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*Counsel for Bernice C. Lee, Receiver*

**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 31st day of December, 2024.

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