

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-24903-JB

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al,

Defendants.

**DEFENDANT RISHI KAPOOR'S RESPONSE TO RECEIVER'S
MOTION TO APPROVE LOS PINOS SETTLEMENT WITH
LOS PINOS ACQUISITION, LLC REGARDING LOS PINOS PROPERTY
AND MODIFY AGREED ORDER REGARDING MOTION TO STAY (ECF 325)**

COMES NOW the Defendant, Rishi Kapoor, by and through his undersigned attorney, and responds to the Receiver's Motion to Approve Settlement Agreement with Los Pinos Acquisition, LLC Regarding Los Pinos Property and Modify Agreed Order Regarding Motion to Stay ("Settlement Motion") [ECF 325], and states as follows:

1. The Defendant agrees that the Receiver and Los Pinos, LLC (the "Mortgagee") should be allowed to enter into this settlement with two provisos. The \$225,000 that the Mortgagee is to pay to the Receiver for settling the Receiver's non-existent claims to the Los Pinos property ("the Home") should be held in escrow. Further, the Court should order the Receiver to place in escrow the \$150,000 that the Mortgagee paid to the Receiver on October 18, 2024, in return for the Receiver refusing to extend our time to sell the Home. (See Settlement Motion paragraph 14).

2. In the Settlement Motion the Receiver concedes that the entities that own the Home are not Receivership Companies (paragraph 3). For over a year the Defendant has contended that

any claims against the Home are defeated by Florida's laws protecting assets owned as Tenants by the Entireties. The Receiver and the SEC have disputed this claim and the dispute has never been ripe for decision by the Court. As a "fallback" position, the Defendant has argued that at least fifty (50%) percent of the entities which own the Home is owned by Jennie Kapoor, the Defendant's wife.

3. The Receiver has never brought any claim or cross-claim against the Defendant. The Receiver has asserted in paragraph 3 of the Settlement Motion that, "The Receiver **may** have claims assertable against the Los Pinos Property to the of all funds of the Receivership Companies used to acquire, pay for or improve the Los Pinos Property." (Empasis added). The Defendant has denied any funds from the Receivership Companies were used for the Home and has provided to the SEC a schedule of the independent sources of funds used for the Home. To date, neither the Receiver nor the SEC has provided any evidence of funds from the Receivership Properties being funneled into the Home.

4. In order to facilitate the sale of the Home, the Defendant's only significant asset, the Defendant agreed to allow Receiver to participate in the sale process and further agreed that any proceeds of the sale would be escrowed by the Receiver. (See Settlement Motion section 6 (d) and footnote 2).

5. In the Settlement Agreement the Mortgagee reserves the right to proceed against the Defendant and his wife, Jennie Kapoor, for any eventual deficiency as they personally guaranteed the loan. Giving the Receiver at total of \$375,000 on the basis of an amorphous, undocumented, possible future claim could create a deficiency resulting in a claim against the Defendant and Jennie Kapoor by the Mortgagee.

WHEREFORE, the Defendant respectfully requests that the Court order that the Settlement Motion be modified to require that the contemplated \$225,000 payment to the Receiver be instead held in escrow by the Receiver until such a time as the Receiver may successfully assert a claim against the proceeds of the sale of the Home, and until the Court then determines who owns the proceeds and whether they are protected by Florida law. Further, the Defendant respectfully requests that the Court order the Receiver to place in escrow, under the same conditions, the \$150,000 that the Mortgagee paid to the Receiver on October 18, 2024, in return for the Receiver refusing to extend our time to sell the Home.

Respectfully submitted,

SHAHADY & WURTENBERGER, P.A.

/s/ Fred A. Schwartz

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify 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/ Fred A. Schwartz*

Fred A. Schwartz