UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, *et al.*,

Defendants.
_____/

CASE NO. 1:23-cv-24903

CWL-CH, LLC, ASJAIA, LLC, AND VIEDEN GROVE OZ, LLC'S OMNIBUS REPLY TO RECEIVER'S AND HALPERN PARTIES' RESPONSES TO MOTION FOR RECONSIDERATION ON ORDER APPROVING SETTLEMENT AGREEMENT WITH THE HALPERN PARTIES

CWL-CH, LLC, ASJAIA, LLC, and VIEDEN GROVE OZ, LLC (jointly and severally referred to hereafter as the "CG Members"), by and through their undersigned counsel[1], hereby file their Omnibus Reply to the Responses filed by the Receiver [D.E. 354] and the Halpern Parties [D.E. 353] to the CG Members' Motion for Reconsideration [D.E. 344] of this Court's Order Approving Settlement Agreement with the Halpern Parties as to the Commodore Properties [D.E. 333, hereafter the "Halpern Settlement Approval Order"]. The CG Members state as follows:

1. **The Receiver and the Halpern Parties Incorrectly Assume that this Court has Denied the CG Members' Motion for Relief from Stay [DE 244].**

In a paperless order [DE 351], this Court has set a hearing on the CG Members' pending Motion for Relief from Stay … [DE 244, hereafter the "Stay Relief Motion"] for March 19th.[2] It

[1] The CG Members and the undersigned counsel have appeared for the limited purpose of seeking relief from this Court's stay and to object to the sale of the Commodore Properties. The CG Members do not concede that this Court has jurisdiction over the liens that they have asserted in the Commodore Properties.

[2] DE 351 gives notice the hearing on the Stay Relief Motion was rescheduled from March 5th to March 19th.

is impossible for the undersigned to reconcile the fact of that impending hearing with the positions expressed in the responses. Clearly, this Court has set the Stay Relief Motion for hearing because that motion remains unresolved.

Despite this, the Receiver argues that the present motion "is predicated on the entirely unsupported assumption" that this Court has not read or considered the Stay Relief Motion. DE 354 at p. 4. Similarly, without an appropriate or verifiable citation, the Halpern Parties assert that the present motion "ignores the Court's finding that it 'considered, and overruled, the objection to the *Motion [for Stay]* filed by the CG Investors, [DE 315].'"[3] (Emphasis added.) Both of these assertions are incorrect. Moreover, each demonstrates that the Receiver and the Halpern Parties wish that the Stay Relief Motion would remain forgotten and hidden in this Court's ever growing docket sheet. Even so, these attempts to downplay the CG Members' Stay Relief Motion require this Court to revisit prior statements by the Receiver, which statements are directly implicated by the Order Approving the Halpern Settlement.

2. The Receiver's Prior Stipulation Directly Contradicts her Position on the Halpern Settlement and Requires Reconsideration of the Settlement Approval Order.

[3] It seems that the Halpern Parties reference is to the following language that appears on page 10 of DE 333:

> *The Court has considered, and overruled, the objection to the Motion filed by the CG Investors, ECF No. [315], who are equity investors in Urbin Coconut Grove Partners, LLC, the entity which owns the Commodore Companies which in turn own or hold leasehold interests in the Commodore Properties.*

However, ECF No. 315 is a document entitled "CG Interested Persons' Response to Receiver's Motion to Approve Settlement Agreement with the Halpern Parties." The Halpern Parties have mistakenly conflated this document with the Stay Relief Motion, which is DE 244.

In her response to the Stay Relief Motion, the Receiver reported to this Court the circumstances in which she had stipulated that the Stay Relief Motion should be granted.

> The Receiver has already advised the CG Investors that she will stipulate that (1) the Receiver will not assert that the CG Investors' asserted lien position (if any) with regard to the Commodore Properties is impaired by the failure to seek an extension of the NLPs, in light of the Receivership Order staying any request for an extension; and (2) ***in the event the sale does not close, and the Receiver agrees to lift the stay generally with regard to the Commodore Properties, the CG Investors could then seek to extend the NLPs***. In the first scenario, assuming a sale of the Commodore Properties is approved and closes, the claims and liens against the Commodore Properties will be addressed by this Court as part of a claim process; and ***in the second scenario, the CG Investors would then have the opportunity to seek such extension in state court***.

See DE 282, at page 13 (emphasis added). At the time that the Receiver announced this stipulation, the only Commodore Property sale under consideration was transaction with Coconut Grove Commodore Development Ventures, LLC (the "CGCDV Sale"). That is the only transaction contemplated in the Receiver's sale motion dated September 24, 2025. *See* DE 238. This stipulation did not and does not contemplate a back-up sale to the Halpern Parties. To the contrary, if CGCDV Sale did not close, the only clearly stated alternative was the Receiver's agreement to allow the CG Members to proceed in in state court. Thus, as proposed by the Receiver and approved by this Court, the Halpern Settlement Approval Order effectively reneges on that stipulation.

To prevent the gross injustice to would follow from that consequence, this Court should reconsider the Halpern Settlement Approval Order and enforce the Receiver's prior stipulation. Along those lines, if the CGCDV sale is not consummated, then this Court should implement the Receiver's stipulation and grant the CG Members' Stay Relief Motion.

3. Receiver and Halpern Parties Misconstrue the Effect of this Court's Stay Order.

Both the Receiver and the Halpern Parties refer to the "dismissed state action" to suggest that "a lis pendens without a pending state action is meaningless." *See* DE 353, pages 7-8; *see also* DE 354, page 6. However, the language of this Court's Stay Order prevented the state court from taking any action that would prejudice the interests of any party to that proceeding. According to DE 24:

> 26. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of Plaintiff 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").
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> 27. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action in connection with any such proceeding, including, but not limited to, the issuance or employment of process.
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> 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.) Thus, without a further order from this Court, the state court was enjoined from taking or permitting any action. That injunction includes a purported dismissal by the state court, albeit one without prejudice. If so, then the state court's order dated July 10, 2024, violated the Stay Order, especially if it caused any prejudice as to the CG Members' NOLP's or claims related thereto. This reading of the Stay Order is consistent with the Receiver's stipulation that is discussed

above, wherein she agreed not to contest the continued viability of the CG Members' NOLP's. This reading is also consistent with the following holding on the effect of an analogous stay in the bankruptcy context:

> We recognize that the stay, by its statutory words, operates against "the commencement or continuation" of judicial proceedings. No specific reference is made to "dismissal" of judicial proceedings. Nevertheless, *it seems to us that ordinarily the stay must be construed to apply to dismissal as well*. First, if either of the parties takes any step to obtain dismissal, such as motion to dismiss or motion for summary judgment, there is clearly a continuation of the judicial proceeding. *Second, in the more technical sense, just the entry of an order of dismissal, even if entered sua sponte, constitutes a judicial act toward the disposition of the case and hence may be construed as a "continuation" of a judicial proceeding.* Third, dismissal of a case places the party dismissed in the position of being stayed "to continue the judicial proceeding," thus effectively blocking his right to appeal. Thus, absent the bankruptcy court's lift of the stay, or perhaps a stipulation of dismissal, *a case such as the one before us must, as a general rule, simply languish on the court's docket* until final disposition of the bankruptcy proceeding. In making these observations, we expressly do not decide any case except the one before us; we do not wish unnecessarily, or with technicality, to impede the district court in maintaining a current docket. We simply hold that the entry of the particular order of dismissal in the appeal before us was prohibited by the section 362 stay.

Pope v. Manville Forest Prods. Corp., 778 F.2d 238, 239 (5th Cir. 1985) (emphasis added); *see also Personalized Air Conditioning, Inc. v. C.M. Sys. of Pinellas Cty., Inc*., 522 So. 2d 465, 466 (Fla. 4th DCA 1988) ("this proceeding was automatically stayed and the trial court's action in dismissing it was void."). In short, under *Pope* and *Personalized Air*, the state court's dismissal order was void; it cannot be deemed to have had any effect upon the viability of the CG Members' NOLP's.

Despite the ruling in *Pope*, the Halpern Parties argue that the state court's dismissal order implicates Florida Rule of Civil Procedure 1.420(f). *See* DE 353 at page 9. In the Halpern Parties' understanding of the case, the state court's dismissal operated to automatically discharge the CG Members' NOLP's. Of course, that understanding is mistaken, and ignores both the *Pope* ruling

and the Receiver's stipulation. There simply is no way for Rule 1.420(f) to operate while this Court's Stay Order remains in place.

Moreover, because of the Stay Order, the CG Members have been enjoined from initiating an appeal of the state court's dismissal. That injunction implicates Florida Statutes, § 48.23(4), which provides that any one-year period that might operate to limit the effect of a lis pendens "does not include the period of pendency of any action in an appellate court." Because the CG Members cannot file an appeal in the state case, state court's dismissal order did not start the clock on the CG Members' appellate rights. Until the CG Members' state appellate rights are adjudicated, the possibility remains that their NOLP's will ripen into a judgment that clouds the title of any subsequent purchaser of the Commodore Properties.

Similarly, as to the Commodore Properties, this Court has yet to render an order that would implicate the CG Members' appellate rights. Therefore, § 48.23(4) allows the CG Members' NOLP's to maintain effectiveness until such time as their federal appellate rights have been adjudicated or waived. Indeed, if this Court issues an appealable order denying the CG Members' Stay Relief Motion, and that order is appealed, then § 48.23(4) would operate to extend the effect of the CG Members' NOLP's.

4. Receiver's and Halpern Parties' Equitable Lien Arguments fail to Recognize that Such Liens are Enforceable.

Both the Receiver and the Halpern Parties rely upon the assumption that the CG Members' claims reflect equitable liens that are not enforceable. On that basis, the Receiver cites *Blue Star Palms, LLC v. LED Trust, LLC*, 128 So. 3d 36 (Fla. 3d DCA 2012). *See* DE 354 at page 8. Similarly, the Halpern Parties argue that the Commodore NOLP's "merely give[] notice to subsequent purchasers that an equitable claim is pending." *See* DE 353 at page 9. However, the

Supreme Court of the United States has recognized that equitable liens are, under certain circumstances, enforceable. "Equitable liens thus are ordinarily enforceable only against a specifically identified fund because an equitable lien 'is simply a right of a special nature over the thing . . . so that the very thing itself may be proceeded against in an equitable action.'" *Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan*, 577 U.S. 136, 145, 136 S. Ct. 651, 659 (2016). Here, the specifically identified property interests would be the fraudulently acquired liens against the Commodore Properties. Therefore, if this Court credits the Receiver's or Halpern Parties' view that the CG Members have asserted equitable liens, then under *Montanile*, those liens are enforceable. On that basis, the argument that the CG Members have failed to explain how they have a "valid, enforceable lien interest" is plainly erroneous.

5. Receiver's Citation to *Quadomain* Highlights the Need for this Court to Resolve the Motion for Relief from Stay.

The Receiver's discussion of *U.S. Bank Nat'l Ass'n v. Quadomain Condo. Ass'n.*, 103 So. 3d 977 (Fla. 4th DCA 2012), only highlights the need for this Court to recognize that it must reconsider the Halpern Settlement. *See* DE 354 at page 5. As the CG Members have previously argued, the state court acquired jurisdiction over the Commodore Properties, as is evidenced by the CG Member's NOLP's. The Receiver errs when she suggests that the Receivership Order ousted the state court's jurisdiction over those properties. Moreover, as is discussed above, this Court's Stay Order prevented the state court from taking any further effective action that would have changed the status quo as to the state court's jurisdiction. Thus, because the state court's order of dismissal is void, the Commodore Properties remain within that court's jurisdiction.

6. **Receiver's Reliance upon *Am. Legion Cmty. Club* is misplaced**.

The Receiver relies upon *Am. Legion Cmty. Club v. Diamond*, 561 So.2d 268 (Fla. 1990), to support an argument that the CG Members' claims do not rest upon a duly recorded instrument. *See* DE 354 at page 7.[4] According to this argument, the Receiver would "distinguish[] between claims which are 'founded on the terms and provisions of the deed' versus claims that are based on 'circumstances surrounding the execution of the deed.'" Further, the Receiver asserts that, because the CG Members have challenged Defendant Kapoor's authority to execute the Halpern Mortgages, their claims are nor based upon the terms and provisions of recorded documents.

However, at best, the Receiver's arguments rest upon a superficial reading of *Am. Legion* and misconstrues the Florida Supreme Court's ultimate ruling. In that case, the court ruled that the exception set forth in F.S. § 48.23(2) "applies only to those cases in which the suit is based on the terms and provisions contained in the recorded document." As it derived this ruling, the *Am. Legion* court approvingly cited the decision in *Berkley Multi-Units, Inc. v. Linder*, 464 So. 2d 1356 (Fla. 4th DCA 1985). In turn, the *Linder* court observed that the critical issue was whether the recorded instrument gave notice that an interested party or person could bring an action in the event of a default. According to *Linder*:

> In the case of a mortgage foreclosure *the recorded mortgage is notice that* if the mortgagor property owner fails to make payments or otherwise defaults under the terms of the mortgage and underlying promissory note *the mortgagee may bring an action to foreclose the mortgage*. In such an action the mortgagee is the plaintiff,

[4] By making this argument, the Receiver violates the stipulation that she announced in DE 282. Admittedly, that stipulation does not address the validity of the Commodore NOLP's. Nevertheless, the gist of this argument is that the time for the CG Members to seek enforcement of the Commodore NOLP's has expired. Otherwise, there would be no point in raising the issue of the exception to the "one-year limitation" set forth in F.S. § 48.23(2). Again, the Receiver has previously advised this Court and the CG Members that she will not contest the CG Members' attempt to extend the Commodore NOLP's, in the event that the original sale is not consummated and the "one-year limitation" is deemed to apply.

> and because his claim or interest is already a matter of public record by virtue of the recorded mortgage, when the foreclosure action is filed he is entitled as of right to file a notice of lis pendens. An action to foreclose a mortgage on real property is an action "founded on a duly recorded instrument."

464 So. 2d at 1357-58 (emphasis added); *cited at* 561 So.2d at 271. As is discussed below, at least one of the contested mortgages includes language that gives notice of the CG Members' right to proceed as they did in the state court case. Thus, per *Am. Legion*, the CG Members' NOLP's fall within the F.S. § 48.23(2) exception.

The Receiver's argument ignores the plain language in and the exhibits (including the mortgages) that are attached to the CG Members' proposed First Amended Complaint. The terms of the mortgages authorize (if not impose upon) the CG Members the power to take steps to preserve the mortgagor companies as going concerns. Filing a derivative action, as they did, would be such a step. To that end, at least one of the challenged mortgages includes the following language:

> 35. Mortgagor and any general partner or member or manager of Mortgagor, as applicable, have each done since the date of their formation and shall do or cause to be done all things necessary to (i) preserve, renew and keep in full force and effect its existence, rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all licenses, and (iv) qualify to do business and remain in good standing under the laws of each jurisdiction, in each case as and to the extent required for the ownership, maintenance, management and operation of the Mortgaged Property. Mortgagor hereby represents, warrants and covenants as of the date hereof and until such time as the Loan is paid in full, that Mortgagor has been, since the date of its formation, is and shall remain a Single-Purpose Entity (as hereinafter defined). A "Single-Purpose Entity" or "SPE" means a corporation, limited partnership or limited liability company that:
>
> (a) was and will be organized solely for the purpose of (i) owning an interest in the Mortgaged Property, (ii) acting as general partner of a limited partnership that owns an interest in the Mortgaged Property, or (iii) acting as the managing member or manager of a limited liability company that owns an interest in the Mortgaged Property;
>
> (b) will not, nor will any partner, limited or general, member, manager or shareholder thereof, as applicable, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, by-laws, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Mortgagor's existence as a Single Purpose Entity;

See ¶ 35, pages 19-21 of the 2EE Mortgage recorded at Miami-Dade County Public Records, Book 33622, Page 215-217. This paragraph is analogous to the typical mortgage's notice that a mortgagee may act in the event of a mortgagor's default. In this paragraph, the Mortgagors commit their members (including the CG Members) to take affirmative action to protect the companies. ("***[A]ny*** … ***member*** or manager of Mortgagor … shall do or cause to be done all things necessary to … preserve, renew and keep in full force and effect its existence, rights, and franchises …".) As such, on the face of this recorded mortgage, language appears that authorizes (if not requires) the CG Members to file the action that they pursued in the State Court Case. Simply put, the CG Members filed the State Court Case to preserve and keep in full force the Receivership entities in which they invested. Thus, a careful reading of the Halpern Mortgages will confirm that language

therein authorizes (if not requires) the CG Members to litigate their claims or to attempt to cure defaults arising under the mortgages.

Moreover, this Court will note that the First Amended Complaint is brought both in the names of the CG Members and derivatively on behalf of Urbin Coconut Grove Partners, LLC. For that reason, even in the absence of the language appearing in ¶ 35 of the 2EE Mortgage, any reader of the mortgages would be on notice that the Mortgagor could act affirmatively to proceed against the mortgagees. *Compare Centerstate Bank Cent. Fla., N.A. v. Krause*, 87 So. 3d 25, 29 (Fla. 5th DCA 2012) ("As a general rule, only the corporation or its owners have standing to assert that its corporate officers acted without authority in their execution of a mortgage. … *The Krauses were not members of KGE, nor were they seeking to obtain an interest in it. … Because the Krauses have no ownership interest in KGE,* as strangers to the Development Loan, they lack standing to challenge its proper authorization.") (emphasis added). Contrary to the facts in *Krause*, the CG Members **are** members of Urbin Coconut Grove Partners, LLC. Their company is a signatory on the contested mortgages. Accordingly, unlike in *Krause*, because they are not "strangers" to the challenged mortgages and because they also are proceeding derivatively, the CG Members' NOLP's properly give notice of their claims. *See also Mohican Valley, Inc. v. MacDonald*, 443 So. 2d 479, 481 (Fla. 5th DCA 1984) (a lis pendens is permitted and proper in derivative shareholder action to challenge a fraudulent conveyance).

CONCLUSION:

For the foregoing reasons, and those set forth in their original motion papers, the CG Members have shown facts and law of a strongly convincing nature to induce this Court to reverse its prior decision in the Halpern Settlement Approval Order. Accordingly, this Court should exercise its discretion under Rule 54(b), Rule 59(b), or Rule 60(b) and vacate or retract DE 333.

WHEREFORE, CWL-CH, LLC, ASJAIA, LLC, and VIEDEN GROVE OZ, LLC, respectfully request that the Court enter an order vacating or retracting this Court's Order Granting 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 [D.E. 333], and for any further relief this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 6th, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, 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