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 REPLY IN SUPPORT OF MOTION TO APPROVE DISBURSEMENT OF VALENCIA LIEN CLAIM FUND PROCEEDS FROM SALE OF UNIT 1104

Bernice C. Lee, as Receiver ("Receiver") over the Receivership Companies,[1] submits this reply in support of the Receiver's Motion to Approve Disbursement of Valencia Lien Claim Funds Proceeds from Sale of Unit 1104 [DE 364] ("Motion to Disburse"), and in reply to the Conditional Objection [DE 377] ("Mironest Objection") filed by non-party Mironest CG, LLC ("Mironest"). The Motion to Disburse does not represent a settlement or compromise of any claims by or against the Receivership Companies, and accordingly the Receiver is glad to clarify in response to the Mironest Objection that any Order granting the Motion to Disburse, and any disbursement made thereunder, are without prejudice to the rights of the Receiver to seek to claw back or otherwise recover from the Lender (defined below) and its affiliates and principals some or all of the amounts disbursed or otherwise paid to Lender, the Receiver's rights to object to any claim asserted by the Lender, and the Receiver's rights or claims against any other party, or any claim which may properly be asserted against Lender or its affiliates by others (subject to the terms of the

[1] Capitalized terms not otherwise defined have the meanings given in the Motion to Disburse.

Receivership Order). However, the Receiver does not believe the potential claims described in the Mironest Objection warrant further deferral of distribution at this time of the Valenica Lien Claim Funds and the risk of additional asserted default interest. The Motion to Disburse represents a reasoned exercise of the Receiver's business judgment and should be approved in order to mitigate the asserted accrual of additional default interest and to preserve potential value for the Receivership Companies and interested parties.

Background

As described in the Motion to Disburse, the assets of the Receivership Companies at the time the receivership case commenced included four condominium units at a property located at 515 Valencia Avenue in Coral Gables, Florida (the "Valencia Project"). On August 29, 2024 the Court entered an order [DE 216] ("Unit 1104 Sale Order") approving the sale of one of those units – Unit 1104 – for a total sale price of $4,010,000. The net closing proceeds were $3,940,691.90, which has been held in the "Valencia Lien Claim Fund." Pursuant to the Unit 1104 Sale Order, the Receiver was directed to file an appropriate pleading or motion to address the proposed allocation and disbursement of the Net Sale Proceeds at a later date, with notice to all potential lien claimants.

Unit 1104 is encumbered by a senior mortgage securing a loan (the "Loan") in favor of 515 Valencia Acquisition, LLC ("Lender"). Unit 1104 is also subject to a junior mortgage in favor of the Halpern Family Trust, and several claims of lien by contractors. Prior to the receivership, the Lender had filed a foreclosure action asserting that as of November 8, 2023, the Lender was owed $3,750,000, together with accrued interest of $223,458.90, and that interest continued to accrue at a 24.99% default rate (an amount equal to $937,125 per year or nearly $80,000 per month).

In connection with Motion to Disburse, the Receiver and her professionals have reviewed the loan documents in connection with the Loan, the related closing statements, the financial and

transactional information relating to the receipts and disbursements in connection with the Loan, correspondence and communications relating to the Loan, and other relevant information. In response to the Mironest Objection, the Lender has provided additional documents and information to the Receiver and has prepared an affidavit to address the allegations made therein which will be filed with the Court, and has agreed that the Receiver may rely on that affidavit. The Receiver has also requested, both prior to and after the filing of the Mironest Objection, any additional documents or information from Mironest which would support the allegations in the Complaint attached to its Objection.

The information available to the Receiver, which includes the Lender's foreclosure complaint,[2] loan documents, closing documents, related communications and other information, reflect that the Loan was originally made in April 2018 to 515 Valencia SPE, LLC (a subsidiary of Receivership Company 515 Valencia Partners, LLC) by Valencia 34, LLC in the principal amount of $12 million, and after certain modifications and assignments was assigned to the Lender's predecessor in interest 2EE LLC in November 2020. In November 2020, a Consolidated and Replacement Promissory Note, Loan Agreement, and related documentation reflect that 2EE and 515 Valencia SPE, LLC amended the loan documents to provide for a total $35 million loan facility to complete construction of the project, with funding to be provided through periodic "draws" during defined phases of the construction project. A $20 million initial advance was funded in November 2020.

Under the loan documents, and specifically the Loan Agreement executed November 10, 2020, requests for draws required evidence of acquisition and improvement costs and payments,

[2] The Lender's foreclosure complaint with exhibits is attached as Exhibit 4 to the Mironest Objection, and was previously filed with the Court as Exhibit 5 to the Receiver's Expedited Motion to Approve Sale of Valencia Unit 1104 Property Free and Clear [DE 208].

including certification of percentage of completion, that outstanding claims were paid, that there were no outstanding liens, and that amounts in the Construction Reserve were sufficient to pay costs of completion, among other things. After November 2020, the Lender made an additional advance that increased the total amount loaned to $25 million. All advances were wired by 2EE's counsel Jeffrey E. Levey, Esq. to the escrow agent, borrower's counsel Goodkind & Florio, P.A., to 515 Valencia Partners, LLC, or in one instance in December 2020 to the general contractor Winmar Construction, Inc. ("Winmar").

The documents and information available to the Receiver further reflect that in November 2021, the loan documents were amended to reflect the conclusion of the "Second Phase" of construction, as defined in the November 10, 2020 Loan Agreement, and to provide for authorization of draws under the "Final Phase" of up to $10 million from a Construction Reserve. On or about November 5, 2021, the Lender funded a draw of $2,426,069.90, which was wired by the Lender to its counsel Mr. Levey for disbursal. Additional draws on the Loan were made on December 17, 2021 of $2,762,750.24, on February 23, 2022 of $1,440,870.98, and on January 12, 2023 of $2,691,960.88.[3] The Lender represents that the maximum amount outstanding under the Loan never exceeded the $35 million funding limit in the November 2020 Loan Agreement.

The documents and information available to the Receiver further reflect that between October 2020 and March 2022, the Lender received periodic Project Status Reports from CBRE, Inc. as a third-party construction risk manager, which provided detailed summaries of the status of the project and the payments made in connection with its construction. In March 2022, the Lender

[3] The January 12, 2023 advance was made by RLC Funding LLC, to whom the Loan had been assigned (discussed further below). The Lender also represents that on June 27, 2022, Lender re-advanced $900,000 as interim "gap financing" for payment of certain outstanding Winmar invoices due to a delay in closing on certain unit sales, which was subsequently repaid.

received a 17th Project Status Report from CBRE which reflected that the project was more than 95% complete, and that CBRE's estimated cost-to-complete was approximately $5 million (which represented an increase of approximately $900,000 over the developer's cost-to-complete direct cost budget). The Lender represents that all draws following the November 2021 amendments were within the $10 million Construction Reserve, and within the remaining cost-to-complete budget reflected in the March 2022 CBRE Project Status Report.

The Lender represents that in May/June of 2022, the project obtained a Temporary Certificate of Occupancy and closing on sale contracts for units commenced. The Lender represents and documentation reflects that sale contracts for the units in the Project began to close in June 2022, and the Lender represents that between June 2022 and November 20222 the principal balance of the Loan was reduced to under $1 million as units were sold and the sale proceeds disbursed to Lender and junior lender.

The documents further reflect that in January 2023, the Loan was assigned to RLC Funding LLC ("RLC"), which on January 12, 2023 made a future advance under the Loan of $2,691,960.88, increasing the total principal balance to $3.75 million. The $2,691,960.88 was wired to the Lender's counsel Mr. Levey, who in turn wired the "net amount" of $2,610,819.02 to the escrow agent, borrower's counsel Goodkind & Florio. The Lender (whose affiliate acted as servicer for RLC) has represented that they understood at the time that the purpose for the funding was to complete the construction of the 12th and 13th floor units. At that point in time, all units except for Units 903, 1104, 1201, 1202 and 1301 had been sold; the Loan remained secured by those remaining units. The Lender has represented that they had no knowledge of any diversion of the loan proceeds away from the Valencia project.

Additional details as to Lender's transactions with respect to the Loan, and with respect to the Lender's relationships and other transactions with the Receivership Companies, are set forth in an affidavit to be filed by the Lender.

The Receiver is also familiar with and has reviewed the complaint filed by Mironest in which it asserts, among other things, that Lender "knew or should have known" of Kapoor's fraud – referring, in particular, to Mironest's contention that "it appears that the Lender's funds were immediately siphoned off to Winmar, and shortly thereafter wired to Location Ventures, such that Location Ventures was able to repay certain Location Ventures shareholders even though Location Ventures was insolvent." [DE 377 at 3]. The Receiver has requested that Mironest provide any additional information or documents that would support its contention that Lender knew or should have known of those asserted facts.

Discussion

1. Receiver's Authority to Propose Distribution of Valencia Lien Claim Fund.

In the Unit 1104 Sale Order, the Court directed the Receiver to "file an appropriate pleading or motion to address the proposed 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 assert a lien claim and/or object to the distribution or allocation of the Valencia Lien Claim Fund." [DE 216 at ¶ 10]. Pursuant to that direction, the Receiver has now filed the Motion to Disburse, and requests the Court approve the proposed disbursement consistent with the Court's "broad powers and wide discretion to determine relief in an equity receivership." *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Mironest Objection does not dispute that broad power and wide discretion, but only asserts that the Court retains the ultimate discretion in how the Receiver's powers are exercised, citing *FTC v. On Point Global, LLC*, No. 19-25406-CIV-Scola, 2020 WL 5819809, *2

(S.D. Fla. Sep. 30, 2020). This the Receiver does not question, which is why the Motion to Disburse is subject to this Court's approval.

2. Mironest's Objection Does Not Warrant Withholding the Disbursement.

The Mironest Objection asserts that the January 2023 funds advanced by the Lender, instead of being used to complete construction of the remaining floors at the Valencia Project, were sent to Winmar (the general contractor) as "prepayment" for work that was not performed, and then transferred out to repay certain Location Venture shareholders. [DE 377 at 5]. With regard to the Lender, Mironest asserts that the Lender "knew or should have known about the fraud being perpetrated by 515 Valencia, Winmar and others." *Id.* at 6. Specifically, Mironest alleges that the Lender was contractually entitled to receive information that "would have either confirmed the fraud or at the very least indicated something was seriously wrong," and that the Lender funded an additional advance in January 2023 when "construction had not been occurring for months, and the project was nearly 50% over budget." *Id.* at 6, 7. Accordingly, Mironest contends that the Lender's claims are "highly suspicious, if not meritless." *Id.* at 8.

As described above, the Receiver has reviewed substantial documents and information with regard to the Lender's transactions in connection with the Valencia project. The Receiver has also requested additional information from both the Lender and Mironest with regard to the matters asserted in the Mironest Objection. The Receiver has received a substantial amount of additional information from the Lender, which is described herein and in even greater detail in an affidavit to be filed by the Lender. Based on the Receiver's review of the available information, the Receiver's business judgment remains that the best interests of the Receivership Companies are served by distributing the Valencia Lien Claim Fund as proposed in the Motion to Disburse, while reserving all rights as set forth below.

The documents and information reflect that the Lender's January 2023 advance was within the amount of the Construction Reserve originally established in connection with the November 2020 loan amendments; that it was within the cost-to-complete budget reflected by the reporting of a third-party construction risk manager; that at the time, the Lender had received third-party reports that the project was 95%+ completed; and that the Lender will represent and attest that the advance was understood by the Lender to be for the completion of the 12th and 13th floor units at the Valencia Project, and that they had no knowledge of any diversion or misuse of the funds.

A potential claim under the Florida Uniform Fraudulent Transfer Act that the Loan constitutes a transfer made with actual intent to hinder, delay or defraud creditors would be subject to a defense under Fla. Stat. § 726.109 that the transfer was received "in good faith and for a reasonably equivalent value." Although the Eleventh Circuit Court of Appeals has not defined "good faith," some courts have, as Mironest has asserted, applied an objective "knew or should have known" standard. *See, e.g.*, *Sallah v. Fahrenheit Venture Fund LLC*, No. 14-22150-CIV-ALTONAGA, 2014 WL 12629450, *6 (S.D. Fla. Sep. 5, 2014). But beyond conclusory allegations, Mironest has not identified any specific information that would reflect that the Lender "knew or should have known" at the time it was made that the January 2023 advance it provided was not used for the benefit of the project, and much of the available information is inconsistent with any particulars that Mironest has cited. A claim to equitably subordinate a loan or claim – a concept primarily applied in bankruptcy cases – would face an even higher threshold of demonstrating that the Lender engaged in "gross misconduct" through actions that are "egregious and severely unfair to other creditors." *See Carlton Fields, P.A. v. LoCascio*, 59 So.3d 246, 247-48 (Fla. 3d DCA 2011).

The Receiver's present analysis of potential claims based on the available information does not, in her business judgment, justify withholding the funds in the Valencia Lien Claim Fund versus reducing potential default interest exposure.

3. Any Claims or Objections to Claims are Preserved.

Moreover, the Motion to Disburse does not represent a settlement of any claims. If granted, it does not release or compromise any claims the Receiver may have against the Lender, and does not release the Lender from potential clawback of disbursements to be made pursuant to the Motion or objection to remaining claims asserted by the Lender, should there be a basis for doing so. Nor does the order release or impair any claim that may properly be asserted by a third party directly against the Lender or its affiliates if the Receivership Order stay were lifted or modified.

Accordingly, to address the Mironest Objection, the Receiver proposes that an order on the Motion to Disburse contain the following language:

> Prior to the commencement of the receivership, an action was filed in state court by Mironest, which had a pre-receivership purchase agreement for Unit 1202 at the Valencia Project, which alleges, inter alia, that the Lender or its affiliates and principals continued to fund loans to 515 Valencia despite having actual or constructive knowledge of the misuse of funds by one or more Receivership Entities and its affiliates and principals, and seeks a declaration that the Lender's liens are invalid, or alternatively should be equitably subordinated to that party's claims. The Receiver and her professionals are reviewing over 40,000 transactions occurring across more than 45 bank accounts, and purchaser deposits for the Miami Beach, Commodore and Villa Valencia properties, as well as other transactions engaged in by the Receivership Companies and potential recoveries in connection with those transactions. In connection with the Motion to Disburse, the Receiver and her professionals have reviewed the loan documents in connection with the Lender's loan, the related closing statements, the financial and transactional information relating to the receipts and disbursements in connection with the Loan, correspondence and communications relating to the Loan, and other relevant information.
>
> This Order, and any disbursement made thereunder, are without prejudice to the rights of the Receiver to seek to claw back or otherwise recover from the Lender and its affiliates and principals some or all of the amounts disbursed pursuant to this Order or otherwise paid to Lender, the Receiver's rights to object to any claim

asserted by Lender, including to equitably subordinate and/or recharacterize as equity all or a portion of the Lender's claim, the Receiver's rights or claims against any other party, or claims which may be asserted against Lender and its affiliates by others if the stay of litigation in the Receivership Order is lifted or modified.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order approving the Motion to Disburse, including the language set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 28th day of April, 2025 via CM/ECF upon all counsel of record and via email and/or U.S. mail on interested parties listed in the attached Service List.

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