

**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.

**RESPONSE OF CWL-CH, LLC, ASJAIA, LLC, AND VIEDEN GROVE OZ, LLC, IN
OPPOSITION TO RECEIVER'S MOTION TO APPROVE BACK-UP CONTRACT
FOR SALE OF COMMODORE PROPERTIES FREE AND
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

CWL-CH, LLC. ("CWL-CH"), ASJAIA, LLC. ("ASJAIA"), and Vieden Grove OZ, LLC. ("Vieden") (jointly and referred to hereafter as the "CG Investors"), by and through the undersigned counsel¹, and per USDC-SDFL Local Rule 7.(c)(1), hereby file this Response in Opposition to Receiver Bernice C. Lee's (the "Receiver") Motion to Approve Back-Up Contract for Sale of Commodore Properties Free and Clear of Liens, Claims and Encumbrances [D.E. 460] (the "Motion"), and state as follows:

INTRODUCTION

In a prior related order [D.E. 333], this Court observed that: "[t]he CG Investors' objection that the proposed sale by credit bid to the Halpern Parties is premature, in that the Receiver will be filing a further motion to approve the Halpern Back-Up Sale Contract after the entry of this

¹ The CG Investors 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 Interested Persons do not concede that this Court has jurisdiction over the liens that they have asserted in the Commodore Properties.

Order, and the issue can be addressed at that time." *See* page 10. Now, the Receiver has filed the motion that the Court anticipated in D.E. 333. And, at this time, the CG Investors renew their objections as stated in their prior filings and oppose any credit bid by the Halpern Parties. *See* D.E. 315, 344, and 355, which are by this reference incorporated herein. Likewise, because the Receiver has yet to correct all the deficiencies in her attempted § 2001 private judicial sale processes, this Court lacks jurisdiction to approve the contemplated back-up sale. Finally, because the Receiver contemplates a sale that would not yield any net proceeds, the CG Investors' recorded Notices of Lis Pendens cannot be extinguished. For these and other reasons, this Court should deny the Receiver's motion.

PROCEDURAL BACKGROUND

The CG Investors add the following matters to supplement the Receiver's recitation of the procedural history that pertains to this matter:

1. On December 3, 2024, the Receiver filed a motion to approve the Halpern Agreement [DE 310].
2. On December 17, 2024, the CG Investors filed their Response [D.E. 315] in Opposition to the Receiver's motion to approve the Halpern Agreement [D.E. 310]. Therein, among other things, the CG Investors objected to those parts of the agreement that would allow the Halpern Parties to enter a credit bid to purchase the Commodore Properties.
3. On January 30, 2025, the Court entered an Order approving the Halpern Agreement on January 30, 2025 [DE 333, hereafter, the "Halpern Settlement Approval Order"]. Therein, the Court noted that: "[t]he CG Investors' objection that the proposed sale by credit bid to the Halpern Parties does not comply with 28 U.S.C. § 2001 is premature, in that the Receiver will be filing a



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further motion to approve the Halpern Back-Up Sale Contract after the entry of this Order, and *the issue can be addressed at that time.*" See page 10 (emphasis added).

4. On February 13, 2025, the CG Members filed their Motion [D.E. 344] for Reconsideration as to the Halpern Settlement Approval Order.

5. Subsequently, the Receiver [D.E. 354] and the Halpern Parties [D.E. 353] filed their responses to the CG Members' Motion for Reconsideration [D.E. 344].

6. On March 6, 2025, the CG Investors filed their Omnibus Reply [D.E. 355] 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].

7. On June 27, 2025, this Court entered its Paperless Order [D.E. 435] denying the CG Investors' motion [D.E. 344] for reconsideration.

8. On September 10, 2025, the Receiver filed her Status Report [D.E. 455] for the Commodore Sale Motion.

9. On September 10, 2025, this Court entered its Paperless Order [D.E. 456] staying further consideration of this Court's consideration of the Commodore Sale Motion [D.E. 238]. Per that order, "The stay as to this Motion shall remain in effect until such time as the Court receives notice that (i) the Receiver's Updated Proposed Order is ripe for the Court's consideration without additional hearing, or the Commodore Sale Motion is ripe for hearing, and (ii) the Receiver has filed a motion to approve the form of sale contract with the back-up buyer. Upon filing of the foregoing, the Court will enter an order advising the parties that the matter is now ripe for consideration."

On September 30, the Receiver filed the present motion [D.E. 460], which is apparently meant to satisfy part of the requirements of the Paperless Order [D.E. 456]. However, the Receiver has not yet filed the notice of ripeness that is required by that order.

RELEVANT FACTUAL BACKGROUND

10. For brevity, by this reference, the CG Investors incorporate their prior recitation of the relevant facts that pertain to this matter, as set forth in D.E. 315 at pages 2 through 9. Along with that, the CG Investors would add the following paragraphs.

11. On July 17, 2023, Greg Brooks, Former CFO of Location Ventures, LLC was deposed. A transcript of that deposition (the “Brooks Deposition”), was filed with the CG Investor’s Response to the Receiver’s prior motion.² The Brooks Deposition provides details that explain why this Court should require the Receiver to investigate and report on the validity of Halpern Trusts’ purported liens on the Commodore Properties. Those details include Mr. Brooks’s testimony that the Halperns’ unauthorized mortgages on the Commodore Properties were given to secure loans to “Location Capital.” *See* Brooks Deposition, pgs. 26-27. Further, Mr. Brooks testified that none of the purported Halpern Parties loan proceeds were paid to the entities that owned the Commodore Properties. *Ibid.*

At page 19, ¶ 35, of her motion, the Receiver stated that: “The sale, after payment of the foregoing obligations, will not yield sufficient net proceeds to make any additional distributions to junior lien creditors or other parties with claims against the Commodore Properties or their owners.” Thus, the Receiver has acknowledged that the back-up sale that is contemplated by this motion

² In D.E. 315 at footnote 4, the CG Investors incorrectly identified a document as the “Books Declaration.” That reference should have been to the “Brooks Deposition,” which was attached to that document as Exhibit 2, which is a transcript of a deposition that was taken as part of the CG Investor’s State Court Case.

would not yield any proceeds to satisfy the rule in *Wells Fargo*. Therefore, there will be no proceeds to which the CG Investors' equitable liens could transfer.

DISCUSSION OF POINTS AND AUTHORITIES

In other cases involving § 2001 sales, courts have recognized that a disputed mortgage interest could not support a credit bid for the property allegedly secured by such a mortgage. *SEC v. Capital Cove Bancorp LLC*, No. SACV 15-980-JLS (JCx), 2015 U.S. Dist. LEXIS 174856 (C.D. Cal. Oct. 13, 2015); *Alter Domus, LLC v. Winget*, No. 08-13845, 2024 U.S. Dist. LEXIS 60690, at *16 (E.D. Mich. Mar. 18, 2024). Courts have also held that, where a bona fide dispute exists as to the validity of a lender's debt, "the lender seeking to submit a credit bid must post an irrevocable letter of credit drawn on another bank to protect the Receiver and Receivership Assets if the lien is voided or is deemed unenforceable." *SEC v. Equitybuild, Inc.*, No. 18 CV 5587, 2019 U.S. Dist. LEXIS 74153, at *9 (N.D. Ill. May 2, 2019) citing *In re Octagon Roofing*, 123 B.R. 583, 590-92 (N.D. Ill. 1991). Thus, clear precedent from other SEC receivership cases guides this Court away from recognizing the unfettered credit bid that the Receiver would allow the Halpern Parties with the proposed sale.

Here, the CG Investors have previously argued that this Court should apply the rules that the *Capital Cove* court employed. To date, the Court has not yet ruled on the CG Investors arguments regarding the validity of the Halpern Parties' credit bid. Indeed, this Court has not found that there is an absence of a "bona fide dispute" as to the Halpern Parties' mortgages. For these reasons, the CG Investors renew and reassert those arguments and the Court must reject the Halperns' credit bid.



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I. A Bone Fide Dispute Prevents the Halpern Parties' Disputed Mortgages From Supporting a "Credit Bid" for the Commodore Properties.

The CG Investors have previously advised this Court of their efforts to obtain judicial review of the disputed Halpern Mortgages in their State Court Case. *See, for example*, D.E. 315 ¶ 39. Unfortunately, because of the stay imposed by this Court's Receivership Order, to date the CG Investors' attempts to obtain such a judicial review have been frustrated. Nevertheless, the CG Investors have provided this Court with a more than sufficient basis to require a further hearing as to the existence of such a dispute. This should properly occur in the state court. However, at a minimum, this court should provide some forum to protect the CG Investors due process rights. While this proceeding is not governed by the U.S. Bankruptcy Code, the decisions applying 11 U.S.C. § 363 (k) in *In re D.A.B. Constructors, Inc.*, should be persuasive. *See* No. 6:21-BK-04053-GER, 2022 WL 854777 at *3 (Bankr. M.D. Fla. Mar. 15, 2022) (finding that the existence of a bona fide dispute regarding the surety's claims and interests is sufficient to sustain the objection to the surety's right to credit bid).³ As in *D.A.B. Constructors, Inc.*, a further hearing on the disputed Halpern Mortgages is warranted.

(1) The Halpern Parties Mortgages should not be deemed sufficient to Support a "Credit Bid" for the Commodore Properties.

Surprisingly, at page 21 of her original motion [D.E. 310] for approval of the Halpern Settlement, the Receiver cited *Capital* as support for her proposed settlement with the Halpern Parties. *See also*, D.E. 460 at pages 21-22. Nevertheless, even a superficial reading of *Capital Cove* reveals that it stands for the proposition that a challenged lien cannot support a credit bid in an

³ In *In re D.A.B. Constructors, Inc.*, on February 8, 2022, the Bankruptcy Trustee filed an objection to the purported secured creditor's bid [D.E. 192 in that case], which is available at: <https://plus.lexis.com/f/Attachment/data/urn%3AcontentItem%3A68DB-6K43-RTF8-T05W-00000-00?attachmentType=PDF&attachmentName=Click%20to%20view%20PDF%20document&origination=BlobStore&sequenceNumber=1&isHotDoc=false&title=D.A.B.%20Constructors%2C%20Inc.> That court conducted a hearing on February 9, 2022, and ultimately found cause to deny the credit bid.



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SEC receivership case. In that case, "CAM" referred to senior lienholders on four of the properties at issue in an SEC receivership. CAM sought permission to employ a credit bid to purchase the disputed properties. However, the Receiver in that case argued that CAM's liens were voidable. As it accepted analogous guidance from the U.S. Bankruptcy Code, the *Capital Cove* court held that:

Although secured creditors may credit bid under 11 U.S.C. § 363(k), courts may deny this opportunity "for cause." See 11 U.S.C. § 363(k). "Intrinsically, acting 'for cause' looks to the court's equity powers that allow the court to balance the interests of the debtor, its creditors, and the other parties of interests in order to achieve the maximization of the estate and an equitable distribution to all creditors." *In re RML Dev., Inc.*, 528 B.R. 150, 155 (Bankr. W.D. Tenn. 2014) (citing *Florida Dept. of Revenue v. Picadilly Cafeterias, Inc.*, 554 U.S. 33, 51, 128 S. Ct. 2326, 171 L. Ed. 2d 203 (2008); *NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 527, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984); *Katchen v. Landy*, 382 U.S. 323, 336, 86 S. Ct. 467, 15 L. Ed. 2d 391 (1966)).

A number of equitable considerations justify the denial of CAM's request to credit bid. The Court takes note of the SEC's prima facie case of Defendants' securities fraud, the Receiver's evidence of a Ponzi scheme, the numerous investors and creditors that were defrauded by Defendants, the Receiver's finding that Defendants' collective assets will be insufficient to pay 100% of all amounts claimed, and the Receiver's intent to equitably distribute recovery among all those who were harmed. **Allowing CAM to credit bid would harm the many unsecured and junior creditors who also await recovery. This conclusion is further supported by the Court's finding that a bona fide dispute exists as to CAM's liens against the properties at issue. Accordingly, the Court finds it has justifiable "cause" to deny CAM's request to credit bid.**

2015 U.S. Dist. LEXIS 174856, at *29-30 (emphasis added); *see also* cases cited above on page 10. The facts in the present case require this Court to reach the same conclusion. The Receiver, Brooks, and the CG Investors have each presented bona fide reasons to dispute the validity of the Halpern Parties' liens. Indeed, the CG Investors named some of the Halpern Parties as defendants in the First Amended Complaint that they filed in the State Court Case, wherein they challenged the validity of those same liens. In short, there exists a bona fide dispute as to the validity of the



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Halpern Parties' liens. Accordingly, per *Capital Cove*, this Court should deny the Receiver's motion for cause, and also deny the Halpern Parties the opportunity to assert a "credit bid".

(2) An Evidentiary Hearing is Required For this Court to Assess Whether the Sale with a Halpern "Credit Bid" can Proceed as Outlined in the Receiver's Motion.

Through her proposed sale of the Commodore Properties, the Receiver will effectively extinguish the CG Investors' claims as to those properties. This is because the Receiver's settlement with the Halpern Parties essentially gives the Commodore Properties to the Halperns, and yields no proceeds for the other creditors or interested persons. The Receiver has taken this posture without allowing the CG Investors an opportunity to present evidence to this Court, much less to conduct discovery, to demonstrate that the Halperns are not entitled to receive any value in exchange for their disputed liens. Instead, previously, the Receiver asked this Court to require that any challenges to the Halperns' claims be transferred to the nominal portion of the proceeds that would be left over. Now, the Receiver admits that there will be no such proceeds to which any such challenges could attach. In any event, for the reasons outlined below, such a proceeding is not equitable, violates all notions of fair play and Due Process, and reflects the shortcomings of this summary proceeding.

Due Process requires that CG Investors receive an evidentiary hearing to present their challenges to the Halpern Parties' claims. However, at this point, it does not appear that the present summary proceeding is the appropriate context for such a hearing. This is because the CG Investors have not been named as parties in a pleading in the present case and have not been served with process. In addition, the CG Investors have not voluntarily submitted their property interests to this Court's jurisdiction for adjudication. While the CG Investors sought aa forum in state court

they have not been given any other forum either, not a plenary action in federal court or even an evidentiary hearing. The CG Investors' claims require a plenary proceeding and cannot be adjudicated in this summary proceeding.

At an earlier stage in these proceedings, the Halpern Parties also argued that their claims could not be properly extinguished in this summary proceeding. As they contested the Receiver's proposed sale of the Stewart Properties, the Halpern Parties argued that:

"The Due Process Clause of the Fifth Amendment guarantees that [n]o person shall... be deprived of life, liberty, or property, without due process of law.'" *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993). This protection provides that "individuals must receive notice and an opportunity to be heard before the Government deprives them of property." *Id.* There is no pleading in this case that seeks to invalidate, rescind or avoid the Trusts' mortgage. Nevertheless, the Receiver's Motion and proposed order, if granted on an expedited basis, would eliminate the Trusts' mortgage without adjudication of its priority lien rights, without legal basis, without hearing and without due process as would occur in a standard mortgage foreclosure action. Moreover, the required hearing under § 2001(b) would be avoided as would the remaining statutory protections afforded to interested parties under § 2001(b). In sum, lienholders would lose their property rights without participation. Notably, the Receiver has put forth no argument, much less evidence, why the Trusts' mortgages should be voided as it requests to do other than generally saying it is equitable. Nevertheless, the Receiver requests this Court to invalidate the Trusts' mortgage, and all other liens on the Stewart Grove Property, without a legal basis, much less a hearing to determine a legal basis to void the mortgages. If the Receiver's Motion were granted without the participation of the interested parties who hold an interest in the Stewart Grove Property, it would violate the due process clause. See *Melikhov v. Drab*, 219CV248FTM66MRM, 2020 WL 7419528, at *2 (M.D. Fla. Oct. 19, 2020) (in proceedings supplementary to enforcing a judgment, holding that due process requires non-parties with interest in property subject to execution to be implead so that the Court may fashion full and appropriate relief while observing due process). Accordingly, it must be denied.

D.E. 153 at pages 9 – 10. That same argument applies to the Receiver's attempt to obtain a summary adjudication of the CG Investors' claims as to the Commodore Properties.

As to those arguments, this Court ruled as follows:

"[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."



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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.

SEC v. Kapoor, No. 23-cv-24903-JB, 2024 U.S. Dist. LEXIS 106961, at *13-14 (S.D. Fla. June 17, 2024) (emphasis added).⁴

Similarly, another panel of the Eleventh Circuit has ruled that a claims process was not a sufficient proceeding for allowing a claimant to object to a receiver's distribution of assets.

[T]he fact that Mistina could have appeared for the hearing on the distribution plan is not alone enough to show that her interests would have been "adequately safeguarded." *Torchia*, 922 F.3d at 1316. In *Torchia*, for example, we held that the hearing on the receiver's distribution plan failed to provide sufficient due process to certain claimants because they "were not permitted to call witnesses or conduct discovery, and oral argument was limited to objections to the plan's claims and distribution process." *Id.* at 1313-14, 1319. Likewise, in *Liberte Capital Grp., LLC v. Capwill*, the Sixth Circuit held that a final distribution hearing did not provide sufficient process and that the trial court should have held a separate hearing regarding the claimant's challenge to the ownership of certain assets. 421 F.3d 377, 384-85 (6th Cir. 2005). In reaching that conclusion, the Sixth Circuit drew a "distinction between a hearing on the merits of a receiver's seizing of assets to be included in the receivership estate and the method of distribution of those assets." *Id.*

SEC v. Terry, 833 F. App'x 229, 234 (11th Cir. 2020). Indeed, the *Terry* court ruled that where a pre-receivership transfer was alleged to be fraudulent, an evidentiary hearing was required.

In *Elliott*, we concluded that certain claimants' due-process rights were violated in a receivership case where the claimants were permitted to file written forms with their objections only. 953 F.2d at 1568. We concluded that this process was inadequate because the issue of whether a pre-receivership transfer was fraudulent "required an evidentiary hearing" where the claimants could "present and argue

⁴ In a subsequent filing in a related appeal proceeding, the Receiver approvingly cited the above-quoted language from the *Elliot* decision. See *Lee v. Halpern, et al.*, 2024 U.S. 11th Cir. Motions LEXIS 1684 at ____.



their facts" and "rebut the characterization of the transfer and present affirmative defenses." *Id.*

833 F. App'x at 233. Here, the CG Investors have alleged in their amended state court complaint that the Halperns' mortgages are fraudulent transfers. *See e.g.* ¶ 187 ("The [Halpern Trusts] mortgages were fraudulent, a sham, and the product of the former Managers' breach of fiduciary duties to UCGP.") Therefore, under the *Terry* ruling, due process requires that an evidentiary hearing be conducted to protect the CG Investors' rights. That requirement cannot be satisfied in this summary proceeding.

II. Court Lacks Jurisdiction because Section 2001 Private Judicial Sale Procedures Remain Unsatisfied.

In her motion, the Receiver purports to show that she has satisfied the requirements of 28 U.S.C. § 2001. However, the issue of whether that statute's requirements is not yet ripe for this Court's consideration. There could be no valid publication of a notice of sale under § 2001(b) until the terms of such a sale have been approved. Indeed, the publication on which the Receiver would rely to satisfy this requirement only states a sale amount. Other than that, no other terms of the sale have been specified. Further, it is not entirely clear that the proposed sale amount that the Halpern Parties propose is a real amount, given that their proposed "sale amount" consists entirely of consideration from a disputed mortgage lien. Aside from that, the notice does not specify that the property to be sold consists of a variety of property interests including leaseholds, condominium units and fee simple interests. For this and other reasons, at the appropriate time, this Court should find that the Receiver's offered notice of sale falls short of § 2001(b)'s requirements.

Along with that deficiency, it remains to be shown that the appraisals upon which the Receiver relies meet the requirements of § 2001(b). It must be shown that those appraisers are each "disinterested persons". The appraisers must also have been prepared in accordance with

applicable professional standards, including The Uniform Standards of Professional Appraisal Practice (USPAP), Advisory Opinion 21. As the appraisals were prepared, were the authors acting as neutrals or as advocates? The CG Investors and other interested persons must be allowed an opportunity to examine those authors before the Court can determine that § 2001 has been satisfied.

And, as the *Horuff* court held, until the prerequisites established in § 2001 are satisfied, this Court lacks a jurisdictional basis for completing the contemplated sale. *Acadia Land Co. v. Horuff*, 110 F.2d 354 (5th Cir. 1940). Here, this Court should require a strict showing that there has been substantial compliance with the statute as described in *Horuff*. Until that showing has been established, this Court lacks jurisdiction to confirm the sale.

In short, the Receiver's motion to approve the backup sale to the Halpern Parties, has not yet been shown to comply with 28 U.S.C. § 2001.

Wells Fargo Precludes a Sale of the Commodore Properties Free and Clear of the CG Investors' Asserted Interests.

In the Stewart Property Order, this Court considered the Halpern Trusts' arguments that a proposed sale violated its due process rights and constituted a taking without just compensation. D.E. 185 at page 8. To analyze these arguments, the Court considered the Eleventh Circuit's ruling in *SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1345 (11th Cir. 2017) ("a federal district court cannot order a secured creditor to either file a proof of claim and submit its claim for determination by the receivership court, or lose its secured state-law property right that existed prior to the receivership."); *see also* D.E. 185 at page 9. Applying *Wells Fargo*, this Court ruled that "the Halpern Trusts' junior security interest is not extinguished or invalidated, but rather, attaches to the funds in the Lien Claim Fund." Thus, this Court relied upon a transfer of liens, coupled with the Receiver's proposed claims process, to avoid a finding that a proposed "free and clear" sale would extinguish a creditor's state-law property right.



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For at least two reasons, the Receiver's present Motion is a clear violation of the spirit of the Stewart Property Order and the holding in the *Wells Fargo* decision. First, if the Halpern Back-Up Sale Contract closes, as the Receiver has acknowledged, there will not be any net sale proceeds available for the other creditors. D.E. 460 ¶ 35, page 19. Thus, there would be no transfer of liens from the Commodore Properties to the net sale proceeds. Indeed, no accommodation whatsoever would be made to ensure that "junior" creditors rights were preserved. In short, the Receiver's approach completely ignores *Wells Fargo*.

Second, if the Halpern Parties' Back-up Sale Contract (with a "credit bid") were to be consummated per the Receiver's Motion, there would also be no transfer of liens to the net sale proceeds. Instead, the CG Investors' liens would simply be extinguished. Further, they would be denied a right to defend their liens or to challenge the validity of the Halpern Parties' liens. Consequently, the Receiver's proposal is a clear violation of the *Wells Fargo* ruling.

By virtue of their Commodore Notices of Lis Pendens, the CG Investors have liens which remain intact throughout these proceedings. Unless and until they are adequately compensated, or the stay is lifted and the CG Investors are allowed to assert their claims in the State Court, this Court has no jurisdiction that would allow it to summarily terminate their liens.

Furthermore, in the absence of a fund to which liens have attached and been transferred after a sale, this Court cannot pretend to allow the Commodore Properties to be sold "free and clear of all liens." If it attempts to do so, this Court will contravene its own ruling in the Stewart Property Order. Moreover, *Wells Fargo* mandates that this Court recognize that it cannot summarily write off all lienholders in favor of the Halpern Parties. As the Halpern Parties observed in their challenge to the Stewart Property sales, were the Court to allow that, it would violate due process and effectuate a taking without just compensation.



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CONCLUSION

The Receiver has acknowledged that the proposed back-up sale to the Halpern Parties will not yield any proceeds that would support a claims process. This is because the Receiver proposes to recognize a 100 % valuation of the Halpern Parties' disputed mortgage liens. Yet, the Receiver has failed to acknowledge that the Halpern Parties' mortgage liens have been questioned.

Because the Halpern Parties' mortgage liens are in dispute, they cannot support a credit bid for the Commodore Properties. At the very least, this Court must allow the CG Investors an opportunity to conduct a plenary proceeding through which this Court can adjudicate their challenge to the Halpern Parties' liens. Therefore, at this time, this Court cannot approve the proposed "back-up" sale.

Also, because the Receiver's motion acknowledges that there will not be a meaningful claims process following the "back-up" sale, the Receiver has not proposed a process that would satisfy Due Process considerations as outlined in the *Wells Fargo* decision. For that reason, even if the Court allowed the Halpern Parties to proceed with a credit bid, the Commodore Properties cannot be sold "free and clear" of the CG Investors' claims.

Further, it would be premature for this Court to find that the Receiver has satisfied the § 2001(b) prerequisites for confirmation of a sale of the Commodore Properties.

For these and other reasons, the Court should deny the Receiver's motion.

WHEREFORE, CWL-CH, LLC., ASJAIA, LLC., and Vieden Grove OZ, LLC., respectfully request that this Court enter an order (i) denying Receiver Bernice C. Lee's Motion to Approve Back-Up Contract for Sale of Commodore Properties Free and Clear of Liens, Claims and Encumbrances (ii) denying the Halpern Parties any right to exercise a credit bid for the Commodore Properties and/or ordering that a plenary proceeding and an evidentiary hearing as to



the validity of the Halpern Parties' mortgage liens, and (iii) grant such further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 14th, 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/ Schneur Zalman Kass

SCHNEUR ZALMAN KASS



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