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 RESPONSE TO MOTION OF COMMODORE CENTRE CONDOMINIUM ASSOCIATION, INC. TO COMPEL THE RECEIVER TO PAY DELINQUENT CONDOMINIUM MAINTENANCE ASSESSMENTS DUE TO THE ASSOCIATION, FOR LIMITED RELIEF FROM THE RECEIVERSHIP ORDER AND FOR RELATED RELIEF

Bernice C. Lee, as Receiver ("Receiver") over the companies[1] listed herein (collectively, the "Receivership Defendants") in this action, responds to the Motion of Commodore Centre Condominium Association, Inc. to Compel the Receiver to Pay Delinquent Condominium Maintenance Assessments Due to the Association, for Limited Relief from the Receivership Order and for Related Relief ("Motion to Compel") [DE 463] filed by the Commodore Centre Condominium Association ("Commodore Association"). The Motion should be denied because: (1) the Commodore Association's claims are more appropriately dealt with as part of a claims process in the receivership case, rather than by compelling immediate payment; (2) the Receiver

[1] The Receivership Defendants include: Location Ventures, LL, URBIN, LLC, Patriots United, LLC; Location Properties, LLC; Location Development, LLC; Location Capital, LLC; Location Ventures Resources, LLC; Location Equity Holdings, LLC; Location GP Sponsor, LLC; 515 Valencia Sponsor, LLC; LV Montana Sponsor, LLC; URBIN Founders Group, LLC; URBIN CG Sponsor, LLC; 515 Valencia Partners, LLC; LV Montana Phase I, LLC; Stewart Grove 1, LLC; Stewart Grove 2, LLC; Location Zamora Parent, LLC; URBIN Coral Gables Partners, LLC; URBIN Coconut Grove Partners, LLC; URBIN Miami Beach Partners, LLC; and URBIN Miami Beach II Phase 1, LLC.

has not received any benefit from the assessments for which the Commodore Association seeks to compel payment; (3) the entity that owns the condominium units at the 3162 Commodore Plaza property does not have available funds to pay the assessments; (4) the Commodore Association is already pursuing insurance claims against the insurer for asserted damage to the property; (5) the Court holds, and has already recognized and exercised, its authority to sell receivership property free and clear of liens, claims and interests such as the Commodore Association's assessment claims; and (6) the Commodore Association's reference to "bar order" cases is inapposite and inapplicable. In response, the Receiver states:

BACKGROUND

A. The Commodore Properties and the Receiver's Efforts to Sell Them.

When this receivership case commenced, the Receivership Property[2] included several real estate projects for which construction had ceased, among them, a complicated assemblage of fee simple and tenant leasehold interests on Commodore Plaza in Coconut Grove, Miami (the "Commodore Properties"). The Commodore Properties comprise:

1. 3138 Property: the partially demolished 3-story "School Property" which is subject to the 99-year ground lease between Urbin Commodore SPE, LLC and TB 3138 Commodore Investments, LLC (the "3138 Ground Lease");

2. 3120 Property: the gutted 1-story "Restaurant Property" which is subject to the 99-year ground lease between Urbin Commodore Restaurant SPE, LLC and TB 3120 Commodore Investments, LLC (the "3120 Ground Lease," and with the 3138 Ground Lease, the "Ground Leases");

3. 3162 Property: the 8 commercial condominium units and 21 residential

[2] "Receivership Property" is defined in the Order Granting Plaintiff Securities and Exchange Commission's Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief Against the Company Defendants ("Receiver Order") as "all property interests of the Receivership Defendants …, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly". [DE 28 at 5].

condominium units owned by Urbin Commodore Residential SPE, LLC located in the building located at 3162 Commodore Plaza (the commercial condominium units include some which are in average condition and some which are in shell condition; the residential units are gutted shells without wall partitions or interior improvements) (the "3162 Condo Units");

4. 3166 Property: a storefront retail space subject to a 99-year ground lease between Urbin Commodore Residential II SPE, LLC and Dharma Studio Inc., which is also the subject of certain other agreements with Grouper Financial, Inc.; and

5. 3170 Property: a storefront retail space owned by Urbin Commodore Residential II SPE, LLC which is also the subject of certain agreements with Grouper Financial, Inc.

Only one of the 29 3162 Condo Units is currently occupied – a commercial unit which is being leased on a month-to-month tenancy for $1,278/month. The 21 residential units – all on the fourth through sixth floors – are completely gutted shells with no interior walls or improvements, are not using the utilities, and are not capable of being used or occupied in any fashion.

The Halpern Trusts[3] have recorded mortgages against the Commodore Properties, including the 3162 Condo Units, and have represented and warranted that they provided in excess of $28 million in loan and refinancing proceeds to the Receivership Companies secured by first position mortgages. Several construction liens and notices of lis pendens have also been recorded against the Commodore Properties, and over $4.7 million in deposits were provided in connection with pre-construction purchase agreements for the project.

Since her appointment, the Receiver has been diligently pursuing a transaction to sell the Commodore Properties in order to liquidate and monetize receivership assets, relieve the receivership estate of any obligation to maintain the Commodore Properties, potentially realize a

[3] The "Halpern Trusts" are the Martin I. Halpern Revocable Trust, the Halpern Family Trust, and together with Martin I. Halpern, individually and as Trustee of the Halpern Trusts, are referred to as the "Halpern Parties."

recovery for the receivership estate, and by doing so, provide a better opportunity for recoveries by investors and other creditors of the Receivership Companies, consistent with the Receiver's responsibilities under the Receivership Order.

After obtaining appraisals of the Commodore Properties, on September 24, 2024, the Receiver filed a Motion to Approve Sale of Commodore Properties Free and Clear of Liens, Encumbrances and Interests ("First Sale Motion") [DE 238] seeking to approve a $28.2 million sale of the Commodore Properties to Coconut Grove Commodore Development Ventures, LLC or its permitted assignee ("First Sale Contract"). Objections to the First Sale Motion were filed by certain equity investors in the Receivership Companies which ultimately owned the Commodore Properties,[4] and by the ground lessors for the 3138 Property and 3120 Property, who also requested stay relief to seek to terminate the ground leases.[5]

After filing the First Sale Motion, the Receiver negotiated a settlement with the Halpern Parties (the "Halpern Agreement") that provided in part: (a) for the disbursement of sale proceeds in the event the sale under the First Sale Contract closed; (b) that the Halpern Parties will make the ground lease payments as protective rental advances; (c) that a party affiliated with the Halpern Parties will be the back-up buyer to purchase the Commodore Properties for $28.2 million via a credit bid of $27.4 million and an $800,000 cash carveout payment for the receivership estate, along with buyer's payment of all real estate taxes, closing costs and other amounts required for

[4] CWL-CH, LLC, ASJAIA, LLC, and Vieden Grove Oz, LLC ("CG Investors") [DE 265].

[5] TB 3138 Commodore Investments, LLC and TB 3120 Commodore Investments, LLC ("Ground Lessors") [DE 245]. The Ground Lessors' request for stay was denied by an order entered the same date as the order approving the Halpern Agreement. [DE 335]

the sale to close, if the First Sale Contract did not close ("Back-Up Contract"); and (d) that the payment under the First Sale Contract or closing on the Back-Up Contract will be in full satisfaction of all amounts owed to the Halpern Parties under all loan documents relating to the Commodore Properties, and the Halpern Parties will not file a claim in, or seek a distribution from the receivership estate with respect to any other amounts owed relating to the Commodore Properties and related loans, and agree to waive any such claim. On December 3, 2024, the Receiver filed a motion to approve the Halpern Agreement [DE 310], and on January 30, 2025 the Court entered an Order granting the motion and approving the Halpern Agreement ("Halpern Settlement Order") [DE 333]. The CG Investors moved to reconsider the Halpern Settlement Order, which the Court denied on June 27, 2025 [DE 435].

In order to obviate potential objections to the sale, the Receiver on January 27, 2025 moved for authority to commission two additional appraisals of the Commodore Properties, and an order was entered (over the objection of the CG Investors) on May 21, 2025 [DE 424, 426].[6] Upon the completion of the appraisals, the Receiver moved for authority to file them with the Court under seal on August 19, 2025 [DE 444, 445], which was granted September 3, 2025, and the appraisals were then filed under seal on September 8, 2025. [DE 444, 445, 451-454]. These appraisals, like the earlier appraisal, reflected that the Commodore Properties have an "as is" market value that is several million dollars less than the proposed purchase price under the Back-Up Contract. Also to obviate potential objections, the Receiver moved to approve publication notice of the proposed sale, which was granted May 1, 2025 [DE 414]. The Receiver published notice in accordance with

[6] An amended order correcting a typographical error was entered May 29, 2025 [DE 429].

the relief granted, and on September 19 and 22, 2025 filed notices advising that no bona fide offer which guarantees at least a 10% increase over the $28.2 million price referenced in the notice was submitted within ten days after publication. [DE 458, 459].

Upon the Halpern Parties' execution of the Back-Up Contract, the Receiver on September 30, 2025 filed a Motion to Approve Back-Up Contract for Sale of Commodore Properties Free and Clear of Liens, Claims and Encumbrances ("Back-Up Contract Motion") [DE 460]. The Back-Up Contract Motion seeks approval of the Back-Up Contract consistent with the Halpern Agreement previously approved by the Court, and provides for a sale free and clear of any claims, liens, and encumbrances against the Commodore Properties. The Back-Up Contract provides in relevant part that closing shall occur thirty days after entry of the Sale Order, unless the Sale Order has been stayed. The only objections filed to the Back-Up Contract Motion were by the CG Investors [DE 462] and a limited objection by the Ground Lessors [DE 461]. The Receiver has addressed both those objections in an omnibus reply [DE 465].

On October 15, 2025, the Receiver filed a Second Status Report for the Commodore Sale Motion and Notice of Termination [DE 464], advising the Court that the buyer under the First Sale Contract had terminated the First Sale Contract, and accordingly the Receiver has requested entry of an order denying the First Sale Motion as moot. In light of the termination of the First Sale Contract and the absence of any better offer as a result of the notice of publication of sale (or otherwise), the Back-Up Contract represents the only pending offer for acquisition of the Commodore Properties, and the only objections thereto are fully briefed.

B. The Commodore Association's Motion to Compel.

On October 14, 2025, the Commodore Association filed their Motion to Compel, by which

it seeks: (1) to compel the Receiver to pay approximately $650,000 in asserted delinquent assessments; (2) for stay relief to file liens for the unpaid assessments; and (3) for a ruling that the Commodore Association is not barred from bringing suit against third parties for the assessments.

The Receiver respectfully submits that none of the requested relief is appropriate, and that granting such relief would be inconsistent with and disruptive of the sale process for the Commodore Properties that the Receiver has been diligently pursuing since her appointment, and which is finally nearing closure.

DISCUSSION

1. The Commodore Association's Claims Should be Addressed Through a Claim Process and Not by a Motion to Compel Immediate Payment.

The Motion to Compel seeks immediate payment by the Receiver to the Commodore Association of all unpaid condominium assessments with respect to the 3162 Units. The Commodore Association asserts that these assessments total $651,827.20, going back to March 2023 (nearly a year prior to the commencement of the receivership). The Commodore Association candidly acknowledges that it "has not located a case wherein a receiver was directed to pay a condominium or homeowner association maintenance or assessments as an expense of administration of the receivership." [DE 463 at 8] Nor has the Receiver. But the Commodore Association cites by analogy to cases applying Section 503 of the Bankruptcy Code, which provides for the allowance of "administrative expenses" in bankruptcy cases for the "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503.[7] In particular, the

[7] In bankruptcy, "administrative expenses" generally have a superior entitlement to payment versus unsecured creditors, but do not have priority over secured claims. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 4-5, 120 S.Ct. 1942, 1946 (2000).

Commodore Association relies on *In re Guillebeaux*, 361 B.R. 87 (Bankr. M.D.N.C. 2007) for the proposition that assessments that accrued post-bankruptcy were treated as administrative expenses under 11 U.S.C. § 503(b)(1) (and so, the Commodore Association argues, they should be treated similarly here).

There are a multitude of reasons why the Commodore Association's claim should be addressed as part of a claim process together with the other claims against the Receivership Companies, and not through a motion to compel based on asserted "administrative expense" status.

First, even were the Court to look to bankruptcy law by analogy in this instance (which it should not),[8] the Receiver disputes that association assessments would be entitled to "administrative expense" status. Indeed, with respect to unpaid ***pre***-receivership assessments, there is nothing in 11 U.S.C. § 503, *Guillebeaux*, or otherwise that would support treating them as administrative expenses of the receivership.[9] And even with respect to post-receivership assessments, the *Guillebeaux* court itself acknowledges that there is a "split in authority," with some bankruptcy courts holding that because they arise out of a pre-bankruptcy contractual obligation to pay association fees, they are properly treated as pre-bankruptcy claims, and not post-bankruptcy administrative expenses. *Id.* at 91-92. Among the cases it cites on that split in authority

[8] As distinguished from the Bankruptcy Code, which establishes statutory priorities for various types of claims, the Court here, in an equity receivership, has "broad powers and wide discretion to determine relief," as the Commodore Association itself acknowledges. DE 463 at 7. *See Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity receivership.")

[9] The *Guillebeaux* court specifically rejected the association's claim of administrative expense status for its prepetition arrearages. *Id.* at 92-93.

is *Matter of Wasp*, 137 B.R. 71, 73 (Bankr. M.D. Fla. 1992), a Middle District of Florida case which held that post-bankruptcy assessments arose from the parties' pre-bankruptcy contractual obligations and therefore were a pre-bankruptcy claim. *Guillebeaux* distinguished *Wasp* by citing to Fourth Circuit precedent[10] which was binding on that court, but is not so for courts within the Eleventh Circuit such as *Wasp* and this Court. Because the assessments arise out of the pre-receivership relationship between the Commodore Association and Urbin Commodore Residential SPE, LLC as the owner of the 3162 Units, the Commodore Association's claim for unpaid assessments is not entitled to any "administrative expense" status.

Second, again assuming the bankruptcy analogy applies, and assuming the Commodore Association's claims are not treated as pre-receivership claims, even bankruptcy courts generally require as a condition of the allowance of any "administrative expense" that the expense provide a benefit to the debtor (by analogy here, the Receiver). The Commodore Association acknowledges this by its citation to *In re Sports Shinko (Florida) Co.*, 333 B.R. 483 (Bankr. M.D. Fla. 2005), in which the bankruptcy court held that to be entitled to "administrative expense" status, the expense must provide "a concrete benefit to the debtor's estate." *Id.* at 490. The Eleventh Circuit has actually gone even further and held that "the benefit must run to the debtor and be *fundamental to the conduct of its business*." *In re Colortex Industries, Inc.*, 19 F.3d 1371, 1383 (11th Cir. 1994) (emphasis added). In the same decision, the Court also made clear that administrative expense priorities "should be narrowly construed in order to maximize the value of the estate preserved for

[10] *In re Rosenfeld*, 23 F.3d 833 (4th Cir. 1994).

the benefit of all creditors," and "to preserve the debtor's scarce resources." *Id.* at 1377.[11]

A consideration of the concrete benefit – or lack thereof – to the receivership estate is consistent with how, for instance, lease obligations are often addressed in receivership cases. When the Ground Lessors argued that they were entitled to rent payments on a current basis, the Receiver noted that receivership law does not create an absolute entitlement to payment of rents on a current basis, but rather that compelling such payment is an equitable determination that depends on the facts and circumstances. In *Irving Trust Co. v. Densmore*, 66 F.2d 21 (9th Cir. 1933), the court reversed an order requiring receivers to pay the rent stipulated in a lease, where (1) the receiver only had "constructive possession" but not "actual possession" of the leased premises; and (2) the order improperly required payment of the rent reserved in the lease, rather than "the reasonable rental value of the premises occupied by the receiver during his occupancy. *Id.* at 23, citing Clark on Receivers (2d Ed.) Volume 1, § 442, pp. 600-01. And another case found it to be error to require a receiver to pay current rents "without any regard to funds in his hands, and without allegation that he has the present means to comply with the demands." *Empire Distilling Co. v. McNulta*, 77 F. 700, 704-05 (7th Cir. 1897). Here, neither the entity which owns the 3163 Units, nor its parent, Urbin Coconut Grove Partners LLC presently have funds available by which to pay the assessments.[12]

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[11] Several bankruptcy courts have held that association dues are not entitled to administrative expense status absent proof of a tangible benefit on the estate. *See, e.g.*, *In re Hall*, 443 B.R. 59, 60-61 (Bankr. D. Md. 2010); *In re Cheatle*, 150 B.R. 266, 269-70 (Bankr. D. Co. 1993); *In re Packard Properties, Ltd.*, 118 B.R. 61, 63-64 (Bankr. N.D. Tex. 1990).

[12] The Commodore Association makes reference to the $2 million in the receivership estate, but those are general receivership funds, not held by either Urbin Commodore Residential SPE, LLC (the owner of the 3162 Units) or its parent Urbin Coconut Grove Partners, LLC.

Here, the Receiver disputes that the assessments have conferred any benefit on the receivership estate. As noted above, the 21 residential units on the fourth through sixth floors of the building are completely gutted, and are not capable of being occupied or used by the Receiver or anyone else. They are not using any of the utilities or any other services of the building. Eight of the nine commercial units are not occupied. The Receiver's only use of any of the common areas at the property has been to secure the properties and to facilitate requests for inspections made by the Commodore Association and others in connection with insurance claims. The *Sports Shinko* case ruled that to quantify the association's claim required the court to "evaluate each of the specific expenditures made by the Association, and determine whether the particular expense resulted in a concrete benefit to the estate." *Sports Shinko*, 333 B.R. at 492. Such an item-by-item evaluation and determination here would be extremely fact-intensive and time-consuming, and would more appropriately be addressed through a claim process, and not through the current motion. The Receiver also disputes the amounts claimed by the Commodore Association. For instance, the Motion to Compel asserts that Urbin ceased paying assessments in March of 2023, but a preliminary review of the records available to the Receiver reflects that payments were made for months thereafter. The Receiver also may dispute, upon being provided complete information as to all expenses upon which the assessments are supposedly based, whether the expenses were necessary or provided any benefit to the receivership estate.

Third, even if the Commodore Association's assessments were entitled to "administrative expense" status (which they are not), that in itself does not warrant, much less dictate, that they should be paid immediately. This Court has repeatedly recognized that it has "broad powers and wide discretion to determine relief in an equity receivership." *See Elliott*, 953 F.2d 1560, 1566

(11th Cir. 1992). That wide discretion undoubtedly encompasses the structure and timing of a claim and distribution process. *See, e.g.*, *Sec. & Exch. Comm'n v. Pension Fund of America, L.C.*, 377 F. Appx. 957, 962-63 (11th Cir. 2010) ("That wide discretion extends to '[a] district court's decision relating to the choice of distribution plan for the receivership"), citing *Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298 (6th Cir. 2009); *Sec. & Exch. Comm'n v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88 (2d Cir. 2002); *Sec. & Exch. Comm'n v. Complete Bus. Solutions Group, Inc.*, No. 20-CV-81205-RAR, 2024 WL 3816613, *5 (S.D. Fla. Jun. 26, 2024). And again, even applying the bankruptcy analogy, the allowance of an administrative expense does not dictate its immediate payment: rather, "[t]he determination of the timing of payment of administrative expenses is a matter within the discretion of the bankruptcy court." *Colortex*, 19 F.3d at 1384 (finding no abuse of discretion in bankruptcy court's denial of motion for immediate payment of administrative expense); *see also In re Photo Promotion Assocs., Inc.*, 881 F.2d 6 , 8-9 (2d Cir. 1989) (bankruptcy court has "broad discretion" with regard to timing of payment of administrative expense claims). Here, the Receiver disputes whether the Commodore Association claims should be afforded priority – both as to entitlement to and timing of payment – over the various other claims related to the Commodore Properties, and the receivership generally. Such matters are more appropriately addressed as part of a claim process.

With regard to the Commodore Association's assertion that there has been damage to the property as a result of the condition in which the Receivership Companies' contractor left the project and the contractor's failure to properly secure the property, [DE 463 at 5, ¶11], and its request that the Court compel the Receiver to pay $250,000 so the Association can undertake certain unspecified work [*Id.* at 10], the Receiver will note that she has fully cooperated with the

Commodore Association and its public adjuster in their efforts to pursue insurance claims against the Receivership Companies' carrier and the contractor's carrier, including facilitating multiple inspections of the property. Given that the Commodore Association is pursuing those insurance claims, and that such claims may well be disputed, the asserted damage to the property should not be a consideration for purposes of deciding whether to compel immediate payment of the Commodore Association's assessments ahead of all other claims against the Receivership Companies. The Commodore Association's assertion of a disputed claim for damages arising from the pre-receivership cessation of work on the property is not a basis for compelling any payment from the receivership.

For all the foregoing reasons, the Receiver respectfully submits that there are multiple disputes, both legal and factual, as to the Commodore Association's asserted entitlement to an administrative expense for unpaid assessments, and that the claim can and should be appropriately addressed through a claim process in the receivership case, and not through the instant Motion to Compel.

2. The Request for Stay Relief to Record Liens is Inappropriate and Inconsistent with a Free and Clear Sale.

This Court has already recognized and exercised – in this case and with respect to the Commodore Properties – its authority to sell receivership property free and clear of liens and claims, even where the proceeds may not be sufficient to pay all claims against the property. In the Halpern Settlement Order, the Court ruled:

> "The district court has 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) (citations omitted); *Sec. & Exch. Comm'n v. Harbor City Capital Corp.*, No. 6:21-cv-694-CEM-DCI, 2023 WL 1105282 (M.D. Fla. Jan. 30, 2023) ("To be sure, 'it has long been recognized that under appropriate circumstances, a federal court

> presiding over a receivership may authorize the assets of the receivership to be sold free and clear of liens and related claims.'"). This Court has previously determined that this includes the power to authorize the sale of real property free and clear of liens, claims, interests and encumbrances. ECF No. [185]. Even where the sale of an asset will not generate sufficient funds to satisfy all existing lien claims, the sale still can produce a benefit by reducing the claims assertable against the Receivership Companies' assets and estate. *Capital Cove*, 2015 WL 9701154 at *8 (where receiver presented evidence of the large number of unsecured and junior creditors who were defrauded, and the receiver's expected inability to pay the full amount of each claim from the pooled assets of the receivership, it was in best interests of the receivership estate to sell properties at highest possible market price, even if below the aggregate value of existing liens, rather than abandoning the properties).

[DE333 at 8].

The Commodore Association did not file any objection to the Back-Up Sale Motion, which seeks approval of the Back-Up Contract by which the Commodore Properties are to be transferred to the Halpern Buyer free and clear of liens, claims and encumbrances. And the Condominium Association affirmatively acknowledges that it does not oppose the proposed sale: "The Association wishes to make it clear that it does not oppose the sale." [DE 463 at 6, ¶14]. The Receiver is grateful for the Commodore Association's non-opposition, and is optimistic that the path to completion of the sale has become more clear with the filing of the Back-Up Contract Motion and the termination of the First Sale Contract: there is now one Back-Up Contract to approve, and upon approval, it will be required to close within thirty days of a Sale Order, absent a stay.

Accordingly, granting stay relief for the Commodore Association to record liens against the 3162 Units is a pointless exercise at this time: if the Back-Up Contract Motion is granted, and the Back-Up Contract closes, then the Commodore Properties will be sold to the Halpern Buyer free and clear of liens, including whatever liens the Commodore Association may now record.

There will be no lien on proceeds from any future sale, because the Commodore Properties will have been conveyed free and clear of any such liens. Granting such relief will only complicate and potentially interfere with the process of completing the sale, assuming the Back-Up Contract is approved.

3. The Commodore Association's Reference to "Bar Order" Cases is Inapposite and Inapplicable.

Finally, the Commodore Association asks for this Court to declare that it is not prohibited from pursuing recovery of unpaid assessments from the ultimate buyer of the Commodore Properties. In support, it cites to two cases addressing the approval of "bar orders" in the context of litigation settlements, *Digital Media Solutions, LLC v. South Univ. of Ohio, LLC*, 59 F.4th 772 (6th Cir. 2023), and *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019). The reliance on these "bar order" cases is misplaced because (1) the Court's recognized authority to enter "free and clear" sale orders derives from its jurisdiction over receivership property; and (2) any claim against a purchaser of property from a receivership estate for unpaid obligations of the receivership companies, arising out of the purchase, is not an "independent" claim such as those addressed in the "bar order" cases.

In the Back-Up Contract Motion, the Receiver, as she has done previously, set out the jurisdictional basis and legal authority for the Court's approval of sales free and clear of liens, claims and encumbrances:

> "The district court has broad powers and wide discretion to determine relief in an equity receivership." *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citations omitted). "This discretion derives from the inherent powers of an equity court to fashion relief." *Id*. These powers include the authority to approve the sale of property of the Receivership Companies. Clark on Receivers § 482 (3d ed. 1992) (citing *First National Bank v. Shedd*, 121 U.S. 74, 87 (1887) (A court of equity having custody and control of property has power to order a sale of the

property in its discretion). "[A]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse." *S.E.C. v. Pension Fund of Am. L.C.*, 377 F. App'x 957, 961 (11th Cir. 2010) (quotations omitted).

"A court of equity under proper circumstances has power to order a receiver to sell property free and clear of all incumbrances, and to deny the mortgagee the right to foreclose his mortgage." *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (3d Cir. 1933); *see United States v. Brewer*, 2009 WL 1748504, at *5 (M.D. Fla. June 19, 2009) (approving private sale and concluding buyer "shall hold good and clear title to the Property as against the world, free and clear of all liens, encumbrances, claims and interests of any kind"); *Sec. & Exch. Comm'n v. Harbor City Capital Corp.*, No. 6:21-cv-694-CEM-DCI, 2023 WL 1105282, at * 7 (M.D. Fla. Jan. 30, 2023) ("To be sure, 'it has long been recognized that under appropriate circumstances, a federal court presiding over a receivership may authorize the assets of the receivership to be sold free and clear of liens and related claims.'"), citing *Sec. & Exch. Comm'n v. Cap. Cove Bancorp LLC*, No. SACV 15-980-JLSJCX, 2015 WL 9701154, at *4 (C.D. Cal. Oct. 13, 2015); *Pennant Mgmt., Inc. v. First Farmers Fin., LLC*, No. 14–CV–7581, 2015 WL 4511337, *4 (N.D.Ill. July 24, 2015) (quoting *Regions Bank v. Egyptian Concrete Co.*, No. 09–cv–1260, 2009 WL 4431133, at *7 (E.D. Mo. Dec. 1, 2009)); *see also Mellen v. Moline Malleable Iron Works*, 131 U.S. 352, 357 (1889) ("[T]he removal of alleged liens or incumbrances [sic] upon property, the closing up of affairs of insolvent corporations, and the administration and distribution of trust funds are subjects over which courts of equity have general jurisdiction.").

One of the primary goals of a receivership is to provide a conduit through which assets can be administered for the benefit of the receivership estate and harmed investors and reduce claims against the receivership estate. "Even where the sale of an asset will not generate sufficient funds to satisfy all existing lien claims, the sale still can produce a benefit by reducing the claims assertable against the Receivership Companies' assets and estate." *Sec. & Exch. Comm'n v. Kapoor*, 2024 WL 5264414, at *2 (S.D. Fla. Nov. 7, 2024); *see Cap. Cove*, 2015 WL 9701154, at *8 (where receiver presented evidence of the large number of unsecured and junior creditors who were defrauded, and the receiver's expected inability to pay the full amount of each claim from the pooled assets of the receivership, it was in best interests of the receivership estate to sell properties at highest possible market price, even if below the aggregate value of existing liens, rather than abandoning the properties). This Court has previously approved the Receiver's proposed free and clear sales, including the sale of the Miami Beach property which did not generate sufficient funds to satisfy all existing claims. *See Sec. & Exch. Comm'n v. Kapoor*, 2024 WL 3026490, at *7 (S.D. Fla. June 17, 2024), *appeal dismissed*, 2025 WL 2375052 (11th Cir. July 2, 2025) (approving Stewart property sale); *Kapoor*, 2024

WL 5264414, at *2 (approving Miami Beach property sale).

[DE 460 at 20-22]. The foregoing makes clear that the Court's authority to enter "free and clear" sale orders derives from the Court's inherent equity powers, and more specifically its custody and control over receivership property. By authorizing a free and clear sale, the Court is exercising its jurisdiction over receivership property, and the claims that may be asserted against that property.

In the *Digital Media* case relied upon by the Commodore Association, the Court was dealing with a different creature: the proposed settlement of litigation claims asserted by a receiver which included a "bar order" permanently enjoining third parties from asserting their own claims against the settling parties. More particularly, in *Digital Media*, a receiver was appointed over Dream Center, an affiliate of a non-profit Foundation, which acquired and operated several higher education universities. At least one of the schools lost its accreditation, resulting in lawsuits by Art Students at the school against Dream Center, its directors and officers ("D&Os"), and the Foundation. The receiver sent a confidential demand letter asserting potential claims by Dream Center against the D&Os, which resulted in a settlement with the D&Os and their insurance carrier which was conditioned on the entry of a "bar order" enjoining third parties, including the students, from pursuing their own claims against the D&Os, the Foundation or the carrier. The trial court approved the settlement and bar order, and the students appealed. *Digital Media*, 59 F. 4th at 775-777.

On appeal, the court held that the district court lacked the power to enter the bar order enjoining the students' claims against the non-receivership entity third parties. The court so held because: (1) the students' claims were not derivative claims for injuries the D&Os caused to the receivership companies, but rather were claims that the D&Os caused injuries "directly incurred

by the Art Students," specifically that the defendants "intentionally misrepresented" the school's accreditation status "to them" to keep them from transferring to another school, *id.* at 784; and (2) asserted interference with the court's exclusive control of receivership property (the insurance proceeds) did not justify the enjoining of *in personam* claims against non-receivership parties or non-receivership assets, *id.* at 787.

But here, by contrast, the Receiver is not requesting a "bar order" in conjunction with any settlement; the Court has already approved the Halpern Agreement, and it contains no such bar order. The Receiver, consistent with the Halpern Agreement, is now seeking approval of the Back-Up Contract which provides for a sale of the Commodore Properties to the Halpern Buyer, free and clear of any liens, claims or encumbrances asserted against the properties. That, likewise, is not a bar order, but an exercise of the Court's recognized authority over the Receivership Property and the claims that may be asserted against it, under which the Court may transfer any lien claim against Receivership Property to the sale proceeds, and may generally deal with any claims against the Receivership Companies through a claim process.

Moreover, unlike *Digital Media*, where the Art Students had asserted independent claims against the D&Os based on their alleged fraudulent representations to the Art Students, which the Receiver then sought to permanently enjoin to facilitate his settlement, here there is ***no*** present claim that the Commodore Association holds against any of the Halpern Parties. The only claim that the Commodore Association has identified is the asserted liability of a purchaser for prior assessments – an obligation that could only be asserted ***if*** the Back-Up Contract is approved, and the Halpern Buyer closes on the sale. Accordingly, unlike *Digital Media*, there is nothing "independent" about any claim that the Commodore Association might seek to assert against a

buyer of the Commodore Properties: it is based entirely on the liability assertedly owed by the Receivership Companies for the unpaid assessments, and it is based entirely on the consummation of the sale transaction with the Receiver.

Of course, the buyer upon closing will be required to satisfy any post-closing assessments made by the Commodore Association or be subject to whatever remedies are available to the Association. Nothing in the Sale Order proposed by the Receiver with regard to the Back-Up Contract would serve to impair the Commodore Association from making such assessments or exercising such remedies.

For these reasons, the Receiver respectfully submits that the "bar order" cases relied on by the Commodore Association are inapposite and inapplicable, and that the Commodore Association's objections should be overruled.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court deny the Commodore Association's Motion to Compel, without prejudice to the Commodore Association pursuing a claim in any claim process ultimately approved by the Court, and without prejudice to any and all objections that may be asserted by the Receiver to liability for, the amount of, or the priority of any such claim, or to the necessity and benefit to the receivership estate of any expenses claimed by the Commodore Association with respect to such clami.

Respectfully submitted,

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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 4th day of November, 2025.

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