

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:23-CV-24903-JB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.

Defendants,

_____/

**REPLY TO RECEIVER’S RESPONSE 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**

Commodore Centre Condominium Association, Inc. (the “Association”), by and through undersigned counsel, files this Reply to the Receiver’s Response [D.E. 469] that Bernice Lee (the “Receiver”) filed in response 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”) [D.E. 463]. In reply to the Receiver’s Response the Association states as follows:¹

The Receiver Should be Compelled to Pay the Association the Maintenance and Assessments Forthwith As the Receivership Has Benefitted From the Association’s Actions

1. In her Response the Receiver readily acknowledges that she has leased one of the units and has been receiving rental income as a result of same, but has not paid anything to the

¹ The Association is filing an amended motion contemporaneously with this Reply. The amended motion changes some of the numbers regarding the amounts due and number of units but does not make any new legal arguments.

Association. The Receiver also described the upcoming sale and acknowledges that the receivership will receive \$800,000.00 as a result of the sale. Despite this the Receiver disputes that the amounts that the Association has paid for items such as maintenance, utilities and insurance have benefitted the receivership. Instead of resolving those issues now, however, the Receiver essentially asks the Court to punt on the issues and resolve them at some unknown future date through some as-of-yet-established claims procedure. In other words, the Receiver asks to reap the benefits of the Association's payments of items necessary to preserve the property from funds collected from the other members of the Association while the Receiver pays nothing.

2. The foregoing is about as fundamentally contradictory as can be to the condominium form of ownership that the Florida Legislature established decades ago. It is also entirely inequitable to the Association and the other unit owners within the Association, who unlike creditors who may have lost money some time ago but whose losses are not increasing, continue to be damaged and prejudiced by the fallout of Rishi Kapoor's alleged actions while the Receiver and the receivership benefit. If receiverships are equitable proceedings at their core, then there is nothing equitable about the Association's plight even when compared to other creditors of the receivership.

3. The Receiver makes a number of arguments regarding the Association's Motion to Compel, including a) none of the maintenance and assessments due to the Association are costs of administration of the receivership; b) even if some or all of the maintenance and assessments are costs of administration, they should not be paid immediately but should instead be determined at some future date as part of the undetermined claims process; c) that it would be inappropriate to allow the Association to record claims of lien given the upcoming sale; and d) the Association's

reference to the cases stating that this Court does not have the authority to bar the Association from asserting its independent claims against any subsequent buyer are inapplicable.

4. With regard to the arguments about the amounts owed to the Association and whether those amounts are administrative charges against the receivership, none of the Receiver's arguments preclude the Court from directing the Receiver to pay some or all of the maintenance and assessments to the Association forthwith.

5. The Receiver acknowledges, as did the Association, that she was not able to locate any cases wherein a receiver was directed to pay a condominium or homeowner association maintenance or assessments as an expense of administration of the receivership.

6. Rather, the Receiver relies on the general cases that give the Court broad discretion in receivership cases to fashion relief. The Association does not quibble with this point, and even acknowledged it in its Motion to Compel (See Motion to Compel at p.3 citing to *SEC v. Lauer*, 2001 U.S. Dist. LEXIS 160383 at *7 (S.D. Fla. 2011) (citations omitted)). The Receiver then argues that the Court should exercise this discretion and decide the issues regarding payment of expenses raised in the Motion to Compel at a later date.

7. The problem with the Receiver's Response is that it fails to address the Association's hardship due to its somewhat unique status as a not-for-profit entity made up of the other unit owners in the property that is responsible for the payment of expenses common to all owners, but who continues to suffer increasing losses on a monthly basis due to the failure of the Receiver to pay anything that is owed.

8. For almost three years the Association has not received any payment from either Urbin or the Receiver. While no payments have been forthcoming, the expenses of the Association, for which Urbin and now the Receiver are responsible to contribute to via regular monthly

maintenance and special assessments as set forth in the Association's declaration and Florida statutes, have continued to accrue.

9. The Association has done its best to meet these expenses without any contribution from Urbin and then the Receiver, but the task has been daunting.

10. The Association has paid tens if not hundreds of thousands of dollars in basic expenses to maintain the Association property, including for items such as utilities, repairs and insurance. Amazingly, while the Receiver disputes the that payment of utilities and upkeep have benefitted the Receiver, the Receiver does not even acknowledge the Association's payment of insurance, perhaps because there is no good argument against payment of insurance as a necessary expense of the administration of any assets, whether in bankruptcy, receivership or otherwise. *See In re Sports Shinko (Florida) Co.*, 333 B.R. 483, 495 (Bankr. M.D. Fla. 2005) ("Insuring an asset of the estate against loss or liability is a necessary business expense.") (citation omitted).

11. All of these expenses are ongoing, and for every month that passes that the Receiver does not pay anything to the Association, the other unit owners are forced to dig deeper and deeper into their pockets to cover the ongoing expenses that the Receiver refuses to pay, thus shifting the losses of the receivership onto parties who had no relationship with Kapoor but have suffered from his actions.

12. The definition of "Assessment" found at Fla. Stat. § 718.103 is "a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner." (emphasis added). The Receiver, standing in the shoes of Urbin as the unit owner, has a responsibility to contribute to the ongoing common expenses, but has refused to do so.

13. The Receiver's arguments that the Court should exercise its discretion and decide the Association's request for payment of administrative expenses at a later date is thus not equitable and entirely inappropriate. Equity does not allow a Receiver to ignore the obligation to pay ongoing common expenses of an association in which the receivership is an owner of more than half the units while the remaining unit owners must continually come out of pocket to cover the amounts that the Receiver should be paying. Delaying the decision on what amounts the Receiver should pay the Association prolongs and increases the damage to the Association and further increases losses to the Association and its unit owners who have upheld their obligations to pay.

14. As noted above, this is not a situation where a creditor, either pre- or post-receivership, is owed a set sum and is not continuing to suffer losses. Rather, for every month that passes that the Receiver refuses to pay anything, the Association and its other members are unfairly and inequitably burdened with expenses that the Receivership should honor. The Court should therefore determine what amounts the Receiver is responsible for² and direct the Receiver to pay them forthwith and not allow the Association to be further damaged as a result of the Receiver's refusal to pay any amounts to the Association.³

² The Association will not rehash its arguments regarding the various cases which treat condominium maintenance and assessments differently, but continues to assert that the Receiver should be directed to pay either all of the amounts that have accrued post-appointment of the Receiver, or at least all mounts that have benefitted the receivership, of which there are many. Suffice it to say however that the Receiver's acknowledgement that she has been collecting rent – no matter how small – and thus enjoying the benefits of the Association's payment of items such as insurance and utilities while not contributing proves that the Receiver is benefitting from said payments, thus confirming the Association should be paid the maintenance and assessments.

³ The Association acknowledges as the Receiver asserted that the Association has filed claims with insurance companies in order to attempt to recover anything possible to offset the damage that has occurred to the condominium property. Those claims are ongoing.

The Court Should Allow the Association to Record its Liens so the Association is Protected in the Event the Sale is Not Completed

15. The Association recognizes that the Court may well approve the currently contemplated sale and order that the sale be made free and clear of liens, claims and encumbrances. Nonetheless, in the event the sale does not close for whatever reason the Association wishes to record its claims of lien so that it has properly protected its lien status and may someday see some recovery of all the maintenance and assessments that the Receiver has failed to pay. For these reasons the Association requests the Court grant it leave to record its claims of lien.

The Receiver's Arguments That the Cases the Association Cited With Regard to the Association's Independent Claims Are Inapplicable Do Not Change the Fact That This Court, Respectfully, Does Not Have the Authority to Prohibit the Association From Asserting its Independent *In Personam* Chapter 718 Claims.

16. The Receiver concludes her response by attempting to argue that the cases that the Association cites that hold that district courts do not have the authority to enter bar orders in receivership cases prohibiting *in personam* claims against third parties are somehow not applicable to the instant case. The Receiver's arguments are that the two cases the Association relies on are "litigation" cases and not cases where property is being sold free and clear, and that the *in personam* claim that the Florida Legislature created specifically for associations to assert against subsequent owners is somehow not an independent claim.

17. Both of these arguments fail to properly address the basis of the Association's *in personam* claim that the Florida Legislature created when it passed Fla. Stat. § 718.116(1)(a). As detailed in the Association's Motion to Compel, that statute creates a cause of action to recover money damages against a subsequent owner of a condominium unit that is not based on any existing lien rights against the property.

18. Because the claim is not based on the existence of any lien or other right against the property, but is instead a true legal claim for damages that associations can bring against subsequent owners, the fact that this Court can order the sale of property free and clear of liens, claims and encumbrances against the property itself does not translate into some broad authority to bar *in personam* claims pursuant to Section 718.116(1)(a).

19. Perhaps recognizing this distinction, the Receiver focuses on the Court's ability to enter "free and clear" sale orders based on the Court's jurisdiction over receivership property. But the claim that the Association can assert under Section 718.116(1)(a) has nothing to do with the Court's equity jurisdiction over receivership property because it is an *in personam* right that is not tied to the existence of any *in rem* claim against any property.

20. The Court can thus approve a sale of property free and clear of liens, claims and encumbrances, and arguably prohibit the Association from asserting liens against the property post-sale. What it cannot do, respectfully, is bar third party *in personam* claims that the Association holds against the subsequent owner that are not created until title to the property is transferred.

21. The Receiver then attempts to argue that the right of the Association to bring claims pursuant to Section 718.116(1)(a) is somehow not "independent" because it arises from the Receiver's sale of the property and the buyer's taking title to same. This argument however mischaracterizes the Association's rights pursuant to Section 718.116(1)(a).

22. The right to attempt to collect from a subsequent owner by recovering a money judgment instead of seeking to foreclose on the property is a direct action that the Association can take against the subsequent owner irrespective of any claims against the entity in receivership.

These are the exact type of independent claims that the courts in the cases the Association cited⁴ found could not be barred. The fact that the instant matter involves a property sale does not change the fact that the Court cannot bar the Association from asserting its independent *in personam* rights against third parties.

23. The Receiver acknowledges that she is not seeking a “bar order” and that the Halpern Agreement does not contain a request for one, and that the buyer is “subject to whatever remedies are available to the Association.” Perhaps this is the Receiver’s acknowledgement that the Court cannot bar the Association from attempting to recover from any subsequent owner on an *in personam* basis pursuant to Section 718.116(1)(a). Regardless however, of the Receiver’s position, the rights the Association can assert are rights that only inure to the Association to bring against a third party, and the entry of a “free and clear” order does not prohibit the Association from bringing them.

24. The Association’s *in personam* claims against any third-party buyer that the Florida Legislature created in Section 718.116(1)(a) are not claims that that this Court can bar pursuant to any sort of “free and clear” order. The Association therefore requests the Court enter an order that confirms that the Association is not prohibited from asserting its *in personam* rights against the subsequent owner as said claims cannot be barred in any “free and clear” order approving the sale of the Urbin units within the Association.

WHEREFORE, for the reasons set forth herein and in the Association’s Motion to Compel, the Association respectfully requests the Court grant the Motion to Compel (as amended), direct the Receiver to pay all unpaid maintenance and assessments as an expense of administration of the

⁴ *Digital Media Solutions, LLC v. South Univ. of Ohio, LLC*, 59 F. 4th 772 (6th Cir. 2023) and *SEC v. Stanford Intl. Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019).

receivership, or alternatively direct the Receiver to pay any amount the Court awards as an expense of administration, grant the Association leave from the Freeze Order to record claims of lien, include in any order approving the sale of Urbin's units that the Association is not prohibited from pursuing its *in personam* rights against the ultimate buyer to recover any remaining unpaid amounts from Urbin and/or the Receiver as well as grant the Association any further relief the Court deems appropriate under the circumstances.

Dated this 17th day of November, 2025.

LAW OFFICES OF ROBERT F. REYNOLDS, P.A.

Attorneys for the Association
101 NE 3rd Avenue, suite 1800
Fort Lauderdale, Florida 33301
Telephone: 954.766.9928
Email: rreynolds@robertreynoldspa.com

By: /s/ Robert F. Reynolds
ROBERT F. REYNOLDS
Fla. Bar No. 174823

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via the Court's email portal to David Rosendorf, Esq., dlr@kttlaw.com and all other parties entitled to receive notice via the Court's CM/ECF noticing service on this 17th day of November, 2025.

/s/ Robert F. Reynolds
ROBERT F. REYNOLDS