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.
_______________________________________/

NON-PARTY VALENCIA ACQUISITION 515, LLC'S (1) RESPONSE AND LIMITED OBJECTION TO RECEIVER'S MOTION TO APPROVE DISBURSEMENT OF VALENCIA LIEN CLAIM FUND, *ETC.* [DE 548]; AND,
(2) MOTION TO TAKE JUDICIAL NOTICE OF STATE COURT CASES

Non-Party, 515 Valencia Acquisition, LLC ("Lender"), hereby files its response and limited objection to Receiver's Motion to (1) Approve Disbursement of Valencia Lien Claim Fund Proceeds from Sale of Unit 1201; and (2) Approve Surcharge of Lender [DE 548] and moves, pursuant to Fed. R. Evid. 201(c)(2), for this Court to take judicial notice of the following cases: (i) the Eleventh Judicial Circuit for Miami-Dade County Case styled *515 Valencia Acquisition, LLC v. 515 Valencia SPE, LLC.*, Case No. 2023-026195-CA-01 ("Foreclosure Litigation"); and, the Eleventh Judicial Circuit Court for Miami-Dade County Case styled *Mironest CG LLC vs. 515 Valencia SPE, LLC et al*, Case No. 2023-026827-CA-01("Mironest Litigation").

RESPONSE ARGUMENT[1]

I. Lender is Entitled to Its Default Interest.

The Receiver's Motion seeks to surcharge Lender and deem payment as satisfaction of the loan "such that no further interest shall accrue on such loan" is an attempted "end-around" the Eleventh Circuit Court of Appeal decision of Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A., 848 F.3d 1339 (11th Cir. 2017).

A. The Relevant Law.

This Court is fully familiar with the Wells Fargo Bank, N.A. decision and, thus, Lender shall refrain from any unnecessary recitation. Relevant here is that portion of the holding that acknowledging that a federal district court has wide-ranging authority to supervise a receivership, it does not have the authority to extinguish a creditor's pre-existing state law interest. Id. at 1344. Such discretion derives from "inherent powers granted an equity court to fashion relief. Id. at 1345. In reversing the district court, the Court of Appeal stated:

> However, while a federal district court has wide-ranging authority to supervise a receivership, we hold it does not have the authority to extinguish a creditor's pre-existing state law security interest, as the district court purported to do here.

Id. The Court based its decision by looking to bankruptcy law for context, noting a secured creditor's lien (the issue at hand) remains intact through the bankruptcy, regardless of whether the creditor files a proof of claim. Id. (citing, In re Bateman, 331 F.3d 821, 827 (11th Cir. 2003).

In looking at bankruptcy, there is no dispute that in apply Florida substantive law, the right of a lender to charge and collect its default interest is virtually unqualified. See

[1] Lender adopts the defined terms used in its Foreclosure Litigation Complaint which identifies and attaches the relevant Loan Documents.

11 U.S.C. § 506(b); In re Sundale, Ltd., 410 B.R. 101, 106 (Bankr. S.D. Fla. 2009) (holding oversecured creditor's contractual right to default interest was enforceable under Florida law and could not be ended by bankruptcy court's exercise of its equitable powers based on such considerations as reasonableness). See also, In re Sublett, 895 F.2d 1381 (11th Cir. 1990); In re Delta Res., Inc., 54 F.3d 722 (11th Cir. 1995).

B. Analysis.

The Receiver has failed to articulate a reason beyond its "general powers" as to why this Court has the power to disregard Wells Fargo Bank, state law on prejudgment interest, the terms of the loan documents, and established bankruptcy law that collectively hold that a Receiver inherits the state law rights and obligations of its loan documents, and a federal district court has no jurisdiction to alter, rewrite, or wholesale disregard them based upon general "inherent powers." Recognizing her weak position, the Receiver has strung together a hodgepodge of outdated, inapplicable, and irrelevant cases attempting to persuade this Court into reversable error, while claiming uniqueness and "prejudice" to junior claimants.

There is nothing unique or prejudicial to permitting default interest to accrue and be charged against junior lienholders. The Mortgage is a first position mortgage that was recorded in the public records. Thus, any party, whether a lender or lienor, was on notice of the default interest provisions in the loan documents. These are commercial agreements on a commercial construction project.

Receiver cannot point to a single piece of record evidence that calls into question the propriety of Lender's loan documents or that junior lienors and lenders were tricked into providing funds or material notwithstanding Lender's recorded mortgage. This is particularly true given the second mortgagee did not loan funds for use on the subject project and, thus, did not look to the collateral repayment.

Lastly, all junior lender's and lienors maintain the statutory right of redemption thereby permitting any of them to cut-off senior position default interest. Accordingly, Receiver's Motion must be denied.

C. The Receiver's Case Law.

The Receiver's citation and reliance on Sec. & Exch. Comm'n v. Capital Cove Bancorp LLC, SACV15980JLSJCX, 2015 WL 9701154 (C.D. Cal. Oct. 13, 2015) is highly misplaced. In Capital Cove, there existed a bona fide dispute over the enforceability of the loan documents. That does not exist here. Receiver attempts- in general terms to bait this Court into the believing such an argument exists- stating "(3) potential challenges to Lender's enforcement of the Loan Documents." Mot. at p. 13. However, the only issue raised by Receiver to Lender's Counsel is the spurious, secondhand notion that the Halpern parties may challenge default interest visa via an intra-creditor agreement. Whether true or not true is of no consequence because a dispute between creditors under an intra creditor agreement bears no weight on the actual enforceability of the Loan Documents themselves. Moreover, Capital Cove further is pre- Wells Fargo Bank, and does not apply Florida substantive law or Federal Bankruptcy law, or Florida substantive law. It applies seemingly California law. Thus, it is of no precedential value.

Next, is Receiver's ***rather baffling*** reliance on Sec. & Exch. Comm'n v. Harbor City Capital Corp., 6:21-CV-694-CEM-DCI, 2023 WL 1105282 (M.D. Fla. Jan. 30, 2023) for the parenthetical citation "(noting authority that default interest may be disallowed in a receivership action)." Mot. at p. 14. There, the receiver sought to limit a lender's default interest and Court denied the receiver's motion, explaining-

> Turning to the Receiver's Motion to have the Court determine the amount that Benworth is due to receive through the sale of the Property, the Court finds that the Motion is due to be denied without prejudice. To begin with, it is somewhat unclear what effect granting the Motion would have. The Receiver requests that the Court "limit the recoverable interest to 18% (rather than 25%) and strike [Benworth's] request for attorney's fees incurred after the Receiver informed them of this Court's stay." Doc. 125. **But the Receiver does not provide adequate support for why the Court should limit the appropriate interest rate at 18%. The Receiver's reasoning appears to sound in equity; Benworth sought an 18% interest rate in the Foreclosure Action, so it may follow that Benworth should not now be allowed to seek a higher interest rate. But what makes 18% a non-arbitrary interest rate other than that? For instance, why not 16%? 20%?**
>
> The appropriate interest rate is also complicated by the Receiver's cited authority. It appears to be undisputed that 18%—or 25% as Benworth argues—is a default interest rate. But the Receiver cites a district court case in which the court disallowed default interest in a receivership action, where the receivership action caused the default. Here, the Court froze Celtic's assets starting on April 21, 2021, and consequently, Celtic failed to make the payments due under the Note starting on June 1, 2021. Docs. 6; 125-1 at 10. It appears that the asset freeze caused Celtic's default, so it is unclear if default interest is appropriate in this case.

Here, there is no issues concerning the calculation of the default interest rate.

The Receiver's reliance Vanston Bondholders Protective Comm. v. Green, 329 U.S. 156, 163 (1946), is also misplaced. In Vanston Bondholders Protective Committee, 329 U.S. 156, the court applied an equitable analysis that is pre-Bankruptcy Code.

Lastly, Receiver cites to Sec. & Exch. Comm'n v. EquityBuild, Inc., 101 F.4th 526 (7th Cir. 2024) for the proposition that "It is reasonable to disallow claims for penalties, interest, and fees" in reliance on Vanston Bondholders Protective Committee, 329 U.S. 156. In EquityBuild, unlike here with Lender's Loan, the security interests referred to

were themselves the Ponzi scheme. In other words, multiple lenders seemingly loaned monies, never paid off or otherwise extinguished, and competed for sale proceeds in five (5) properties. Thus, Wells Fargo's holding is never implicated. Moreover, EquityBuild was decided under Illinois, not Florida law.

II. The Court Should Not Deem Payment as "Satisfying" the Loan.

A Court order deeming the Loan Documents and, in particular, deeming the Mortgage as "satisfied" is tantamount to a termination of Lender's security interest. It has the practical effect of cutting off all tail financial obligations owed by the Borrower to the Lender.

As to attorneys' fees, there is no credible dispute that the Mortgage deems attorneys' fees as an "obligation" under the Loan Documents. Nor is there any dispute that Lender is seeking indemnity under the Loan Documents by virtue of its inclusion in the Mironest Litigation. Specifically-

RE: Villa Valencia 1104 Sale Motion

From Troy Tolentino <ttolentino@thealdermanlawfirm.com>
Date Wed 2024-11-13 4:22 PM
To Jason Alderman <Jalderman@thealdermanlawfirm.com>; Bernice C Lee <blee@kttlaw.com>
Cc David L Rosendorf <dlr@kttlaw.com>; robert Gutlohn <robert@spectrum91.com>; Lauren <Lauren@spectrum91.com>

1 attachment (168 KB)
Invoice 10437_Redacted.pdf;

Bernice, see attached.

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-and-

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Invoice submitted to:
RLC Funding, LLC

C106:P113

Invoice # 10437

Invoice Date: 08/14/24
Terms: COD
Services Through: 08/14/24

Billing Summary

Total Hours:	86.90
Total Labor:	$66,095.00
Total Expenses:	$284,220.69
Total Invoice Amount:	**$350,315.69**
Total Amount Due:	**$350,315.69**

To deem the Loan satisfied, cuts off all further accrual, as well as interest and security for the continuing obligation of Borrower under the Mortgage to indemnify Lender and its principal in the Mironest Litigation. Stated otherwise, it kills Lender's security on the remainder of the collateral. The Motion thus must be denied.

III. Receiver's Request for Surcharge of Expenses.

Lender has a limited objection to Receiver's surcharge of expenses. The surcharge should not come out of Lender's default interest but instead be charged as a litigation expense advanced by Lender and added to the Loan balance.

<u>MOTION FOR JUDICIAL NOTICE</u>

Pursuant to Fed. R. Evid. 201(c)(2), Lender requests this Court take judicial notice of the Clerk of the Court files in the Foreclosure Litigation and Mironest Litigation.

Fed. R. Evid. 201(b)(2) provides that the court may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. <u>In re Chariots of Palm Beach, Inc.</u>, 17-19455-MAM, 2019 WL 4744900, at *2 (Bankr. S.D. Fla. Sept. 27, 2019) Courts routinely take judicial notice of the records on file with the court, as well as the records of other courts both within and outside of the federal system. *See In re Chariots of Palm Beach, Inc.*, 17-19455-MAM, 2019 WL 4744900, at *2 (Bankr. S.D. Fla. Sept. 27, 2019); In re Loe, 07-12045-BKC-RBR, 2007 WL 997581, at *1 (Bankr. S.D. Fla. Mar. 29, 2007). All of the records and facts set forth above are appropriate for judicial notice, as they are not subject to reasonable dispute and constitute court records that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Accordingly, judicial notice is appropriate and warranted.

Respectfully submitted,

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By: */s/ Jason R. Alderman*
Jason R. Alderman
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on July 27, 2026, with the Clerk by using the CM/ECF system, which will send notification of such filing to all attorneys of record.

By: */s/ Jason R. Alderman*___
Jason R. Alderman