

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 21-61176-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS, LLC,
EQUINOX HOLDINGS, INC.,
PROPERTY INCOME INVESTORS 26, LLC,
PROPERTY INCOME INVESTORS 304, LLC,
PROPERTY INCOME INVESTORS 201, LLC,
PROPERTY INCOME INVESTORS 3504, LLC,
PROPERTY INCOME INVESTORS 1361, LLC,
PROPERTY INCOME INVESTORS 4020, LLC,
PROPERTY INCOME INVESTORS 9007, LLC,
PROPERTY INCOME INVESTORS 417, LLC,
PROPERTY INCOME INVESTORS 4450, LLC,
PROPERTY INCOME INVESTORS 3050, LLC,
LARRY B. BRODMAN and ANTHONY
NICOLSI (f/k/a ANTHONY PELUSO),

Defendants.

_____ /

RECEIVER’S REPLY IN SUPPORT OF MOTION TO ESTABLISH AND APPROVE (i) PROOF OF CLAIM FORM AND CLAIM BAR DATE; (ii) PROCEDURE TO ADMINISTER, REVIEW, AND DETERMINE CLAIMS; AND (iii) NOTICE PROCEDURES AND INCORPORATED MEMORANDUM OF LAW

On December 31, 2021, Miranda L. Soto, as Receiver (the “Receiver”) filed her Motion to Establish and Approve (i) Proof of Claim Form and Claim Bar Date; (ii) Procedure to Administer, Review, and Determine Claims; and (iii) Notice Procedures and Incorporated Memorandum of Law (the “Claims Motion”) (Doc. 48). After the Court entered an Order granting the Claims Motion on January 10, 2022 (Doc. 55), investors Richard Bentley, Joseph Alexander, and P&E Properties, LP (the “Investors”) filed their “Response and Objection” to

the Claims Motion on January 14, 2022 (the “Investor Objection”) (Doc. 56). That same day, Defendant Anthony Nicolosi filed his Response to the Claims Motion (the “Nicolosi Response”) (Doc. 57). On January 19, 2022, the Court entered an Order vacating the Order granting the Claims Motion and establishing January 21, 2022 as the deadline for the Receiver to submit any Reply in support of the Claims Motion (Doc. 58).

As set forth below, the Receiver submits that the grounds asserted for the Investor Objection and the Nicolosi Response (collectively, the “Responses”) are premature and based on a fundamental misunderstanding of the Claim Motion’s purpose and proposed relief. While the Claims Motion sought Court approval of the general framework and parameters for administering the claims process, including a proof of claim form and associated submission and publication procedures, the Responses took issue with **how the Receiver might later determine, prioritize, and ultimately make any distribution for any unspecified future submitted claims**. The issues speculated about in the Responses were not part of any requested relief in the Claims Motion. Rather, the Claims Motion specifically and repeatedly indicated that the Receiver will **file separate future motions** seeking Court approval of her claim determinations, any proposed priority for each claim, and a plan of distribution based on the claim determinations and priorities. Claims Motion at p. 2, 4, 6, 14-17. At that time, any interested parties – including the Investors and/or Nicolosi – will have the opportunity to weigh in on the requested relief.

In sum, the Responses improperly and prematurely invite the Court to weigh in on matters that are not currently before the Court, and accordingly the Receiver respectfully

requests that the Court overrule the Responses and enter an Order granting the Claims Motion to allow the Receiver to proceed with the proposed claims process.

I. The Responses Address Matters Outside The Claims Motion’s Requested Relief.

In preparing the Claims Motion, the Receiver went to great lengths to not only specify the exact relief she was seeking but to also outline the future relief she would seek by separate motion once the proposed claims process was approved and implemented. As outlined in the introduction and reiterated several times throughout the Claims Motion, the Receiver stated that she was only seeking approval of the procedural framework for a claims process that would allow the Receiver to distribute Proof of Claim Forms to potential claimants, review the timely submitted Proof of Claim Forms, and ultimately submit those determinations and a plan of distribution for the Court’s approval. *See, e.g.*, Claims Motion at 2, 4, 6, 14-17. The Claims Motion **did not** seek the Court’s approval of (i) any future determinations of submitted Proof of Claim Forms, (ii) any future priorities or classifications of any submitted Proof of Claim Forms, (iii) how Receivership assets would eventually be distributed to claimants with approved claims; or (iv) any decision about what funds would be used to pay each claim or whether claims would be prioritized or differentiated based on the entity(ies) in which that claimant invested. Indeed, it would be both illogical and premature to submit such issues for the Court’s current determination when there has not been a single Proof of Claim Form submitted to (and thus reviewed by) the Receiver.

Yet the Responses “object” to the Claims Motion by taking issue with how the Receiver **might** sometime in the future determine specific (unsubmitted) claims or Receivership assets **might** be distributed (to unknown claimants). For example, the Investor

Objection contends that the “Receiver’s simplified plan for lumping together all defrauded investors provides an inequitable means for distributing limited proceeds when they become available.” Investor Objection at p. 5. Similarly, the Nicolosi Response vaguely posits that a “future plan of distribution” could benefit some investors at the expense of other investors and further requests that the Court take this into consideration when reviewing “the Receiver’s plan of distribution as it is developed to equitably distribute monies to investors from the Receivership assets tied to their investments.” Nicolosi Response at p. 3.

Simply put, none of the issues raised in the Responses are the subject of any requested relief in the Claims Motion and are thus not ripe for determination. The Receiver has not proposed a “simplified plan” or “plan of distribution,” let alone any plan for the distribution of Receivership assets. Nor has the Receiver proposed that the treatment of each claim depend on which entity(ies) that claimant invested. The near-entirety of the Investor Objection (in which the Nicolosi Response concurs) is devoted to how each theoretical potential investor might share in a portion of any future distributions of Receivership assets, but such determination will only be possible once the Receiver is able to review all timely submitted Proof of Claim forms and submit – by separate motion – her proposed determination of each claim, the proposed priority for each claim, and each claim’s entitlement to share in any distribution of Receivership assets. The Receiver is guided by principles of equity, and thus will only be able to propose what she believes is the most equitable treatment of submitted claims and plan of distribution once the timeframe for submission of potential claims has closed.

II. All Interested Parties Will Be Given Proper Notice And The Opportunity To Weigh In On The Issues Raised In The Responses At The Appropriate Time.

At best, the Responses place the proverbial cart (well) before the horse. The Receiver believes that addressing those issues now would be premature, illogical, and unprecedented in that the Court would be asked to make unsubstantiated conclusions and findings as to how the Receiver **might treat, determine, prioritize, and make distributions concerning future claims that have not yet been submitted.** The Receiver submits that the proper and sensible approach is to address those issues when they are ripe for the Court's review and determination. That time is not now. If and when the Receiver does file any future motion(s) seeking Court approval of the topics currently addressed by the Responses, any interested parties – including the Investors and Nicolosi – will be afforded adequate opportunity and notice to respond to such motion(s). But at this juncture, and before a claims process has even been formally commenced, the Court should decline the Responses' invitation to prematurely address these issues.

V. CONCLUSION

For the reasons stated herein, the Receiver respectfully requests that the Court (i) overrule the Responses (Docs. 56-57); (ii) grant the Claims Motion in its entirety (Doc. 48); and (iii) enter any other relief that is appropriate and just.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

/s/ Raquel A. Rodriguez

Raquel A. Rodriguez, FBN 511439

One Biscayne Tower

2 S. Biscayne Blvd, Suite 1500

Miami, FL 33131-1822

T: 305-347-4080

F: 305-347-4089

raquel.rodriguez@bipc.com

and

BUCHANAN INGERSOLL & ROONEY PC

By: /s/ Jordan D. Maglich

Jordan D. Maglich, Esq. (FBN 0086106)

401 E. Jackson St., Suite 2400

Tampa, FL 33602

T: 813-222-1141

F: 813-222-8189

jordan.maglich@bipc.com

Attorneys for Receiver Miranda L. Soto

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

Alice Sum, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1950
Miami, Florida 33131
*Counsel for Plaintiff, Securities and
Exchange Commission*

Mark C. Perry, Esq.
2400 East Commercial Blvd., Ste 201
Fort Lauderdale, Florida 33308
*Counsel for Defendant, Anthony
Nicolosi, fka Anthony Peluso*

I further certify that on January 21, 2022, a true and correct copy of the foregoing was sent via electronic mail to the following:

Carl F. Schoeppl, Esq.
Schoeppl Law, P.A.
4651 North Federal Highway
Boca Raton, Florida 33431-5133
E-mail: carl@schoeppllaw.com
Counsel for Defendant Larry Brodman

Larry Brodman
Larrybro58@gmail.com

/s/ Jordan D. Maglich _____
Attorney