

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

CASE NO.: 21-61176-CIV-SINGHAL

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
NICOLOSI (f/k/a ANTHONY PELUSO),

Defendants.

**RECEIVER'S RESPONSE IN OPPOSITION TO INVESTORS, RICHARD BENTLEY,
JOSEPH ALEXANDER, AND P&E PROPERTIES, LP'S MOTION FOR
CLARIFICATION OF JUNE 15, 2022 STAY ORDER [Doc. 84]**

COMES NOW, MIRANDA L. SOTO, ESQ., solely in her capacity as Receiver (the "Receiver") for Defendants, 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; and Property Income Investors 3050, LLC (the "Receivership Entities"), by and through the undersigned counsel, and files this Response in

Opposition to Investors, Richard Bentley, Joseph Alexander, and P&E Properties, LP's (the "Movants") Motion for Clarification of Stay Order [Doc. 84] (the "Motion") and states as follows:

PRELIMINARY STATEMENT

Receiver opposes the Motion and respectfully requests that this Court deny it, allowing the Order Appointing Receiver to stand as entered. On June 15, 2021, this Court deemed the appointment of the Receiver necessary and appropriate for the purposes of marshalling and preserving assets of the Receivership Entities and stayed all related litigation involving Receivership Entities. [Doc. 10] Notwithstanding such order, Movants seek to thwart the Receiver's ability to marshal assets by requesting "clarification" of this Court's Order Appointing Receiver, when the Order is clear on its face. In actuality, Movants ask this Court rewrite its Order, which clearly stayed all litigation not only against the Receivership Entities but also against third parties. [Doc. 10 at ¶¶ 26-28]. As clearly ordered by this Court, the Receiver is the only person permitted to marshal assets, whether they be tangible or intangible, including causes of action, without interference from completing claims by Movants, who wish to jump to the front of the line to the prejudice of other investors. As such, the Receiver respectfully requests that this Court deny the Motion.

MEMORANDUM OF LAW

Background

On June 7, 2021, the Commission filed its complaint [Doc. 1] in the United States District Court for the Southern District of Florida against Defendants, Larry Brodman, Anthony Nicolosi f/k/a Anthony Peluso, and the Receivership Entities. The Commission alleged that Defendant Brodman and the Receivership Entities raised at least \$9 million from over 150 investors who were told that their funds would be used almost entirely to purchase "turnkey, multifamily properties" in South Florida, which would then be renovated, rented to tenants, and eventually sold. [Doc. 1

at ¶ 3]. Although a portion of investor funds were used to purchase various properties in the South Florida area, the Commission alleged that Brodman and the Receivership Entities misappropriated and diverted over \$2 million in investor funds, extensively commingled investor funds, and in some instances used investor funds to make purported “profit” payments and distributions to other investors. [Doc. 10 ¶¶ 4, 70-71]. The Commission also alleged that, despite statements in the offering materials that commissions would only be paid to licensed brokers, Defendants Property Income Investors LLC and Brodman used at least \$1.2 million in investor funds to pay undisclosed sales commissions to unlicensed sales agents, including Defendant Nicolosi. [Doc. 10 ¶¶ 68-69.]

On June 15, 2021, the Court granted the Commission’s Motion for Appointment of Receiver and entered an Order appointing Miranda L. Soto as the Receiver over the Receivership Entities (“Order Appointing Receiver”). [Doc. 10]. The Receiver’s powers and responsibilities are set forth in the Order Appointing Receiver, which provides that the Receiver:

- “[S]hall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Entities under applicable state and federal law...” and “shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.” [Doc. 10 ¶¶ 4-5];
- Shall “take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Entities...” and “manage, control, operate and maintain the Receivership Estates and hold in Receiver’s possession, custody and control all Receivership Property, pending further Order of the Court.” [*Id.* ¶ 7(b)-(c)];
- Is “authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings...as the Receiver deems necessary and appropriate...” [*Id.* ¶ 37]; and
- Is directed to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property...and to “file and serve a full report and accounting of each Receivership Estate” for each calendar quarter. [*Id.* ¶¶ 46, 48].

Additionally, in the Order Appointing Receiver, this Court stayed all legal actions involving the Receivership Property, the Receivership Entities, and, importantly, any officers/directors/managers or agents of the Receivership Entities, including any third parties. [Doc. 10 at ¶¶ 26-28].

On June 21, 2021, Movants, Richard Bentley, Joseph Alexander, and P&E Properties, LP sued the following: Larry Brodman, Anthony Nicolosi, Property Income Investors 9007, LLC, Property Income Investors 1361, LLC, Property Income Investors 201, LLC, Property Income Investors 304, LLC, and Property Income Investors 26, LLC for claims including Accounting of Assets, Conversion, Breach of Contract, Breach of Fiduciary Duty, Accounting, Temporary and Permanent Injunction, Emergency Appointment of Receiver, Unjust Enrichment, Negligence Misrepresentation, Fraudulent Inducement, Common-law Fraud, Violation of Fla. Stat. Sections 517.12 and 517.301, and Violation of Florida Deceptive and Unfair Trade Practice Act. (“State Court Case”). Movants added as defendants professional accountants for the Receivership Entities (the “Accountants”). The Accountants filed a motion to stay the State Court Case, which was granted by the State Court on June 15, 2022. On June 8, 2022, prior to the State Court granting the Accountants’ stay motion, Movants filed the instant Motion.

Argument

Clarification of the Order Appointing Receiver is not warranted. The Order Appointing Receiver is clear and unambiguous. It clearly precludes Movants, and any other person, from asserting claims involving the Receiver, the Receivership Property, and the Receivership Entities, including claims against third parties. [Doc. 10 at ¶¶ 26-28]. Movants’ State Court Action was filed in violation of the Order Appointing Receiver, as the language of the Order clearly applies to the claims filed. Specifically, the Order Appointing Receiver states:

The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process. [Doc. 10 at ¶ 27].

Receiver should be permitted to continue marshalling and collecting assets without select investors, like the Movants here, diminishing the assets recoverable through their own legal actions against Receivership Entities or third parties. It is the Receiver's position, consistent with this Court's Order Appointing Receiver, that all ancillary proceedings have been and must continue to be stayed in their entirety for the duration of the Receivership or until the Court lifts the stay.

The Receiver is in the best position to determine what claims should be pursued and how to pursue them. In that regard, the Receiver and her staff have employed experienced professionals to investigate claims against a number of potential non-parties, including third parties who acted as agents for the Receivership Entities or provided services to the Receivership Entities prior to the Receiver taking charge. If the Receiver deems that these claims are viable and will recover assets on behalf of the Receivership Estate, the Receiver will take appropriate action to seek recovery against these persons on behalf of the Receivership.

The Receiver also adopts the arguments and authorities in the Memorandum filed by the Securities and Exchange Commission in opposition to the Motion.

CONCLUSION

WHEREFORE, Miranda L. Soto, as Receiver, respectfully requests that this Court deny Investors, Richard Bentley, Joseph Alexander, and P&E Properties, LP's Motion for Clarification of this Court's June 15, 2021 Order and grant any other relief this Court deems just and proper.

Dated this 22nd day of June, 2022.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 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:

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I further certify that on June 22, 2022, a true and correct copy of the foregoing was sent via electronic mail to the following:

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