

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 21-61176-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS, LLC, et al.,

Defendants.

ORDER

THIS CAUSE is before the Court on Investors, Richard Bentley, Joseph Alexander, and P&E Properties, LP's Motion for Clarification of Stay Order (DE [84]). Plaintiff Securities and Exchange Commission (DE [88]) and the Receiver (DE [87]) each filed a response in opposition. No subsequent reply was filed. Accordingly, the matter is ripe for review.

On June 7, 2021, this action was instituted by the Securities and Exchange Commission ("SEC") against Defendants, Larry Brodman ("Defendant Brodman"); Anthony Nicolosi f/k/a Anthony Peluso ("Defendant Nicolosi"); 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"). The SEC alleged 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. (Compl. (DE [1]) at ¶ 3). Although a portion of investor funds were used to purchase various properties in the South Florida area, the SEC alleged that Defendant 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. (Order (DE [10]) ¶¶ 4, 70–71). The SEC 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. *Id.* at ¶¶ 68–69. This action was initiated in part to marshal and preserve assets of Defendants, that are attributable to funds derived from investors or clients of the Receivership Entities, are held in constructive trust for the Receivership Entities, were fraudulently transferred by the Receivership Entities, and/or may otherwise be includable as assets of the estates of the Receivership Entities.

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. See *generally* (Order (DE [10]), entered June 15, 2021) (appointing Miranda L. Soto as the Receiver over the Receivership Entities). The Order (DE [10]) 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. *Id.* at ¶¶ 26–28.

On June 21, 2021, Investors, Richard Bentley, Joseph Alexander, and P&E Properties, LP's (the "Movants") sued 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 in the Seventeenth Judicial Circuit in and for Broward County, Florida ("State Court Case").¹ The State Court Case was amended to add Anthony Coleman, CPA and David Cohen ("CPA Defendants") as party Defendants because both individuals served as accountants to the Receivership Entities. The CPA Defendants filed a motion to stay the State Court Case, which was granted by the State Court on June 15, 2022.

On June 8, 2022, a week prior to the stay entered in the State Court Action, the Movants filed the instant motion for clarification.² Clarification of the Order (DE [10]), however, is not warranted because the Order (DE [10]) granting the SEC's Unopposed Motion and Memorandum of Law for Appointment of Receiver (DE [3]) is unambiguous that claims against potential defendants who are liable to the Investors, including the accountants for the Receivership Entities, are covered by the stay language and included in the stay of litigation. The Movants argument that Order (DE [10]) does not specifically identify potential defendants, such as the CPA Defendants in the State Court Case for the Receiver Entities, is unavailing. It is neither feasible nor practical for the SEC or the Court to determine and include every single potential defendant or class of defendant at the outset of the filing of a lawsuit. Instead, the Receiver is charged with the responsibility

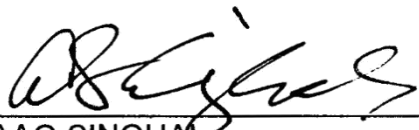
¹ Case No. CACE21-012218.

² This Court would note the Movants failed to comply with Local Rule 7.1(a)(3).

to investigate and marshal assets, including pursuing claims against third-parties.
Accordingly, it is hereby

ORDERED AND ADJUDGED that the Investors, Richard Bentley, Joseph Alexander, and P&E Properties, LP's Motion for Clarification of Stay Order (DE [84]) is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 25th day of July 2022.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF