Maddin, Hauser, Wartell, Roth & Heller, PC
Michael S. Leib (P30470)
28400 Northwestern Hwy., 3rd Floor
Southfield, MI 48034
Telephone: (248) 827-1874/ Fax: (248) 359-6174
Email: msl@maddinhauser.com

Attorney for Flagstar Bank, FSB

Peter A. Davidson (SBN 76194)
Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, CA 90212-2974
Telephone: (310) 273-6333/ Fax: (310) 859-2325
Email: pdavidson@ecjlaw.com

Local Counsel for Flagstar Bank, FSB

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION (LOS ANGELES)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND, COPELAND WEALTH MANAGEMENT, A FINANCIAL ADVISORY COROPORATION, and COPELAND WEALTH MANAGEMENT, A REAL ESTATE CORPORATION,

Defendants.

CASE NO.: 2:11-cv-08607-R -DTB

OPPOSITION OF FLAGSTAR BANK, FSB, TO RECEIVER'S MOTION TO: (1) CONSOLIDATE RECEIVERSHIP ENTITIES; AND (2) POOL ASSETS AND LIABILITIES OF THE VARIOUS RECEIVERSHIP ENTITIES, DECLARATION OF DENNIS LUTZ

Date: November 5, 2012
Time: 10:00 a.m.
Ctrm: 8
Judge: Hon. Manuel L. Real

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INTRODUCTION

Flagstar Bank, FSB ("Flagstar") is a secured lender of Copeland Properties Ten, LP ("CP Ten" also referred to as "Borrower") with a first mortgage lien on real property owned by it in Troy, Michigan. Flagstar also has a security interest in and lien on the rents generated from the Property as a result of a duly recorded "Assignment of Leases and Rents" agreement. The rents generated from the Property, therefore, are Flagstar's cash collateral securing the obligations owed to it under the mortgage and related note.

The note and mortgage were in default prior to the Receiver's appointment. The loan matures on March 3, 2016, at which time, if all payments continue to be timely made, there will be a balloon payment due of $8,166,739.07. The Property is the only asset of CP-10. The Property has five buildings on it, all of which are currently leased to a single user tenant. The lease expires on December 31, 2014 – 14 months before the loan becomes due.[1] Flagstar believes, and the Receiver has not indicated otherwise, that there is no equity in the Property given the amount owed to Flagstar and the Property's value. Because the Property is CP-10's only asset, CP-10 has no ability to make the balloon payment when it becomes due, or to make the monthly payments when the current lease expires. Flagstar's cash collateral, currently being held by the Receiver, will therefore be needed to help satisfy the obligation CP-10 owes.

The Receiver has asked the Court for an order seeking the consolidation of the various receivership entities and the pooling of the assets and liabilities of the various receivership entities.[2] The Receiver does not discuss the fact that Flagstar has a perfected security interest in CP-10's Property and in the rents generated from the Property, which rents constitute Flagstar's

[1] Flagstar has been told that the tenant does not intend to renew its lease because the Property is not sufficient for its needs. It therefore appears the Property will be non-income producing in two years or less. When the lease expires $8,371,542.58 will be owed on the loan.

[2] The Receiver's Motion as filed is defective and should be denied on that basis alone. While the Receiver has filed a Memorandum of Points and Authorities in support of his supposed motion (Doc 130) he has not filed or served a "Notice of Motion". (Local Rule 7-4). Nor has the Receiver complied with Local Rule 7-3. The purported motion also violates the due process rights of the parties to be affected (the creditors of the various entities and the entities' investors) because no notice of the motion or the supporting documents were served on all the creditors and investors of the entities that will be impacted and, hence, they have not had an opportunity to respond or oppose the purported motion.

cash collateral and which rents the Receiver cannot use absent Flagstar's consent. This is odd given that the Receiver has known about Flagstar and its opposition to the use of it collateral for almost a year now.

The Receiver contends that substantive consolidation would be in the best interest of investors, because it would eliminate possible litigation that might be required to recover transfers made and make the Receiver's accounting easier. However, as explained below, those excuses do not apply to CP-10, where not only is the accounting work for transfers made to it minimal, but the Receiver has already performed it.

The Receiver also does not discuss the law that substantive consolidation cannot affect a creditor's lien. Substantive consolidation, therefor, will not and cannot alter Flagstar's rights and liens with regard to the Property or the cash generated from the Property which the Receiver is holding. The Receiver, therefore, should be required to continue to account for and separately maintain the cash generated from the Property, which will ultimately be needed to either make the payments owed to Flagstar when the current tenant's lease is up or to make the balloon payment when it becomes due in 2016. Indeed, because there is no equity in the Property, and it appears there will not be sufficient cash generated to pay the loan in full when due, the Receiver's continuing expenditure of time, effort and money on the Property is actually a detriment to the receivership estate and the other creditors and investors. As a result, the Court should not only deny the Receiver's motion, as it affects CP-10 and its Property, but should order the Receiver to abandon the CP-10 Property and/or lift the stay issued by the Court so that Flagstar can commence foreclosure proceedings with regard to the Property.

THE LOAN DOCUMENTS

On March 3, 2006, Copeland Properties Ten, L.P. (the "Borrower") borrowed money from Flagstar in the amount of $9,450,000.00 (the "Loan" and "Loan Amount"). In connection with the loan, the Borrower signed a mortgage loan agreement **(Exhibit 1)**, a mortgage for property located in Troy, Michigan **(Exhibit 2)**, a promissory note **(Exhibit 3)**, and an assignment of rents and leases **(Exhibit 4)** (the "Loan Documents"), among other documents. The mortgage and assignment of rents and leases were duly recorded. The monthly payments on the Note are

$64,116.06 and the maturity date is March 3, 2016. The loan balance as of October 1, 2012 is $8,799,578.31. Flagstar believes the Property's value is significantly less than the debt.[3]

The loan was in default prior to the Receiver's appointment because one of the guarantors of the loan filed bankruptcy (See **Exhibit 1**, para, 6.1(i) p. 12); because there was a change in ownership or control of the Borrower (See **Exhibit 1**, para. 6.1(f) p. 12); and because the general partner is no longer in place. Indeed, there currently is no general partner for CP-10. In addition, the mortgage loan agreement provides that, upon the application for permission for appointment of a receiver or the appointment of a receiver of the Borrower, which has not been discharged within sixty days after the date of appointment, shall be an event of default. (See **Exhibit 1**, paragraph 6.1(i), page 12). This receivership cannot interfere with Flagstar's rights under its Loan Documents. The general rule is that the Receiver has no better rights as to Flagstar than the Borrower and stands in the Borrower's shoes. See Kaercher v Citizen's Nat. Bank of Ortonville, Minn., 57 F. 2d 58, 59 (8th Cir. 1932); Herron v. Fannie Mae, 857 F.Supp. 2d 87, 96 (D.D.C. 2012); cf. O'Melveny & Meyers v. F.D.I.C., 512. U.S. 79, 86, 114 S.Ct. 2048 (1994).

The Borrower's Property, which is subject to Flagstar's mortgage, is subject to a lease with Faurecia Automotive Seating, Inc., a Delaware corporation, as the tenant. In 2004, the lease was amended to include additional property and to extend the term of the lease to December 31, 2014. There are no other tenants for the Property subject to Flagstar's mortgage.

CP-10 SHOULD NOT BE INCLUDED IN ANY CONSOLIDATION NOR SHOULD ITS PROPERTY

The Receiver advocates substantive consolidation of the various receivership entities because the Receiver believes that would be fair to be investors in the various partnerships and it

[3] In the Receiver's Report No. 4 (Doc. 129) the Receiver states he has engaged a broker to provide broker opinions of value for the properties under the Receiver's control and, based on the valuations, has listed properties owned by six of the receivership entities for sale and has or will be abandoning properties owned by two other of the entities. The Receiver has not indicated that he believes CP-10's Property has sufficient value to justify his listing it for sale. The Receiver states he has been having discussions with certain of CP-10's limited partners who expressed an interest in acquiring the Property from the Estate. Flagstar is informed and believes that those negotiations have broken down and that there will not be an agreement between CP-10 partners and the Receiver. The CP-10 partners wanted to use Flagstar's cash collateral to pay the Receiver to release the CP-10 Property from the receivership estate.

would make his accounting and other tasks easier. The Receiver ignores the position of the creditors of the various entities, which is the focus of all the cases the Receiver cites. As the Receiver notes, one of the results and purposes of substantive consolidation is that it eliminates inter-entity claims and pools the assets and liabilities of the various entities, making the creditors of the various entities creditors of the consolidated entity. This can have a negative effect on creditors depending on to whom they provided credit and what assets they were relying on in doing so. One thing is clear however: "Substantive consolidation does not effect a validly perfected lien." 2, Collier on Bankruptcy, ¶105.09[3] (16th Ed. 2012). As indicated, Flagstar has a duly perfected lien on the Property owned by CP-10 and on the rents generated by the Property which the Receiver is holding.

The Receiver's justification for consolidation, besides his wanting to treat the defrauded investors the same, is that he contends the various partnerships assets were comingled because there were transfers between one another and it would be expensive and time consuming to unravel the transfers. However, this argument does not stand scrutiny with regard to CP-10 because as the Receiver has previously admitted the transfers with regard to CP-10 were minimal and the Receiver has already unraveled them.

The universe of transfers regarding CP-10 that need to be unraveled are as follows: "With respect to CP-10, the balance sheets reflect that it owes approximately $31,000 to Copeland Fixed Income Three ("CFI 3"), it received an equity investment of approximately $95,000 from Copeland Properties Five, and that CP-10 Objector Vellone Muraligopal ("Muraligopal") owes $165,000 to CFI 3." Receiver's Reply to Objections of Certain Limited Partners of Copeland Properties Ten (Doc "21" p. 1 lns. 25-28). The only money that CP-10 owes another partnership is $31,000, which is owed to CFI 3. The Receiver is holding currently $430,123 of CP-10 funds (Receiver's Report Number 4 (Doc 128) p. 9). Therefore, if the rents generated from the CP-10 Property were not Flagstar's cash collateral, the Receiver could easily balance the books and repay the obligation of the CP-10 to CPI 3.[4]

[4] In fact, Receiver has acknowledged that CP-10 is a net creditor of Fixed Income One ("CPI 1"), Copeland Properties Six ("CP 6"), Copeland Properties Nine ("CP 9") and Copeland

The other two items of purported "comingling" the Receiver discusses are not comingling at all and do not require repayment. As the Receiver indicates, Copeland Properties Five has an investment in CP-10 of $95,000. It is not owed money. It is no different from the other limited partners who are only entitled to a return if the partnership's creditors are paid in full first. The other item, $165,000 owed to CFI 3 by Muraligopal is not an obligation of CP-10. It is an obligation of one of the CP-10's partners. The fact that one of the CP-10's partner's owes a different partnership money is not a ground to consolidate CP-10. That would be like saying that because a shareholder of General Motors breached a contract, the other party to the contract can sue General Motors. The Receiver's justification for substantive consolidation with respect to CP-10, therefore, is illusory. It does not justify CP-10 being included in any consolidated entity. Indeed, commentators note: "Inability to sort out books and records may constitute a harm to be avoided by substantive consolidation, the mere difficulty and expense will not." 2, Collier on Bankruptcy, at ¶105.09[2][d]; In re Owens Corning, 419 F.3d 195, 211 (3rd Cir. 2007) ["Mere benefit to the administration of the case (for example, allowing a court to simplify a case by avoiding other issues or to make postpetition accounting more convenient) is hardly a harm calling substantive consolidation into play."]. Here, as indicated, the Receiver has already sorted out the transfers related to CP-10.

Because substantive consolidation has the potential of drastically affecting substantive rights and treating some creditors unfairly by impairing their interests, the doctrine of substantive consolidation "must be used sparingly and reserved for rare cases." In re Lewellyn, 26 B.R. 246 (S.D. Iowa, Bankr. 1982). See also, In re Continental Vending Machine Corp., 517 F.2nd 997 (2nd Cir. 1975) stressing that substantive consolidation should be "used sparingly" because of the possibility of unfair treatment of creditors who have dealt solely with one company having a surplus as opposed to those who have dealt with other companies having deficiencies; Chemical Bank of New York Trust Co., v. Kheel, 369 F.2nd 845, 847 (2nd Cir. 1966) ("power to consolidate should be used sparingly because of the possibility of unfair treatment of creditors of a corporate

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Realty." (Doc "21" supra. at p. 3 ln. 11-13)].

debtor who have dealt solely with that debtor without knowledge of the interrelationship with others"). This view has been adopted by Collier: "In general, courts have adopted the view that '[t]he power to consolidate should be used sparingly' because of the potential harm to creditors of substantive consolidation." 2, Collier on Bankruptcy, ¶105.09 [2] [d]. Collier goes on to note that although some courts have expressed a greater willingness to consider the appropriateness of substantive consolidation in recent years "Because this area of the law is based strictly on equitable principles without a statutory basis, it will continue to evolve. In this area, however, the potential harm to innocent creditors on which the prior court's admonition was based should continue to give the court pause before expanding the doctrine, despite the modern trend." Id.

Further, the courts have stated that the proprietary of consolidation should be measured against a high burden of proof which the movant must satisfy. See, In re Ford, 54 B.R. 145 (W.D. Mo. Bankr. 1984). In satisfying this high standard, a movant may not rely upon bare conclusory allegations of fact but must instead present a factually developed record supporting consolidation. In re Gulf Co., Inv. Corp., 593 F.2nd 921 (10 Cir. 1979); In re Huntco., 302 B.R. 35 (E.D. Mo. Bankr. 2003).

No matter what test this Court adopts to determine whether substantive consolidation is appropriate, infra, the Receiver has not met the high burden of proof required for substantive consolidation because his motion has numerous evidentiary deficiencies and does not provide admissible evidence justifying substantive consolidation. The purported declaration of the Receiver consists of only one page, which is unsigned, and does not lay a proper foundation for the admission of the three exhibits attached thereto (See Doc 130-10). The three exhibits attached to the purported declaration are not admissible evidence because they are not signed under penalty of perjury, no foundation has been laid for their admissibility, and they consist of either argument, multiple levels of hearsay or expert testimony by a lay witness.

The only other evidence submitted in support of the motion are the eight declarations submitted by victims of Copeland (two of which are husband and wife and which mirror each

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other). While the declarations tell a sad story of blind trust in a crook, they do not constitute evidence sufficient to justify substantive consolidation and, indeed, make no mention whatsoever of CP-10.

The Receiver states courts have adopted various tests for when substantive consolidation should be permitted. The Receiver, however, ignores the most recent test, adopted by the Third Circuit in In Re Owens Corning, supra. There the Third Circuit stated:

> "[W]hat must be proven (absent consent) concerning the entities for whom substantive consolidation is sought is that (i) prepetition they disregarded separateness so significantly that their creditors relied on the breakdown of entity boarders and treated them as one legal entity, or (ii) postpetitiion their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors." Id. at 211.

As indicated by the Exhibits attached hereto, and the supporting declaration, Flagstar did not disregard the separateness of the various entities and did not rely on the breakdown of entity boarders and treat all of the Copeland entities as one legal entity. Quite the opposite. It only relied on CP-10's property and guarantees from certain CP-10 partners. The Receiver has not demonstrated otherwise. Further, as indicated above, the entities assets and liabilities are not so scrambled as to make separating them prohibitive, hurting all creditors. The Receiver has already unscrambled what went on and allowing consolidation would hurt those creditors who relied on the separateness of the Copeland entities, such as Flagstar. As the Owens Corning court stated: "we disagree that '[i]f a creditor makes [a showing of reliance on separateness], the court may order consolidation...if it determines that the demonstrated benefits of consolidation 'heavily' outweigh the harm. If an objecting creditor relied on the separateness of the entities, consolidation cannot be justified vis-a-vis the claims of that creditor." (Citations omitted). Id. at 210. Chemical Bank of New York Trust Co. v. Kheel, supra. at 848 ("Equality among creditors who have lawfully bargained for different treatment is not equity but its opposite..."):

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With regard to substantial identity between the entities, the entities are all separate limited partnerships. The only connection is that some of them had the same corporate general partner.[5] More importantly, however, creditors dealt with the entities separately. They did not deal with them as a "single economic unit". With regard to CP-10, the creditors of CP-10 only looked to CP-10, its property and its partners. Flagstar in making its loan only looked to the CP-10 Property and the CP-10 partners, some of which provide personal guarantees to secure the debt owed to Flagstar.[6] Guarantees were not provided to Flagstar by any other Copeland entity. The Receiver also has also not demonstrated that other creditors of CP-10 looked to any Copeland entity except CP-10 for payment. It is clear, therefore, that at least with regard to CP-10, the Receiver has not met his burden of proof and CP-10 should not be included in the consolidation, if the Court orders it. Substantive consolidation need not be an all or nothing proposition. If the Court feels it is appropriate to consolidate some of the Copeland entities, but not others, the Court clearly has the power to do that. 2, Collier on Bankruptcy, ¶p. 105.09[3] ("the court has the power to order less than complete consolidation or to limit the effect of a substantive consolidation order"). In re Standard Brands Paint Co., 154 B.R. 563, 566 (Bankr. S.D. Cal. 1993) (maintaining separate corporate existence of five related debtors).

Indeed, the Receiver also does not meet the very tests he advocates, as those tests relate to Flagstar. Under the "Substantial Identity Test," the Receiver admits he needs to prove a substantial identity between the entities to be consolidated and that consolidation is necessary to avoid to some harm or to realize some benefit. The Receiver has admitted, however, that the various real estate partnerships are separate partnerships, and their only connection is that some had the same corporate general partner and some had a different corporate general partner. The Receiver further admits that the books were kept separate and that the transfers that did occur were

[5] Copeland Wealth Management acted as the general partner for some entities while Copeland Wealth Management, a Real Estate Corporation acted as the general partners for other entities. [Motion p. 4 ln. 26; p. 5 ln. 1-2].

[6] The Receiver does not explain or consider how consolidation will affect the CP-10 partners' guarantees. Consolidation cannot affect Flagstar's rights to look to the guarantors for payment if necessary, but may increase the guarantors' liability if consolidation negatively affects Flagstar's cash collateral.

all accounted for on the books. As to the second portion of the test, while the Receiver believes there will be some benefit to "investors" he has not established the benefit to the various entities "creditors"; and particularly not to the entities secured creditors. In Re Owens Corning, supra. at 214 ["commingling justifies consolidation only when separately accounting for the assets and liabilities of the distinct entities will reduce the recovery of *every* creditor-that is, when every creditor will benefit from the consolidation. Moreover, the benefit to creditors should be from cost savings that make assets available rather than from the shifting of assets to benefit one group of creditors at the expense of another. Mere benefit to some creditors, or administrative benefit to the Court, falls far short." (emphasis in original)]

The Receiver further admits that even if he meets both of the above conditions, substantive consolidation is not appropriate if an objecting creditor shows "(1) it relied on the separate credit of one of the entities to be consolidated; and (2) it will be prejudiced by substantive consolidation." (Motion p. 21, ln. 11-13.) Here it is clear that Flagstar relied only on the assets of CP-10 and guarantees from only CP-10 partners. There is no cross-collaterization. Flagstar had nothing to do with any of the other entities. Second, as indicated above, Flagstar will be prejudiced by substantive consolidation because the Receiver apparently proposes to take the $420,000 being held in the CP-10 account, all of which came from the rental of the Property and which is Flagstar's cash collateral, as well as future rents generated by the Property, and combine them with the other assets of the estate to, among other things, pay the Receiver's and his counsel's professional fees and to distribute to investors. [Motion p. 25, ln. 5-9] Flagstar would be substantially prejudiced by that action because, as indicated above, those funds will be needed to pay the balloon payment that will be coming due, and, if the current tenant does not renew its lease, to make the monthly mortgage payments when the lease terminates in 2014.

Similarly, the Second Circuit Test requires two factors be met: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extended credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." Again, as indicated, Flagstar and other creditors dealt with the entities as separate economic units and relied on their separate identity in extending credit. They did not treat the

entities as a single economic unit. And, as indicated above with regard to at least CP-10, its affairs are not so entangled such that consolidation will benefit "all creditors". CP-10 only has two creditors CPI 3, which is owed $31,000 as an unsecured obligation, and Flagstar Bank which is owed $8,799,578.31 as a secured obligation. Because the Receiver has not met either of the tests he proffers with regard to Flagstar and CP-10, CP-10 and its Property, including Flagstar's cash collateral, should not be included in any consolidation order this Court may issue.

IF THIS COURT ORDERS SUBSTANTIVE CONSOLIDATION IT SHOULD MAKE IT CLEAR THAT SUBSTANTIVE CONSOLIDATION DOES NOT AFFECT FLAGSTAR'S LIEN ON THE PROPERTY OR THE CASH COLLATERAL GENERATED BY THE PROPERTY AND THE RECEIVER SHOULD BE ORDERED NOT TO COMINGLE OR USE FLAGSTAR'S CASH COLLATERAL WITHOUT FLAGSTAR'S CONSENT

There is no question that Flagstar has a perfected security interest in the rents generated by the CP-10 Property and that the rents are Flagstar's cash collateral. §363 to the Bankruptcy Code which defines "cash collateral", provides it means "cash, negotiable instruments…rents, or profits of property…."

The Receiver cites no case law that allows a receiver to avoid or ignore a perfected security interest of an independent third party creditor on property placed in receivership or that avoids a perfected security interest by the expediency of substantive consolidation. As indicated above, the black letter law is: "Substantive consolidation does not effect a validly perfected lien." Collier at ¶105.05[3] supra.; In re AHF Development, Ltd., 462 B.R. 186, 198 (Bankr. N.D. Tex. 2011) ["Substantive consolidation should not affect a validly perfected lien. If a lien is affected, then consolidation should not be ordered."]; In re Tureaud, 45 B.R. 658, 661 (Bankr. N.D. Okla. 1985) aff'd 59 B.R. 973 (N.D. Okla. 1986) ["Consolidation will not eliminate the security interests of creditors or change the status of secured creditors to unsecured creditors. Consolidation will not eliminate guarantees by one debtor to pay for the debts of another debtor."] In re Gulfco Inv. Corp., 593 F.2d 921, 930 (10th Cir. 1979) ["in no event can secured creditors be deprived of their secured status as part of a consolidation program…"] This applies not only to Flagstar's lien on CP-10's Property, but its security interest in the cash collateral generated from the Property.

If reference is made to the bankruptcy code and cases, which is what the Receiver relies on to support for his substantive consolidation motion, it is clear that cash collateral cannot be used without either (1) the consent of the creditor with an interest in the collateral or (2) court authorization granted, after notice and a hearing, and then only if the secured creditor is provided with "adequate protection" of its interest in the collateral. 11 U.S.C. §363(c)(2). See, 3, Collier on Bankruptcy, at ¶363.03 [4][2]. In order to provide adequate protection for the use of cash collateral either (1) a cash periodic payment must be made to the extent there is a decrease in the value of an entity's interest in the cash collateral; (2) an additional or replacement lien must be provided to the extent of a decrease in value of the entity's interest in such property or (3) the entity must be provided with the "indubitable equivalent" of such entity's interest in such property". 11 U.S.C. § 361. The Receiver nowhere explains how he proposes to provide adequate protection to Flagstar if the Receiver is allowed to use Flagstar's cash collateral. As a result, the Receiver should be prohibited from using the $420,000 in the CP-10 account which is Flagstar's cash collateral and any future rents collected from the Property. Indeed, the Receiver should be ordered, if this Court permits substantive consolidation, to continue to segregate and account for any cash collateral in his possession or which comes into his possession as a result of the operation of the Property. 3, Collier on Bankruptcy, ¶363.03 [4][b]:

> §363(c)(4) requires a trustee to segregate and account for any cash collateral in the trustee's possession, custody or control. In the absence of authorization to use cash collateral, the trustee is responsible for maintaining the collateral for the protection of the creditor with an interest in the collateral. Segregation of cash collateral is also important to secured creditors in view of the requirement of nonbankruptcy law that the creditor be able to identify cash proceeds to maintain an interest in the proceeds. The segregation requirement applies to cash collateral on hand at the time of the filing as well as cash generated during the case through the accumulation of after required cash such as rents..."

THE RECEIVER SHOULD BE ORDERED TO ABANDON THE CP-10 PROPERTY OR THIS COURT SHOULD LIFT THE STAY SO THAT FLAGSTAR CAN FORECLOSE

Because Flagstar has a perfected security in the CP-10 Property and its cash collateral, and because the value of the Property and the cash collateral is not sufficient to pay Flagstar what is owed by CP-10, the continued maintenance of the Property and expenditure of energy and funds by the Receiver related to the Property is of no benefit to the receivership estate. As indicated, even if this Court consolidates the various receivership entities, that consolidation order cannot affect Flagstar's perfected security interest in the Property or in the cash collateral it generates and the Receiver cannot use the cash collateral for any purposes without Flagstar's consent or an order of this Court which provides "adequate protection" to Flagstar. As a result, neither the Property nor the cash collateral is of any benefit to the receivership estate and the Receiver should be ordered to abandon the Property and turn over the cash collateral to Flagstar or, in the alternative, the Court should lift the stay issued by the Court so as to permit Flagstar to exercise its state court remedies and foreclose on the Property.

CONCLUSION

For the reasons set forth above this Court should deny the Receiver's motion to substantively consolidate CP-10 with the other receivership entities. If the Court does grant the Receiver's motion and allows the Receiver to substantively consolidate CP-10 with the other receivership entities, the Court's order should make clear that substantive consolidation has no effect, whatsoever, on Flagstar's perfected security interest in the Property or in the rents generated from the Property in which Flagstar also has a perfected security interest and which constitutes Flagstar's cash collateral. The order should also make clear that the Receiver is not

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authorized to use Flagstar's cash collateral and must continue to segregate and account for any cash collateral generated from the Property.

DATED: October 12, 2012

Respectfully submitted,

ERVIN COHEN & JESSUP LLP

By: /s/Peter A. Davidson
PETER A. DAVIDSON,
Attorneys for Flagstar Bank, FSB

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V

CHARLES P. COPELAND, COPELAND WEALTH MANAGEMENT, A FINANCIAL ADVISORY CORPORATION, and COPELAND WEALTH MANAGEMENT, A REAL ESTATE CORPORATION,

Defendants.

Case No: 11-08607-R-DTB
Hon. Manuel L. Real
Mag. Judge David T. Bristow

DECLARATION

Michael McGovern declares:

1. I am a Vice President for Flagstar Bank, FSB, custodian of the records described herein, have personal knowledge of the facts set forth herein and could and would testify thereto.

2. On March 3, 2006 the Flagstar Bank, FSB ("Bank") entered into a Mortgage Loan Agreement with Copeland Properties 10, L.P.("Borrower") Attached hereto as **Exhibit 1** is a true and genuine copy of that Mortgage Loan Agreement.

3. On March 3, 2006 the Bank entered into a Mortgage for property located in Troy, Michigan in connection with the Mortgage Loan Agreement. Attached as **Exhibit 2** is a true and genuine copy of that Mortgage.

4. On March 3, 2006 the Bank entered into a Promissory Note with Copeland Properties 10, L.P. which is secured by the Mortgage on the Troy, Michigan property described in **Exhibit 2**. A true and genuine copy of the Promissory Note is attached as **Exhibit 3**.

5. As further security for the Promissory Note, Borrower signed an Assignment of Rents and Leases. A true and genuine copy of the Assignment of Rents and Leases is attached as **Exhibit 4**.

6. Each of Exhibits 1 through 4 attached hereto were created in the ordinary course and scope of the Bank's business and were prepared by authorized personnel of the Bank and have been maintained by the Bank in the ordinary course of the Bank's business.

7. According to bank records, the monthly payments on the Promissory Note are $64,116.06 and the maturity date is March 3, 2016.

8. The loan balance as of October 1, 2012 is $8,799,578.31 together with accruing interest, costs and attorney fees.

9. The property securing the loan and mortgage has been leased to Faurecia Automotive Seating, Inc. The lease term ends on December 31, 2014. If all payments are timely made on the loan, when the lease expires $8,371,542.58 will be owed on the loan.

10. The Promissory Note matures on March 3, 2016 at which time, if all payments have been timely made, a balloon payment of $8,166,739.07 will be due.

11. In agreeing to make a loan to Copeland Properties 10, L.P., the Bank relied on CP-10's separate property and guaranties from certain partners of CP-10. The Bank specifically relied on the separateness of CP-10 from any other entity and did not look to any other Copeland entity or their assets for payment or to secure the loan.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 12 2012 at Troy, Michigan.

Michael McGovern

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of Los Angeles, State of California. My business address is 9401 Wilshire Boulevard, Ninth Floor, Beverly Hills, CA 90212-2974.

On **October 15, 2012**, I served true copies of the following document(s) described as **OPPOSITION OF FLAGSTAR BANK, FSB, TO RECEIVER'S MOTION TO: (1) CONSOLIDATE RECEIVERSHIP ENTITIES; AND (2) POOL ASSETS AND LIABILITIES OF THE VARIOUS RECEIVERSHIP ENTITIES; DECLARATION OF DENNIS LUTZ** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

_ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Ervin Cohen & Jessup LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 15, 2012, at Beverly Hills, California.

/s/ Lore Pekrul
Lore Pekrul

ERVIN COHEN & JESSUP LLP

SERVICE LIST

BY ELECTRONIC FILING

David M Rosen Rosend@sec.gov
David R Moore davidr@mooreskiljan.com
Douglas D Guy dguy@gogglaw.com, bjackalone@gogglaw.com
Edward G Fates tfates@allenmatkins.com, bcrfilings@allenmatkins.com, jbatiste@allenmatkins.com
Everett G Barry ebarry@mulvaneybarry.com, gcurtis@mulvaneybarry.com
Francis Emmet Quinlan , Jr Frank.Quinlan@ndlf.com, sue.love@ndlf.com
Jeffrey Scott Goodfried jgoodfried@perkinscoie.com
John H Stephens jstephens@mulvaneybarry.com, cjennings@mulvaneybarry.com, thebrank@ethreeadvisors.com
John M McCoy , III mccoyj@sec.gov
Lisa Torres ltorres@gogglaw.com, lgodat@gogglaw.com, tscutti@gogglaw.com
Marcus O Colabianchi mcolabianchi@duanemorris.com
Meagen Eileen Leary meleary@duanemorris.com, jnazzal@duanemorris.com
Michael B Garfinkel mgarfinkel@perkinscoie.com, mbaggett@perkinscoie.com
Michael S Leib mleib@maddinhauser.com, bwislinski@maddinhauser.com
Patrick L Prindle pprindle@mulvaneybarry.com, cjennings@mulvaneybarry.com
Peter Alan Davidson pdavidson@ecjlaw.com, lpekrul@ecjlaw.com
Phillip K Wang pwang@duanemorris.com, jnazzal@duanemorris.com
Spencer E Bendell bendells@sec.gov, LAROFiling@sec.gov, marcelom@sec.gov
William P Tooke wtooke@mechlaw.com