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10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION (LOS ANGELES)**

12
13
14 **SECURITIES AND EXCHANGE
COMMISSION,**

15 **Plaintiff,**

16 **v.**

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

19 **Defendants.**
20

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

**REPLY OF FLAGSTAR BANK TO
OPPOSITION OF CERTAIN LIMITED
PARTNERS OF CP-10 AND VELLORE
MURALIGOPAL TO RECEIVER'S
MOTION FOR APPROVAL OF
SETTLEMENT WITH FLAGSTAR
BANK, FSB**

Date: December 17, 2012
Time: 10:00 a.m.
Ctrm: 8
Judge: Hon. Manuel L. Real

1 Certain partners of Copeland Properties 10 ("CP-10") (hereinafter the "Partners") have
 2 filed an Opposition to the Receiver's motion seeking approval of the Receiver's settlement with
 3 Flagstar Bank, FSB ("Flagstar"). The settlement concerns Flagstar's loan, secured by the property
 4 owned by CP-10 in Michigan, and Flagstar's claim to the rents generated from the property. The
 5 Partners objection is curious, given that the Partners have repeatedly urged this Court to release
 6 CP-10 and the property from the receivership.¹ That is exactly what will occur as a result of the
 7 Receiver's settlement with Flagstar.

8 Contrary to the assertions of the Partners, the Partners do not control CP-10 and cannot act
 9 on CP-10's behalf. This Court has held that CP-10 is in receivership and, hence, the Receiver is
 10 the only one that can act on behalf of CP-10. The Receiver has determined, in the exercise of his
 11 business judgment, that the settlement is in the best interest of the receivership estate. The Court
 12 should ratify the Receiver's action and grant the motion.

13 The Partners' objection really is that they are upset that the Receiver did not settle with
 14 them on terms more favorable to them. Instead, the Receiver settled with Flagstar, on terms that
 15 are more favorable to the receivership estate; a decision the Receiver made in the exercise of his
 16 business judgment. Indeed, contrary to the statements made by the Partners, the settlement with
 17 the Receiver is more favorably economically to the receivership estate than the settlement
 18 proposed by the Partners, to which neither the Receiver nor Flagstar agreed. As the chart on page
 19 7 of the Opposition indicates, under the settlement proposed by the Partners, the Receiver has to
 20 give up the Muraligopal note, with a face value of \$165,000, and CP-5's interest in CP-10 with a
 21 face value of \$79,888.44. Under the settlement with Flagstar, the Receiver keeps both assets.
 22 Therefore, while the settlement may not be as favorable to the Partners as that desired by them, the
 23 settlement negotiated by the Receiver with Flagstar results in the receivership estate being almost

24 ¹ Objection of Certain Limited Partners of Copeland Properties Ten to Receiver's
 25 Preliminary Report Dated November 18, 2011 (Doc 16) p. 12 ["it is respectfully requested that
 26 CP-10 be excluded from the Receivership."]; Supplemental Objection of Certain Limited Partners
 27 of Copeland Properties Ten to Receiver Preliminary Report Dated November 18, 2011 (Doc 27) p.
 28 5, ll. 25-26 ["There is no reason for CP-10's inclusion in the Receivership"]; Objection of Certain
 Limited Partners of Copeland Properties Ten to Receiver's Fee Application Dated February 21,
 2012 (Doc 49) p. 4, l. 23 ["nothing justifies inclusion of CP-10 in the Receivership Estate..."].

1 \$250,000 better off.

2 With regard to the rents the Receiver is holding, they are not going to Flagstar. There is a
 3 dispute between the Partners and Flagstar as to who has rights in those rents. The settlement
 4 between the Receiver and Flagstar does not affect anyone's rights to the funds. Instead, the
 5 Receiver will maintain the funds until the Court orders who they should go to and in what
 6 proportion. Similarly, the parties rights and obligations under the Flagstar loan and loan
 7 documents remain unaffected. Flagstar contends the loan was in default prior to the receivership.
 8 The Partners may disagree. However, that is not a determination this Court needs to make or that
 9 the Receiver needs to be involved with. The settlement does not affect any parties rights or
 10 positions. If Flagstar files a notice of default, which it has been prohibited from doing because of
 11 this Court's stay order, once the property is abandoned these issues can be decided appropriately
 12 by the state court.

13 It is obvious why Dr. Muraligopal opposes the settlement. Under the proposal the Partners
 14 made to the Receiver, Muraligopal's obligation to repay his \$165,000 note basically disappears.
 15 Under the settlement the Receiver has made with Flagstar, the Receiver keeps the note and the
 16 right to proceed to take steps to collect it for the benefit of the receivership estate.

17 Muraligopal's discussion of the stay being lifted and the cite to Wenke II is a red herring.
 18 The stay in this case will disappear because the Receiver is abandoning CP-10 and the property
 19 from the receivership estate as part of the settlement. CP-10 and to the property should not remain
 20 part of the receivership just so Muraligopal can avoid having dealt with his guaranty. The stay
 21 order currently in effect does not prevent Flagstar, or any other creditor, from pursuing guarantors
 22 of receivership entities' debts. It only prevents actions against the entities in receivership. (Doc. 3
 23 p. 7). Litigation stays in receivership and bankruptcy cases do not extend to non-debtor
 24 guarantors. See In re Chugach Forest Products, Inc., 23 F.3d 241, 246 (9th Cir. 1994) (citing
 25 cases); U.S. v. Dos Cabezas Corp., 995 F.2d 1486, 1491-92 (9th Cir. 1993). SEC v. Byers, 637
 26 F.Supp.2d 166 (S.D.N.Y. 2009), cited by Muraligopal, does not hold otherwise. It deals solely
 27 with whether secured creditors can have deficiency claims against the receivership estate, under

1 the receiver's distribution plan in that case, after exhausting their collateral. It has no bearing on,
 2 and does not even discuss, a creditor's right to pursue a guarantor who is not in receivership.

3 With regard to Muraligopal's claim that he was defrauded into guaranteeing the loan.
 4 That, again, is a factual issue of this Court does not have to decide. If and when Flagstar seeks to
 5 pursue the guaranty, Muraligopal can raise whatever defense he believes he has in state court.

6 The standard for approving a settlement in a receivership is whether the settlement is in the
 7 best interest of the estate. 3, Clark, Law of Receivers, §655 (3rd Edition 1959) ["The only
 8 justification for the compromise of claims is that it is done for the best interest of the receivership
 9 and the estate under the control and possession of the court."]. Here, the Receiver, in the exercise
 10 of its business judgment, determined that the proposed settlement with Flagstar is better for the
 11 estate than the proposal made by the Partners. The settlement results not only in a better deal
 12 economically for the receivership estate, but gives the Partners what they have repeatedly
 13 requested, the abandonment of the partnership and the property from the receivership estate, and
 14 the Receiver's control. It allows the parties the right to proceed, unencumbered by the
 15 receivership, and avoids the receivership estate expending additional resources on property the
 16 Receiver has concluded has no value, over and above the loan it secures.

17 For the reason's set forth in the Receiver's motion, this Court should approve the
 18 Receiver's settlement with Flagstar.

19 DATED: December 3, 2012

Respectfully submitted,

20 ERVIN COHEN & JESSUP LLP
 21 Peter A. Davidson

22
 23 By: /s/ Peter A. Davidson
 24 Peter A. Davidson
 25 Attorneys for Flagstar Bank, FSB
 26
 27
 28

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 **December 3, 2012**, I served true copies of the following document(s) described as **REPLY OF FLAGSTAR BANK TO OPPOSITION OF CERTAIN LIMITED PARTNERS OF CP-10 AND VELLORE MURALIGOPAL TO RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT WITH FLAGSTAR BANK, FSB** 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.

X BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

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 December 3, 2012, at Beverly Hills, California.

/s/ Lore Pekarul
Lore Pekarul

ERVIN COHEN & JESSUP LLP

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