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9
10 Attorneys for Third-Party Objectors, Robert Allen; Elayne Allen; Vellore
11 Muraligopal; Vellore Muraligopal, Trustee of the Muraligopal Living Trust;
12 Myron and Ruby Cinque, Trustees of the Cinque Family Trust; Rick and Blanche
13 Higdon, Trustees of the Higdon Revocable Trust; Klaus Kuehn; Lynda Kuehn;
14 Richard Paul Blanford; Glenn Goodwin, Trustee of the Glenn Goodwin Trust; and
15 James Powell

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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION - LOS ANGELES**
21

22 SECURITIES AND EXCHANGE)
23 COMMISSION,)

24 Plaintiff,)

25 v.)

26 CHARLES P. COPELAND, COPELAND)
27 WEALTH MANAGEMENT, A)
28 FINANCIAL ADVISORY)
CORPORATION, and COPELAND)
WEALTH MANAGEMENT, A REAL)
ESTATE CORPORATION,)

Defendants.)

CASE NO. 11-08607-R-DTB

OPPOSITION OF VELLORE
MURALIGOPAL, M.D. AND
MURALIGOPAL
INVESTMENTS, LLC TO
ORDER APPROVING
SETTLEMENT BETWEEN
RECEIVER AND FLAGSTAR
BANK, F.S.B.; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF

Date: December 17, 2012
Time: 10:00 a.m.
Ctmm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

Case No. 11-cv-08607-R-DTB

OPPOSITION OF VELLORE
MURALIGOPAL, M.D. AND
MURALIGOPAL INVESTMENTS, LLC
TO ORDER APPROVING SETTLEMENT
BETWEEN RECEIVER AND FLAGSTAR
BANK, F.S.B.; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

Date: December 17, 2012
Time: 10:00 a.m.
Crtrm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT VELLORE MURALIGOPAL, M.D., AND
MURALIGOPAL INVESTMENTS, LLC (referred to jointly hereinafter as “Muraligopal”)
HEREBY OPPOSE the motion filed by Thomas C. Hebrank (“Receiver”), the court-appointed
Permanent Receiver for Copeland Wealth Management, a Financial Advisory Corporation, Copeland
Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates including, but
not limited to, Copeland Properties Ten, LP (the “Receivership Entities”) seeking this Court’s

1 approval of a proposed agreement by and between the Receiver and Flagstar Bank, F.S.B.
 2 ("Flagstar") and pertaining to the disposition of real property located at 2350-2500 Meijer Drive,
 3 Troy, Michigan (the "Michigan Property"). The Real Property is presently within the jurisdiction
 4 and control of the Receiver.

5 Muraligopal, an investor in Copeland Properties Ten, LP ("CP 10"), and purportedly a
 6 guarantor of the Flagstar loan utilized by CP 10 and the Receivership Entities to purchase the
 7 Michigan Property, contends Flagstar is without standing to enter into the agreement, as there is no
 8 declared default on the underlying Flagstar loan, that the purported agreement effects a violation of
 9 the permanent injunction presently controlling the assets of the Receivership Entities, that this
 10 Court's broad discretion permits this Court to deny its approval of the proposed agreement, or to
 11 tailor a resolution that better protects the investors, and that the proposed agreement is not in the best
 12 interests of Muraligopal, a party defrauded by the Copeland Defendants.

13 Muraligopal consequently contends that it is well within this Court's discretion to deny the
 14 motion filed by the Receiver, or alternatively, to impose conditions on any agreement ultimately
 15 approved such that any agreement by and between the Receiver and Flagstar made in connection
 16 with the Michigan Property avoids unnecessary and unwarranted harm to innocent investors'
 17 interests who are at the risk of being further injured by the current version of the proposed
 18 agreement.

19 Respectfully submitted,

20 Dated: November 26, 2012

21 GAW, VAN MALE, SMITH,
 22 MYERS & REYNOLDS

23 By: 

24 JAMES R. FORBES
 25 ALFONSO L. POIRÉ
 26 Attorneys for Vellore Muraligopal, M.D., and
 27 Muraligopal Investments, LLC
 28

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

By way of the proposed Settlement Agreement that is the focus of this motion seeking approval, the Receiver and Flagstar are attempting to artificially create a financial shortfall where none currently exists, setting the stage for Flagstar not only to notice a default on a secured loan and retake and sell collateral, but also to pursue purported guarantors for any resulting deficiency. Specifically, the CP 10 partnership and the Michigan Property to which it holds title is presently operating at a net profit exceeding \$118,000 per quarter. The proposed Settlement Agreement would affect an abandonment of that Michigan Property, trigger potential liability on behalf of the guarantors of Flagstar's secured loan for any deficiency resulting from a sale of the Michigan Property, and create additional litigation in this Court over the resulting treatment of existing CP 10 cash on hand, all to purportedly resolve a dispute which does not presently exist, and in which Flagstar currently has no standing. As a result, this Court must reject the proposed Settlement Agreement.

I. STATEMENT OF FACTS

Physician Vellore Muraligopal, M.D., a pediatrician and a neonatal/perinatal specialist, and his investment-related, single-purpose limited liability company Muraligopal Investments, LLC, are best treated as a single entity in the context of this dispute. They are consequently referred to jointly hereinafter as "Muraligopal." Muraligopal is an investor who was defrauded by Defendant Charles Copeland ("Copeland"), Muraligopal's accountant of over 20 years, and who now bears the very real risk of being further injured should this Court approve the present iteration of the proposed agreement by and between Permanent Receiver Charles C. Hebrank ("Receiver") and Flagstar Bank, F.S.B. ("Flagstar").

In 2005 and 2006, Copeland invested Muraligopal's funds into Copeland Partnership Ten, LP ("CP 10"), a limited partnership that purchased a group of commercial buildings located at 2350-2500 Mejier Drive, Troy, Michigan (the "Michigan Property"). It also appears that in March 2006, Copeland acted to defraud Muraligopal into executing a personal guaranty of the \$9,450,000.00 loan generated by Flagstar (the "Secured Loan") obtained for the purpose of funding CP 10's purchase of

1 the Michigan Property by presenting Muraligopal with a one-page signature sheet (without the actual
2 personal guaranty) amidst a number of other CP 10-related documents and requesting Muraligopal
3 sign that signature sheet at the same time he was requesting execution of other CP 10-related
4 documents.

5 On October 25, 2011, the Securities and Exchange Commission ("SEC") obtained a
6 permanent injunction to enjoin the fraudulent activities of Charles Copeland, Copeland Wealth
7 Management, a Financial Advisory Corporation ("CWM"), and Copeland Wealth Management, a
8 Real Estate Corporation ("Copeland Realty") (referred to jointly hereinafter as "Defendants") with
9 the intention of marshaling and preserving the Defendants' assets for the benefit of the victims of the
10 Defendants' fraudulent practices. The Receiver was appointed in connection with this effort with
11 the intention of obligating the Defendants to disgorge ill-gotten gains, taking possession of the
12 Defendants' property, and prohibiting third parties from commencing actions against "Defendants
13 CWM and Copeland Realty or their subsidiaries or affiliates." (Permanent Injunction, at p. 7.)

14 The Michigan Property which is the focus of the proposed agreement between the Receiver
15 and Flagstar is currently fully rented by a single lessee/tenant, monthly payments from that tenant to
16 CP 10 are current, CP 10's payments to Flagstar on the Secured Loan - as well as to applicable
17 taxing authorities - are current, and the Receiver's Report No. 4, filed in this matter on or about
18 September 28, 2012, reveals that during the period from June through August 2012, CP 10 generated
19 a net income for the receivership in the amount of \$118,226.57. The Michigan Property is CP 10's
20 sole asset, and the current lease controlling the Michigan Property will not expire until December 31,
21 2014. Further, by his own admission, the Receiver has \$437,788.79 presently on account ("Cash on
22 Hand") in connection with CP 10 as of November 14, 2012, which amount results from the tenancy
23 of the Michigan Property.

24 In August 2012, the Receiver, Flagstar, and the CP 10 partners discussed a settlement
25 proposal proffered by the CP 10 investor group. Although that proposal would have resulted in a net
26 gain to the CP 10 partnership in the amount of \$16,500, a removal of CP 10 and the Michigan
27 Property from the receivership, a greater cash distribution to the Receiver than in the current
28 Receiver/Flagstar proposal, and a final settlement of all claims regarding the receivership (*i.e.*,

1 terminating the litigation vis-à-vis CP 10, the CP 10 partners, and the Receiver insofar as CP 10 is
 2 concerned), the Receiver opted against pursuing and finalizing the CP 10-proposed settlement
 3 opportunity once Flagstar proposed the current Settlement Agreement.

4 Flagstar's proposed Settlement Agreement, which the Receiver is currently moving this
 5 Court to approve, would instead result in an arbitrary division of the Cash on Hand, would result in
 6 the Receiver's abandonment of the Michigan Property, would continue the Receiver's role as a
 7 partner in CP 10, and would unnecessarily set the stage for Flagstar to pursue the personal
 8 guarantors for any deficiencies relating to the Secured Loan when Flagstar moves to sell the
 9 Michigan Property. The justification put forth by the Receiver for the approval of the proposed
 10 Settlement Agreement is that it would resolve a purported dispute between Flagstar and the Receiver
 11 over ownership of the Cash on Hand (to which Flagstar currently has no right), as well as over the
 12 future rents, issues and profits generated by the Michigan Property.

13 Noteworthy here is the fact that Flagstar currently has no possessory right to the Michigan
 14 Property, as the Secured Loan is paid current and is not in financial default. Flagstar therefore has
 15 no legal standing or authority to negotiate on behalf of Muraligopal or any of the other CP 10
 16 investors, and no authority to enter into any agreements on behalf of the CP 10 investors with the
 17 Receiver or with anyone else. This is of particular importance when it is considered the proposed
 18 Settlement Agreement for which Flagstar and the Receiver seek this Court's approval has the effect
 19 of needlessly compounding and increasing the harm the Defendants' actions have already wrought
 20 upon Muraligopal and the defrauded investors of CP 10.

21 For the following reasons, Muraligopal's position is that the current form of the Receiver's
 22 proposed Settlement Agreement with Flagstar is unacceptable and runs contrary to the permissible
 23 exceptions to the guidelines courts are to utilize when considering exceptions to stays entered in
 24 SEC actions, and that this Court has the authority to modify certain terms of that proposed
 25 agreement, or refuse approval altogether.

26 **II. ARGUMENT**

27 **A. The Receiver's Motion Violates the Guidelines Set Forth in *S.E.C. v. Wencke* for** 28 **Modifications of Court-Ordered Stays**

In instances in which the SEC brings actions to enforce federal securities laws, the federal

1 courts “have inherent equitable authority to issue a variety of ancillary relief measures.” (*S.E.C. v.*
 2 *Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). Here, in that ancillary relief measure context, this
 3 Court issued a permanent injunction seeking to prevent the initiation of certain actions that would
 4 prove detrimental to the receivership’s assets, one of which is CP 10’s Michigan Property.

5 In a subsequent proceeding in the same action, the *Wencke* court set forth guidelines for
 6 courts to use when determining whether an exception to a stay should be made in any given case,
 7 specifically setting forth three guidelines courts should consider:

8 (1) whether refusing to lift the stay genuinely preserves the status quo or whether the
 9 moving party will suffer substantial injury if not permitted to proceed; (2) the time in
 10 the course of the receivership at which the motion for relief from the stay is made;
 and (3) the merit of the moving party's underlying claim.

11 *SEC v. Wencke*, 742 F.2d 1230, 1231 (9th Cir. 1984) (“*Wencke II*”) (citing *Wencke*, 622 F.2d at
 12 1374).

13 The Receiver’s currently proposed Settlement Agreement with Flagstar seeks to abandon the
 14 Michigan Property, which would return the Michigan Property to Flagstar, and in addition put all but
 15 \$225,000.00 of the \$437,788.79 Cash on Hand “in an interest bearing account, which account shall
 16 be subject to further order of the Court.” (Proposed Agreement, at p. 2, Section 2.d.). A clear
 17 problem arises, however, as the result of the Receiver’s acknowledgement in the moving papers that
 18 “the market value of the Michigan Property is not sufficient to enable me to sell the Michigan
 19 Property for an amount which would result in meaningful net proceeds to the Receivership estate.”
 20 (Declaration of Thomas C. Hebrank in Support of Motion for Order Approving Settlement
 21 (“Hebrank Declaration”), at p. 3, ll. 4-7). Put another way, the Receiver is willing to abandon a
 22 profit-making asset of the receivership at the present time for a sum that not only would not “result
 23 in meaningful net proceeds to the Receivership estate,” but in fact, would more than likely set the
 24 stage for Flagstar to proceed against the purported personal guarantors to recoup any shortfalls
 25 Flagstar may suffer having lent monies when property values were high (2006), and selling that
 26 same property before the economy has had the opportunity to recover from the financial and real
 27 estate market free fall that occurred at the end of 2008.

28 That possibility, in turn, serves to violate the first guideline set forth in *Wencke II*, insofar as

1 the status quo present now – *i.e.*, the Receiver managing a profitable property for the benefit of all
 2 investors and creditors – would not be preserved. Further, with the Receivership having only been in
 3 place slightly over one year, there is no temporal need to accomplish this abandonment now,
 4 particularly in light of the fact the current tenant of the Michigan Property still has over two years
 5 remaining on its lease. In addition, the fact the economy is showing consistent signs of recovery
 6 indicates that permitting a little time to pass would more than likely result in a higher sales price for
 7 the Michigan Property at a later date, likely permitting the Receiver to obtain an even higher sales
 8 price, and possibly avoiding further harm to Muraligopal and the other CP 10 investors who
 9 Defendants defrauded into executing personal guaranties of the Secured Loan.

10 The first inquiry under the three prongs of the *Wencke* framework is "whether refusing to lift
 11 the stay genuinely preserves the status quo, or whether the moving party will suffer substantial injury
 12 if not permitted to proceed." *Wencke II*, 742 F.2d at 1231. In *S.E.C. v. Byers*, a district court found
 13 that maintaining the stay undeniably maintained the status quo where the moving party was "only
 14 concerned with recouping their own investments, presumably even at the expense of other
 15 investors." (*S.E.C. v. Byers*, 592 F.Supp.2d 532, 537 (S.D.N.Y., 2008)).

16 Here, although this motion for approval of proposed settlement is put forth by the Receiver, it
 17 is Flagstar who would benefit at the expense of the other CP 10 investors and creditors of the
 18 receivership. Muraligopal and the other nominal personal guarantors – similarly situated CP 10
 19 investors and victims of Defendants' fraudulent activities – would bear disproportionate and
 20 unnecessary harm should this Court approve the proposed Settlement Agreement, thereby allowing
 21 Flagstar to manufacture an instance of financial default vis-à-vis the Secured Loan *where none*
 22 *currently exists* and subsequently seeking to recoup any deficiencies from the nominal guarantors
 23 which would likely result from a present-day sale of the Michigan Property. Even more revealing of
 24 Flagstar's true motivation with this proposed Settlement Agreement is the fact that under Michigan
 25 law, once a loan secured by real property is classified as being in default (*i.e.*, once the lender files a
 26 notice of default), payments generated by the property securing the loan in question are remitted
 27 directly to the lender, rather than to the borrower. At the present time, Flagstar has not issued a
 28 notice of default, has no right to receive the monthly rent the tenant pays to CP 10, and no right to

1 CP 10's Cash on Hand. If the status quo is preserved, Flagstar will be prevented from accessing
 2 these additional funds, and will be paid according to the underlying loan documents associated with
 3 the Secured Loan – as they are currently being paid.

4 As touched on above, the second prong of the guidelines discussed in *Wencke* addresses the
 5 time in the course of the receivership at which the motion is made. Here, the receivership is slightly
 6 over one year old. The *Wencke* court set forth its guidelines in the context of a receivership that, at
 7 the time of the decision, was in its seventh year. The receivership involved in this action is not close
 8 to termination, and this proposed settlement is premature.

9 Under the third prong of the guidelines set forth in *Wencke*, this Court is tasked with
 10 considering the merit of the claim Flagstar is pressing against the Receiver in order to prompt the
 11 Receiver's extant motion for approval of Settlement Agreement. When assessed from this
 12 perspective, Flagstar has absolutely no basis from which to seek any remedy, or merit any action at
 13 all on the part of the Receiver to modify or change the present stay. As the Receiver sets forth in his
 14 declaration, "[p]ayments under the Flagstar Loan are current" (Hebrank Declaration, at p. 2, ll.20-
 15 21), and the expenses of the Michigan Property, "including a recent payment of \$85,314.44 for
 16 2012-2013 real property taxes," are satisfied. (*Id.*, at p. 2, ll. 24-26). As yet, Flagstar has not filed a
 17 notice of default relating to the Secured Loan. Put simply, there is no reason for this Court to permit
 18 Flagstar to pressure the Receiver into proposing a Settlement Agreement between the Receiver and
 19 Flagstar - thereby imposing a detrimental settlement upon the CP 10 investors - when Flagstar's
 20 Secured Loan is not in financial default. The harm in doing so is brought into particular focus when
 21 doing so would enable Flagstar to pursue a default and deficiency-based remedy to the detriment of
 22 innocent investors, creditors and guarantors. This Court must not allow this to occur, and must
 23 reject the Receiver's proposed Settlement Agreement in its current form.

24
 25 **B. This Court Has The Equitable Authority to Demand Modification of the
 Proposed Agreement**

26 In the event this Court is inclined to approve a proposed settlement between the Receiver and
 27 Flagstar, this Court should demand that the parties modify any such proposed agreement such that
 28 the purported guarantors of the Secured Loan are protected from any deficiency claims Flagstar may

1 later seek to pursue. Such a modification is within this Court's broad equitable authority.

2 At the present time, Flagstar has not declared the Secured Loan to be in default, and has not
3 been damaged, as all payments from CP 10 to Flagstar are current. Nevertheless, should this Court
4 approve the proposed settlement as currently written, the Receiver will abandon the Michigan
5 Property, and Flagstar will sell the Michigan Property, likely for an amount less than is due on the
6 Secured Loan. This, in turn, would permit Flagstar to pursue the CP 10 investors and purported
7 personal guarantors for any such deficiency, further harming those investors to a degree beyond that
8 which the Defendants' fraudulent activities have already harmed them.

9 In *S.E.C. v. Byers*, 637 F.Supp.2d 166 (S.D.N.Y. 2009), , a case also involving defrauded real
10 estate investors and secured lenders, the court specifically addressed its equitable powers to approve
11 a proposed plan of distribution proffered by the receiver involved in that action which would result
12 in atypical treatment of secured creditors.. The plan proposed in *Byers* prohibited the secured parties
13 from pursuing deficiency claims based on an argument those secured parties were already receiving
14 a greater percentage on their secured claims than were the defrauded investors, and the court's
15 "broad equitable authority" permitted approval of unequal treatment under the plan (*i.e.*, by
16 authorizing a plan that precluded those secured lenders from increasing their returns by pursuing
17 deficiency claims in addition to the returns represented by turnover of the secured collateral to
18 them). (*Id.*, 637 F.Supp.2d at 183-184).

19 Here, the proposed settlement between the Receiver and Flagstar contains no such protection
20 of the defrauded investors, and instead does nothing to prevent Flagstar from not only taking over
21 and selling the Michigan Property (Flagstar's collateral under the Secured Loan), but also then
22 pursuing the purported personal guarantors of the Secured Loan (who are also CP 10 investors
23 defrauded by the Defendants) for any deficiency resulting therefrom. This Court must not approve a
24 proposed plan between the Receiver and Flagstar until such a plan contains additional protections for
25 the already victimized investors. The *Byers* holding stands for the proposition such disparate
26 treatment is not only acceptable, but within the court's equitable power to approve. As a result, this
27 Court must not approve the current form of the proposed settlement.

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III. CONCLUSION

For the foregoing reasons, Muraligopal opposes the Receiver's pending Motion for Order Approving Settlement Between Receiver and Flagstar Bank, F.S.B.

Dated: November 26, 2010

GAW, VAN MALE, SMITH, MYERS &
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