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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MANAGEMENT SOLUTIONS, INC., a
Texas corporation; WENDELL A.
JACOBSON; and ALLEN R. JACOBSON,

Defendants.

**OBJECTION OF MUTUAL OF
OMAHA LOANPRO, L.L.C.
TO MOTION FOR
MISCELLANEOUS ORDERS
RE ESTATE ADMINISTRATION
FILED OCTOBER 4, 2013**

Civil Action No. 2:11-cv-01165

Judge Bruce S. Jenkins

Mutual of Omaha LoanPro, L.L.C. (“MOLP”), files this objection to the Investor Group’s Motion for Miscellaneous Orders re Estate Administration Plan (“Motion for Miscellaneous Orders”) (Docket No. 1290), and respectfully requests that the Court deny the Motion and decline to grant the relief requested.

OBJECTION AND ARGUMENT

MOLP is a first lien secured creditor of Lakes Edge, LLC, an Ohio limited liability company (“Lakes Edge”), which is a receivership entity. The Note from Lakes Edge to MOLP matured on February 28, 2013 and remains unpaid and owing. As of August 5, 2013, the Loan principal and interest owed to MOLP (at the Note Rate) balance is \$7,991,802.56.¹

MOLP opposes the relief sought in the Motion for Miscellaneous Orders for the following reasons:

A. The Appointment Order Specifically Directs Liquidation *Post Haste*

This is a Liquidating Receivership. *See* Appointment Order (Docket No. 4). Paragraph 39 of the Appointment Order instructs the Receiver on how to liquidate Receivership Property (“ . . . list for sale . . . engage a broker . . . and take all necessary and reasonable actions to cause the sale of all real property in the Receivership Estate”). There is no direction, however, in the Appointment Order tying together liquidation of receivership property with either approval of a claims process or a plan of distribution. *See, e.g.*, Order Appointing Receiver ¶ 54 (“within ninety (90) days of entry of this Order, the Receiver shall file the Liquidation Plan. . .”). The Appointment Order contains no specific direction or timing as to a claims process or distribution plan. Although the Court (obviously) has the authority to amend or supplement its Appointment Order, there is no need for doing so now that implementation of the Receiver’s Second Liquidation Plan is underway.

¹ MOLP’s Note, Mortgage, and first lien security interest are defined in Docket No. 1095 at ¶¶ 1-3.

B. The Investor Group's Motion Will Cause More Delay

Now that the Second Liquidation Plan is proceeding, the Motion for Miscellaneous Orders, if granted, would involve more delay, add uncertainty, and create greater financial risk to the Receivership Estate. Postponing or delaying implementation of the Second Plan of Liquidation is unnecessary. The Investor Group has offered neither evidence nor authority as to how its new delay tactic would benefit the Estate. Furthermore, the Investor Group acknowledges Court approval of a "distribution plan . . . will be many months away." (Motion p. 6.) Indeed, before the Court can even approve a distribution plan, it must first approve and oversee a claims process. A claims process necessarily involves:

- * Filing a plan, hearing challenges to plan, and Court approval
- * The Receiver conducting claims process
- * Court resolution of disputes

These processes and procedures, in their still undefined state, will not happen quickly. The two year anniversary of this Receivership is a mere 60 days away and only now are the properties being offered for sale. Further delay undoubtedly leads to financial risk. That the multi-family Receiverships assets have positive equity today is no future assurance these same properties will not hereafter decline in value, thereby reducing the equity payable to the Receiver, or worse, decline in value below the debt owed.

Furthermore, although supposedly eschewing any desire to delay unnecessarily liquidation of the receivership properties that is precisely what the Investor Group proposes. (Motion pp. 6-7.) The Motion for Miscellaneous Orders is simply the Investor Group's back door attempt to require the Receiver to hold on to the secured properties longer, at substantial risk of loss to the estate.

The Investor Group also contends incorrectly that MOLP and other secured lenders have not been harmed by the passage of time. This contention fails to comprehend that but for the stay, secured lenders would have already extracted themselves from the receivership and its attendant costs, including attorneys' fees. The Lakes Edge Note has matured, the Lakes Edge Mortgage Lien is a first priority position, and there exists today sufficient equity to pay off the Note with the Receivership Estate receiving the cash equity above the debt.

C. Secured Lenders Have Already Unwritten the Costs of the Receivership

The Motion for Miscellaneous Orders also requests that claimants share “equally in the administration of expenses of this receivership”. (Motion pp. 8-9.) Here again, the Investor Group offers no specificity as to the relief it seeks. Nonetheless, the Investor Group asserts that it is “fundamental fairness that all those who are supposed to benefit from the institution of this receivership should share equally in the expense of the receivership”. (Motion p. 8.) To date, however, the secured creditors like MOLP have shouldered the lion's share of the Receivership costs. But for the stay order, MOLP could have foreclosed its security interest and received the proceeds from the sale of its secured collateral, to which it is contractually entitled. Indeed, the positive cash flow from the secured properties, such as Lakes Edge, that have underwritten the cost of the Receivership thus far. Furthermore, the Investor Group may not seek to better their unsecured creditor or equity position by infringing on the rights of secured creditors like MOLP. “[T]he position of a secured creditor, who has rights in the specific property, differs fundamentally from that of an unsecured creditor, who has none.” *See generally Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 550, 589 (1936). To the extent there is inequality, it arises from the secured lenders' priority position. “Because one debt is secured and another is not there is manifestly an

CERTIFICATE OF SERVICE

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