

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CASE NO. 6:21-cv-694-CEM/DCI

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

HARBOR CITY CAPITAL CORP.,
HARBOR CITY VENTURES, LLC,
HCCF-1, LLC,
HCCF-2, LLC,
HCCF-3, LLC,
HCCF-4, LLC,
HCCF-5, LLC,
HARBOR CITY DIGITAL VENTURES, INC.,
HCC MEDIA FUNDING, LLC,
JONATHAN P. MARONEY,

Defendants,

and

CELTIC ENTERPRISES, LLC and
TONYA L. MARONEY,

Relief Defendants.

_____ /

BENWORTH'S RESPONSE TO ORDER TO SHOW CAUSE

Non-Party, BENWORTH CAPITAL PARTNERS LLC, as servicer for
Mira Capital LLC, ZF Capital LLC, LN Investments LLC, Capital Partners 2
LLC, and Maria L. Santayana Living Trust (collectively, "Mira Lenders")

(together with the Mira Lenders, “Benworth”), by and through undersigned counsel, hereby files its response to the Court’s Order to Show Cause (“Order”) [ECF No. 136], and in support thereof, states:

LEGAL ARGUMENT

A. Personal Jurisdiction over Benworth

As a threshold matter, it is important to note that Benworth is a non-party to these proceedings, nominal or otherwise. To date, it has never been personally served under Fed.R.Civ.P. 4, 4.1(a), or 45(b). “The Supreme Court has not ... addressed specific jurisdiction over nonparties.” *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 136 (2d Cir.2014). Generally, “[t]he jurisdiction of the court over a party can be acquired either through service of process or their voluntary appearance.” *Ganpat v. Aventure Investment Realty, Inc.*, 2020 WL 13002514, at *4 (S.D.Fla. Oct. 28, 2020), *report and recommendation adopted sub nom.*, 2020 WL 13002513 (S.D.Fla. Nov. 12, 2020). “Fed.R.Civ.P. 4 governs service of summonses at the inception of civil actions. Service of all other process, other than a subpoena to a non-party for documents under Rule 45, is governed by Fed.R.Civ.P. 4.1.” *United States v. Evans*, 2013 WL 12382874, at *3 n.2 (N.D.Ga. June 17, 2013), *report and recommendation adopted*, 2013 WL 12382873 (N.D.Ga. July 8, 2013).

B. There is a Valid Dispute or Genuine Doubt as to Which Court has Exclusive Jurisdiction

It is critical to acknowledge that the Foreclosure Action encompasses more than just an *in rem* action against the Property, but also includes *in personam* relief on the underlying promissory note and guaranty against Celtic Enterprises LLC and Jonathon P. Maroney which arguably falls outside of the scope of the Receivership Order (or “Order Staying Litigation”) [Order, p.3; ECF No. 72-1]. While the Receivership Order names Celtic as a “Receivership Entity”, *Mr. Maroney is not*.

Since commencement of the Foreclosure Action in October 2021,¹ notwithstanding the state court’s order granting the Receiver’s motion to stay on June 9, 2022 (“State Stay Order”), there has been very limited case activity. Apart from responding to the Receiver’s filings and appeal of the State Stay Order to the Florida Fifth District Court of Appeal, Benworth has not taken any meaningful steps to prosecute the Foreclosure Action, as demonstrated by the docket. *See Exhibit “A”*.

The crux of the present disagreement pertains to the precise moment this Court acquired jurisdiction over the Property and to what extent it possesses exclusive jurisdiction over the Property’s disposition. While this

¹ Benworth’s state court counsel, Mr. Albert Rey, Esq., almost exclusively practices in state court. Benworth retained undersigned for the purpose of addressing the federal matters herein.

Court regrettably finds Benworth's actions contumacious, this case nonetheless presents a common situation with an uncommon set of factual circumstances and temporal occurrences.

Respectfully, Bethworth disagrees that this Court acquired jurisdiction of the Property "no later than August 11, 2021." [Order, p.5]. The Court's order initially appointing the Receiver on August 11, 2021 specifically stated that "***Ms. Donlon is not authorized to act as receiver until the Court enters an order concerning the scope of her powers.***" [ECF No. 68, ¶3]. The Receivership Order, which "fully laid out the scope of the Receiver's powers and enjoined all ancillary proceedings involving Receivership Property" [Order, p.2], was not ultimately adopted until November 8, 2021, after commencement of Benworth's Foreclosure Action in October. [Order, p.3; ECF No. 75]. Consequently, there is a legitimate dispute or genuine doubt as to whether this Court has jurisdiction over Benworth and its collateral.

"A foreclosure proceeding is a very specific legal proceeding to terminate a mortgagor's interest in property." *Bray v. PNC Bank, N.A.*, 196 F.Supp.3d 1282, 1288 (M.D.Fla.2016). "Cases have held that where there are *in rem* claims against the same property in both state and federal court, the court with jurisdiction over the property has exclusive jurisdiction to proceed." *Popescu v. JP Morgan Chase & Co.*, 2013 WL 5535867, at *3 (S.D.Fla. Oct. 7, 2013) (citing *Donovan v. City of Dallas*, 377 U.S. 408 (1964)). "The prior exclusive

jurisdiction doctrine, also known as the *Princess Lida* doctrine, was established by the United States Supreme Court as a way to resolve *in rem* and *quasi in rem* attachment conflicts between federal and state courts.” *Regions Bank v. Am. Leisure Resorts, Inc.*, 2013 WL 12164644, at *2 (S.D.Fla. June 28, 2013) (citing *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 466 (1939)). “The first court to assume control of the res exercises exclusive subject matter jurisdiction. ... A court must control the res in order to properly adjudicate *in rem* and *quasi in rem* claims. ... Essentially, for the *Princess Lida* doctrine to be invoked, both actions in state and federal courts must be *in rem*.” *Regions Bank*, 2013 WL 12164644, at *2 (internal citations omitted).²

While the appointment of a receiver places property *in custodia legis*, this Court did not authorize the Receiver to act absent entry of an order defining the scope of her powers. *In re Chira*, 343 B.R. 361, 368 (Bankr.S.D.Fla.2006), *aff'd*, 367 B.R. 888 (S.D.Fla.2007); *see* ECF No. 68, ¶3. Until entry of the Receivership Order, the Court was not in “possession” of the Property. *Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189, 196–97 (1935). “[O]f two courts having concurrent

² “Under the ‘local action rule,’ a suit primarily seeking transfer of title to real property is considered to be *quasi in rem* and is required to be brought in the county where the land is situated. ... Although a mortgage does not transfer legal title in Florida, it does subject the title to a lien, and a successful foreclosure would transfer legal title to the property. Here, if the receivership court voids [or impairs] the mortgage[], then [Benworth] would lose its liens and the foreclosure action would be over.” *Ocean Bank v. State, Dept. of Fin. Services*, 902 So.2d 833, 835 (Fla. 1st DCA 2005) (internal citations omitted).

jurisdiction *in rem*, one first taking possession acquires exclusive jurisdiction, ... it is exclusive only so far as its exercise is necessary for the appropriate control and disposition of the property. The jurisdiction does not extend beyond the purpose for which it is allowed, to enable the court to exercise it appropriately and to avoid unseemly conflicts. ... The other court does not thereby lose its power to make orders which do not conflict with the authority of the court having jurisdiction over the control and disposition of the property.” *Id.* at 198 (internal citations omitted).

This jurisdictional “tug of war” is compounded by Florida law governing the filing of *lis pendens* based on a recorded instrument. *See* Florida Statute § 48.23.³ “The doctrine of *lis pendens* is defined as the jurisdiction, power, or control which courts acquire over property involved in a suit pending the continuance of the action and until final judgment therein.” *De Pass v. Chitty*, 105 So. 148, 149 (Fla.1925); *In re Martin*, 278 B.R. 634, 640-41 (Bankr.S.D.Fla.2002) (under Florida law, “*lis pendens*” is jurisdiction, power, or control which courts acquire over property involved in pending suit). “[T]he court presiding over the action which created the *lis pendens* has exclusive jurisdiction to adjudicate any encumbrance or interest in the subject property

³ Benworth’s counsel(s) have been unable to locate any case authority on point which reconciles or otherwise discusses the legal principals set forth in *Princess Lida* with the statutory language of Florida Statute § 48.23, other than cases discussing the *Rooker-Feldman* doctrine which is inapplicable to the present facts.

from the date the *lis pendens* is recorded to the date it enters final judgment.” *U.S. Bank Nat. Ass'n v. Quadomain Condominium Ass'n, Inc.*, 103 So.3d 977, 979–80 (Fla. 4th DCA 2012) (citing *Seligman v. North American Mortgage Company*, 781 So.2d 1159, 1163 (Fla. 4 DCA 2001)) (court which adjudicated foreclosure of mortgage obtained after a *lis pendens* for the property was properly recorded in a marital dissolution action did not have jurisdiction because the “the court in the dissolution proceeding had jurisdiction over the property until final judgment”). “A notice of *lis pendens* also operates to protect its proponent, by preventing intervening liens that could impair or extinguish claimed property rights.” *Taylor v. Steckel*, 944 So.2d 494, 497 (Fla. 3d DCA 2006); see *Taylor v. Steckel*, 944 So.2d 494, 497 (Fla. 3d DCA 2006) (quoting *Avalon Assocs. of Delaware Ltd. v. Avalon Park Assocs., Inc.*, 760 So.2d 1132, 1134 (Fla. 5th DCA 2000)) (*lis pendens* “also enables a court ‘to deal with the property and preserve its jurisdiction over the subject matter.’ ”). “[T]he only way to enforce a property interest that is unrecorded at the time the *lis pendens* is recorded is by timely intervening in the suit creating the *lis pendens*—all other actions are barred.” *Quadomain Condo. Ass'n.*, 103 So.3d at 979.

As argued in its state court and appellate filings, Benworth’s position is that once the Foreclosure Action was filed and its *lis pendens* recorded, the state court acquired exclusive jurisdiction over the Property. “It is axiomatic that security interests in property are determined by state law, *Butner v.*

United States, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979), and that a receiver appointed by a federal court takes property subject to all liens, priorities, or privileges existing or accruing under the laws of the state, *Marshall v. New York*, 254 U.S. 380, 385, 41 S.Ct. 143, 145, 65 L.Ed. 315 (1920).” *Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir. 2017) (internal quotations omitted); *accord, e.g., Barnhill v. Johnson*, 503 U.S. 393, 398 (1992) (observing that, as a general matter, “‘property’ and ‘interests in property’ are creatures of state law”).

“Where the judgment sought is strictly *in personam*, for the recovery of money ... both a state court and a federal court having concurrent jurisdiction may proceed with the litigation, at least until judgment is obtained in one court which may be set up as *res adjudicata* in the other.” *Penn Gen. Cas. Co.*, 294 U.S. at 1195–96. Accordingly, a balance of interests may be accomplished here. Although *quasi in rem*, the Foreclosure Action can still be pursued in state court for the sole purpose of liquidating the amounts owed to Benworth while also enabling the Receiver to sell the Property through the court-approved sale process under 28 U.S.C. § 2001. This suggested course of action is commonly practiced procedure in bankruptcy court. *See, e.g., Bushong v. Theard*, 37 F.2d 690 (5th Cir.1930); *In re Brown*, 6:12-BK-01140-KSJ, 2013 WL 85131 (Bankr.M.D. Fla. Jan. 8, 2013), *aff'd sub nom.*, 526 B.R. 882 (M.D.Fla.2013), *aff'd sub nom.*, 572 Fed.Appx. 849 (11th Cir.2014); *In re Hrachova*, 582 B.R.

808 (Bankr.M.D.Fla.2018); *Matter of Royston Dev. Corp.*, 25 B.R. 715, 717 (Bankr.M.D.Fla.1982).⁴

Respectfully, the state court is well-suited to adjudicate this exact type of controversy. “Although the Florida laws are not complex, in light of the large number of foreclosure cases pending in the Florida state courts, consistency in the application of Florida law in these cases is an important consideration and is best left for the state courts to resolve.” *Popescu*, 2013 WL 5535867, at *3. “[C]ourts have broad discretion to abstain from hearing state law claims whenever appropriate in the interest of justice, or in the interest of comity with state courts or respect for state law.” *In re United Container LLC*, 284 B.R. 162, 176 (Bankr.S.D.Fla.2002) (citing 28 U.S.C. § 1452). “Comity for the state courts and the general principle that cases arising under state law should generally be tried in the state court weigh in favor of permissive abstention.” *Id.* at 177; *see, e.g., In re Brown*, 2013 WL 85131, at *2 (“allowing the parties to jump the state court tracks and remove their dispute to the federal bankruptcy forum would usurp the state court's authority over its own state

⁴ “We note, however, that our Circuit's bankruptcy law has fielded and answered questions similar to those presented here and specifically addressed what limits are imposed upon a district court under similar circumstances. We conclude bankruptcy law is both analogous and instructive here. After all, a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors.” *Sec. & Exch. Comm'n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1344 (11th Cir. 2017).

law issues, and, equally as troubling, would turn the bankruptcy court into a ‘last chance’ forum to resolve state court mortgage disputes.”).

Recognizing the significance of the jurisdictional conflict herein and acknowledging the consequences of the existing injunction, Benworth is in the process of preparing – and intends to file shortly – an appropriate motion for relief from the Receivership Order to dissolve the injunction to allow Benworth to proceed *lis alibi pendens*. “Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed.” *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 297 (1970); *see SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 764 F.3d 1327, 1346 (11th Cir.2014).

While Benworth eventually received notice of the Receivership Order, it was not until a month after its issuance [ECF No. 125-4] and not in a manner “reasonably certain to inform” Benworth as a non-party of the complete bar to its continued efforts to recover its defaulted mortgage loan – a recurrent problem in this case.⁵ *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950). “[T]he question of the extent to which a federal injunction applies to non-parties is governed by Federal Rule of Civil Procedure 65(d), not by state

⁵ Just as the Receiver never noticed a hearing on her “Unopposed” Motion to Approve Private Sale of Real Property [ECF No. 111] pursuant to 28 U.S.C. § 2011(b), the Receiver also never provided Benworth with notice of any of the prior temporary restraining orders or preliminary injunctions previously entered in this case.

law.” *ADT LLC v. NorthStar Alarm Services, LLC*, 853 F.3d 1348, 1354–55 (11th Cir.2017) (quoting *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 154 F.3d 1345, 1355 (Fed. Cir. 1998)). “Rule 65 requires that a party have notice of an injunction before that party may be bound by the injunction.” *Id.* (citing Fed.R.Civ.P. 65(d)(2)) (stating that an injunction binds only enumerated parties “who receive actual notice” of the injunction “by personal service or otherwise.”). “The purpose of a preliminary injunction is to maintain the *status quo* until the court can enter a final decision on the merits of the case.” *Axiom Worldwide, Inc. v. HTRD Group Hong Kong Ltd.*, 2015 WL 9673589, at *2 (M.D.Fla. Dec. 8, 2015), *report and recommendation adopted*, 2016 WL 81377 (M.D.Fla. Jan. 7, 2016) (citing *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011)). However, “[a]n order may not be ‘so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law.’” *ADT LLC*, 853 F.3d at 1354–55 (quoting *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 13 (1945)).

Fully appreciating the gravity of this Court’s Order to Show Cause, Benworth respectfully submits that its actions have never been designed with intent to deliberately disobey the directives of this Court, inflict harm, show disrespect, or otherwise offend this tribunal. Based on the arguments presented above, Benworth respectfully asserts that its actions were undertaken in a good faith effort to protect its collateral and does not warrant

sanctions or give rise to civil contempt under the circumstances. *See GCM PARTNERS, LLC v. Hipaline Ltd.*, 2021 WL 1526669, at *7 (N.D.Ill. Apr. 19, 2021) (quoting *Taggart v. Lorenzen*, 204 L. Ed. 2d 129 (2019)) (“The supreme Court has recognized that civil contempt is a “severe remedy” that “should not be resorted to where there is [a] *fair ground of doubt* as to the wrongfulness of the defendant's conduct.”) (emphasis original).

C. Improper Notice to Benworth and Defective Sale Procedures

Undersigned respectfully submits that Footnote 7 of Benworth’s Response [ECF No. 133] was an inadequate characterization of the insufficient notice Benworth generally takes issue with and was not intended to misrepresent the underlying facts or otherwise mislead the Court. Rather, Benworth was attempting to convey that it had not been *properly* noticed or served with the Receiver’s Motion to Approve Private Sale which Benworth maintains did not sufficiently adhere to the mandatory requirements of 28 U.S.C. § 2001(b).

Benworth’s counsel, Mr. Rey, filed a Motion to Quash Subpoena [ECF No. 78] which was granted, in part, on December 22, 2021, thereby quashing the Receiver’s subpoena. [ECF No. 79]. Mr. Rey’s appearance in these proceedings was for the singular purpose of moving to quash service and did

not waive Benworth's due process rights.⁶ While Mr. Rey continued to receive electronic notifications after his initial Motion, Benworth has never been personally served and continues to be a non-party to these proceedings. Had Mr. Rey not moved to quash the improperly issued subpoena, he would never have been automatically added to the Court's electronic filing list. The Certificate of Service included as part of the Receiver's Motion to Approve Private Sale does not reflect any service to Benworth via U.S. Mail or otherwise. As a non-party with constitutionally protected property rights, Benworth was entitled to adequate service and notice before its collateral was ordered to be sold free and clear of Benworth's mortgage interest, particularly where, in this case, the Receiver disputes the indebtedness and is seeking to reduce the amounts contractually owed to Benworth *without* filing a third-party lawsuit or summary proceedings to, at minimum, determine the validity or extent of Benworth's secured interests or the parties' respective rights to the sale proceeds. *See* Fed.R.Civ.P. 14(b); *S.E.C. v. Aquacell Batteries, Inc.*, 2008

⁶ *See Ganpat*, 2020 WL 13002513 at *4 ("for a filing to constitute a general appearance sufficient to waive a challenge to jurisdiction, 'it must seek some sort of affirmative relief on the merits of the case.'") (quoting *Segalis v. Roof Depot USA, LLC*, 178 So.3d 83, 85 (Fla. 4th DCA 2015)); *see also Whatley v. World Fuel Services Corp.*, 2020 WL 2616209, at *3 (S.D.Fla. May 22, 2020) (finding the defendant waived the right to object to the subpoena because the "failure to serve written objections to a subpoena within the time specified by Rule [45(d)(2)(B)] typically constitutes a waiver of such objection, as does failing to file a timely motion to quash"); *CITGO Petroleum Corp. v. Petroleum Logistics Serv. USA, Inc.*, 2022 WL 2341226, at *4 (S.D.Fla. Apr. 12, 2022) ("Generally, a non-party's failure to file written objections to a subpoena within the applicable timeframe results in waiver of the right to object to enforcement of the subpoena.").

WL 2915064, at *4 (M.D.Fla. July 24, 2008) (“summary proceedings are authorized by the Federal Rules and the controlling case law in [the Eleventh Circuit].”).

While the Receiver published notice of intent to privately sell the subject real property for \$2,925,000 to Anthony and Teresa Albanese at an undefined closing date [ECF No. 112-1],⁷ it appears there was never a hearing (or published notice of hearing) on the Motion to Approve Private Sale. Rule 2001(b) provides that “[a]fter a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby.” 28 U.S.C. § 2001(b) (emphasis added). Nothing in the published Notice of Sale gives notice of a pending Motion to Approve Private Sale. [ECF No. 112-1]. “Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.” 28 U.S.C. § 2001(b); *see Huntington Nat. Bank v. JS & P, L.L.C.*, 2014 WL 4374355, at *2 (E.D.Mich. Sept. 4, 2014) (“before confirming a sale, the Court must direct that the terms

⁷ Published on September 22, 2022, the same day the Motion to Approve Private Sale was filed. [ECF No. 111].

of the sale be published in a newspaper of general circulation at least ten days before confirmation of the sale. 28 U.S.C. § 2001(b).”).

While the Court found good cause to relieve the Receiver from *some* of the judicial sale requirements of Rule 2001(b) [ECF No. 113, p.2], there must still be a “*hearing with adequate notice given to all interested persons.*” *Fed. Trade Comm'n v. E.M. Sys. & Servs., LLC*, 2016 WL 11110381, at *3 (M.D.Fla. Mar. 4, 2016) (citing 28 U.S.C. § 2001(b)) (emphasis added). “While this Court has broad discretion over the terms and conditions of the sale, the notice requirement for a judicial sale of property is more strict.” *United States v. Little*, 2008 WL 2676808, at *2 (E.D.Cal. June 30, 2008). “[T]he Court may not waive the mandatory requirements of § 2001(b).” *Sec. & Exch. Comm'n v. EB5 Asset Manager, LLC*, 2016 WL 7508252, at *2 (S.D.Fla. Mar. 25, 2016) (citing *Huntington Nat'l Bank v. Big Sky Dev. Flint*, 2010 WL 3702361, at *2 (E.D.Mich. Sept. 16, 2010)); *see also Sec. & Exch. Comm'n v. Gity*, 2022 WL 832388, at *2 (S.D.Fla. Jan. 4, 2022) (requiring strict adherence to mandatory requirements of Rule 2001(b)).⁸ “The permissive language allowing the Court

⁸ *See SEC v. Yin Nan "Michael" Wang, et al.*, CV 13-7553 JAK (SS), 2015 WL 13950300, at *2 (C.D.Cal. Apr. 28, 2015) (“Numerous courts, including the Ninth Circuit, have recognized that the procedural provisions of section 2001(b) are mandatory and may not be waived by the court.”); *see United States v. Stonehill*, 83 F.3d 1156, 1162 (9th Cir.1996) (“private sales of real property” under section 2001(b) require the appointment of “three disinterested persons to appraise such property” and may not be confirmed at a price “less than two-thirds of the appraised value”); *Redus Florida Commercial, LLC v. College Station Retail Center, LLC*, 777 F.3d 1187, 1186 n.16 (11th Cir.2014) (“Courts have no power [under 28 U.S.C. § 2001(b)] to confirm a private sale at a price ‘less than two-thirds of the appraised value.’ ”);

discretion to determine what is in the best interests of the estate is ... limited by the minimum standards delineated by Congress of what satisfies the best interest standard. ... These standards cannot be waived by this Court.” *Huntington Nat. Bank*, 2014 WL 4374355, at *2. “The Court does not have discretion to waive the requirements of § 2001(b).” *Id.* at *2. “The purpose of the safeguards in 2001(b) is to prevent ‘the opportunity for frauds in private sales.’” *Id.* (quoting *Acadia Land Co. v. Horuff*, 110 F.2d 354, 354–355 (5th Cir.1940)); see *SEC v. Private Equity Mgmt. Group, LLC*, 2009 WL 10676006, at *3 (C.D.Cal. Nov. 20, 2009) (“What troubles the Court is that the Receiver’s proposed ‘pre–approval’ mechanism, at least as it applies to privately negotiated sales, does not comply with the appraisal and public notice components of the confirmation procedures prescribed in 28 U.S.C. § 2001(b). The plain language of the statute indicates that those components are mandatory—i.e., not within the Court’s discretion to forego.”).⁹

United States v. Brewer, 2009 WL 1313211, at *1 (M.D.Fla. May 12, 2009) (court’s power to authorize sale of real estate within a receivership estate is “limited” by the “requirements for sale set forth in 28 U.S.C. § 2001”); *S.E.C. v. T-Bar Resources, LLC*, 2008 WL 4790987, at *3 (N.D.Tex. Oct. 28, 2008) (“The procedures outlined in § 2001(b) define the Court’s authority to authorize the sale of real property. Accordingly, per the express terms of the statute, a court must have the assistance of three appraisals before confirming the private sale of real property.... Only upon reviewing the multiple appraisals may a court finally determine whether a proposed sale is in the best interests of the estate.”) (citations omitted).

⁹ It should be noted that the cases cited in the Report and Recommendation in support of deviating from the judicial sale procedures of Rule 2001(b) involved disposition of personalty, not realty. [ECF No. 113, p.2]; see *S.E.C. v. T-Bar Res., LLC*, 2008 WL 4790987, at *3 (N.D.Tex. Oct. 28, 2008) (“[I]n allowing courts to order the private sale of personal property, 28 U.S.C. § 2004 informs that courts are to follow the same procedures outlined in § 2001(b),

Here, the docket does not reveal that a hearing was ever held on the Receiver's Motion to Approve Private Sale (or publication of same) as required by Rule 2001(b). The stringent requirements of Rule 2001(b) "are, by the express terms of the statute, made conditions precedent to a valid sale. ... *A sale made without compliance to these requirements is void.*" *S.E.C. v. Kirkland*, 2007 WL 624278, at *2 (M.D.Fla. Feb. 23, 2007) (quoting *Acadia Land Co.*, 110 F.2d at 354-55) (internal quotations omitted) (emphasis added).

Although 28 U.S.C. § 2001(c) specifically excludes sales under Title 11, the bankruptcy code and rules of procedure, *i.e.*, 11 U.S.C. §§ 363, 102(1) and Fed.R.Bankr.P. 2002, 6004, and 6006, are informative¹⁰ of the necessary sale procedures and notice requirements rigorously applied and enforced by courts to ensure that all interested parties, including secured creditors, are properly noticed and apprised of the proposed dispositions of property which may impair or affect such creditor's rights. "[W]hile a federal district court has wide-ranging authority to supervise a receivership," it arguably does not have the authority to impair a "creditors' pre-existing state law security interest" just

'unless the court orders otherwise.' *Id.* Congress thus considered deviating from the rigors of § 2001(b)'s procedures in relaxing the process for the sale of personalty. The absence of any such authorization in the sale of realty suggests that Congress intended the more stringent procedures to be the rule when ordering the sale of real property.").

¹⁰ See, e.g., *Wells Fargo Bank*, 848 F.3d at 1344; *S.E.C. v. Elliott*, 953 F.2d 1560, 1572 (11th Cir.1992) (analyzing bankruptcy law in the receivership context).

like it does not have the authority to extinguish it. *Wells Fargo Bank, N.A.*, 848 F.3d at 1344.

Best practices for ensuring adequate notice would have been to personally serve Benworth via process server or certified/registered mail. *See, e.g.*, Fed.R.Civ.P. 4, 4.1(a), and 45(b).¹¹ This is the essence of what Benworth was trying to express in its Response: after the Court quashed the Receiver's subpoena, Benworth should have been adequately served with a copy of the Motion to Approve Private Sale (and notice of hearing) rather than through electronic delivery to Mr. Rey, who only appeared for the purpose of quashing the subpoena. The nature and substance of the Receiver's Motion to Approve Private Sale [ECF No. 111], and subsequent Motion to Determine Interest and Fees [ECF No. 125], potentially prejudices Benworth's rights, and should have been personally served upon Benworth to ensure adequate notice of the complete relief sought by the Receiver.

As discussed above, undersigned respectfully submits that Benworth's representation in Footnote 7 of its Response was regrettably ineffectively communicated by Benworth's counsel and based on valid due process concerns with the Receiver's sale process.

¹¹ This is emphasized by the fact that the Receiver believes that the "Mira Plaintiffs", rather than Benworth, are the true parties in interest to the subject mortgage loan and should "be required to respond to the Motion." *See* ECF No. 128, p.2 n.1 & p.4, ¶14.

WHEREFORE, for all the forgoing reasons, Benworth respectfully requests the Court discharge the Order to Show Cause against Benworth.¹²

Dated: February 13, 2023

Respectfully Submitted,

READ LAW PLLC

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By: /s/ Alexis S. Read
Alexis S. Read, Esq.
Fla. Bar No. 98084

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2023, a true and correct copy of the foregoing was served via Notice of Electronic Filing (CM/ECF) to all parties on the Court's Service List.

By: /s/ Alexis S. Read
Alexis S. Read, Esq.
Fla. Bar No. 98084

¹² Benworth expressly reserves the right to amend or supplement this Response.

EXHIBIT “A”

BECA - Brevard Electronic Court Application

05-2021-CA-052113-XXXX-XX

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MIRA HOLDINGS VS CELTIC ENTER Case Information

Case Number	Case Type	Filing Date	Case Status	Status Date	Judge	Jurisdiction	Charging Agency
05-2021-CA-052113-XXXX-XX	FCL-NON-HOMESTEAD \$250000 & >	11/08/2021	ORIGINAL PENDING	11/08/2021	SCOTT BLAUE	CENTRAL	NONE

Participants

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Type	Name	Participant Id	DL Number	Race	Gender	DOB	Address 1	Address 2	City State Zip
DEFENDANT (1)	CELTIC ENTERPRISES LLC	4072175					1712 PIONEER AVE		CHEYENNE, WY 82001-4406
DEFENDANT (2)	CENTRAL FLORIDA PRODUCT INSTALLATIONS LLC	4072176					412 VILLAGE VIEW LN		LONGWOOD, FL 32779-2610
DEFENDANT (3)	MARONEY JONATHAN PAUL	4072177					143 LANSING ISLAND DR		INDIAN HARBOUR BEACH, FL 32937-5355
DEFENDANT (4)	DOE J	4072178					143 LANSING ISLAND DR		INDIAN HARBOUR BEACH, FL 32937-5355
PLAINTIFF (1)	MIRA HOLDINGS LLC	4072170					NO ADDRESS INFORMATION AVAILABLE		
ATTORNEY FOR: P1	REY ALBERT D	4072181					12955 SW 42ND ST STE 6		MIAMI, FL 33175-2928
PLAINTIFF (2)	ZF CAPITAL LLC	4072171					NO ADDRESS INFORMATION AVAILABLE		
ATTORNEY FOR: P2	REY ALBERT D	4072181					12955 SW 42ND ST STE 6		MIAMI, FL 33175-2928
PLAINTIFF (3)	LN INVESTMENTS LLC	4072172					NO ADDRESS INFORMATION AVAILABLE		
ATTORNEY FOR: P3	REY ALBERT D	4072181					12955 SW 42ND ST STE 6		MIAMI, FL 33175-2928
PLAINTIFF (4)	CAPITAL PARTNERS 2 LLC	4072173					NO ADDRESS INFORMATION AVAILABLE		
ATTORNEY FOR: P4	ALVAREZ HUGO V	3313488					121 ALHAMBRA PLZ FL10		CORAL GABLES, FL 33134-4540
ATTORNEY FOR: P4	REY ALBERT D	4072181					12955 SW 42ND ST STE 6		MIAMI, FL 33175-2928
PLAINTIFF (5)	SANTAYANA MARIA L LIVING TRUST	4072174					NO ADDRESS INFORMATION AVAILABLE		
ATTORNEY FOR: P5	REY ALBERT D	4072181					12955 SW 42ND ST STE 6		MIAMI, FL 33175-2928

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View	Event Date	Document Number	Description	Page Count	Amount
	11/08/2021	1	COMPLAINT OR PETITION	64	
	11/08/2021	2	LIS PENDENS RECORDED IN THE OFFICIAL RECORDS	1	
	11/08/2021	3	CERTIFICATE OF NOTE IN POSSESSION	9	
	11/08/2021	4	ADMINISTRATIVE ORDER 21-24 PROPOSED CASE MANAGEMENT ORDER	3	
	11/08/2021		PROPOSED SUMMONS TO BE ISSUED	1	
	11/08/2021		PROPOSED SUMMONS TO BE ISSUED	1	
	11/08/2021		PROPOSED SUMMONS TO BE ISSUED	2	
	11/08/2021		PROPOSED SUMMONS TO BE ISSUED	2	
	11/08/2021		ASM: FORECLOSURE \$250000 AND >		1906.00
	11/08/2021		ASM: LIS PENDENS - FIRST PAGE		5.00
	11/08/2021		ASM: INDEX RECORDING NAMES > 4		5.00
	11/08/2021		ASM: ISSUE CIRCUIT SUMMONS		40.00

	11/08/2021		ORIGINAL FILING UPDATED		
	11/12/2021	5	SUMMONS ISSUED VIA E-MAIL TO ATTORNEY	1	05-2021-CA-052113-XXXX-XX
	11/12/2021	6	SUMMONS ISSUED VIA E-MAIL TO ATTORNEY	1	
	11/12/2021	7	SUMMONS ISSUED VIA E-MAIL TO ATTORNEY	2	
	11/12/2021	8	SUMMONS ISSUED VIA E-MAIL TO ATTORNEY	2	
	11/12/2021	9	NOTICE OF PAYMENT DUE	2	
	12/06/2021	10	NOTICE OF APPEARANCE	1	
	12/15/2021	11	MOTION TO STAY PROCEEDINGS	35	
	12/20/2021	12	NOTICE OF HEARING	2	
	01/18/2022	13	MOTION TO STRIKE	37	
	01/19/2022	14	NOTICE OF CANCELLATION OF HEARING	1	
	01/27/2022		CAL: HEARING		
	01/27/2022		CR: HEARING CANCELLED		
	03/07/2022	15	MOTION FOR DEFAULT BY COURT	9	
	03/07/2022	16	RETURN OR PROOF OF SERVICE	2	
	03/07/2022	17	RETURN OR PROOF OF SERVICE	2	
	03/07/2022	18	RETURN OR PROOF OF SERVICE	3	
	03/10/2022	19	NOTICE OF HEARING	2	
	04/07/2022	20	AFFIDAVIT REGARDING MILITARY SERVICE	3	
	04/11/2022	21	STIPULATION TO SUBSTITUTE ATTORNEY	1	
	04/18/2022	22	NOTICE OF HEARING	1	
	04/19/2022		CAL: HEARING		
	04/19/2022		CR: HEARING HEARD		
	06/06/2022	23	ORDER/NOTICE OF CASE MANAGEMENT ORDER REQUIREMENT	4	
	06/09/2022	24	ORDER GRANTING MOTION OR PETITION	3	
	06/23/2022	25	MOTION FOR REHEARING	10	
	06/27/2022	26	ORDER DENYING MOTION FOR REHEARING	2	
	07/11/2022		ASM: APPEAL CIRCUIT TO 5DCA		100.00
	07/11/2022	27	CIVIL NOTICE OF APPEAL TO FIFTH DISTRICT COURT OF APPEALS (5DCA) RECORDED IN THE OFFICIAL RECORDS	6	
	07/12/2022	28	FIFTH DISTRICT COURT OF APPEALS (5DCA) ACKNOWLEDGMENT - RECORD REQUIRED TO BE PREPARED	2	
	07/13/2022	29	FIFTH DISTRICT COURT OF APPEAL (5DCA) ORDER	1	
	10/26/2022	30	FIFTH DISTRICT COURT OF APPEALS (5DCA) ACKNOWLEDGMENT NO RECORD	2	
	01/03/2023		RSGN: CASELOAD REASSIGNMENT		
Total Number of Document Pages				220	

Complaints

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Complaint Date	Cause of Action	Disposition Date	Disposition Description
11/08/2021	FCL-NON-HOMESTEAD \$250,000 & >		

Financials

Print

Name	Receivable	Amount Assessed	Amount Waived	Amount Paid	Due Date	Balance
P 1	CO LIS PEND- 1ST PG	\$5.00	\$0.00	\$5.00		\$0.00
P 1	APPEAL CIR TO 5DCA	\$100.00	\$0.00	\$100.00		\$0.00
P 1	ISSUE CIR SUMMONS	\$40.00	\$0.00	\$40.00		\$0.00
P 1	INDEX REC NAMES > 5	\$5.00	\$0.00	\$5.00		\$0.00
P 1	FORECLOSE \$250,000 >	\$1,906.00	\$0.00	\$1,906.00		\$0.00
TOTALS:		\$2,056.00	\$0.00	\$2,056.00		\$0.00
TOTAL AMOUNT ELIGIBLE FOR A CIVIL LIEN:						\$0.00

Payments

Print

Receipt	Party	Memo	Event Description	Receipt Date	Amount	Payment Type	Received From
S225098	P 1	EFILING # 153077833	PMT: APPEAL CIRCUIT TO 5DCA	07/12/2022	\$100.00	REGULAR CASH	REY ALBERT D
S208316	P 1		PMT: LIS PENDENS - FIRST PAGE	11/15/2021	\$5.00	REGULAR CASH	A REY I EVORA

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S208316	P 1		PMT: INDEX RECORDING NAMES > 4	11/15/2021	\$5.00	REGULAR CASH	A REY I EVORA
S208316	P 1		PMT: FORECLOSURE \$250000 AND >	11/15/2021	\$1,906.00	REGULAR CASH	05-2021-CA-052113-XXXX-XX
S208316	P 1		PMT: ISSUE CIRCUIT SUMMONS	11/15/2021	\$35.00	REGULAR CASH	A REY I EVORA
B210090	P 1		PMT: ISSUE CIRCUIT SUMMONS	11/15/2021	\$5.00	REGULAR CASH	ALBERT REY PA
TOTAL PAID:					\$2,056.00		

Past Court Schedule

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Date	Time	Judge	Matter Type	Result
01/27/2022	02:30 PM	DAVID DUGAN	HEARING	CR: HEARING CANCELLED
04/19/2022	02:15 PM	DAVID DUGAN	HEARING	CR: HEARING HEARD

Judge History

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	Date Assigned	Case Type	Judge	Description
1	11/08/2021	FCL-NON-HOMESTEAD \$250000 & >	DAVID DUGAN	INITIAL ASSIGNMENT
2	01/03/2023	FCL-NON-HOMESTEAD \$250000 & >	SCOTT BLAUE	RSGN: CASELOAD REASSIGNMENT


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