UNITED STATES DISTRICT COURT
DISTRICT OF THE STATE OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. PATRICK CHURCHVILLE, CLEARPATH WEALTH MANAGEMENT, LLC Defendants, and CLEARPATH MUTLI-STRATEGY FUND I, L.P. CLEARPATH MULTI-STRATEGY FUND II, L.P. CLEARPATH MULTI-STRATEGY FUND III, L.P. HCR VALUE FUND, L.P. Relief Defendants	C.A. No. 1:15-cv-00191-S-LDA

WELLS FARGO BANK, N.A.'S REPLY TO RECEIVER'S RESPONSE TO OBJECTION TO RECEIVER'S PETITION TO SELL

Wells Fargo Bank, N.A. ("Wells Fargo"), as servicer and on behalf of the mortgagee, Bank of America, N.A. ("Bank of America"), hereby replies to the Receiver's response (ECF No. 69)("Response") to Wells Fargo's objection (ECF No. 68)("Objection") to the "Petition to Sell Condominium Located at 6 Whitney Court, Unit 10 at 'The Polo Club' (the "Property") via Private Sale free and Clear of Liens, Claims Mortgage and Encumbrances" (hereinafter "Petition to Sell," ECF No. 65). In its Objection, Wells Fargo requested that the Court defer the Petition to Sell, order the Receiver to produce a HUD-1 and permit Wells Fargo and Bank of America sufficient time to review it; or deny the Petition to Sell and grant relief to Bank of America to foreclose. The Receiver responded by requesting approval of the sale and the recovery of all of

his unliquidated costs and fees, or alternatively, the grant of relief from stay to Wells Fargo, subject to the recovery of all of his unliquidated costs and fees. Because the Receiver proceeded imprudently with a sale that he admits is not beneficial to the receivership estate, and without the consent or approval of the secured lender on the Property, his request for costs and fees should be denied. While Wells Fargo and Bank of America both remain willing to review a properly documented proposal for a short sale, given the Receiver's unwillingness to produce a HUD-1 statement, and the lack of equity in the Property, the Court should order the stay lifted and permit Wells Fargo to proceed to a non-judicial foreclosure.

FACTS AND PROCEDURAL HISTORY RELEVANT TO THE REPLY

Wells Fargo is the servicer for Bank of America. On July 16, 2015, Wells Fargo advised Churchville that his loan was in default for failure to make payments due. (Objection, Exhibit C.) On July 22, 2015, Wells Fargo assigned the Mortgage to Bank of America, N.A. ("Bank of America"). (Objection, Exhibit D.) The Assignment of Mortgage was recorded on August 3, 2015 in Book 861 at Page 305 of the Land Evidence Records of the Narragansett Town Clerk. *Id.*

On July 30, 2015, the Court granted the SEC's Motion to Appoint a Receiver (hereinafter "Appointing Order," ECF No. 16). Pursuant to the Appointing Order, the Court took exclusive jurisdiction and possession of the assets of the Receivership Defendants and gave the receiver broad powers to manage and control the assets. The Appointing Order also imposed a stay of litigation in any and all ancillary proceedings, including "foreclosure actions." (*Id.* ¶32)

On August 18, 2015, the Receiver ran a preliminary title search on the Property, identifying two mortgagees, Bank of America and Citibank Federal Saving Bank, with mortgages having a combined face value of $480,000.00 (Petition to Sell at pg. 2). The Receiver then gave the mortgagees notice. *Id.* Without seeking the mortgagees' consent or approval, the Receiver voluntarily marketed the Property. The Receiver communicated to Wells

Fargo's counsel on April 8, 2016 that he had "conditionally accepted an offer for the property located at 6 Whitney Court for the purchase price of $294,750 . . . expressly subject to the approval of the RI Federal Court " and that he "intend[ed] to file a Petition to Sell which will set forth the detail of the sale in the next few days." (Response at Exhibit A) He did not ask Wells Fargo's counsel to provide a payoff amount until more than two weeks later, on April 25, 2016. (*Id.*). The payoff amount was disclosed in the Objection. The short delay that was needed for Wells Fargo to properly evaluate and comply with its legal obligations under the Gramm-Leach-Bliley Act before properly disclosing Mr. Churchville's loan balance information was necessary and reasonable, and caused the Receiver no harm.[1] Accordingly, the Receiver engaged a real

[1] Wells Fargo could not just provide payoff information to the Receiver without verifying that the disclosure would be lawful. The Receiver is not the borrower of the mortgage loan that Wells Fargo is servicing. After some interim communications, on May 4, 2016, Wells Fargo's counsel apprised the Receiver that "[t]he payoff is confidential, non-public information of a consumer borrower that is protected by the Gramm-Leach-Bliley Act, 15 U.S.C.§ 6801, *et seq*. [that] Wells Fargo cannot provide . . . in the absence of the borrower's written consent or a court order." *See* (Response at Exhibit A). Wells Fargo is obligated by law to ensure that it protects the financial privacy rights of the consumer borrowers of the loans that it services. "The relevant portion of the Gramm–Leach–Bliley Act provides that '[a] financial institution may not disclose nonpublic personal information [of a consumer borrower] to a nonaffiliated third party[.]'" *Lamarque v. Centreville Sav. Bank*, 22 A.3d 1136, 1138 n.4 (R.I. 2011). The Receiver is a non-affiliated third party within the meaning of the Graham-Leach-Blilely Act; he is not an affiliate of Wells Fargo. Accordingly, for Wells Fargo to provide the requested payoff to the Receiver, a recognized exception must apply.

On May 4, 2016, the Receiver wrote back that the federal court order appointing him "vests [the Receiver] with all right and authority regarding Mr. Churchville's assets, including the authority to liquidate this property" and that the Receiver would be "advising [the court] that Wells Fargo is refusing to provide the payoff because it does not acknowledge or recognize the authority granted by the Court's Order." (*Id.*). On May 4, 2016, Wells Fargo's counsel replied to the Receiver that per his request counsel had "reviewed the Order Appointing Receiver (Dkt No 16) . . . [was] consulting with Wells Fargo about it and will have its response for [the Receiver] shortly." *See* email dated May 4, 2016, attached hereto as **Exhibit A**. On May 5, 2016, Wells Fargo's counsel wrote that counsel had "consulted with Wells Fargo and we'll be providing the payoff in response to the [Receiver's Petition to Sell] that was filed yesterday." (Response at Exhibit A). On May 23, 2016, Wells Fargo filed its response, setting that the mortgagee "holds a valid, perfected first priority lien on the Property to secure payment of a Note with an outstanding balance in excess of $344,000," and further stated that "as of May 1, 2015, the total payoff amount owed to Bank of America was $344,353.43, exclusive of attorney's fees and costs." (Dkt. No. 68 at 1, 5.) Wells Fargo's disclosure of this information in a responsive pleading filed within this action was lawfully made pursuant to the express judicial process exception of the Gramm-Leach-Blilely Act, 15 U.S.C. § 6802(e)(8). Case law has recognized that when, as here, the information is disclosed in a filed court pleading, the disclosure does not violate the Gramm-Leach-Bliley Act. *See*, e.g., *Guarrielo v. Family Endowment Partners, LP*, No. 14-cv-13351-IT, 2015 WL 4762844, at *2 (D. Mass. Aug. 12, 2015). Additionally and independently, the Receiver's appointment order that the Receiver pointed counsel to is an additional source of authority permitting the disclosure. *See Lamarque*, 22 A.3d at 1141 (holding that the financial institution's disclosure of its consumer borrower's loan balance to the purchaser of a property at foreclosure did not violate the Gramm-Leach-Bliley Act because the purchaser had obtained title to the property at the time of the disclosure).

estate broker, marketed the property for sale, and obtained his proposed offer, all before he asked Wells Fargo's counsel to provide a payoff figure.

On May 4, 2016, the Receiver filed the Petition to Sell. Citing the authority vested in him by Paragraph 38 of the Appointing Order, the Receiver sought the Court's authorization to accept and consummate the sale transaction in accordance with the Purchase and Sale Agreement ("P&S") attached to the Petition to Sell as Exhibit A. The Receiver noted that the $295,000.00 purchase price identified in the P&S would not fully satisfy the first or second mortgages recorded against the Property, and further noted that "the appraisal obtained for the Property identifies a current market value that is substantially less than the balance of the Wells Fargo/BOA and Citibank mortgage liens." (*Id.* at IV). The Receiver requests that the Court enter an order authorizing the sale of the Property free and clear of any and all liens, claims, mortgages and encumbrances.

The Court scheduled an initial hearing for May 16, 2016. Undersigned counsel for Wells Fargo advised the Court that the Receiver's proposed short sale of the Property was presently being evaluated, and further that Wells Fargo would expedite the process as much as possible and would file a response to the Petition to Sell as required by May 23, 2016. Counsel for Wells Fargo subsequently told the Receiver that a HUD-1 was required to evaluate the short sale. On Friday May 20, 2016, the Receiver advised undersigned counsel that he "hasn't seen [a HUD-1" and hasn't discussed with the buyers counsel about [sic]," that "title counsel would prepare," and further that "[w]e will need a decision from the Bank without the HUD. Unit there is final approval title counsel isn't going to move forward preparing for a closing that may not be approved." (Objection, Exhibit E.)

ARGUMENT

Because the Receiver proceeded imprudently with a sale that he admits is not beneficial to the receivership estate, and without the consent or approval of the secured lender on the Property, his request for costs and fees should be denied. This Court should not permit a surcharge upon mortgagee's collateral for costs which do not benefit the mortgagee or Receivership estate. While Wells Fargo and Bank of America both remain willing to review a properly documented proposal for a short sale, given the Receiver's unwillingness to produce a HUD-1 statement, and the lack of equity in the Property, the Court should order the stay lifted and permit Wells Fargo to proceed to a non-judicial foreclosure.

1. The Receiver Should Not Have Incurred Costs Selling the Property.

The Receiver should not have incurred costs attempting to sell the Property. Incurring these liabilities is inconsistent with his fiduciary duties, the terms of the Receivership Order, and prudent management of Receivership assets.

Forging ahead with hiring a broker and marketing the Property without the consent and approval of Wells Fargo and Bank of America is not consistent with the Receiver's fiduciary duties to creditors of the estate.[2] The Receiver admits that he ran title and knew, or should have known, in August, 2015, that the Property was subject to liens in excess of its value. A prudent receiver does not incur liabilities without a legitimate expectation of benefit to the estate. A prudent receiver contacts the secured lender and obtains approval and consent to a surcharge.

The proposed sale violates the terms of the Appointing Order. Paragraph 38 of the Appointing Order authorizes the Receiver to sell real property "on terms in in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization

[2] Under Rhode Island law, the Receiver's duties run to creditor of the estate. Lyons, *Receivers, Ethics, Conflicts and Confidentiality*, 57 APR R.I. B.J. 5, p. 7, n. 10 (2009)

of the true and proper value of such real property." (Appointing Order, ¶38.) The Receiver has done neither. The Receiver admits "there are no surplus funds that will benefit the Receivership Estate from this sale". (Response, p. 5.) Additionally, his proposal does not take "due regard to the realization of the true and proper value of such real property." Instead, the Receiver proposes to sell Property at less than its appraised value and for less than is owed to the holder of a valid, perfected, first priority lien.

Because the Receiver acted imprudently and outside the mandate of the Appointing Order, his requests for costs and fees should be denied.

2. The Receiver Should Have Abandoned the Property.

The Receiver should have abandoned the Property because it is of inconsequential value to the estate. Instead, he incurred Receivership Estate liabilities. For about $1,000 in combined fees and costs, the Receiver could have analyzed the title and appraisal and decided to abandon the Property. Nothing in the Appointing Order compelled him to conduct a sale. The Receiver's contention that Appointing Order "specifically directs" him to sell the Property is false. The Appointing Order "authorizes" him to conduct a sale, but does not "specifically direct" a sale. A comparison of encumbrances to value would have indicated that the Property was burdensome to the estate and of inconsequential value. Instead of incurring liabilities or expending Receivership Assets in pursuit of a sale with "no surplus funds that will benefit the Receivership Estate", the Receiver should have abandoned the Property.

3. The Receiver Is Not Entitled To Fees And Expenses Which Do Not Directly And Materially Benefit Bank Of America.

Under both Rhode Island state law and the federal Bankruptcy Code, a surcharge is only available to the extent it materially benefits the secured lender. *See*, *South County Sand & Gravel Co. v. Bituminous Pavers Co.,* 274 A.2d 427, 430 (RI 1971); 11 U.S.C. §506(c). Here, the

proposed sale is of modest benefit to Bank of America, to the extent that costs of foreclosure are avoided, but these benefits are speculative, as the Property is being sold at a discount from its appraised value. Under no circumstances should Bank of America be surcharged if the Property is not sold. Accordingly, as set forth in the Objection, the most the Receiver can surcharge Bank of America is the cost of foreclosure, and only in the event the Property is actually sold.

In *South County Sand & Gravel*, the Court noted the judicial rule that "permits receivership expenses to be taxed against encumbered property when the secured creditor or his property has been benefited or otherwise advantaged by the receivership proceedings and then only in proportion to the extent of the benefit or advantage conferred." *Id.* at 244-45 (collecting cases). The same rule applies under section the Bankruptcy Code. Section 506(c) is an exception to the general rule that the bankruptcy estate absorbs administrative costs.[3] *In re K&L Lakeland, Inc.* 128 F.3d. 203, 207 (4th Cir. 1997). Section 506(c) requires a debtor to prove that: 1) the costs and expenses of sale were reasonable; 2) the costs and expenses were necessary; and 3) the lender benefited from the sale. 11 U.S.C. § 506(c); *In re Parque Forestal, Inc.*, 949 F.2d 504, 512 (1st Cir. 1992). General administrative costs cannot be recovered by a debtor under section 506(c); such costs must instead be paid from the bankruptcy estate. *In the Matter of Combined Crofts Corp.*, 54 B.R. 294, 297 (Bankr. W.D. Wis. 1985); *see also In the Matter of Iberica Mfg., Inc.*, 180 B.R. 707, 712 (Bankr. D.P.R. 1995) (administrative costs, including attorneys' fees, not recoverable against secured creditor absent a showing of a resulting benefit to the creditor). The most important element of the section 506(c) test, as well as the most difficult to prove, is that

[3] 11 U.S.C. § 506(c) provides as follows:

> The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claims.

the secured creditor received a direct and quantifiable (not qualitative or generalized) benefit. *In re Evanston Beauty Supply, Inc.*, 136 B.R. 171, 176 (Bankr. N.D. Ill. 1992); *see also Combined Crofts*, 54 B.R. at 297 (same). "Courts construing 506(c) appear to require the debtor-in-possession, who bears the burden of proving the benefit, to show that absent the costs expended the property would yield less to the creditor than it does as a result of the expenditure." *In re Crutcher Concrete Construction,* 218 B.R. 376, 380-81 (Bankr. S.D. Ky. 1998); *In re Hiddleston*, 162 B.R. 13, 16 (Bankr. D. Kan. 1993); *Brookfield Prod. Credit Assoc. v. Borron*, 36 B.R. 445, 448 (E.D. Mo. 1983) (same).

South County Sand & Gravel presented the "unusual" circumstance where a receivership estate had no unencumbered assets, and the receivers, if they were to be reimbursed for their expenses and compensated for their services out of that estate, had to resort to receivables which were validly assigned to a trust company and which, even if fully collected, will not satisfy its claim against the insolvent. The Court noted that in this situation, a conflict develops between the receiver and the secured creditor, because "the receiver naturally looks in whole or in part to the encumbered property for his fees and expenses, and the secured creditor just as naturally insists that his security interest should not be diminished by the receivers' charges at least until what is due and owing has been fully paid." *Id.* at 244. In *South County Sand & Gravel*, the receivers were seeking to recover their expenses in contesting the validity of the trust company's status as secured creditor. The Court applied the rule and found "no justification whatsoever for allowing the receivers a $1,500 fee for contesting the validity of the security interest in the accounts." The secured creditor did not seek their appointment, and they were not appointed to look after its interests. The Court found that "under no conceivable theory was [the creditor's] secured position in any way benefited or advantaged by the receivers' antagonism," and it would

be a "harsh and manifestly unjust rule which in such circumstances would require the [creditor] to pay reparations to the receivers for their unsuccessful attempts to cut down its contractual rights."

Here, the Receiver has asked this Court for authority to surcharge Bank of America's collateral for "substantial fees and costs to secure, insure, protect, market and sell the Property." These amounts are unliquidated and no doubt contain substantial fees for attempting to surcharge Bank of America. Wells Fargo has requested a HUD-1 to evaluate the expenses that the Receiver proposes to deduct from the gross proceeds of sale. Neither a HUD-1 nor itemization has been provided. The "substantial fees" no doubt include the Receiver's wrangling over his authority to sell the Property, and his attempt to compromise Bank of America's Mortgage, neither of which is surchargeable. These charges are not necessary. "'Necessary' costs appear to be those that are *unavoidably incurred* by the trustee or debtor in possession in the preservation or disposal of the secured property." *Combined Crofts*, 54 B.R. at 297 (emphasis added); *see also Iberica*, 180 B.R. at 713 (same). These costs are not reasonable. As set forth in the Objection, the "reasonableness" of costs under section 506(c) is measured by the amount that the secured creditor would have incurred in foreclosing on the property on its own behalf. 4 Collier on Bankruptcy ¶ 506.05[5] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.); *Combined Crofts*, 54 B.R. at 297; *Evanston*, 136 B.R. at 176.

Because the Receiver has failed to establish that his costs and fees were necessary, reasonable and benefited Bank of America, they should be denied.

4. The Receiver's Actions, Not Wells Fargo's, Caused Damage to the Estate.

Remarkably, the Receiver blames Wells Fargo for inaction, while shirking responsibility for his own actions. Wells Fargo was stayed by the Appointing Order. Wells Fargo had no duty

to move for relief to foreclose or any duty to foreclose.[4] The Receiver, on the other hand, had an affirmative duty to prudently discharge his fiduciary obligations to the Receivership Estate, including Bank of America, as a creditor of that estate.

5. The Receiver Is Not Entitled To Sell The Property Free And Clear Of Bank Of America's Mortgage.

The Objection provides case law support for the propositions that neither Rhode Island law nor federal law permit the Receiver to compel a short sale and sell free and clear of Bank of America's lien. (Objection, pp. 5-8.) The Receiver fails to cite authority permitting a short sale. The right to sell free and clear is not unfettered. For guidance, this Court should look to the bankruptcy analog. There, if the value is insufficient to satisfy the liens, the property cannot be sold without the creditor's assent. *See, e.g., In re LCC Fin. Corp.,* No. 02-12846-MWV, 2002 WL 33894816, at *2-3 (Bankr. D.N.H. Dec. 10, 2002). Section 363(f) of the Bankruptcy Code empowers the trustee of an estate to sell the estate's property "free and clear of any interest in such property of an entity" if any one of the following five conditions is present: (1) an applicable non-bankruptcy law permits such a sale, (2) the entity at issue consents, (3) the interest is a lien and the property's selling price is greater than the aggregate value of all liens on such property, (4) the interest is in a bona fide dispute, or (5) the entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f). Subsections (1) cannot be satisfied because there is no statutory or case law authority to modify Bank of America's rights. Subsections (2) and (4) are inapplicable, leaving only (3) and (5). The Receiver admits he cannot satisfy subsection (3), because Bank of America's mortgage alone

[4] No state or federal court in Rhode Island appears to have found a fiduciary relationship between borrower and lender. *In re Belmont Realty Corp.*, 11 F.3d 1092, 1101 (1st Cir. 1993) (citing *Reid v. Key Bank of Southern Maine, Inc.*, 821 F.2d 9, 17 (1st Cir. 1987)); *see also Fleet National Bank v. Liuzzo,* 766 F.Supp. 61, 68 (D.R.I. 1991) (granting summary judgment in favor of lender, finding no evidence that lender and borrower intended a fiduciary relationship beyond relationship of debtor-creditor).

exceeds the proposed sale price. Subsection (5) only applies to second and third lienors, who could be subject to equitable foreclosure and compelled to accept money satisfaction.

For the foregoing reasons, the Receiver's request to sell free and clear should be denied.

6. Additional Reply Points.

The Receiver's allegation that the "assignment to BOA was recorded post-appointment and without leave of court" is gratuitous, irrelevant and should be stricken. Nothing in the Appointing Order restrained assignment of the Mortgage. Further, an assignment four days after the entry of the Appointing Order and prior to its service is not a violation of the Appointing Order.

The Receiver's citation to the "problems and inconvenience to a ready, willing and able Buyer for the Property" demonstrate confusion over or disregard of the Receiver's fiduciary duty to creditors, including Bank of America. The Receiver owes the buyer no duty. The Receiver owes a fiduciary duty to the creditors. The Receiver cannot justify his disregard for a creditor's right with convenience for the buyer.

It is regrettable that the Receiver has chosen to fight with Wells Fargo instead of cooperate and supply the information necessary for Wells Fargo to make an informed decision. Given the present circumstances, however, including the admitted lack of equity in the Property, the Receiver should cut the estate's losses and abandon the Property, or alternatively, this Court should deny the request for expenses and lift the stay so that Wells Fargo may foreclose on the Property.

CONCLUSION

For the foregoing reasons, Wells Fargo, as servicer and on behalf of the mortgagee, Bank of America, N.A., objects to the Petition to Sell and requests that the Court:

(a) defer the Petition to Sell, order the Receiver to provide the HUD-1 form and allow Wells Fargo additional time upon receipt to evaluate and respond to the proposed sale; or

(b) exercise its authority under Paragraph 39 of the Appointing Order to reject the Receiver's proposed sale and deny the Petition to Sell;

(c) grant Wells Fargo relief from the injunction entered in aid of the Receivership to foreclose;

(d) deny the Receiver's unliquidated request for costs and fees; and

(e) grant such other and further relief as is just and equitable.

Respectfully submitted,

/s/ Lauren J. O'Connor

Lauren J. O'Connor (Bar# 7808)
Seyfarth Shaw LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210-2028
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Dated: May 26, 2016

CERTIFICATE OF SERVICE

I, Lauren O'Connor, hereby certify that this document has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 26, 2016.

/s/ Lauren J. O'Connor
Lauren J. O'Connor

O'Connor, Lauren J

From: O'Connor, Lauren J
Sent: Wednesday, May 04, 2016 5:58 PM
To: Stephen DelSesto
Cc: Julie A. Zaccagnini; Bizar, David
Subject: Re: Churchville

Stephen:

Per your request I have reviewed the Order Appointing Receiver (Dkt No 16). I am consulting with Wells Fargo about it and will have its response for you shortly. Thank you.

Lauren J. O'Connor
Sent from my iPhone

On May 4, 2016, at 4:36 PM, Stephen DelSesto <sdelsesto@dbslawfirm.com> wrote:

> Lauren
>
> If you review the federal court order appointing me, you will see that it vests me with all right and authority regarding Mr. Churchville's assets, including the authority to liquidate this property. Also, I'm not sure how Wells Fargo/ BoA will be able to take a position on my Petition or be entitled to any distribution without disclosing the current payoff to me.
>
> Based on this position I will need to file a supplemental with the Court advising that Wells Fargo is refusing to provide the payoff because it does not acknowledge or recognize the authority granted by the Court's Appointing Order.
>
> Thank you.
>
> Stephen F. Del Sesto, Esq.
> Donoghue Barrett & Singal
> One Cedar Street
> Suite 300
> Providence, RI 02903
> T: 401.454.0400
> F: 401.454.0404
> sdelsesto@dbslawfirm.com
> www.dbslawfirm.com
>
> On May 4, 2016, at 4:06 PM, O'Connor, Lauren J <loconnor@seyfarth.com> wrote:
>
> > Stephen and Julie:
> >
> > The payoff is confidential, non-public information of a consumer borrower that is protected by the Gramm-Leach-Bliley Act, 15 U.S.C.A. § 6801 et seq.- Wells

Fargo cannot provide this information in the absence of the borrower's written consent or a court order.

Thanks,
Lauren

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loconnor@seyfarth.com | www.seyfarth.com

SEYFARTH SHAW

From: Julie A. Zaccagnini [mailto:jzaccagnini@dbslawfirm.com]
Sent: Tuesday, May 03, 2016 3:57 PM
To: O'Connor, Lauren J
Cc: Stephen DelSesto
Subject: RE: Churchville

Thank you. I appreciate your assistance.

Julie A. Zaccagnini
Paralegal

One Cedar Street
Suite 300
Providence, RI 02903
T 401-454-0400
F 401-454-0414
jzaccagnini@dbslawfirm.com
www.dbslawfirm.com

From: O'Connor, Lauren J [mailto:loconnor@seyfarth.com]
Sent: Tuesday, May 03, 2016 3:50 PM
To: Julie A. Zaccagnini
Cc: Stephen DelSesto
Subject: RE: Churchville

Julie: I will get back to you on this tomorrow. Sorry for the delay. Thanks.

Lauren J O'Connor | Seyfarth Shaw LLP
Seaport East | Two Seaport Lane, Suite 300 | Boston, Massachusetts 02210-2028
Direct: +1-617-946-4924 | Fax: +1-617-790-6788
loconnor@seyfarth.com | www.seyfarth.com

SEYFARTH SHAW

From: Julie A. Zaccagnini [mailto:jzaccagnini@dbslawfirm.com]
Sent: Tuesday, May 03, 2016 3:15 PM
To: O'Connor, Lauren J
Cc: Stephen DelSesto
Subject: RE: Churchville

Attorney O'Connor,

Following up on the below. Can you please provide a payoff, or estimated payoff, for inclusion in the Petition to Sell? It's imperative that the Petition be filed within the next few days.

Thank you,
Julie

From: Julie A. Zaccagnini
Sent: Wednesday, April 27, 2016 7:12 PM
To: 'O'Connor, Lauren J'
Cc: Stephen DelSesto
Subject: RE: Churchville

Attorney O'Connor,

The Petition has been amended to reference that only Citibank (second mortgage holder) has not contacted the Receiver. Do you have an anticipated timeframe as to when you expect the payoff, or at least an estimated payoff, so the Petition can be finalized and filed with the Court?

Thank you,
Julie

From: O'Connor, Lauren J [mailto:loconnor@seyfarth.com]
Sent: Tuesday, April 26, 2016 4:26 PM
To: Stephen DelSesto
Cc: Julie A. Zaccagnini
Subject: RE: Churchville

Thanks Stephen. I have forwarded this information to the bank, and am waiting to hear from them as to the proposed sale price and payoff amount. The draft

petition states that you are seeking to withhold from the sale price your fees, costs and expenses incurred in connection with the marketing and sale of the property. What is that amount? I would also request that you remove the language in the bolded paragraph stating that "neither mortgagee has contacted the Receiver."

Thanks, Lauren

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loconnor@seyfarth.com | www.seyfarth.com

SEYFARTH SHAW

From: Stephen DelSesto [mailto:sdelsesto@dbslawfirm.com]
Sent: Monday, April 25, 2016 3:41 PM
To: O'Connor, Lauren J
Cc: Julie A. Zaccagnini
Subject: Churchville

Dear Lauren

It was a pleasure speaking to you. As discussed, attached is a copy of the appraisal that I obtained dated September 2, 2015. Also attached are copies of the Notice to Wells Fargo/BOA and the draft Petition to Sell. Please review and contact me with any questions.

As an additional request, could you please provide me with a current payoff amount that I can share with the Court.

Thank you.

Sincerely,
Stephen