

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

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Civil Action No. 4:11-cv-655

v.

JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.

**AMENDED MOTION FOR SHOW CAUSE HEARING REGARDING RECOVERY OF
RECEIVERSHIP ESTATE ASSETS AND BRIEF IN SUPPORT**

TO THE HONORABLE COURT:

COMES NOW Keith M. Aurzada as Receiver (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Defendants”), by and through his undersigned counsel, hereby files this Motion for Show Cause Hearing Regarding Recovery of Receivership Estate Assets and Brief in Support (the “Motion”) and respectfully shows the Court as follows:

I.

INTRODUCTION

1. Pursuant to the Orders of this Court, the Receiver is tasked with taking exclusive custody and control of all assets and records of, or traceable to, the Defendants for the benefit of the Receivership Estate and ultimately the investors and creditors of Defendants. Through his

investigation, the Receiver has identified thousands of residential real estate mortgages and promissory notes that Defendants have owned, serviced, or contracted to purchase or acquire (the “Notes”). The Receiver has received conflicting reports of whether the Notes are assets of the Receivership Estate.

2. At this time, several entities that are not Defendants have asserted an interest in many of the Notes, including Cavco Holdings, LLC; Equitas Housing Fund III, LP; Equitas Housing Fund, LLC; ER, LLC; Harbour High Yield Fund, LLC; Harbour Internal Fund, LP; Harbour Portfolio I, LLC; Harbour Portfolio II, LLC; Harbour Portfolio III, LLC; Harbour Portfolio IV, LLC; Harbour Portfolio V, LLC; Harbour Portfolio VI, LP; Harbour Portfolio VII, LP; Home Solutions Partners I REO, LLC; Home Solutions Partners I, LP; Home Solutions Partners II REO, LLC; Home Solutions Partners II, LP; Home Solutions Partners III REO, LLC; Home Solutions Partners III, LP; Home Solutions Partners IV REO, LLC; Home Solutions Partners IV, LP; Stewardship Fund No. 2, LP; Stewardship Fund No. 3, LP; Stewardship Fund No. 4, LP; Stewardship Fund No. 5, LP; and Stewardship Fund No. 7, LP; (the “Potential Claimants”).¹

3. Despite the claims of ownership by the Potential Claimants, to date the Receiver has received insufficient information to determine the ownership of the Notes. The Receiver understands that Halo is the primary servicer of the Notes and has inquired regarding the ownership of the Notes. In response to requests by the Receiver, Halo has provided bank

¹ This Motion does not at present apply to Stewardship Fund No. 2, LP; Stewardship Fund No. 3, LP; Stewardship Fund No. 4, LP; Stewardship Fund No. 5, LP; or Stewardship Fund No. 7, LP because they are working to provide the Receiver with sufficient information to determine their ownership of certain Notes. Moreover, the Receivership Estate holds a 40% limited partnership interest in each of those entities. The Receiver, however, reserves the right to amend this Motion to include those entities in the event they fail to provide adequate documentation to demonstrate their ownership in any of the Notes.

statements showing wire transfers from the Potential Claimants to Defendants, lists of properties purportedly transferred to and from Defendants, and purchase and sales contracts between the Potential Claimants and Defendants. Halo, however, has not provided, nor has the Receiver located, documents indicating that the Notes or the underlying properties were transferred, assigned, or otherwise provided to the Potential Claimants, or evidence that the Defendants actually owned the properties purportedly sold or assigned to the Potential Claimants. Although the Receiver does not fault Halo—indeed Defendants’ poor record keeping may be the cause of deficient documentation—neither Halo nor its sub-servicer LenderLive² have provided the Receiver with sufficient documentation to determine ownership of the Notes. As a result of the deficient documentation of the purchase or assignment of the Notes, the Receiver believes that all Notes may be property of the Receivership Estate.

4. Accordingly, by this Motion, the Receiver seeks an order from the Court requiring all parties asserting, or which may in the future assert, an interest in the Notes to appear and show cause why they are entitled to an interest in the Notes. In the absence of proof of ownership by another entity, all interests in the Notes are assets of the Receivership Estate and, therefore, under the exclusive control of the Receiver.

II.

BACKGROUND FACTS

A. General Background

5. On October 14, 2011, the Securities and Exchange Commission (the “Commission”) instituted the above-captioned action, and the Receiver was appointed as

² LenderLive is a sub-servicer used by Halo to collect funds from homeowners and apply the funds to the proper account.

receiver for the Defendants through the Court's entry of the Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme (Dkt. No. 24); Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities (Dkt. No. 25); and Order Appointing Receiver Over James Temme (Dkt. No. 30) (together, the "Receiver Orders"). Pursuant to the Receiver Orders, the Receiver is to "immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 (Dkt. No. 24).

6. This matter was initiated on October 14, 2011, when the Commission filed its Complaint alleging that during the three years prior to filing suit, Temme defrauded investors out of at least \$35 million by promising to purchase distressed and non-performing residential mortgage loans that Defendants would restructure into performing loans that would be resold at a profit. The Commission further alleges that Defendants represented to investors that they would receive returns based on either payments from the homeowners or from the resale of the repackaged mortgages or underlying properties. Based on those representations, the Commission alleges that Defendants misappropriated investor funds through a "web of deceit," in which Defendants: "falsely represented that investor funds would be used to purchase certain mortgages or property when in fact the investor funds were used to payoff other investors; falsely claimed to own mortgages or other loans they did not; and falsely promised different investor groups that he had purchased the same loans on their behalf." Complaint ¶ 4 (Dkt. No. 1).

7. The Receiver's investigation has discovered approximately 6,900 Notes that Defendants have in the past owned, serviced, or contracted to purchase. As a result of the

purported misrepresentations by Defendants, investors have come forward claiming an interest in many of the 6,900 Notes, as well as other mortgages and notes that Defendants represented they owned. Indeed, it is possible that multiple investors claim to have purchased or contracted to purchase the same Notes from Defendants.

8. The master servicer for the Notes is Halo, which is responsible for management of the assets, including holding escrow accounts for the properties. Funds are collected from the homeowners by LenderLive, Halo's sub-servicer. The Receiver has requested from Halo and LenderLive documentation regarding the owner of each of the Notes that Halo and LenderLive service. To date, however, Halo has only been able to provide minimal documentation, insufficient to indicate ownership of the Notes. Specifically, Halo has provided the Receiver with bank statements reflecting money transfers from Potential Claimants to the Receiver, "tapes" of properties the Potential Claimants thought they were purchasing, and promissory notes between the Potential Claimants and the Defendants. The documentation provided by Halo, however, does not demonstrate that Defendants owned the properties purportedly sold to the Potential Claimants or include assignments of deeds, mortgages, notes, allonges, or other typical assignment documents. As a result, ownership of the Notes cannot be established with the documentation provided by Halo.

III.

BRIEF IN SUPPORT

A. THE NOTES MAY BE PROPERTY OF THE RECEIVERSHIP ESTATE.

9. Pursuant to the Receiver Orders, the Receiver is authorized to take exclusive possession of all assets of Defendants. At this time, no entity has demonstrated that it is entitled

to an interest in the Notes. In the absence of such evidence, the Receiver believes that the Notes may be assets of the Receivership Estate.

B. EXPEDITED CONSIDERATION IS APPROPRIATE IN THIS CASE.

10. Federal receivership law recognizes the use of summary show cause proceedings to resolve disputes to property claimed by a Receivership Estate. *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 668 (6th Cir. 2001); *see also Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 2000); *SEC v. Wencke*, 783 F.2d 829, 837-38 (9th Cir. 1986). It is well settled that Federal Courts have “broad powers and wide discretion” to fashion such relief in equitable receivership proceedings. *Basic Energy & Affiliated Res.*, 273 F.3d at 668. This discretion, which derives from the Court’s inherent equitable powers, makes abbreviated and summary proceedings possible without violating the interests of due process. *See id.* (allowing summary proceedings so long as they “permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts”); *SEC v. Elliott*, 953 F.2d 1560, 1571 (9th Cir. 1992). Therefore, so long as the Court gives all investors a meaningful opportunity to present their factual and legal contentions, summary proceedings are proper to determine whether they have any interest or may retain any interest in any of the Notes.

11. Furthermore, summary proceedings are favored in the context of federal receivership actions because they embrace the long-recognized policy of preserving and protecting assets for claimants of the Receivership Estate. *See Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38. Abbreviated procedures—including the use of a single receivership proceeding to resolve all claims—advance the government’s interest in judicial efficiency by “reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the receiver’s assets.” *Basic Energy & Affiliated Res.*, 273 F.3d at 668; *Elliott*,

CERTIFICATE OF CONFERENCE

I hereby certify that the Receiver conferred with David Reece of the Commission regarding the relief requested in the foregoing. The Commission is not opposed to the foregoing requested relief.

_____/s/ Jay L. Krystinik_____
Jay L. Krystinik

CERTIFICATE OF SERVICE

I certify that on February 7, 2012, I served a true and correct copy of the foregoing pleading *via* ECF to all parties consenting to service by the same and by United States First Class Mail, postage prepaid, to the following in accordance with the Federal Rules of Civil Procedure:

<u>Entity Name</u>	<u>Address</u>
Cavco Holdings, LLC	8117 Preston Road, Suite 160, Dallas, TX 75225
Equitas Housing Fund III, LP	Halo Asset Management, LLC 700 Central Expy S, Suite 500, Allen, TX 75013
Equitas Housing Fund, LLC	Halo Asset Management, LLC 700 Central Expy S, Suite 500, Allen, TX 75013
ER, LLC	Robert Asa Boyce Jr. 4016 Centenary Lane, Dallas, TX 75225
Harbour High Yield Fund, LLC	Charles A. Vose III 8214 Westchester Dr., Suite 635, Dallas, TX 75228
Harbour Internal Fund, LP	Charles A. Vose III 8214 Westchester Dr., Suite 635, Dallas, TX 75228
Harbour Portfolio I, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Harbour Portfolio II, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Harbour Portfolio III, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Harbour Portfolio IV, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Harbour Portfolio V, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Harbour Portfolio VI, LP	Charles A. Vose III 8214 Westchester Drive, Suite 635, Dallas, TX 75225
Harbour Portfolio VII, LP	Charles A. Vose III 8214 Westchester Drive, Suite 635, Dallas, TX 75225
Home Solutions Partners I REO, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225
Home Solutions Partners I, LP	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Home Solutions Partners II REO, LLC	Charles A. Vose III 8214 Westchester Dr., Ste. 635, Dallas, TX 75225-6124
Home Solutions Partners II, LP	Charles A. Vose III 8214 Westchester Dr., Ste. 635,

