

**IN THE UNITED STATES DISTRICT 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.**

**RECEIVER’S RESPONSE TO AMENDED MOTION FOR RELIEF FROM STAY**

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (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 “Receivership Entities”), and submits this Response to Amended Motion for Relief from Stay (the “Motion”). In support of his response to the Motion, the Receiver would respectfully show the Court as follows:

**I.**

**INTRODUCTION**

1. In the Motion, MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC, and F & B Note Holdings, LLC (collective, the “Movants”) seek relief from the stay to investigate and potentially pursue claims against the Affiliates (as that term is

defined in the Motion) for: (i) recovery of 440 mortgages held by one or more of the Affiliates; (ii) fraud; (iii) civil theft; and (iv) negligence.

2. The Motion states that “Movants do not seek to investigate or assert claims outside of this SEC action against James Temme, Stewardship Fund, LP, or other entity owned or controlled by them.” Motion ¶ 8.

3. The Receiver opposes the Motion to the extent it seeks relief from stay to pursue claims against, or otherwise recover, the 440 mortgages held by the Affiliates (the “Contested Mortgages”). The Contested Mortgages are a potential Receivership Estate asset and, as such, are properly the subject of the stay.

4. The Receiver does not express an opinion regarding the portions of the Motion in which Movants seek relief from stay to investigate or potentially pursue claims against the Affiliates.

## II.

### ARGUMENT

#### A Legal Standard

7. Courts considering whether to lift a stay of litigation entered pursuant to a receivership order have applied a three-part test that balances the interests of the receiver and the moving parties:

- (1) Whether refusing to lift the injunction genuinely preserves the status quo or whether the moving party will suffer substantial injury if it is not permitted to proceed;
- (2) The time in the course of the receivership at which the motion for relief from the injunction is made; and
- (3) The merits of the moving party’s underlying claim.

*SEC v. Wencke*, 622 F.2d 1363, 1373-74 (9th Cir. 1980) (establishing balancing test); *United States v. Acorn Tech. Fund, L.P.*, 429 F.3d 438, 444 (3d Cir. 2005) (adopting *Wencke* test).

8. Movants have the burden of proving that the balance of these factors weighs in favor of lifting the stay. *See Acorn*, 429 F.3d at 450. “The factors enable a district court to remain mindful that (1) ‘[t]he interests of the Receiver are very broad and include not only protection of the receivership res, but also protection of defrauded investors and considerations of judicial economy’ and (2) the purpose of the stay of litigation is ‘to give the receiver a chance to do the important job of marshaling and untangling a company’s assets without being forced into court by every investor or claimant.’” *United States v. Petters*, No. 08-5348, 2008 WL 5234527, at \*3 (D. Minn. Dec. 12, 2008) (quoting *Acorn*, 429 F.3d at 443).

#### B Discussion

9. The Receiver was appointed in this matter according to 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).

10. Moreover, under the Receiver Orders the Receiver is entitled to “Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate.” Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities ¶ 5(f)(h) (Dkt. No. 25).

11. The Court should deny the Motion to the extent it seeks relief from stay to pursue claims against, or otherwise recover, the Contested Mortgages. The Contested Mortgages are properties in which the Receivership Estate may assert an interest and, therefore, may seek to recover on behalf of the estate. Indeed, as acknowledged in the Motion, the Receiver has specifically reserved his right to pursue future action to recover the Contested Mortgages. Motion ¶ 9 (“[T]he Receiver acknowledged that these mortgages which the Finch and Barry Group were attempting to purchase were not part of the receivership estates, **without prejudice to the Receiver’s ability to later assert otherwise, based upon new information or changed circumstances.**”). As a result, the Contested Mortgages are a potential asset of the Receivership Estate and should be preserved in the event the Receiver seeks to recover them in the future. Such protection preserves the status quo and serves to preserve the receivership res.

12. Moreover, Movants have not met their burden of establishing that they will suffer irreparable injury if the Contested Mortgages remain under the protection of the stay. Movants allege only monetary damages, an award of which would make Movants whole. Movants, therefore, have not met their burden of demonstrating that the stay should be lifted regarding the Contested Mortgages.<sup>1</sup>

Dated: August 15, 2012

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<sup>1</sup> The Receiver does not express an opinion on the propriety of granting relief from stay to investigate or potentially pursue claims against non-receivership entities. The Receiver, however, does not consent to, and would oppose any request for, discovery directed to the Receiver by the Movants.

**BRYAN CAVE LLP**

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**CERTIFICATE OF SERVICE**

I certify that on August 15, 2012, I served a true and correct copy of the foregoing pleading by United States First Class Mail, postage prepaid, to the following in accordance with the Federal Rules of Civil Procedure:

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Moreover, the foregoing will be uploaded to [www.stewardshipfundreceivership.com](http://www.stewardshipfundreceivership.com)

//s// Bradley J. Purcell  
Bradley J. Purcell