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

SECURITIES AND EXCHANGE §  
COMMISSION § CAUSE NO. 4:11-CV-655  
§  
VS. § AUGUST 30, 2012  
§  
JAMES G. TEMME, ET AL. § (Judge Clark)

MOTION FOR AUTHORITY TO LIFT STAY  
  
BEFORE THE HONORABLE AMOS MAZZANT  
  
UNITED STATES MAGISTRATE JUDGE

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1 THE COURT: Okay. We're here in Case  
2 4:11-cv-655, SEC versus James G. Temme, et al. And then we're  
3 here for a couple of matters. We first have the scheduling  
4 conference issue, which I think we can dispose of relatively  
5 quickly, but go ahead and make appearances for -- and make  
6 sure everyone just speaks into the microphone if you're going  
7 to speak. For SEC.

8 MR. REECE: Good afternoon, Your Honor. David  
9 Reece on behalf of the SEC.

10 THE COURT: Okay. Thank you. For the receiver?

11 MR. KRYSTINIK: Yes. Good afternoon, Your  
12 Honor. Jay Krystinik for the receiver, and with me is Keith  
13 Aurzada, the receiver.

14 MR. AURZADA: Good afternoon, Your Honor.

15 THE COURT: Thank you.

16 MR. FLEGLE: Good afternoon, Your Honor. Jim  
17 Flegle and Mike Donley on behalf of the Home Solutions and  
18 Harbour entities.

19 THE COURT: Okay. Then, Mr. Pennington,  
20 you're -- go ahead.

21 MR. PENNINGTON: Yes. Allen Pennington, Your  
22 Honor, here for the Finch & Barry Group. With me is my  
23 client, Mike Barry.

24 MR. BARRY: Hello, Your Honor.

25 THE COURT: Okay. Thank you. Let's just talk

1 quickly regarding the issue of the scheduling conference.

2 We've continued this so many times from the dates that I think  
3 I first proposed -- or the formula for Judge Clark's formula.  
4 So what I think I'm going to do is just go ahead and put this  
5 on his September 2013 docket. Any objection to that?

6 MR. REECE: None from the SEC, Your Honor.

7 THE COURT: And then I'll just go ahead and  
8 we'll just -- it probably won't get entered till tomorrow or  
9 Tuesday, but I'll enter the scheduling order and we'll just do  
10 our dates back from that, so I'll just take care of that. If  
11 there's issues come up from that, let me know and we can  
12 address it at that time.

13 And the hearing we have set today is on the  
14 motion to -- on the motion to -- for authority to lift the  
15 stay, I believe. Is that the only -- that's the only motion  
16 we've set for today. I know there are several other motions  
17 that are pending, which I don't think I can necessarily take  
18 up today, but we can discuss those at the end of the hearing  
19 of where we're at on those.

20 But then, I guess, the amended motion for relief  
21 of stay, which Mr. Pennington this is your motion -- and I  
22 assume there's been no resolution. I've read all the  
23 materials, but I assume there's been no resolution of this  
24 matter by agreement. Would that be correct, Mr. Pennington?

25 MR. PENNINGTON: Allen Pennington. No, Your

1 Honor, there hasn't been.

2 THE COURT: And I know at our last hearing, you  
3 went through some of these facts, but tell me, what's your  
4 intent today? I notice you have some witnesses, so tell me  
5 what --

6 MR. PENNINGTON: Yes, Your Honor. We're here to  
7 make a formal record on a motion for relief from stay, and  
8 what we're asking the Court to do is really not to lift the  
9 stay, because I think clearly the stay does not apply to what  
10 we want to do, if you look at the plain language.

11 So I'm not sure exactly what the Court's order  
12 would look like, but what we're wanting to do is to -- is to  
13 go and assert certain claims against Mr. Charles Vose, III,  
14 and some Home Solutions entities in a state court proceeding.  
15 And I don't know exactly what the Court's order is going to  
16 look like --

17 THE COURT: Well, in the state court proceeding,  
18 I guess Judge Wheelis just -- he punt it back to me,  
19 essentially.

20 MR. PENNINGTON: He did, and that --

21 THE COURT: So --

22 MR. PENNINGTON: That action was actually filed  
23 before this action. And so very early on in the proceeding,  
24 we had a Rule 202 petition there, which I'm sure you're  
25 familiar with; it was a request to go take depositions, not a

1 lawsuit.

2 THE COURT: As a former state judge, yes, I'm  
3 aware of that.

4 MR. PENNINGTON: Thank you. And so he basically  
5 said, well, I need some direction from the Court, and so, of  
6 course, it's your stay, not his. It's yours to interpret, I  
7 believe.

8 THE COURT: Okay. Very good. And then, so how  
9 do you want to proceed?

10 MR. PENNINGTON: Your Honor, I'd like to start  
11 off with, essentially, an opening statement using the ELMO so  
12 you'll know what we're going to do. I have two witnesses that  
13 I think are going to be very short, and then I'll be glad to  
14 pass the baton.

15 THE COURT: That's fine.

16 MR. PENNINGTON: Okay.

17 THE COURT: Do you have someone assisting you  
18 with the ELMO? Or if not, we have a lapel mic you can use.

19 MR. PENNINGTON: I don't think so. I came in a  
20 little early, and Ms. McCord was very nice to show me how to  
21 use it, and we'll see how I did on the instruction.

22 THE COURT: I'm saying, you need -- you can  
23 speak -- I'll let you speak from there if you're going to be  
24 using something you need to point to or if you're just putting  
25 it up there. We have -- you have to use a lapel mic if you're

1 going to stay there.

2 MR. PENNINGTON: I guess the question is, do  
3 you -- do you need for me to put on the microphone?

4 THE COURT REPORTER: As long as you're right  
5 there speaking that loud, I can hear you.

6 MR. PENNINGTON: Okay. I don't think I need a  
7 microphone.

8 THE COURT: The only thing is it won't go into  
9 our digital recorder and we also have a backup digital  
10 recording.

11 MR. PENNINGTON: Yes, sir.

12 THE COURT: If it doesn't go through the speaker  
13 system, it won't be in the digital recording.

14 MR. PENNINGTON: Okay.

15 THE COURT: So I just --

16 MR. PENNINGTON: Very good. All right. May it  
17 please the Court.

18 Your Honor, the question here today is whether  
19 this Court should give a free pass to persons and entities who  
20 are not defendants in this action, but who assisted Jay Temme  
21 and Stewardship in defrauding people, including many of these  
22 people out here in the courtroom, who directly benefited from  
23 those fraudulent activities and who have money that they  
24 received from the defrauded people which is not part of the  
25 receivership estate.



1                   Your Honor, would you mind if I sat down so I  
2 can -- so I can see this?

3                   THE COURT: That's fine.

4                   MR. PENNINGTON: Thank you very much. I  
5 appreciate it.

6                   Basically, Your Honor, we are wishing to assert  
7 the following claims against the Home Solutions affiliates,  
8 which would be Charles Vose and the -- and the other parties  
9 identified in the motion. The testimony you're going to hear  
10 today is that F & B Note Holding company, which is one of the  
11 clients I represent, had a written contract with a company  
12 called Home Solutions Partners to purchase 440 specific  
13 mortgages. Okay.

14                   Mr. Temme, we believe, had a power of attorney  
15 or at least a course of dealing to enter into that contract on  
16 behalf of the Home Solutions affiliates. Now, you're aware,  
17 of course, upon your having entered the original temporary  
18 restraining order in this case of an affidavit that you  
19 received from Mr. Charles Vose in which he says that his  
20 signature is forged on that contract of sale. And so we'll be  
21 dealing with that in the hearing today.

22                   What is crucial to this -- to this hearing to  
23 understand, Your Honor, is that my client, F & B, paid \$3.1  
24 million directly to Home Solutions Partners for 440 specific  
25 mortgages, 400 -- 440 specific notes secured by mortgages

1 existing across the country. Also, the Court will recall that  
2 in that declaration of Mr. Vose that I referred to, he admits  
3 that his company's account -- I believe it's Home Solutions  
4 Partners I -- received that money, the three-point -- the  
5 entire \$3.1 million.

6 By the same token, Your Honor, it's, of course,  
7 true that F & B paid no money to Jay Temme or Stewardship.  
8 Our money was pursuant to a contract with Home Solutions. We  
9 paid them direct for our -- for our mortgages. F & B got  
10 neither mortgages nor money back from the Home Solutions  
11 affiliates. Now, I -- in the response that has been filed to  
12 our motion, Your Honor, there's a lot of discussion about the  
13 merits of the case.

14 The Home Solutions Partners and I believe  
15 Mr. Flegle want to dispute the facts. I don't really believe  
16 this is the place for that, Your Honor. I think the question  
17 here is whether we can proceed with this action and whether it  
18 interferes with the jurisdiction of this Court. If it  
19 doesn't, of course, the merits of the claim would be  
20 determined in the state -- in the state court. And, in fact,  
21 I say here, I mean, that's what the jury trial is for, is  
22 to -- is to determine the merits.

23 First off, as I alluded to earlier, it's our  
24 belief that the Court's stay simply doesn't apply, and the  
25 only reason that we're here is because we do have this

1 directive from Judge Wheelis in Collin County to come get  
2 relief from the stay. Again, this is very early on in the  
3 proceeding, and perhaps he did the right thing in requiring  
4 that.

5 But here's the -- here are the pertinent  
6 provisions of the Court's stay. The duties of the receiver  
7 shall be specifically limited to matters relating to the  
8 receivership estate and unsettled claims thereof remaining in  
9 the possession of the receiver as of the date of this order.  
10 Of course, you're aware, Your Honor, that the receiver's  
11 powers are broad and limited at the same time. They can only  
12 deal with what is owned by the companies that are in  
13 receivership, be they hard assets or claims or records and  
14 documents.

15 All right. Your stay order specifically says  
16 that any and all civil actions or other proceedings against  
17 any of the Temme-controlled entities. And in the other order,  
18 it uses the term Stewardship Fund entities. Those are defined  
19 the Stewardship Fund entities, which I think is probably the  
20 term that was intended to be used in the Temme order, is right  
21 here.

22 Stewardship Fund entities is defined in your  
23 orders as Stewardship Fund, LP, Stewardship Group, LLC,  
24 Destiny Fund, LP, Stewardship Management, LP, and any  
25 entity -- those entities, directly or indirectly controlled.

1 Home Solutions, Charles Vose is not among any of those parties  
2 ostensibly protected by the stay.

3           It goes on and says, any claim or suit that  
4 seeks recovery from the receivership assets or is -- or that  
5 is hereafter filed against any of the Temme-controlled  
6 entities or the receiver shall be filed in this court. And so  
7 you have the question also as to whether -- I think Home  
8 Solutions is trying to raise, and they're saying, well, this  
9 is -- the receiver owns this cause of action, and we'll -- and  
10 we've given you quite a bit of briefing on that. I think it's  
11 very clear that these claims are not -- are not owned by the  
12 receiver and these are personal claims belonging to my  
13 clients, the F & B Group.

14           The stay goes on, and I think 8A is worth  
15 looking at. It says that creditors and other persons are  
16 restrained from -- and then, A, the commencement or  
17 continuation, including the issuance of employment of process  
18 of any judicial, administrative or other proceeding against  
19 the receiver, any of the defendants, the receivership estate,  
20 or any agent, officer or employee related to the receivership  
21 estate. Again, none of those parties even arguably include  
22 the Home Solutions entities. Okay?

23           Going on with my -- with my opening statement,  
24 the direct claims that we will be bringing, I've tried to  
25 spell them out so the Court will see exactly what we're --

1 what we're going to do. We believe that we'll be able to  
2 prove these facts; that the Home Solutions affiliates had a  
3 long history of unsatisfactory dealings with Temme. You'll  
4 recall at the last hearing that I had, I worked up a little  
5 spreadsheet called "A Story Beyond Belief," and that  
6 document -- and I have another copy if anybody wants it. But  
7 that document shows that, according to the declarations that  
8 Mr. Vose has placed in this court, that his companies had  
9 bought something like \$7 million of assets and mortgages from  
10 Temme that they hadn't got assignments on. So, again, that's  
11 going to be our proof that they were on notice of his  
12 fraudulent activities.

13           And next, we're going to show that the Home  
14 Solutions affiliates were aware of an October 2010, \$5.7  
15 million fraud suit against Temme. And, in fact, we will be  
16 able to show that not only did Mr. Vose know about that  
17 lawsuit, but, in fact, he attended the mediation to settle  
18 that lawsuit on December 3, 2010, shortly before the  
19 transaction with our clients.

20           Next, Home Solutions affiliates knew that Jay  
21 Temme had powers of attorney to sell mortgages and the Home  
22 Solutions affiliates knew that Temme had the use of bank  
23 accounts and the names of Home Solutions affiliates. At the  
24 last hearing, you'll recall we showed you some bank account  
25 records that showed bank accounts at Comerica Bank, I believe,

1 that were all in the name of the Home Solutions Partners, but  
2 the only one signing on those accounts were Jay Temme and  
3 someone that worked with him, and those bank account  
4 statements even had the address of Jay Temme's office on them.

5 And so Home Solutions affiliates knew that Temme  
6 had powers of attorney to sell the mortgages that Home  
7 Solutions companies owned, and they knew that Temme had the  
8 use of these bank accounts. And we're going to be able to  
9 show, we believe, that Home Solutions affiliates knew about  
10 Temme's attempts to sell these mortgages. Again, the  
11 affidavit that you granted TRO on in this case, though it  
12 doesn't come right out and say it, Mr. Vose clearly suggests  
13 that he didn't know anything about the attempt to sell these  
14 mortgages, that his name was forged on the document.

15 We will be able to show -- we'll try to show in  
16 the state court that Mr. Vose well knew about Temme's attempts  
17 to sell these mortgages and was working to complete that  
18 transaction. This was not -- this was not a surprise  
19 transaction to him. And then, finally, we'll show that the  
20 Home Solutions affiliates had prominent law firms send  
21 threatening and misleading letters to my clients to discourage  
22 them from taking action against them.

23 Now, it should be pointed out that I think one  
24 of the reasons that all these parties are here today, Your  
25 Honor, all these investors are here is because many of them

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1 are considering third-party actions against other parties not  
2 in this proceeding to recover some of their investment. Now,  
3 at least I'm willing to concede and I think one other  
4 gentleman out there who already has a lawsuit going is  
5 probably willing to concede that to the extent that we can  
6 recover monies from these third parties, that that would  
7 reduce the amount of our claim in this receivership estate and  
8 that -- and so the -- not that it particularly matters to the  
9 legal question, but it is a fact that to the extent that my  
10 clients can recover money from the Home Solutions affiliates  
11 elsewhere, it would reduce their claim in this court and  
12 increase the recovery by other investors.

13           And then on those lines, let me just add this  
14 before we get into the testimony. As I pointed out, many  
15 other investors have potential direct claims against third  
16 parties and the investors are awaiting disclosure by the  
17 receiver of documents and information he has obtained from  
18 these entities, such as Home Solutions, Halo, the names that  
19 you keep hearing. And these -- this information, once it's --  
20 once it's exposed will ultimately, we believe, lead to other  
21 investor direct claims against third parties not part of these  
22 estates.

23           I will point out -- and I'll have to get it for  
24 you here in a minute. I don't want to slow down. But there  
25 is one lawsuit outstanding already called the Berg lawsuit

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1 that was filed by Mr. David Lunn, who's here in the courtroom  
2 today, and his lawsuit looks an awful lot like our lawsuit  
3 that we're proposing to file. It's alleging damages based  
4 upon the fraud of Temme -- Jay Temme and others, not against  
5 the Home Solutions Group, but against the Halo Group. But it  
6 looks identical -- not identical, but it looks very similar to  
7 the lawsuit that we propose to file.

8           And the Halo Group, which, by the way, was  
9 taking the position back in Judge Wheelis' court that the stay  
10 protected them, has been sued in this Berg lawsuit, I believe  
11 last fall or in December. And Halo has not taken the position  
12 that this stay protects them from that lawsuit, even though  
13 the Berg Group is seeking recovery of damages related to  
14 the -- to the joint fraud, if you will, of Jay Temme and this  
15 Halo Group.

16           So other -- other party -- this is an important  
17 hearing. That's why I want to make a complete record, is  
18 because it really is a Bellwether decision by the Court as to  
19 whether these investors are going to be -- are going to be  
20 held up in some way from proceeding their remedies against  
21 other parties who are not parties to this action.

22           And so would the Court like a copy of that other  
23 lawsuit?

24           THE COURT: Yes, if you want to go ahead and  
25 submit that.



1 MR. PENNINGTON: Yes. This has been marked,  
2 Your Honor, as Exhibit 16, a certified copy of this lawsuit  
3 from the 191st Judicial District. It was filed December 9,  
4 2011. And so I will offer a certified copy of Exhibit 16 at  
5 this time.

6 THE COURT: Any objection?

7 MR. FLEGLE: No objection from Home Solutions or  
8 Harbour.

9 MR. KRYSTINIK: No objection from the receiver.

10 THE COURT: I'll admit the exhibit.

11 (Exhibit No. 16 was admitted.)

12 MR. PENNINGTON: Your Honor, at this time, we'd  
13 like to call Doug Furra to the stand.

14 THE COURT: Well, before you do that, let me go  
15 ahead and give the others an opportunity, if they would like  
16 to make argument or response, and then I'll let you put on  
17 your evidence.

18 MR. KRYSTINIK: Good afternoon again, Your  
19 Honor. Jay Krystinik for the receiver.

20 The receiver takes his task extremely seriously,  
21 and he understands the frustration that the Finch & Barry  
22 investor group has, but he was appointed to act for everyone,  
23 including all of the people that are in the back of the  
24 courtroom here. And he has a duty to act for everyone that is  
25 a beneficiary of the receivership estate. When this lawsuit

1 was instituted by the Securities Exchange Commission, there  
2 were a multitude of actions brought by various investor groups  
3 against the defendants, and the Commission instituted this  
4 action to try to bring some order to that process.

5           And granting the motion would completely unwind  
6 what the Commission has tried to do with their enforcement  
7 action and lead to a multiplicity of lawsuits where investors  
8 try to grab what they can for themselves, which would  
9 circumvent the goal of the Commission's proceeding and what  
10 the receiver eventually intends to do, which is an equitable  
11 pro rata distribution of receivership assets.

12           One thing I noticed, Judge, in looking at the  
13 chart that Mr. Pennington put up about his direct claims,  
14 every single one of the bullet points contained the word  
15 Temme. These are claims that belong to the receiver and that  
16 the receiver can enforce, not individual investors. When  
17 courts consider whether to lift a stay to allow an investor to  
18 pursue a claim, they consider several factors.

19           One is whether refusing to lift the injunction  
20 will preserve the status quo. That's exactly what refusing to  
21 lift the injunction will do. There's no argument to the  
22 contrary.

23           Second is whether the moving party will suffer  
24 substantial injury if it is not permitted to proceed. I don't  
25 think you'll hear any evidence on that today. To the

1 contrary, you'll hear the receiver say that he intends to have  
2 a pro rata equitable distribution that has been approved time  
3 and time again in SEC enforcement actions. Courts also  
4 consider the time in the receivership in which the motion for  
5 relief is made. The receiver believes this is still very  
6 early in this receivership.

7           And again, finally, the courts consider the  
8 merits of the moving party's underlying claims. For reasons  
9 that all argue, we believe that these claims are the  
10 receiver's claims. What the Court should consider in weighing  
11 those factors are the interests of the receiver, which are  
12 very broad and include not only protection of the receivership  
13 property, but also protection of all defrauded investors in  
14 considerations of judicial economy, which they're trying to  
15 unwind. And also, the purpose of the stay is to give the  
16 receiver a chance to do the important job of marshaling and  
17 untangling a company's assets without being forced into court  
18 by every investor or claimant.

19           And as I pointed out, all of their direct claims  
20 mention Mr. Temme, a defendant in this action. We think that  
21 if the stay is granted, either Mr. Temme or the receiver are  
22 going to be essential parties, will have to be appear --  
23 appear as witnesses, will be the subject to discovery, which  
24 would completely run afoul of the purpose of the stay.

25           I'd like to turn to 4X. It's mentioned in the

1 parties' briefings, but that's 242 F.3d 325. We also  
2 discussed that at our last hearing.

3 THE COURT: What was that cite again?

4 MR. KRYSTINIK: 242 --

5 THE COURT: Right.

6 MR. KRYSTINIK: -- F.3d 325.

7 THE COURT: Thank you.

8 MR. KRYSTINIK: I brought five copies, Your  
9 Honor. Would you like me to approach with a courtesy copy?

10 THE COURT: Yes, that would be great. Thank  
11 you.

12 MR. PENNINGTON: Your Honor, did you -- did you  
13 find our notebook that we sent in on Tuesday?

14 THE COURT: Yes. Thank you.

15 MR. PENNINGTON: Okay.

16 MR. KRYSTINIK: And I have a green flag.

17 There's no specific highlights because it goes on for a few  
18 pages, but there are two cases that are dead square in play.  
19 One is SEC versus Forex, which I handed you; and within Forex,  
20 they cite United States versus Durham, 86 F.3d 70. In both  
21 Forex and in Durham, there were investors that believed that  
22 they could identify particularized -- particularized harm to  
23 them and that they could trace funds.

24 And that's exactly what the pleadings by the  
25 Finch & Barry Group say; that they invested money, the money

1 went to -- one thing that wasn't on the chart -- the money  
2 went to Destiny Fund, one of the receivership entities. The  
3 defendants then paid out those funds invested by one investor  
4 to another investor. That's the definition of the Ponzi  
5 scheme.

6 In both Forex and in Durham, the receiver  
7 proposed and the district court granted a pro rata  
8 distribution whereby those investors who wanted to trace their  
9 funds received a pro rata distribution rather than being  
10 treated preferentially to jump to the front of the line with  
11 respect to the funds that they thought they could trace. And  
12 in both Forex and in Durham, the Fifth Circuit affirmed the  
13 district court's approval of the receiver's pro rata  
14 distribution plans and said that's more equitable, and  
15 specifically said that the district courts did not err in  
16 determining that pro rata distribution plans were more  
17 equitable than allowing tracing for individual investors.

18 And after we brought this up at the last  
19 hearing, there was an amended motion to lift stay where the  
20 Finch & Barry Group tried to distance themselves from the  
21 tracing argument. Instead of saying that they could  
22 automatically point to where their assets went, they instead  
23 now say, we have direct claims.

24 But as I've already said, each of their direct  
25 claims squarely mentions Mr. Temme and the Stewardship

1 receivership entities in their claims. Although he's not  
2 completed his analysis, the receiver does intend to file a  
3 plan that will call for a pro rata distribution. And I should  
4 have said this at the start, but the receiver would like to  
5 address the Court at the appropriate time with just a general  
6 status update. I didn't want to omit that.

7           But if the stay is lifted here, all of the other  
8 investors will be harmed by the Finch & Barry group's actions  
9 because any recovery that they obtain that should rightfully  
10 come to the receivership estate will not be able to satisfy  
11 the claims of investors as a whole. Instead, it will go to a  
12 single group of investors.

13           Based on the current state of the pleadings, the  
14 receiver submits that it's inequitable and he objects to the  
15 motion to lift the stay. And specifically, if the Court were  
16 to grant relief from the stay, the receiver believes that he  
17 would have to intervene in a state court action to protect his  
18 interests and the interests of all investors.

19           There's a statement, Judge, that the receiver  
20 has somehow released the claims against the Home Solutions  
21 affiliates and doesn't intend to pursue them. That is just  
22 simply not true. It's not before the Court today, but there  
23 is a well-developed record from our last hearing where I  
24 specifically said we were not releasing Chad Vose or any of  
25 the Home Solutions affiliates except for what was specifically

1 released in those settlement agreements. The receiver cannot  
2 reach a resolution regarding these controversies when the Home  
3 Solutions affiliates think that they're going to be the target  
4 to potentially multiple lawsuits.

5 One final point is the argument that if they  
6 prevail, it will offset their claims in this proceeding. Your  
7 Honor, the concept of offset applies to mutual obligations.  
8 The only way there can be an offset of their claims against  
9 the receivership estate is if the claims that they want to  
10 assert against the Home Solutions affiliates are related to  
11 the claims against the receivership estate. I think that  
12 their admission that the claims would offset concedes that  
13 these claims are related and they involve the receivership  
14 estate, and for that reason, they properly are claims that can  
15 be asserted by the receiver.

16 With that said, Your Honor, we'd request you  
17 deny the motion, and the receiver is happy to answer any  
18 questions you may have.

19 THE COURT: Well, and, of course, at the end of  
20 the proceedings, I'll ask for just an update from the  
21 receiver. But answer me this, what about this 440 mortgages,  
22 which is not part of this -- the receiver's estate at this  
23 present time, correct?

24 MR. KRYSTINIK: That's an interesting point,  
25 because we asked to see the copy of the mortgages that was

1 attached to this assignment agreement, and the receiver has  
2 not seen a copy of those mortgages. We were shown at one  
3 point just a list of mortgages, but we have never seen a copy  
4 of their assignment contract with a -- with a tape of  
5 mortgages attached to them.

6 The receiver specifically requested that from  
7 the Finch & Barry group's counsel and did not receive that,  
8 and it is not included in the exhibits that we were provided  
9 for today. They are blank. They are contracts with missing  
10 exhibits. So today we can't do that analysis and be prepared  
11 to answer that question.

12 THE COURT: Okay. And Mr. Pennington, can you  
13 answer that question? I still have to get through everybody  
14 else before I come back to you for reply to the arguments, but  
15 can you answer that specific question?

16 MR. PENNINGTON: I have no earthly idea what  
17 he's talking about concerning asking me for a copy of  
18 anything. But at the hearing when we -- it was the show cause  
19 hearing and the receiver stipulated that it did not appear  
20 that those 440 mortgages were part of the estate. That's what  
21 the judge is recalling.

22 THE COURT: Right, but it was reserved. The  
23 receiver --

24 MR. PENNINGTON: To change his mind.

25 THE COURT: Correct. I mean, it wasn't --



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1 MR. PENNINGTON: He deserved the right to change  
2 his mind.

3 THE COURT: But the question I was asking him is  
4 where they were at on the issue of whether those 440 were  
5 going to be part of the receiver estate.

6 MR. PENNINGTON: Yeah.

7 THE COURT: He's indicating they don't have the  
8 documents to --

9 MR. PENNINGTON: I'll be happy to -- I'll be  
10 happy to give it to him. We offered an exhibit at that  
11 hearing. I was very careful to state on the record, here is  
12 exhibit whatever, listing the 440 mortgages. We don't have  
13 the mortgages. We don't have the actual physical documents,  
14 but we have the tape, as Mr. Krystinik calls it, of the 440  
15 mortgages.

16 They're in this Court's record, because I wanted  
17 to make it very clear at that time that these are the 440  
18 mortgages that the receiver was taking the position today --  
19 that day at least, that the estate didn't appear to have any  
20 interest in. So those are in the Court's record. I'll be  
21 happy to provide Mr. Krystinik another copy of that after the  
22 hearing.

23 THE COURT: Okay. Mr. Krystinik, if you'll go  
24 back to the podium and make sure I understand this. So what  
25 you're telling me is, basically, as we stand here today, the

1 receiver has not been able to make a determination yet whether  
2 or not those 440 mortgages should be part of the receiver's  
3 estate or not.

4 MR. KRYSTINIK: May I have one moment to confirm  
5 that with the receiver?

6 THE COURT: Yes.

7 (Sotto voce discussion ensued.)

8 MR. KRYSTINIK: We've seen a tape that we  
9 analyzed and do not believe that that tape is property of the  
10 estate, but we have never seen a tape in a form attached to  
11 the contract. That's the distinction I was trying to make.

12 MR. PENNINGTON: It's also attached, Your Honor,  
13 to the declaration of Leroy Finch that was filed in your  
14 courtroom to obtain the TRO. I believe the receiver has that.

15 MR. KRYSTINIK: Your Honor, we have -- we have a  
16 list. We just don't think it was -- from what we've seen, we  
17 don't think it was ever attached to a contract.

18 THE COURT: Okay. I guess my question is, so  
19 how are we going to determine this? And how can the receiver  
20 determine whether or not those mortgages should or should not  
21 be part of the receivership estate? I mean, at some point, we  
22 have to make that decision. And so what else is going to be  
23 necessary for that decision to be made?

24 MR. KRYSTINIK: It's unlikely that these claims  
25 or that these mortgages are property of the estate. We just

1 don't want to concede that because we're trying to protect all  
2 of the investors.

3 THE COURT: For how long? I mean, at what  
4 point -- I mean, I can understand, and certainly the receiver  
5 has to make a good faith and make a decision whether to pursue  
6 those assets or not, but it can't go on forever. I mean, at  
7 some point, he has to make a decision and do the due diligence  
8 and decide, no, that's not part of the receivership estate. I  
9 mean --

10 MR. KRYSTINIK: Perhaps I don't understand Your  
11 Honor's question. I understand your question with respect to  
12 the mortgages themselves and the 440 mortgages, but with  
13 respect to the motion to lift the stay to pursue the claims  
14 regarding the funds that flowed through the receivership  
15 estate --

16 THE COURT: Well, those are separate issues. I  
17 know those are separate issues because in your -- in your  
18 response, you raise the issue of, you weren't going to release  
19 the 440 mortgages or -- that issue, as well as -- you took a  
20 mixed position, I guess, on the issue of allowing it to  
21 proceed. You didn't really mind them investigating at least  
22 in the initial response, but I think in the reply or sur-reply  
23 I think you took the position that, no, they shouldn't be able  
24 to go and pursue any of these claims because the receiver  
25 would have to come back and be party of the state court

1 proceeding.

2 I'm just trying to make sure I understand what  
3 the playing field is and what we're fighting about today. So  
4 if I'm going down the wrong trail, please tell me because I  
5 want to make sure I do what's right.

6 MR. PENNINGTON: Yes.

7 THE COURT: Well, wait a minute. Let  
8 Mr. Krystinik go ahead and respond.

9 MR. KRYSTINIK: You're right, I believe the  
10 receiver has gained comfort that if it is established that  
11 there was a contract and that that tape was ever attached to  
12 the contract and that the tape he's analyzed was indeed a tape  
13 that was attached to that contract, I believe the receiver has  
14 obtained comfort that those mortgages are not property of the  
15 estate.

16 THE COURT: You're still not talking in definite  
17 terms. How are you going to determine that? I mean --

18 MR. KRYSTINIK: That --

19 THE COURT: -- where do we have the -- what  
20 document are we going to be able to look at to prove one way  
21 or the other whether or not those mortgages were actually part  
22 or attached to that contract?

23 MR. KRYSTINIK: That may be -- that may come out  
24 today with the evidence that they'll present. Based upon what  
25 we've been presented, we don't think that a tape was attached

1 to the contract.

2 THE COURT: Okay. And let's assume that's the  
3 case. So what does that mean then, in terms of those being  
4 ever -- I mean, does that change the fact whether those are  
5 assets or not of the --

6 MR. KRYSTINIK: No.

7 THE COURT: Okay.

8 MR. KRYSTINIK: The receiver's -- that would go  
9 back to my prior answer, the receiver's gained -- is  
10 comfortable that they're not property of the estate. But can  
11 I confirm that with --

12 THE COURT: Yes. Go ahead.

13 (Sotto voce discussion ensued.)

14 THE COURT: Just one second. I'll give you full  
15 opportunity, Mr. Pennington. Don't worry.

16 MR. PENNINGTON: Thank you.

17 MR. KRYSTINIK: May I just have the receiver  
18 explain?

19 THE COURT: Yes, go ahead.

20 MR. KRYSTINIK: Because it's nuanced.

21 MR. AURZADA: Your Honor, as it relates to these  
22 440 mortgages, I don't believe the receivership estate owns  
23 them. They were owned by HSP. We did our initial due  
24 diligence there. The only way these mortgages become property  
25 of the estate is if we find that HSP was somehow complicit in

1 the fraud that was perpetrated on F & B. That's it, as it  
2 relates to the mortgages.

3 So -- and you asked the question, what documents  
4 would I look at? I would look at the note and I would see who  
5 the last allonge was and I would look at the assignment of  
6 mortgages that's been recorded. And the due diligence that I  
7 did in advance of the last hearing was to do a sampling. I  
8 didn't do them all, because it was 440, but we did a sampling  
9 of the mortgages held by -- on that list to verify: What did  
10 the title look like? Did the title look like title stopped  
11 with HSP?

12 So to the extent you're hearing a less than 100  
13 percent definite position on that, it is because it may come  
14 to pass that in terms of my investigation and my pursuit of a  
15 claim against HSP that I can come back into a claim to those  
16 mortgages. But as of the record title, I don't have a claim.

17 THE COURT: Okay. And so the objection then  
18 really isn't so much to these mortgages, although you're still  
19 trying to get a definitive answer on that -- and maybe we'll  
20 have that by the end of today's hearing. Your issue is the  
21 fact that they want to pursue things against Home Solutions?

22 MR. AURZADA: Yes.

23 THE COURT: Which is a part of -- is part of the  
24 estate?

25 MR. AURZADA: I believe so, yes.

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1 THE COURT: I mean, they're a party to this  
2 case?

3 MR. AURZADA: Yes.

4 THE COURT: Okay. Thank you.

5 MR. PENNINGTON: On the note --

6 THE COURT: Mr. Pennington.

7 MR. PENNINGTON: Yes, Allen Pennington.

8 On the notes, I really don't expect, once we  
9 file this lawsuit in state court, for Home Solutions to send  
10 over 440 assignments. I just don't think that's going to  
11 happen, given the aggressive manner in which they defended  
12 against this claim. I am more than happy to keep the receiver  
13 apprised of any success in obtaining these mortgages when and  
14 if that happens. But I don't expect those to come over by  
15 courier once we file this lawsuit.

16 So I don't think there's an imminent problem  
17 with the notes. I think that we can go forward with our case  
18 for damages and/or the notes, and if it looks like we're going  
19 to get them or there's a verdict in a trial that we get the  
20 notes, I will be glad to notify the receiver before we take  
21 possession of those, so he can -- he can see where he is at  
22 that point.

23 THE COURT: Okay. And let me come back.

24 Anybody else who would like to speak, go ahead.

25 MR. FLEGLE: Your Honor, may I?

1 THE COURT: Yes, Mr. Flegle.

2 MR. FLEGLE: If Your Honor will permit me to put  
3 what we think the issues in this hearing are in context and  
4 put them in a little bit of background.

5 Our clients, too, are victims of the  
6 Temme/Stewardship fraud. The evidence in the record before  
7 Your Honor includes a declaration by our client through our --  
8 Mr. Vose that our clients have lost in excess of \$3 million.  
9 So this is an attempt in this state court proceeding of victim  
10 going after victim.

11 The Finch & Barry Group that want the stay  
12 lifted are MDA Realty Holdings, LLC, MVB Realty Holdings, LLC,  
13 LF Realty Holdings, LLC, and F & B Note Holding, LLC. Only  
14 one of those entities is on any kind of contract, and that  
15 contract is not with anything that has a name that is remotely  
16 close to our client.

17 If I may approach the ELMO, Your Honor?

18 THE COURT: Yes.

19 MR. FLEGLE: Contrary to what was just said in  
20 opening by counsel for the F & B Group, the assignment of  
21 contract on which they make a claim is with the Stewardship  
22 Fund, LP, and it is with F & B Note Holding, LLC, only one of  
23 the entities that wants a free pass at state court litigation.  
24 The assignment is signed by Stewardship Fund, Mr. Temme, both  
25 receivership entities, not our clients, and the assignee is



1 F & B Note Holding, Mr. Pennington's client, are one of the  
2 four.

3 Now, it is true that this assignment relates to  
4 another document, and this other document has been filed.  
5 It's in document 3-4, and it is a document that says it's  
6 called a Charged-Off Nonperforming Note Sale, Mortgage and  
7 Real Estate Owned Agreement, and it's between Stewardship  
8 Fund, LP, and Home Solutions Partners, LP.

9 And as we have produced to the Court in a  
10 declaration, this lengthy document has a signature purportedly  
11 by Mr. Vose. It's a fraud -- it's a forge -- forged  
12 signature, because he didn't know this contract even existed  
13 until he was contacted by the lawyers for the F & B Group  
14 about five months after this transaction occurred. And it is  
15 under the name of Home Solutions Partners, LP, the nonexistent  
16 corporation.

17 So one of the premises that there is a contract  
18 between any of my clients and the F & B Group is just flat  
19 wrong. If there was any question about what the knowledge or  
20 understanding of the F & B Group was on this transaction, it  
21 is cleared up by the wire fund instructions.

22 And may I approach one more time, Your Honor?

23 THE COURT: Yes.

24 MR. FLEGLE: The wire fund instructions on this  
25 transaction that we received showed the originator of the wire

1 fund for this \$3 million is 48th Street Holdings, LLC, which  
2 is not on the list of clients for Mr. Pennington. I'm sure he  
3 can explain that. And the beneficiary -- the beneficiary now  
4 is Home Solutions Partners, LP. That's who they thought they  
5 were dealing with because that's what Mr. Temme told them they  
6 were dealing with.

7           And Home Solutions Partners, LP, has a 2500  
8 Dallas Parkway, Suite 440 address, which just happens to be  
9 where Mr. Temme and Stewardship work. And this is clear in  
10 the Secretary of State's records, too. My clients, who are  
11 the target of the motion and the amended motion, are Home  
12 Solutions Advisors, LLC, which is a management company for  
13 each of the Home Solutions funds: Home Solutions GP, LP,  
14 which is a general partner of each fund; Home Solutions  
15 Partners I, II and III, LP; Harbour Portfolio I, LLC; Harbour  
16 Portfolio II, LLC; and Mr. Vose, who is the president of Home  
17 Solutions Advisors, LLC, until August of 2011.

18           And there's also a mention in the motion of "and  
19 perhaps other Home Solutions affiliates." So what is being  
20 asked of this Court today is free game on a whole bunch of  
21 doc- -- clients that have nothing to do with the transaction  
22 that's being discussed by Mr. Pennington in his opening  
23 statement. Moreover, of my clients, each of these entities  
24 were the subject of this order's -- this Court's show cause  
25 order entered February 13th, 2012, at the request of the

1 receiver.

2 All of the Home Solutions Partners funds,  
3 including IV, which I'm not representing today because  
4 Mr. Pennington hadn't mentioned it, several of the Harbour  
5 Portfolio funds that are not mentioned today because he hasn't  
6 mentioned it yet, and Cavco -- and each of those entities  
7 cooperated with the receiver after the show cause order was  
8 entered, submitting voluminous documentation and submitting  
9 themselves to extensive inquiry.

10 Also, interestingly enough, Your Honor, the  
11 subject of the show cause order were Equitas Housing Fund III,  
12 LP, Equitas Housing Fund, LLC, and ER, LLC. That's  
13 interesting because the clients that Mr. Pennington has  
14 represented are specifically mentioned in the SEC's complaint  
15 as the Equitas investors. Because it was their intent not to  
16 enter a transaction with us, but to enter a transaction with a  
17 Temme entity to form Equitas Funding III and put the money --  
18 or put the properties in a fund that Mr. Temme would be a part  
19 of. None of our funds, by the way, have Mr. Temme as a party.

20 In addition, Your Honor, the F & B's -- the  
21 Finch & Barry Group's focus in the amended motion and in the  
22 reply that was filed last week is on the \$2.2 million that it  
23 alleges, quote, Home -- the Home Solutions affiliates, quote,  
24 intend to keep. Well, that \$2.2 million is money, as Your  
25 Honor may remember, that went to Home Solutions Partners III,

1 LP, Harbour Portfolio I and Harbour Portfolio II. And those  
2 funds came from a Temme-controlled entity, Destiny Fund II,  
3 LP, over which the receiver has authority.

4 The Court has approved settlements with two of  
5 these entities, Harbour Portfolio I and Harbour Portfolio II.  
6 There is not an agreement with Home Solutions Partners III,  
7 LP. And as indicated by the receiver's counsel, part of the  
8 reason is if -- we can't settle something when there's all  
9 this tension about who's doing what to whom.

10 In this receivership action, Your Honor, my  
11 clients have fully cooperated with the SEC and the receiver.  
12 If Your Honor will remember in the June 6th hearing, here's  
13 what was in the transcript. Mr. Reece, on behalf of the SEC,  
14 when Your Honor asked him, well, why isn't Home Solutions in  
15 this complaint? Mr. Reece said, I guess I'd just say that,  
16 obviously, the Commission only brings charges against people  
17 that it believes has evidence committed securities fraud. And  
18 that was -- that's what we've done in this case.

19 The receiver explained to the Court what he has  
20 done in this case, Mr. Aurzada, at 35: I've done a lot of due  
21 diligence that Mr. Krystinik talked about. I've reviewed  
22 thousands of e-mails. I've looked at bank records. I've  
23 interviewed Mr. Vose for hours. I've asked him to sign an  
24 additional affidavit in addition to the one he signed for the  
25 SEC. I've quizzed his counsel. I've looked at the underlying

1 assets that were purchased, and I've looked at the bank  
2 records that the estate has. If I don't have a settlement,  
3 the evidence shows that Harbour I, II and IV and Cavco can  
4 take the position that they purchased these assets and I have  
5 no title to them.

6           These may not be in the estate but they're not  
7 in the estate because somebody's absconded with them in  
8 contradiction -- contradiction to the securities laws, it's  
9 because our people purchased them directly from GMAC and  
10 several other places, and we showed that evidence to the  
11 receiver.

12           In fact, Mr. Pennington at that hearing said, I  
13 think Mr. Aurzada has done a very good job -- a great job in  
14 this case. He's a very, very fine attorney and he's very  
15 conscientious.

16           This case was started, if Your Honor will  
17 remember, because the SEC began an investigation and found  
18 that there were investors all over the state suing Mr. Temme,  
19 and he was creating havoc, because Mr. Temme was robbing Peter  
20 to pay Paul.

21           This Court properly appointed a receiver in the  
22 case. There's confusion about the case authority here. The  
23 Sixth Circuit authority, which is the only authority that  
24 Mr. Pennington gives this Court about the limitations on a  
25 receiver, are Liberty Capital Group and Jarrett. Liberty

1 Capital Group is a private civil litigation. Doesn't involve  
2 the SEC. Doesn't involve a federal agency.

3 And Liberty Capital Group, the Court ruled,  
4 could only step in the shoes of the corporation for which --  
5 I'm sorry -- the receiver could only step in the shoes of the  
6 corporation for which he was appointed a receiver. He was a  
7 corporate receiver. And by the way, in the Liberty Capital  
8 Group, the claim that was being asserted and they wanted to  
9 assert outside the receivership was a claim by the defrauded  
10 investor against the investor's advisors, broker dealers,  
11 fiduciaries, financial advisors. We are none of those. In  
12 fact, we are competitors with Mr. Pennington's clients.

13 The Jarrett case, J-A-R-R-E-T-T case, that he  
14 cites actually deals with a statute of limitations and whether  
15 or not the receiver's actions could toll the statute for  
16 investors that are outside the litigation. There's clear  
17 authority for the receiver to have the full, complete  
18 authority that the receiver's suggesting the Court he has  
19 today.

20 In bringing an action for an injunction in the  
21 employment of a receiver, the SEC is concerned with the  
22 protection of those who already have been injured. It is  
23 concerned with protecting the investment public, all these  
24 people here, including my clients, because they were  
25 investors, too.

1 Your Honor, if I could -- and I do think it's  
2 important if Your Honor will bear with me. I have some charts  
3 that I'd like to go -- if I could just go through five  
4 minutes' worth.

5 THE COURT: That's fine.

6 MR. FLEGLE: If we could approach and provide  
7 them with you.

8 THE COURT: Yes. These are going to be Home  
9 Solutions Exhibits 1, 2 and 3?

10 MR. FLEGLE: We could do that, if you'd like,  
11 Your Honor.

12 THE COURT: Or are these the numbering of -- is  
13 there joint numbering for all these exhibits?

14 MR. FLEGLE: I have not numbered them. I was  
15 just going to use them as demonstratives, but if we put them  
16 as Home Solutions, that's fine with me.

17 THE COURT: Oh, that's fine. So you're not  
18 going to offer these into evidence?

19 MR. FLEGLE: No, I'm not going to offer --

20 THE COURT: Okay. That's fine then.

21 MR. FLEGLE: If -- Your Honor, if I may, if I  
22 could come to the ELMO.

23 THE COURT: Yes. Go ahead.

24 MR. FLEGLE: It will become apparent in just a  
25 moment why we've got a red line down the middle of this page,

1 and that's because the Fifth Circuit and the other cases  
2 looking at these kind of transactions say if you cross the red  
3 line, it's in the receiver's bucket.

4 Here's the way the F & G (sic) Group transaction  
5 came down. Stewardship, now a receiver entity, Stewardship  
6 Fund, LP, claimed it was a buyer on this long-named agreement  
7 with a company that does not exist and a signature that was  
8 forged. Stewardship Fund, LP, a receivership entity, assigned  
9 that contract to F & B Note Holding, LLC, one of  
10 Mr. Pennington's clients.

11 At the instruction of Mr. Temme, 48th Street  
12 Holdings, LLC, funded 3.139,667.20 million dollars into a bank  
13 account that evidence shows unmistakably the F & B Group  
14 thought it was sending to Home Solutions Partners, LP, as  
15 beneficiary with Stewardship's address on the wire  
16 instructions. That in and of itself takes this and puts it in  
17 the receivership estate.

18 But there's more. The wire instructions into  
19 this partnership account -- into this account, which actually  
20 had the name Home Solutions Partners I, LP, was transferred  
21 over to Destiny Fund II, LP, per Mr. Temme's instructions. So  
22 we're back inside the estate. And subsequent to that time,  
23 payments were made per Temme's instructions to Home Solutions  
24 Partners III, LP, for antecedent debt and -- well, the  
25 receiver can discuss that if he wants -- and to Harbour I and



1 to Harbour II, we've been released by order of the Court on  
2 settlement with those entities.

3 This transaction chart shows unequivocally that  
4 any claims that are being asserted that F & B Group wants to  
5 assert are receivership claims, not open game, open season in  
6 private litigation in the state court. This is shown by the  
7 Fifth Circuit's opinion in the Forex case that was mentioned a  
8 bit ago.

9 And some of these results at first hit me and  
10 say, wait a minute, but for -- but for a V8, they would have  
11 had all their money back, but they didn't get the V8. Look at  
12 what happened to the Whitbecks. They gave two checks to Forex  
13 that ultimately became a receivership entity, 100,000 bucks  
14 and 800,000 bucks. Kosova, who was an agent for Forex, took  
15 the \$800,000 check, didn't put it in a Forex account, put it  
16 in an account at Phantom Preferred Trading Corporation  
17 account. And then on Kosova's transfer instructions, \$750,000  
18 of that was transferred to Rosenthal Collins Group.

19 Now, just stop for a second. Phantom Preferred  
20 Trading wasn't in the receivership, Rosenthal Collins Group  
21 wasn't in the receivership, the holding, receivership funds.  
22 Whitbecks wanted their money back because it was their money,  
23 and the trustee -- I mean, the receiver and the Court said,  
24 sorry, you've got to go through the procedure like everybody  
25 else and get pro rata, which is what should obtain here.

1           The Bayer case is a Sixth Circuit case from that  
2 circuit that Mr. Pennington presented to the Court a couple of  
3 cases earlier -- or late last week. In this receivership  
4 case, there were escrow investors. They were talked into  
5 putting \$500,000 into a 30-day escrow account at Fleet Bank on  
6 the hopes that Bayer Financing -- Bayer would get a financial  
7 transaction involving about \$75 million.

8           The escrow agreement for this \$500,000 was  
9 executed by McLaurie and Schuman, who were agents for Bayer  
10 receivership entity, and by Smith for the Boston Group. The  
11 Boston Group was an advisor to Bayer trying to get the \$75  
12 million. As the Court said in this case -- not surprisingly,  
13 30 days later, there was no financing. And here is what  
14 happened to these poor folks. McLaurie, who was with Bayer,  
15 approved release of the funds on behalf of Bayer. Smith, who  
16 was with the Boston Group, an advisor, refused to release.

17           The receiver found -- McLaurie even went so far  
18 as to sue Smith in Michigan state court, saying, you've got to  
19 let this money go back to these investors. The receiver found  
20 out about this -- frankly, found out about it because the  
21 Bayer correspondence was coming to the receiver's office and  
22 their office opened it. They didn't even know the case was  
23 going on. And as soon as they found out the case was going on  
24 against Smith, the receiver intervened, just like what the  
25 receiver's counsel is saying here would happen if the stay was

1 lifted in this case, and the \$500,000 escrow was transferred  
2 to the receivership and disbursed pro rata.

3 Now, just to complete the circle of the  
4 Temme/Stewardship involvement in the transaction that they're  
5 trying to sue my clients over, in one of the filings -- I  
6 think this is in the first supplemental Rule 202 petition that  
7 was filed against my clients, one of several -- they describe  
8 the transaction. James Temme implemented the subject  
9 transaction. Temme is a principal of Stewardship Fund, LP.

10 And then look at what is pled in state court and  
11 what Judge Wheelis was confronted with. Stewardship was a  
12 member of Equitas General Partner, Equitas Housing Fund III,  
13 Gen Par, LLC. With regard to the investment, Temme  
14 represented to petitioners that Stewardship Fund, LP, could  
15 close on its contract to buy certain mortgages from Home  
16 Solutions Partners, LP, and provide the mortgages to Equitas,  
17 which is, again, an entity that is subject to the Steward --  
18 to the receiver's control, because it is a -- an entity that  
19 is related to Stewardship Fund.

20 To act, Your Honor, as the Finch & Barry Group  
21 requests, this Court would be nothing more than what the  
22 Janvey court described as doing, which is a judicial Robin  
23 Hood, well-meaning, but nonetheless taking money from one  
24 victim and giving it to another. There's no reason for the  
25 stay to be lifted. There's frankly no reason for the Court to

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1 have an evidentiary hearing today, as the case law is clearly  
2 in support of this court as a court in an SEC receivership  
3 with a receiver appointed, can hold plenary hearings, and  
4 there's no need for a full-blown evidentiary hearing for a  
5 decision like this. Thank you.

6 THE COURT: Thank you. Mr. Reece, did you want  
7 to add anything from the SEC?

8 MR. REECE: Your Honor, on behalf of the SEC, I  
9 think I would rather wait until towards the conclusion of the  
10 hearing and -- so we have the benefit of everything before we  
11 make -- make a statement.

12 THE COURT: That's fine. Mr. Pennington.

13 MR. PENNINGTON: May I respond briefly --

14 THE COURT: Yes.

15 MR. PENNINGTON: -- to those opening points?

16 As promised, Mr. Flegle is clearly arguing the  
17 merits of our claim. The fact of the matter is that even  
18 though that exhibit that he showed you as to where the money  
19 was going said Home Solutions Partners, you've got the bank  
20 account records in your record. You've got it in that  
21 notebook, and it shows that that money, \$3.1 million plus went  
22 directly from my clients, not to Temme, not to Stewardship,  
23 but to Home Solutions Partners I, LLC.

24 And Mr. Vose, in his first of many declarations  
25 in this court, says those records reflect that on April 27,

1 2011, a wire transfer of \$3,139,667.20 was received into an  
2 account in the name of Home Solutions Partners I, LP. Until  
3 that time, the account had been dormant. So he's arguing the  
4 merits of the case. Clearly, we have a -- we have a prima  
5 facie case here. It's up to a finder of fact to hear all the  
6 witnesses, maybe even from Mr. Vose.

7 THE COURT: Now, which document is that?

8 MR. PENNINGTON: Okay. I'm referring to page 3  
9 of the original declaration of Charles Vose that was the basis  
10 of your temporary restraining order. It is -- well, it's in  
11 my notebook.

12 THE COURT: So it's document 8?

13 MR. PENNINGTON: Thank you. Document 8. If  
14 you'll look at the bottom of page 3, you'll see what I just  
15 read.

16 Okay. So that money did not go to Stewardship,  
17 it went to Home Solutions Partners I. We had a contract with  
18 Home Solutions Partners. We're going to be able to show, I  
19 believe -- when the Stewardship people are finally able to  
20 testify, we're going to be able -- we're going to be able to  
21 show, Your Honor, that this is not a contract that Mr. Vose  
22 didn't know about; that he did know all about this contract.

23 Is that correct, Mr. Helms?

24 MR. HELMS: That's my client's --

25 THE COURT: Well, if you'll approach the podium.

1 You can't -- just identify yourself.

2 MR. HELMS: Yes. John Helms for Mr. Temme. And  
3 that's my client's position.

4 THE COURT: Is -- which is what?

5 MR. HELMS: That Mr. Vose knew about the  
6 transaction.

7 MR. PENNINGTON: This forged -- forged contract.  
8 Okay. So, again, we can talk about the merits all day. None  
9 of -- neither of the gentlemen pointed out any language in the  
10 stay that protects any of these Home Solutions Partners. And  
11 Mr. Flegle's complaining about the fact that I'm wanting an  
12 open hunting license on any of his clients, but -- the fact is  
13 those people are not parties to this proceeding. They are not  
14 protected by the stay. I don't believe they were intended to  
15 be protected by the stay.

16 Let me talk about the standing issue, okay?  
17 Because that is an issue in this hearing. The question is --  
18 if you look at the Sixth Circuit law, the question is whether  
19 the receivership company could have brought the claim. That's  
20 the threshold issue. So the Sixth Circuit says -- if you look  
21 in my brief, it says when a receiver is appointed over a  
22 corporation, the receiver may only assert claims that could  
23 have been asserted by the corporation. Okay.

24 So if that's the law, then it's a very simple  
25 question. Could Stewardship Fund sue Home Solutions Partners

1 and Charles Vose for the fraud that we're complaining about?  
2 Of course not. Temme and Stewardship weren't defrauded in any  
3 respect by Home Solutions Partners. They were working with  
4 them. They were working with them to take \$3.1 million of my  
5 client's money.

6 So the idea that Mr. Aurzada, the receiver, can  
7 sue them for fraud, for civil theft, for negligence simply  
8 misses the mark. They can't -- they can't assert those  
9 claims. Those belong to my clients.

10 Now, the Forex case has a totally different  
11 situation. That involves a situation where you had money that  
12 could be traced that was in the receivership estate. It was  
13 in a separate account, but it was in the receivership estate.

14 And Mr. Quilling, remember, told you -- he's the  
15 one that lost the Forex case, and he said that the Court held  
16 that his clients couldn't have that money; it had to be  
17 distributed pro rata. We're not talking about money that's in  
18 the estate. We're not talking about an asset of the estate  
19 here. We're talking about a direct claim that we have against  
20 the Home Solutions Partners.

21 Let me respond to a couple of points by  
22 Mr. Krystinik. I can't understand whether the receiver's  
23 opposing this motion or not. I got a response saying they  
24 only objected to the claim for the notes, which I thought we  
25 had already resolved, and now he's here talking about, well,

1 no, we want to be able to bring these claims, as if they  
2 possibly could, and so we're objecting to it at this hearing.

3           Your Honor, it wasn't too many months ago that  
4 we were in this courtroom on a motion to approve settlement  
5 that Mr. Aurzada was throwing -- was trying to throw releases  
6 at Mr. Vose like you throw rice at a bride coming out of a  
7 church. I mean, I don't quite understand this change in  
8 position, because no one got notice of that hearing. I found  
9 out about it by accident and I came up here, and I kept you  
10 late and I apologize for that, but I objected on behalf of all  
11 these people to Mr. Vose getting a blanket release. And so  
12 now -- and Home -- from Home Solutions Partners getting a  
13 release, because it -- remember, the release had affiliates in  
14 it.

15           So I don't quite understand what the receiver's  
16 position is. And I haven't heard anything from the receiver  
17 to say that this stay prevents -- expressly prevents a lawsuit  
18 by my clients against third parties. There is no precedent  
19 from the Fifth Circuit that they can show you that allows this  
20 Court and allows the receiver to usurp a private cause of  
21 action, whether it be against one of these parties'  
22 advisors -- investment advisors or whether it be against some  
23 other party who's not a party to this action.

24           Even though the damages may be the same, these  
25 parties and my clients have every right to proceed against



1 these third parties to recover their monies for direct damage  
2 caused by that customer -- by that -- I'm sorry, by that  
3 defendant. It doesn't matter that it's the same amount of  
4 damages and that -- but it -- but that's why if our damages  
5 are \$3.1 million and we recover them over here and if these  
6 other investors recover money from third parties, of course --  
7 you're familiar with double recovery. You can't -- you can't  
8 recover the same damages twice. And so it reduced the claim.

9           So it's clear that the receiver has no intent  
10 whatsoever to proceed against Home Solutions with any claims.  
11 He tried to release them back in May. There's going to be --  
12 and I think -- I think Mr. Aurzada will tell you there's going  
13 to be a very small, if any, distribution in this case to the  
14 investors. And so this is an important decision. I mean, if  
15 you were to decide that we can't -- we can't sue third parties  
16 who we directly interacted with, like my clients did with Home  
17 Solutions and sent them money, then that's going to change the  
18 whole dynamic of this whole situation.

19           And so we think it's an important matter, and  
20 the Forex case doesn't have anything to do with this. We're  
21 not talking about recovering money in the receivership estate.

22           THE COURT: Well, tell me the -- I guess the  
23 original agreement was between Home Solutions Partners, LP,  
24 which isn't one of these entities. Do you -- do you disagree  
25 with that? It wasn't -- it's not part of the Home Solutions,

1 Mr. Flegle's clients -- that's not one of his clients.

2 MR. PENNINGTON: Well, I -- I think that if we  
3 were ever allowed to see Home Solutions' records, I think we  
4 would see that these 440 mortgages are owned by Home Solutions  
5 Partners I and II and III and IV and that Mr. Temme signed  
6 this contract for Mr. Vose for Home Solutions Partners to  
7 cover them all.

8 THE COURT: Okay. Well, the first question is,  
9 though --

10 MR. PENNINGTON: I'm sorry.

11 THE COURT: The original -- the topic is --  
12 we're talking about Home Solutions Partners, LP. I mean, so  
13 is that an -- is that truly an entity or is that a fictitious  
14 corporation that was set up or was -- I mean, is it part --  
15 he's saying it's not part of the Home Solutions group.

16 MR. PENNINGTON: I say it's a misnomer. I say  
17 it's a misnomer. I mean, if we were to sue Home Solutions --

18 THE COURT: Then go ahead and sue Home Solutions  
19 Partners, LP. Go right at it. I mean, why -- I mean, if that  
20 is some corporation, why can't you go after them. That's  
21 not --

22 MR. PENNINGTON: Well --

23 THE COURT: I mean, that's not part of his  
24 group.

25 MR. PENNINGTON: I think our -- I think our

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1 pleading will say that Home Solutions Partners is a dba --

2 THE COURT: We're not talking about piercing  
3 some kind of corporate veil or something like that. That's a  
4 whole different situation. If you can prove that Home  
5 Solutions Partners, LP, is some separate corporation -- that's  
6 not what I'm hearing you say. I hear you want to go after  
7 Mr. Flegle's clients.

8 MR. PENNINGTON: Okay. Straight up, I don't  
9 know that Home Solutions Partners, LP, exists, I mean, to  
10 answer your question directly.

11 THE COURT: Well, I assume Mr. Flegle's not  
12 telling the Court misinformation. He doesn't believe that it  
13 does exist.

14 MR. PENNINGTON: Sure. But Home Solutions  
15 Partners I does --

16 THE COURT: Okay. Let's talk about that.  
17 Now --

18 MR. PENNINGTON: That's who got our money.

19 THE COURT: Now, the declaration for Mr. -- I  
20 guess your Exhibit 8 from Mr. Vose indicates the money was  
21 transferred -- and Mr. Flegle, if you'll go back to the  
22 podium, let me ask you this.

23 You gave me this chart and said the money was  
24 wire-transferred from 48th Street Holdings, LLC, to Home  
25 Solution Partners, LP. Of course, Mr. Vose said it went to

1 Home Solutions I, LP. What's the difference here? Is that  
2 one of your clients?

3 MR. FLEGLE: Home Solutions Partner -- Partners  
4 I, LP, is one of my clients, Your Honor. The wire transfer  
5 that I'm talking about is the actual transfer executed by  
6 Mr. Pennington's clients. And if we need to, I can put this  
7 in the record. We got this from Mr. Pennington.

8 At the time they were making the transfer  
9 showing that the originator, 48th Street Holdings, LLP,  
10 thought it was sending funds to a beneficiary, which is Home  
11 Solutions Partners, LP. The actual account name that was used  
12 is in the name of Home Solutions Partners I, LP, and it is an  
13 account that sends its records directly to Mr. Temme's address  
14 at Stewardship.

15 THE COURT: I guess the question I'm trying to  
16 figure out is, was the account the money was wired to, was  
17 that or was that not an account of your client's?

18 MR. FLEGLE: It was an account of my client's,  
19 Your Honor. Money went into one of my client's accounts, and  
20 money was immediately taken out of my client's accounts, and I  
21 think the record is unequivocal that was all done by  
22 Mr. Temme.

23 MR. PENNINGTON: Well, I don't -- I don't see  
24 that lack of equivocation, Your Honor. But, Your Honor, if  
25 you want to see the account statement, it's in your book.

1 It's at -- do you want to see it? It's tab 10, page 5.

2 THE COURT: Okay. So Mr. Flegle, you didn't --  
3 you weren't totally honest in this chart. The money didn't go  
4 to this nonexistent entity. The money did go to one of your  
5 clients.

6 MR. FLEGLE: Well, I -- well, if I -- if I'm  
7 misleading Your Honor, I apologize. That was not my intent.  
8 The chart -- the chart was an indicator of the -- what his  
9 clients thought they were doing, not -- they didn't -- the  
10 whole transaction here is a fraud, and what happened in the --  
11 in the interim between the green box with the wire transfer  
12 and the transfer to Destiny Fund II is that Mr. Temme used our  
13 account without our knowledge.

14 THE COURT: Okay.

15 MR. PENNINGTON: Your Honor, that goes to the  
16 merits. And the question I think you should ask yourself is  
17 when was my client damaged? My client was damaged when \$3.139  
18 million hit Mr. Vose's account. That's when my client was  
19 damaged.

20 MR. FLEGLE: And if I may say, Your Honor, from  
21 my client's standpoint, if this \$3.1 million is the damage to  
22 them and it was some kind of benefit to us, we were damaged  
23 when that money went out of our account at Mr. Temme's  
24 instruction to a receivership entity.

25 THE COURT: And then Mr. Pennington, when the

1 money was transferred from this account, it did go into a  
2 receivership asset.

3 MR. PENNINGTON: That's correct. That's  
4 correct. And that's -- and we're not -- we're not seeking --  
5 I mean, that's a separate claim we have, but we have a claim  
6 for this \$3.1 million against Home Solutions Partners because  
7 they negligently left this account open and they knew Temme  
8 was using these accounts; they knew about this contract, they  
9 knew this money was coming in. Again, we're talking -- we're  
10 arguing about the merits and I'm talking --

11 THE COURT: No, I know -- I understand, but I'm  
12 trying to -- I'm trying to get to the bottom of this myself --

13 MR. PENNINGTON: Sure.

14 THE COURT: -- so I can feel comfortable with  
15 whatever decision I ultimately make. From your -- your  
16 client's perspective, you thought you were dealing with Home  
17 Solutions Partners, LP, which is a nonexistent entity. I  
18 mean, that's the reality, is, is that when you wired the  
19 money, that's who you thought you were wiring the money to.

20 You did not think you were dealing -- well, they  
21 may have thought based on this -- and believe me, Mr. Temme  
22 has caused a lot of people a lot of hardship, which we're  
23 trying to sort through now, which I -- believe me, these cases  
24 I -- I hate these cases from the standpoint -- these SEC cases  
25 from the standpoint of how many people are harmed by this and

1 then so few people get so little in return after the dust  
2 settles. I don't like -- I don't mean I don't like doing  
3 this -- this is my job. But, I mean, I don't like what I see  
4 happens to all these people that have invested and have lost  
5 money. I do not like to see that happen at all.

6 But Mr. Pennington -- so I'm just a little  
7 concerned about the fact that -- like, I don't necessarily see  
8 a problem with you pursuing Home Solutions Partners, LP, if  
9 that's an -- if that's an existing corporation. But I think  
10 everyone's telling me that that's essentially not a  
11 corporation, and in my mind, that's not the same thing as  
12 Mr. Flegle's clients.

13 MR. PENNINGTON: But doesn't that go to the  
14 merits, Your Honor? I mean, if we've got -- if we can prove  
15 that Mr. Vose knew about the contract, approved the contract,  
16 and knew that his companies were selling these mortgages to my  
17 clients, what difference does it make that there is a minor  
18 typographical difference in the name of the company?

19 I mean, this is very confusing. I don't know  
20 how many Home Solutions Partners entities there are, but there  
21 are a bunch of them. And, you know, I think Home Solutions  
22 Partners, especially from a misnomer standpoint in state  
23 court, is close enough. It's close enough.

24 THE COURT: I'm not sure that's the way that  
25 works, but Mr. Flegle, do you have anything else to add?

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1 MR. FLEGLE: No, Your Honor, not unless Your  
2 Honor's got a question.

3 THE COURT: Okay. And then Mr. Krystinik, come  
4 back and explain to me again this one -- I've heard a lot of  
5 things today, so I'm trying to understand the implication on  
6 what the argument of the receiver in terms of allowing them to  
7 at least pursue a claim against Home Solution Partners, LP. I  
8 just want to make sure I understand why they shouldn't be able  
9 to proceed something is just because the money came into the  
10 receivership estate? Is that the simple fact that --

11 MR. PENNINGTON: So --

12 THE COURT: -- the money came into that, so -- I  
13 mean, their client doesn't have the money anymore and -- now,  
14 the argument they're trying to assert is that basically  
15 Mr. Vose is a bad actor just like Mr. Temme. Where does that  
16 get -- issue get decided and how is that issue going to get  
17 decided? Let's just assume for me that Mr. Vose is just as  
18 bad as Mr. Temme and was complicit in this. How do we  
19 determine that in this -- how is that going to be determined  
20 here?

21 MR. KRYSTINIK: Well, under the Fifth Circuit,  
22 the receiver stands in the shoes not only of the corporations  
23 over whom he's the receiver, but also in the shoes of  
24 creditors of the receivership estate. And so if it's  
25 determined that Mr. Vose -- Mr. Vose is a bad actor, the



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1 receiver has direct claims, and the -- I want to analogize  
2 this to another case where Mr. Aurzada was --

3 THE COURT: I'm not saying Mr. Vose or -- I'm  
4 not sure I'm pronouncing that right, but --

5 MR. KRYSTINIK: I'm not sure I am either.

6 THE COURT: Okay. If -- I'm not saying that he  
7 is. I'm just trying to -- I'm looking at these scenarios of  
8 how this is resolved. And I'm not saying Mr. Flegle and his  
9 clients are bad actors. I don't know. I mean, they're  
10 claiming they're a victim in this. That may be all true. But  
11 I'm just trying to parse out how it will get resolved in this  
12 lawsuit.

13 I mean, I know that -- and Mr. Vose hasn't been  
14 released and Home Solutions hasn't -- Mr. Flegle's entities --  
15 I got to be careful how I -- because we have different Home  
16 Solutions. But Mr. Flegle's clients haven't been released  
17 yet. So explain to me how the end game -- and for this  
18 hypothetical that Mr. Vose is a bad actor and not presuming  
19 Mr. Temme -- not judging him either, but I'm just saying as  
20 the same actions that was happening here, but --

21 MR. KRYSTINIK: I can make a distinction -- and  
22 I'm going to assume that your hypothetical is correct, that  
23 Mr. Vose -- Mr. Vose or -- is a -- is some sort of bad actor.  
24 On the facts alleged in their pleading that if it is true that  
25 he conspired with Mr. Temme to participate in what they

1 allege, then the receiver has a claim. And I am confused that  
2 Mr. Pennington says that the receiver doesn't have call-back  
3 ability under those factors, because the receiver stands in  
4 the shoes of the investors.

5 And that will be resolved as part of the  
6 receiver's investigation. And as I said earlier, he can't  
7 pursue that right now because Mr. Flegle's clients have no  
8 interest in trying to resolve anything with the Home Solutions  
9 Partners III, LP, while this is hanging over their head as  
10 well. And the implication that the receiver has no power is  
11 honestly without merit.

12 This is a court of equity. And in the SEC  
13 versus Derek Nelson case in the Northern District of Texas, we  
14 requested and obtained an order from the Court that the  
15 receiver could exercise all Chapter 5 avoidance powers under  
16 the bankruptcy code as if there was a bankruptcy filed. And  
17 there wasn't a bankruptcy filing in that case, but the  
18 receiver was willing to do that in order to get specific  
19 preference/avoidance actions in that case.

20 The same thing could be done here if your  
21 hypothetical is correct and if it is shown that there were --  
22 that Mr. Vose was complicit, that would be a receivership  
23 claim.

24 THE COURT: And how is that determination going  
25 to be made? I mean, how do we determine factually -- how is

1 that going to be playing out to determine whether or not he is  
2 a bad actor or not?

3 MR. KRYSTINIK: Now --

4 THE COURT: And that's basically what the Finch  
5 Group is basically asserting, is that they want -- they  
6 believe that he was part of the transaction and they want to  
7 pursue claims against -- not him personally maybe, but  
8 against -- well, maybe against him personally, too -- I don't  
9 know -- but at least against the Home Solution entities.

10 MR. KRYSTINIK: We're stepping fairly close to  
11 the receiver's work product, and I have discussed this with  
12 the receiver. But he can conclude that investigation. If not  
13 voluntarily, he has the ability to depose and to conduct  
14 discovery on these very issues. And I hope that answers the  
15 Court's question.

16 THE COURT: Okay. Thank you.

17 MR. REECE: Your Honor, may I say a few things?

18 THE COURT: Yes. Mr. Reece, we'll give you a  
19 chance. Mr. Pennington, I'm fair to everybody. I'll let  
20 everybody have their say.

21 MR. PENNINGTON: Thank you, Your Honor.

22 MR. REECE: Your Honor, David Reece on behalf of  
23 the SEC. And I said initially I wanted to wait till the end  
24 to kind of weigh in, but some of these issues have addressed  
25 some issues that I wanted to comment on just from our point of

1 view. And I guess from the -- from the starting point, I  
2 should say, I'm like Your Honor, I don't like these cases  
3 either from the standpoint of all the people that are harmed.

4 And it's often a difficult balancing act of  
5 how -- how do you balance what the receiver's doing versus  
6 what people who have been harmed legitimately want to do. You  
7 know, I understand that completely. And in some ways, this is  
8 just a matter of timing from my point of view.

9 My understanding, what I'm hearing here today is  
10 that the receiver is exploring whether or not he has the  
11 ability to regain that money that came from Finch & Barry and  
12 went to the Home Solution entities. Whether he has that  
13 ability or not, it -- that remains to be seen.

14 However, I do agree with the receiver's counsel  
15 that, in general, in the Fifth Circuit -- I understand the  
16 Sixth Circuit cases say what Mr. Pennington says they say, but  
17 that's not a uniform state of the law. There are cases that  
18 suggest that the receiver does have the ability to bring  
19 lawsuits all with in the sense of standing in the shoes of the  
20 creditors, not just the entities over which he is the  
21 receiver. So he's exploring that, and that's an issue.

22 As Your Honor mentioned at the very beginning of  
23 this hearing, the receiver has got a lot of issues pending  
24 right now. The receiver is one person. It takes time to work  
25 through these issues. And as the receiver has pointed out, if

1 in the meantime, you have a separate lawsuit that's going  
2 after assets that are arguably receivership assets that could  
3 be brought back into the estate, well, that's going to cause  
4 further drain on the receivership.

5 And as the Court knows from the factors to --  
6 that the Court looks to about whether lifting a court's -- a  
7 litigation stay, one of the factors is, where are you at in  
8 the receivership, and this is -- especially in the scope of  
9 equity receiverships, in the infancy, I would submit. And  
10 that's one reason to -- that weighs heavily against lifting  
11 that stay.

12 And I would say, as far as whether the stay  
13 applies, I think the Court -- I think it does based on what  
14 I'm hearing today. To give an example from some receivership  
15 issues in -- that came up in the Stanford case, obviously,  
16 there are investors in that case who believe that they were  
17 harmed by their financial advisors. The receiver is also  
18 suing the financial advisors, seeking commissions and other  
19 compensation that the Stanford entities paid to those people.

20 Now, that's a step ahead of where we're at in  
21 this case now, but that's -- it's an analogous situation, and  
22 the Court applied the litigation stay to prevent lawsuits  
23 going against those financial advisors until the Court had a  
24 better sense of whether or not those lawsuits would be  
25 dissipating receivership assets. It's just a balancing act.

1 And I think that case shows that the Court has the discretion  
2 to do that here.

3 It doesn't necessarily foreclose the possibility  
4 in the future for someone to come back and reurge that, no,  
5 now we have a better sense, these are or are not claims that  
6 are subject to the receivership and then maybe the litigation  
7 stay should not be applied. But that's an equitable  
8 consideration that can be taken up at a later date, it seems  
9 to me, and I will respectfully submit that.

10 THE COURT: Okay. Thanks, Mr. Reece.  
11 Mr. Pennington.

12 MR. PENNINGTON: Briefly. If you'll look at  
13 Exhibit 17 in the book -- is there a 17 in your book?

14 THE COURT: I don't have a 17.

15 MR. PENNINGTON: Okay.

16 THE COURT: I don't think they do either.

17 MR. PENNINGTON: Your Honor, Exhibit 17 is an  
18 April 26, 2011 letter to Mr. Temme from Brad Staley. What  
19 I'd -- what I'd like to do is ask you to conditionally admit  
20 this. My client's going to be identifying it, but could you  
21 conditionally admit Exhibit 17 so I can make a point?

22 THE COURT: Well, have you showed it to the  
23 other side?

24 MR. PENNINGTON: No. And I apologize, this is  
25 three copies of the same thing stapled together -- or four.

1 THE COURT: If you want to tender it to the  
2 Court, let me look at it, too.

3 MR. PENNINGTON: Yes.

4 THE COURT: And what are you pointing to this  
5 letter for? I haven't seen it yet, but --

6 MR. PENNINGTON: All right. Exhibit 17, Your  
7 Honor, I think answers the questions about the Home Solutions  
8 Partners. You're going to hear testimony from Mr. Barry that  
9 as part of their due diligence, they reached out to iServe.  
10 iServe was the company that was -- that was servicing these  
11 440 mortgages for Home Solutions Partners, whoever.

12 And you'll see even Mr. Staley refers to it --  
13 to his client as the Home Solutions Partners Loan Land  
14 Contract Portfolio, so I think -- I think the evidence is  
15 probably going to show that Home Solutions Partners is a  
16 generic assumed name for the Home -- the various Home  
17 Solutions Partners, I, II, III, IV, up to whatever.

18 In addition, Your Honor, I failed to respond to  
19 one point made in passing by the receiver about the receiver  
20 having to be a party to the -- any action we brought.  
21 Since -- since we are just proposing to bring fraud claims,  
22 obviously, Mr. Flegle, being the superb lawyer that he is, is  
23 going to name Stewardship and Temme as responsible third  
24 parties under state law. Those do not have to be made parties  
25 to the action. They're not necessary parties. The receiver's

1 not a necessary party, but they would be responsible third  
2 parties who would not be physical parties to the case, unless,  
3 of course, I guess, they wanted to -- wanted to intervene, but  
4 I'm not sure what the point of that would be.

5 Finally, Your Honor, as I pointed out, the Berg  
6 lawsuit is ongoing now. It looks just like ours in substance  
7 except it's against the Halo entities, and Mr. Lunn here is  
8 representing the plaintiffs in that case. Would you like to  
9 hear from him?

10 THE COURT: I'm not sure what he has to say to  
11 add to this, but --

12 MR. PENNINGTON: Do you have any interest in  
13 saying anything? Nothing like putting your colleague on the  
14 spot.

15 THE COURT: Would you identify yourself, sir.

16 MR. LUNN: Yeah. David Lunn, Your Honor.

17 We do have a lawsuit filed. We filed against  
18 the Halo companies and the officers, directors of Halos -- of  
19 Halo. We did that on different theories of liability. These  
20 aren't theories of liability that the receiver can pursue,  
21 just like I'm hearing here today. If you have a  
22 representation made by somebody, they're going to participate  
23 in a process and have oversight over that process and that's  
24 false, you have a direct claim against that party. That has  
25 nothing to do with what Temme did or didn't do.



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1           You're relying upon the representations, the  
2 statements that are made about how they're going to treat your  
3 money, how they're going to -- how they're going to have  
4 oversight. And if they don't do that, you have a separate  
5 claim against them. And that sounds to me we have the same  
6 thing going on here, we have different theories of liability,  
7 where if Mr. Vose said, we're going to do -- take your money  
8 and buy these assets and they don't do it, you're gone.

9           THE COURT: I'm just wondering, if you want to  
10 tell me about your lawsuit -- you're not tag-teaming with  
11 Mr. Pennington --

12           MR. LUNN: No, I'm not.

13           THE COURT: -- in making his argument, so -- I'm  
14 not sure what standing you'd have in this. I'll give you some  
15 leeway if you want to tell me about your lawsuit, but he can  
16 make whatever arguments he thinks that's important to how that  
17 affects my decision today, but --

18           MR. LUNN: Well, I guess I was just here for  
19 you -- that it was made as an exhibit to this proceeding to be  
20 sent to the Court, have questions about why we believe, you  
21 know, after looking at the stay, that wouldn't apply. That's  
22 the exact reasons is because they're independent claims that  
23 aren't claims against Stewardship or the -- any of the  
24 Stewardship entities that are a party to this SEC litigation.

25           THE COURT: Okay. Thank you.

1 MR. LUNN: Thank you, Your Honor.

2 MR. PENNINGTON: Your Honor, I'd also point out  
3 that I know Mr. Lunn and I are right because this would be the  
4 first time that a Notre Dame and Southern Cal graduate agreed  
5 on anything.

6 Could we call our first witness?

7 THE COURT: Yeah. I'm not sure we need  
8 evidence, but I'll give you -- you say they're not going to be  
9 very long?

10 MR. PENNINGTON: They're not, and I think we  
11 need a complete -- I have a feeling this case is going to the  
12 Fifth Circuit, and so I think we need a complete record, Your  
13 Honor.

14 MR. KRYSTINIK: May I just address Mr. Lunn's  
15 lawsuit briefly?

16 THE COURT: Yes. Go ahead.

17 MR. KRYSTINIK: And I want to wrap up something  
18 that you addressed before. This will tie into your question  
19 about your hypothetical. Mr. Lunn alleged that the Halo  
20 entities directly participated and made -- had direct action  
21 with his clients. That is not the allegation here. The  
22 allegation here is that they dealt directly with Temme -- with  
23 Mr. Temme, and all of their allegations were with Mr. Temme.

24 As we tried to clarify in our -- in our  
25 sur-response, if they allege something different than what

1 they've alleged today that is completely different, in other  
2 words, Mr. Vose came in and hit them on the head with a  
3 hammer, the receiver would not be taking the position that  
4 he's taking now. Thank you.

5 THE COURT: All right. And Mr. Pennington, that  
6 is a distinction. I mean, you're -- you have no allegations  
7 about anything that Mr. Vose did -- or Vose did. It's all  
8 about what Mr. Temme did in the name of Home Solution  
9 Partners, LP.

10 MR. PENNINGTON: Well, I don't exactly agree  
11 with that. I --

12 THE COURT: So tell me what fraud directly  
13 that -- I mean, you're -- the dealings were with Home  
14 Solutions Partners, LP, which apparently was Mr. Temme acting  
15 in that capacity. Who else -- where is -- what  
16 representation? For a fraud claim, it's -- I just had a fraud  
17 trial in this last week, so --

18 MR. PENNINGTON: Sure.

19 THE COURT: -- tell me who made the fraud --  
20 fraudulent allega- -- or representation?

21 MR. PENNINGTON: I am not aware of any oral  
22 misstatements that were made to my clients at this time. But  
23 we have -- we have a direct claim against them because we  
24 directly sent their money to them. Let's just suppose --  
25 let's argue my side of the merits and let's just suppose that

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1 the -- the proof comes out that Mr. Vose knew about the  
2 agreement, said sign my name to it, under the power of  
3 attorney or otherwise, and you get -- and you get the F & B  
4 people to send that money to my account.

5 We -- that's not -- that's not fraud by  
6 misrepresentation, but it's -- but it's fraud of my client  
7 through Mr. Temme, directly benefiting Home Solutions Partners  
8 I. So just because -- and that's -- and that's a good --  
9 that's their big point, is that there was no direct  
10 representations of Mr. Vose to my clients, and that's probably  
11 by design. And the fact that this contract didn't have a  
12 Roman numeral I on it may also have been by design.

13 But, again, we're getting into the merits of the  
14 case. We either can make a case against them or not, but  
15 clearly, I think we've shown, and I hope the Court is  
16 satisfied, that we were directly damaged when we sent \$3.1  
17 million to this Home Solutions Partners I account that they  
18 negligently or intentionally left open for just this such a --  
19 for just this sort of mischief. We have negligence claims,  
20 and we have civil theft as well. And they can certainly steal  
21 money from us without ever talking to us.

22 THE COURT: Well, I'm not sure I see your point.  
23 The problem the Court has is that -- like I don't see a  
24 problem with you proceeding against Home Solutions Partners,  
25 LP, but apparently, that's not a true entity. I don't see how

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1 that gets you to going against Mr. Flegle's clients, but I'm  
2 not going to make a decision from the bench. I'm going to  
3 have to -- I want to go back and look at everything --

4 MR. PENNINGTON: Sure.

5 THE COURT: -- and re-look at all the motions.  
6 The Court's been very busy. And I looked at everything last  
7 night, but it's a big decision, it affects everybody, and I  
8 want to make sure I make the right call on this.

9 Now, I will let you go ahead and put on  
10 evidence. I will tell you from -- I don't know that an  
11 evidentiary hearing is required, necessary, or even allowed in  
12 this situation. I'll let you make your record.

13 MR. PENNINGTON: Sure.

14 THE COURT: I don't know that that will be  
15 pertinent to the Court's decision, so it may be irrelevant,  
16 but I'll -- since everyone is here and you're -- I'll let you  
17 go ahead and do it. You said they'll be short, right?

18 MR. PENNINGTON: I'll be snappy.

19 THE COURT: Okay. Very good. Go ahead.

20 MR. PENNINGTON: Doug Furra, please.

21 THE COURT: You want to call your witness.

22 MR. PENNINGTON: Doug Furra.

23 THE COURT: I'm sorry. I can't hear the name of  
24 the witness you're calling.

25 MR. PENNINGTON: I'm sorry. Sorry. Doug Furra.

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1 THE COURT: And that's Furra, F-U-R-R-A?

2 MR. PENNINGTON: F-U-R-R-A.

3 THE COURT: I'm sorry?

4 MR. REECE: May I be excused, Your Honor?

5 THE COURT: Well, actually, I forget about the  
6 time sometimes. Why don't we go ahead and just take like a  
7 ten-minute break. We've been going for a little while. And  
8 then we'll come back and start that evidence. And then before  
9 we finish up, we'll do -- I haven't forgotten about coming  
10 back to the receiver when we're finished about a report.  
11 Okay. We'll take a ten-minute recess.

12 (Recess from 3:19 to 3:31 p.m.)

13 THE COURT: Please be seated. Okay. Do we --  
14 everybody back? Okay. I think we do. Mr. Pennington. Okay.

15 Mr. Furra, if you'll approach and be sworn in.  
16 If you'll raise your right hand.

17 (The witness was duly sworn.)

18 THE COURT: Go ahead and proceed.

19 MR. PENNINGTON: Thank you, Your Honor.

20 **DOUG FURRA,**

21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. PENNINGTON:**

24 Q. State your name, please.

25 A. Doug Furra.

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1 Q. Okay. Mr. Furra, where do you live?

2 A. In Dallas.

3 Q. Okay. And have you ever been associated with a  
4 company called Stewardship Fund?

5 A. Yes.

6 Q. When were you associated with that company?

7 A. I believe it started in late December of 2003 up  
8 through last August.

9 Q. All right. When did you -- well, what's the --  
10 what's the name of the company that you believe you worked  
11 for?

12 A. Stewardship Fund, LP.

13 Q. Very good. And when did you start working for  
14 Stewardship Fund, LP?

15 A. Well, I -- I was an investor in late 2003 and I  
16 was -- because we brought some properties, and I would -- I  
17 would show up to help monitor the things that were just  
18 getting started. But I think when I actually became probably  
19 an employee would have been 2004, 2005. I'm not exactly sure.

20 Q. Okay. And very briefly, how did that business --  
21 what did that business start out doing?

22 A. Well, actually, before I came along, I think they  
23 were buying foreclosed properties on like, you know, at  
24 auction. And then soon after that, they bought a bulk package  
25 up in Indianapolis, I believe. And then when I came in there,

1 they started buying bulk packages of foreclosed properties.

2 Q. Okay. And then in 2010, did Stewardship begin  
3 servicing mortgages for some of the Home Solutions entities?

4 A. Well, yes. We were -- we -- when -- Home Solutions  
5 entities -- either as an investor or as putting them to us to  
6 manage for them, they would -- yeah, they would -- we would  
7 handle -- basically, they'd be nonperforming mortgages, so we  
8 would try to get them reset and performing again.

9 Q. Okay. Tell the judge what "reset" means.

10 A. Like restructuring the mortgage, if they're not --  
11 they're not paying, so we would go in and rechange the terms  
12 such that -- usually lowering the principal and changing the  
13 terms to something that they could -- that they could manage,  
14 that they could live with.

15 Q. By April 2011, do you have any idea of how many  
16 mortgages Stewardship Fund was servicing for the Home  
17 Solutions companies?

18 A. I really don't, no.

19 Q. Would it have been at least a thousand?

20 A. The mortgages for the -- I don't know if it was that  
21 many mortgages that we -- we had both mortgages and REO  
22 properties, and probably would have been close to a thousand.

23 Q. Okay. And did Stewardship get involved with Halo in  
24 2010 or 2011?

25 A. I think it probably started in 2010.



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1 Q. Okay. And what was -- what was Halo's relationship  
2 and role with regard to Stewardship?

3 A. Well, they were developing a software for -- to  
4 replace the platform that we had for us, and I -- there may  
5 have been some other things that they were -- that they were  
6 doing with Jay, but I -- but that was -- primarily was  
7 developing a software for us.

8 Q. Okay. So they developed the software that allowed  
9 you to service the mortgages?

10 A. Right, to allow us to service the mortgages, sell the  
11 properties, that -- types of things we were doing, yes.

12 Q. And were there various Home Solutions companies that  
13 you serviced mortgages for?

14 A. Yes.

15 Q. And so was there like a -- do you remember Home  
16 Solutions Partners I and Home Solutions Partners II, et  
17 cetera?

18 A. Yes.

19 Q. Okay. Did you and Jay from time to time refer to  
20 those companies collectively as Home Solutions Partners?

21 A. Yes.

22 Q. Okay. Did you learn at some point that F & -- the  
23 F & B Group or F & B Note Holding company was purchasing some  
24 mortgages from the Home Solutions companies?

25 A. I did hear that, yes.

1 Q. Okay. And did you -- was it your understanding that  
2 these mortgages were owned exclusively by the Home Solutions  
3 Partners companies?

4 A. Yeah, I think -- I think so, yeah. I'm trying to  
5 remember. I don't remember the exact details, but yeah, I  
6 believe Jay was telling me that Finch & Barry was going to be  
7 buying Home Solutions properties.

8 MR. KRYSTINIK: Your Honor, I'm going to object  
9 to the answer as nonresponsive to the extent that it involves  
10 hearsay and it is not within his personal knowledge, and I  
11 would also object to leading.

12 THE COURT: Okay. I'll sustain.

13 MR. PENNINGTON: I'm sorry. Could you read back  
14 the question, please.

15 THE COURT: No. Go ahead and re- -- just  
16 restate your question again.

17 MR. PENNINGTON: Well, I don't remember it, Your  
18 Honor.

19 THE COURT: Well, do the best of your memory.

20 MR. PENNINGTON: Okay.

21 THE COURT: I don't let my court reporter read  
22 back, so --

23 MR. PENNINGTON: All right. Sorry.

24 Q. (BY MR. PENNINGTON) How did you refer to the F & B  
25 Group?

1 A. Just -- best I remember, it was a group, I believe  
2 that Jay had said were out of Chicago.

3 Q. Yeah, but what did you call them?

4 A. Oh. Finch & Barry.

5 Q. Okay. All right. Did you ever see the contract  
6 to -- that Finch & Barry Group had to purchase the mortgages?

7 A. No.

8 Q. Did you ever see a contract between Stewardship Fund  
9 and Home Solutions Partners to purchase those mortgages?

10 A. No.

11 Q. Okay. Now, in connection with your work at  
12 Stewardship Fund, did you ever have occasion to work with  
13 powers of attorney?

14 A. Yes.

15 Q. Okay. And what sort of powers of attorney did you  
16 ever get from any of the Home Solutions companies?

17 A. Well, when we were -- when we were -- when they put  
18 properties with us either to sell or restructure the  
19 mortgages, we would have powers of attorney to allow us to do  
20 that, that would be signed by Mr. Charles Vose to allow us to  
21 sell the properties or restructure the notes.

22 Q. And did you -- did you have stacks of original powers  
23 of attorney from the Home Solutions companies?

24 A. Yes. We would have several at a time, yes.

25 Q. Okay. And did you have -- did you have powers of

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1 attorney in late 2010 and early 2011 for all the Home

2 Solutions Partners entities as best you recall?

3 A. Yes. I'm sure of 2011. I'm not sure that -- I don't  
4 remember when we -- exactly when we first started doing that  
5 for them, but I know -- I know in 2011.

6 Q. Okay.

7 THE COURT: Would you like to approach?

8 MR. PENNINGTON: May I approach the witness?

9 THE COURT: Yes.

10 Q. (BY MR. PENNINGTON) Let me show you what we've  
11 marked as Exhibit 20 and ask you if --

12 THE COURT: Do you want to tender a copy to the  
13 Court.

14 MR. PENNINGTON: I can. Sure.

15 Q. (BY MR. PENNINGTON) Is Exhibit 20 an example of one  
16 of the powers of attorney that you used back in 2010 and 2011  
17 for Stewardship?

18 A. Yes.

19 Q. And I notice that power of attorney is to you, Doug  
20 Furra, correct?

21 A. Correct.

22 Q. Were there similar powers of attorneys from the Home  
23 Solutions Partners to Jay Temme?

24 A. Yes.

25 Q. And so is Exhibit 20 an actual certified copy of a

1 power of attorney from Cleveland, Ohio, that you used to --  
2 that you used to transfer ownership of a mortgage owned by  
3 Home Solutions Partners?

4 A. It would have either been a mortgage or a -- or an  
5 actual piece of real estate. It's one of the two.

6 Q. Yeah. You can't tell from the power of attorney.

7 A. Correct.

8 Q. Okay.

9 MR. PENNINGTON: We will offer the certified  
10 copy, Exhibit 20, Your Honor.

11 THE COURT: Any objection for purposes of this  
12 hearing?

13 MR. KRYSTINIK: I'm going to object for purposes  
14 of relevance for this hearing. It's a power of attorney from  
15 an entity that is not at issue in this hearing given to a  
16 gentleman who is not alleged to have participated in the  
17 transaction at issue in this hearing.

18 MR. PENNINGTON: I'll connect it up, Your Honor.

19 THE COURT: Okay. I agree with the objection,  
20 and I'll go ahead and admit it conditionally at this point.  
21 Go ahead.

22 (Exhibit No. 20 was admitted.)

23 MR. PENNINGTON: Okay. Let me -- I think I can  
24 give you some more. I was trying to move along.

25 Q. (BY MR. PENNINGTON) Okay. Is this -- does this

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1 look, in terms of language, just like the other powers of  
2 attorney that you -- that you used from the Home Solutions  
3 Partners companies?

4 A. Yes.

5 Q. And were they all signed by Charles Vose  
6 individually?

7 A. Yes.

8 Q. Okay. And so this is consistent with the others that  
9 you used?

10 A. Yes, sir.

11 Q. So if the judge wants to see what the powers of  
12 attorney were that you had for Home Solutions Partners I or II  
13 or III or IV, he could look at Exhibit 20 and see that?

14 A. Yeah. Yes, they were all very similar.

15 Q. Okay. To your understanding --

16 MR. PENNINGTON: May I approach the witness,  
17 Your Honor?

18 THE COURT: Yes.

19 MR. PENNINGTON: I gave away all my copies.

20 Q. (BY MR. PENNINGTON) Do you see this -- in fact,  
21 right here, do you see this particular statement in the power  
22 of attorney that appoints -- where Mr. Vose appoints you his  
23 true and lawful attorney-in-fact for me and in my name? Do  
24 you see "in my name"?

25 A. Yes.

1 Q. Is that -- was that representative of other powers of  
2 attorney that you had from the Home Solutions Partners  
3 companies?

4 A. I think they were all very similar, yes.

5 Q. Okay. And so are there -- did you have some that had  
6 that language in it?

7 A. I think so, yes.

8 Q. All right. Any reason to doubt that you did?

9 A. No.

10 Q. And what you're given the power to do here in  
11 paragraph 2 is to sell or convey upon such terms as you deem  
12 appropriate.

13 MR. KRYSTINIK: Judge, I'm going to object again  
14 on relevance. The document has been admitted conditionally.  
15 The Court can understand what the power of attorney does.

16 MR. PENNINGTON: May I proceed?

17 THE COURT: What are you trying to get at,  
18 Mr. Pennington?

19 MR. PENNINGTON: Well, I'm trying to show that a  
20 forgery is not a forgery if you have a power of attorney that  
21 allows you to sign a document in the person's name. That's  
22 number one I'm showing.

23 And number two, I'm showing that this power,  
24 specifically the power granted, is the power to sell notes and  
25 real estate, which is what we're talking about.

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1 THE COURT: Now, how do you -- yes, I understand  
2 this transaction, but how do you connect them to the  
3 transaction in question?

4 MR. PENNINGTON: I'll do that through the other  
5 witness, Your Honor.

6 THE COURT: Okay. Well, you've established that  
7 they've used these powers of attorneys and these -- in the  
8 transactions as to this, but -- that's fine, but --

9 MR. PENNINGTON: Okay.

10 Q. (BY MR. PENNINGTON) And is it your understanding  
11 that the power -- the power that you're given here is to sell  
12 or convey upon such terms as you, the agent, shall deem  
13 appropriate the interest of this Home Solutions company and  
14 the real estate currently held in that entity?

15 A. Yes.

16 Q. All right. And these powers of attorney, as you  
17 recall, did they sometimes have attached lists of properties  
18 or lists of notes, or were they always just a general document  
19 covering all real estate and notes owned by that company?

20 A. I don't remember any having lists attached to them.

21 Q. Did they all look like Exhibit 20?

22 A. To the best of my knowledge, yes, they did.

23 Q. All right.

24 MR. PENNINGTON: Your Honor, we'll offer --  
25 we'll offer Exhibit 20, the certified copy, at this time.



1 Just giving you the certified copy.

2 THE COURT: Okay. Well, I've conditionally  
3 admitted it, so --

4 MR. PENNINGTON: All right. Let me proceed.

5 Q. (BY MR. PENNINGTON) Did -- when did you leave  
6 Stewardship?

7 A. Last August, August 2011.

8 Q. All right. Were these powers of attorney that you  
9 and Mr. Temme had used to do anything besides selling? As far  
10 as Home Solu- -- the Home Solutions companies were concerned,  
11 were they used for anything other than selling mortgages and  
12 notes?

13 A. And real property, yes. Mortgages and notes and real  
14 property.

15 Q. Okay. And is it your understanding based on this  
16 Exhibit 20 that you could have entered into a contract to sell  
17 those notes, executed assignments and done all of those  
18 things?

19 MR. KRYSTINIK: Object to leading, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. PENNINGTON) What was your -- did you  
22 understand that there -- whether there were any limitations in  
23 what you could do in terms of selling mortgages and notes  
24 under one of these powers of attorney?

25 MR. KRYSTINIK: Object again. This now calls

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1 for a legal conclusion. The document speaks for itself.

2 Again, reurge my witness to the relevancy of this -- of the --  
3 my objection to relevancy of this witness, given he's never  
4 seen the contract at issue.

5 MR. PENNINGTON: Your Honor, may I?

6 THE COURT: No. I'm sustaining the objection.

7 MR. PENNINGTON: I'm asking his understanding,  
8 Your Honor.

9 THE COURT: Well, again, I'm not sure how this  
10 is totally relevant, but explain to me how you think this is  
11 relevant to the transaction at hand.

12 MR. PENNINGTON: Right. Well, Your Honor,  
13 because we have not yet received any documents from the  
14 receiver, and I'm sure the receiver has all these powers of  
15 attorney and that's the subject of a motion to compel I had  
16 before the Court, I can't show you the actual power of  
17 attorney that may have been used in this transaction. So what  
18 I'm using is a facsimile which the witness has identified as  
19 being identical to the one that would have been used. That's  
20 the relevance, Your Honor.

21 THE COURT: Well, we haven't conditionally been  
22 able to see if it's relevant, but, I mean, it is what it is,  
23 so I don't know -- this witness doesn't have knowledge of the  
24 actual transaction. If he does, talk about that, but if  
25 not -- I mean, I don't know what else you need.

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1 MR. PENNINGTON: What do you mean by "the actual  
2 transaction"?

3 THE COURT: The transaction you want to tie up  
4 here that's --

5 MR. PENNINGTON: Oh, I'm with you, Your Honor.

6 Q. (BY MR. PENNINGTON) Okay. Did you learn -- let me  
7 move on.

8 Did you learn in October 2010 about a lawsuit  
9 that was filed by MCS Stewardship No. III against the --  
10 Stewardship?

11 A. I'm sorry. When did you say?

12 Q. In October of 2010.

13 A. I can't say that it was October. It was late in  
14 2010. I'm not sure when -- I don't remember exactly when I  
15 became aware of it.

16 Q. Did you -- did you see that lawsuit?

17 A. No.

18 Q. All right. But you were aware that it was filed?

19 A. Yes.

20 Q. And did you discuss it with Jay Temme?

21 A. Yes, he discussed it with me.

22 Q. What did he say about it?

23 MR. KRYSTINIK: Objection, Your Honor, calls for  
24 hearsay.

25 THE COURT: Sustained.

1 MR. PENNINGTON: Well, Your Honor, he's --  
2 Mr. Temme, as I understand it, is not willing to testify right  
3 now, so that would make -- that would make this, number one,  
4 admissible; and number two, it's clearly an admission of a  
5 party opponent to my clients.

6 THE COURT: But you're not a party to this  
7 lawsuit.

8 MR. PENNINGTON: Sir?

9 THE COURT: You're not a party to this lawsuit.

10 MR. PENNINGTON: Well, we're going to be making  
11 a claim eventually here, Your Honor.

12 THE COURT: Well, but right now, you're not, so  
13 sustained.

14 MR. PENNINGTON: Okay.

15 Q. (BY MR. PENNINGTON) And finally, did you have any  
16 conversations with Mr. Temme in the summer of 2011 about his  
17 relationship with the Home Solutions companies?

18 A. Yes.

19 Q. And what did he say?

20 MR. KRYSTINIK: Same objection, hearsay.

21 THE COURT: Sustained.

22 MR. PENNINGTON: Okay. Your Honor, I'll make a  
23 bill and state that his answer would have been that Home  
24 Solutions -- well, can I -- can I get his answer under a bill,  
25 to make it a bill?

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1 THE COURT: Yes. This can be your offer of  
2 proof. That's fine.

3 (Begin offer of proof.)

4 Q. (BY MR. PENNINGTON) Okay. Okay. As an offer of  
5 proof, what did -- what did Mr. Temme tell you about his  
6 relationship with the Home Solutions entities in the -- in the  
7 summer of 2011?

8 A. He told me that Chad, Mr. Vose, was not happy with  
9 him and that he owed him some money.

10 MR. PENNINGTON: Okay. And also, on the -- on  
11 additional offer of proof, Your Honor.

12 Q. (BY MR. PENNINGTON) What did Mr. Temme say about  
13 this lawsuit filed by MCS?

14 A. Just that he was getting it settled. I mean, when I  
15 found out about it in late 2010, they were in settlement  
16 agreements, and he was trying very -- trying very hard to get  
17 it settled.

18 Q. You mean in settlement negotiations?

19 A. Right.

20 Q. Okay. And were you aware that Mr. Vose went to the  
21 December 3, 2010 mediation to help Mr. Temme settle that case?

22 A. No.

23 Q. Okay.

24 MR. PENNINGTON: Your Honor, we'll offer  
25 Exhibit 14.

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1 THE COURT: Wait. First of all, that concludes  
2 your offer of proof?

3 MR. PENNINGTON: Yes. Thank you.

4 THE COURT: Okay.

5 MR. PENNINGTON: That concludes the offer of  
6 proof. Thank you, Your Honor.

7 (End of offer of proof.)

8 MR. PENNINGTON: Your Honor, we will offer  
9 Exhibit 14, which is the Plaintiff's Original Petition in the  
10 MCS case that he's just talked about. It's in tab 14.

11 THE COURT: Any objection?

12 MR. KRYSTINIK: Objections on relevance grounds,  
13 Your Honor.

14 THE COURT: How is this relevant?

15 MR. PENNINGTON: Right. It's -- our lawsuit, as  
16 we described, is going to be based on the fact that -- partly  
17 on the fact that Mr. Vose was well aware that Mr. Temme was  
18 defrauding people. He was aware of this lawsuit. He actually  
19 went to the mediation with Mr. Temme on December 3rd, 2010, to  
20 resolve this lawsuit --

21 THE COURT: That hasn't been established yet.  
22 This witness didn't have any knowledge of that, so --

23 MR. PENNINGTON: Right. But that's the --  
24 that's the relevance, that it's notice -- it's notice to  
25 Mr. Vose of the -- that Mr. Temme was defrauding people.

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1 THE COURT: Okay. Well, I'll admit it.

2 (Exhibit No. 14 was admitted.)

3 THE COURT: I'm not sure it's relevant, but for  
4 the purposes of this hearing, I'll let you -- I'll give you  
5 some leeway to develop your record, but I don't know that it's  
6 relevant. Go ahead.

7 MR. PENNINGTON: I'll pass the witness.

8 THE COURT: Any questions? That was an  
9 invitation. You don't have to ask questions. I'm just --  
10 I'll give you, the other side, if they want -- if anybody  
11 wants to ask questions.

12 **CROSS-EXAMINATION**

13 **BY MR. KRYSTINIK:**

14 Q. Mr. Furra, do you still have Exhibit 20 in front of  
15 you?

16 A. No, I do not.

17 Q. Do you recall that it listed the address of Home  
18 Solutions Partners I REO as 8117 Preston Road, Suite 116,  
19 Dallas?

20 A. I don't -- I don't recall.

21 MR. KRYSTINIK: May I approach the witness ever  
22 so briefly?

23 THE COURT: Yes.

24 A. Yes, sir.

25 Q. (BY MR. KRYSTINIK) And now you're looking at

1 Exhibit 20?

2 A. Yes, sir.

3 Q. All right. And that contains a -- an actual address  
4 for the Home Solutions entity at issue?

5 A. Yes, sir.

6 Q. To the best of your recollection, do the documents  
7 regarding Home Solutions list that address or a similar  
8 address as the correct address for Home Solutions entities?

9 A. Yes, I think so.

10 Q. What entity is located at 2550 Park -- Dallas  
11 Parkway?

12 A. That was the Stewardship Fund.

13 Q. Okay.

14 MR. KRYSTINIK: Your Honor, may I approach again  
15 to retrieve my copy?

16 THE COURT: Yes.

17 MR. KRYSTINIK: I'll pass the witness, Your  
18 Honor.

19 THE COURT: Mr. Flegle, any questions?

20 MR. FLEGLE: Yes, Your Honor, just briefly.

21 **CROSS-EXAMINATION**

22 **BY MR. FLEGLE:**

23 Q. Sir, have you in your experience at Stewardship ever  
24 talked with anyone who represented themselves as being a part  
25 of the Finch & Barry Group?



1 A. No, not -- I spoke with Mr. Barry earlier out in the  
2 hall, but that was the first time.

3 Q. Today was the --

4 A. Yes.

5 Q. -- first time you've ever spoken to anyone that said  
6 they were with the Finch & Barry Group; is that correct?

7 A. That's -- to the best I -- best of my recollection,  
8 yes.

9 Q. Were you ever at any communications that Mr. Temme  
10 had with anyone at the Finch & Barry Group?

11 A. I can't recall any, no.

12 Q. Were you involved in any communications in which  
13 Mr. Temme negotiated an assignment of contract with F & B Note  
14 Holding, LLC?

15 A. No.

16 Q. Were you present when the document that has been  
17 presented to us by counsel for Finch & Barry called  
18 Charged-Off Nonperforming Note Sale Mortgage and Real Estate  
19 Owned Agreement was executed by the Stewardship Fund?

20 A. I don't -- I don't know what you're -- I don't know  
21 what -- I mean, no, I don't think so.

22 Q. And had Mr. Temme shown you any of the transaction  
23 documents that the Stewardship Fund had with F & B Note  
24 Holding, LLC, or Finch & Barry or Equitas?

25 A. I don't recall seeing them, no.

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1 Q. You said earlier that you heard Jay, or Mr. Temme,  
2 telling you or somebody that Finch & Barry was buying  
3 mortgages?

4 A. Yes. It was -- I can't remember exactly when, but  
5 that he was saying that Finch & Barry was going to be buying  
6 mortgages from Home Solutions.

7 Q. And other than that statement by Mr. Temme, do you  
8 know anything else about the Finch & Barry mortgage purchase  
9 transaction?

10 A. I mean -- I mean, it was my understanding that they  
11 had bought them. That's all -- that's all I know, yes.

12 Q. And did you do any personal investigation to see if  
13 the transaction had closed or where the money went or --

14 A. No, I did not.

15 Q. Or did anybody show you a tape, Mr. Temme or anybody  
16 else, a tape that said these are the mortgages that were sold  
17 or assigned to the F & B Note Holding, LLC, company?

18 A. It seems like we -- it seems like we did see -- I did  
19 see a list at some point of the mortgages that -- at least  
20 ones that were on our system, on our AMX system, because it  
21 was my understanding from Jay that there were other mortgages  
22 that weren't on our system that were also part of the deal.

23 Q. And did you do any independent investigation to see  
24 whether those mortgages were owned or --

25 A. No.

1 Q. -- whether --

2 A. No.

3 Q. No?

4 A. I'm sorry. No.

5 Q. Now, you also said -- and I believe you said you've  
6 never seen the contract between Stewardship Fund, LP, and the  
7 F & B Note Holding, LLC company?

8 A. No.

9 Q. You were asked about a power of attorney for  
10 Cleveland, Ohio. Did you make an effort as you were working  
11 with Temme to separate your responsibilities under these  
12 powers of attorney so that if you got a power of attorney for  
13 Home Solutions Partners I REO, you understood that that power  
14 of attorney did not apply to another Home Solutions fund,  
15 didn't you?

16 A. Yes.

17 Q. So if you got a Home Solutions Partners I, LP, power  
18 of attorney, you wouldn't use that for transactions with  
19 Fund III or Fund IV?

20 A. No.

21 Q. Because that'd be wrong, wouldn't it?

22 A. Yes. Yes.

23 Q. And did you see any power of attorney or -- I didn't  
24 hear whether you did or not -- any power of attorney that  
25 Mr. Temme at least alleged to you was a power of attorney that

1 Stewardship Fund was using in a transaction for F & B Note  
2 Holding, LLC, for any Home Solutions entity?

3 A. No. Not specifically, no.

4 Q. And did you ever see a Homes -- a power of attorney  
5 for a company named Home Solutions Partners, LP, without a  
6 number in it?

7 A. I could have. I -- we had a lot of different power  
8 of attorneys for a lot of different entities. I can't say  
9 without looking and seeing it now.

10 Q. So today your answer is, I don't remember?

11 A. I don't remember. Correct.

12 Q. And then you were asked about this MCS lawsuit  
13 against Stewardship, and you said you heard about that in late  
14 2010, right?

15 A. Correct.

16 Q. Now, after you heard about that lawsuit in late 2010,  
17 you still stayed on with Mr. Temme for another eight or nine  
18 months, didn't you?

19 A. Correct.

20 Q. Now, when you heard about this MCS lawsuit against  
21 Stewardship, did you reach some kind of immediate  
22 conclusion -- because you'd been working with Mr. Temme for a  
23 while -- any immediate conclusion that he was a securities  
24 fraud thief?

25 A. No.

1 Q. Did you still think he was honest at the time?

2 A. Yes.

3 Q. Have you read the Securities Exchange Commission's  
4 complaint in this case?

5 A. I don't think I read it completely. I've read parts  
6 of it.

7 MR. FLEGLE: I'll pass the witness, Your Honor.  
8 Thank you.

9 THE COURT: Mr. Reece, I assume you have no  
10 questions?

11 MR. REECE: Not at this time, Your Honor.

12 THE COURT: Mr. Pennington.

13 MR. PENNINGTON: A couple of follow-up, Your  
14 Honor.

15 **REDIRECT EXAMINATION**

16 **BY MR. PENNINGTON:**

17 Q. You were asked some questions about whether you saw  
18 any evidence as to whether these -- this transaction occurred.  
19 Did you see any such evidence on the records of Stewardship?

20 A. Yes. Some of the -- some of the notes on the  
21 platform -- the AMX platform showed new ownership being  
22 Equitas, which was --

23 Q. And you understood Equitas was the Finch & Barry  
24 Group?

25 A. Correct.

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1 Q. Okay. And so, do you know how many of those  
2 mortgages showed up like that as being owned by Equitas?

3 A. No. I can't recall.

4 Q. Do you know if Equitas was ever formed as a limited  
5 partnership?

6 A. I can't say for sure. I think it was, but I -- no, I  
7 can't say for sure.

8 Q. Do you know?

9 A. No.

10 Q. Okay. And then -- and then finally, I thought you  
11 told me that all the powers of attorney you saw from the Home  
12 Solutions Partners groups were unrelated to any -- well, let  
13 me start over.

14 I thought you told me that any powers of  
15 attorney you got from the Home Solutions Partners groups did  
16 not have attached any list of mortgages or notes; is that  
17 correct?

18 A. That's correct.

19 Q. Okay. So anytime you saw -- you didn't use any  
20 powers of attorney from the Home Solutions Partners entities  
21 that had lists of mortgage or notes attached?

22 A. I can't recall any, no.

23 Q. You just used general powers of attorney just like  
24 Exhibit 20?

25 A. Correct.

1 Q. To convey whatever you were conveying for that -- for  
2 that company at that time?

3 A. Correct.

4 Q. Okay.

5 MR. PENNINGTON: Pass the witness.

6 THE COURT: Okay. Sir, you may step down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you. Can this witness be  
9 fully excused?

10 MR. PENNINGTON: No.

11 THE COURT: I'm sorry?

12 MR. PENNINGTON: No, Your Honor.

13 THE COURT: No? Okay. Sir, if you'll go ahead  
14 and -- I guess, has the Rule been invoked?

15 MR. PENNINGTON: Well, it never was.

16 THE COURT: Okay. Well, you can go ahead and  
17 have a seat.

18 MR. PENNINGTON: You're welcome to stay.

19 THE COURT: Or you can leave. It's up to you.  
20 Okay. You have another witness?

21 MR. PENNINGTON: Yes. At this time, Your Honor,  
22 I want to offer a -- offer an exhibit, but first, I want the  
23 Court to take judicial notice of the declaration of Leroy  
24 Finch; that is another one of my clients. You'll recall that  
25 that -- that particular declaration was one of the two, the

1 other one being from Charles Vose on which you granted a  
2 temporary restraining order in this case. Will the Court be  
3 willing to take judicial notice of that declaration and its  
4 attachments?

5 THE COURT: And where is that at?

6 MR. PENNINGTON: It was filed on October 14,  
7 2011, the very first day of this case, along with the  
8 complaint.

9 THE COURT: Okay. But it's part of the record  
10 already, so --

11 MR. PENNINGTON: It's part of the record, but my  
12 understanding is I have to ask you to take judicial notice of  
13 it.

14 THE COURT: Yes. That's part of our court  
15 record, that's fine.

16 MR. PENNINGTON: Thank you. And what I want to  
17 do -- I had Debbie during the break print out that declaration  
18 and Exhibit 3, which I've marked as Exhibit 21, and this  
19 Exhibit 21 and Exhibit 3 to it is, in fact, the promissory --  
20 I'm sorry -- is, in fact, the contract of sale between  
21 Stewardship and Home Solutions Partners, LP, and it does have  
22 attached -- I believe this is the document Mr. Krystinik was  
23 looking for. It does have attached the list of the 440  
24 mortgages. So I'll offer Exhibit 21 at this time.

25 THE COURT: But that was already part of the



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1 record? I mean, you're just pointing it out, so --

2 MR. PENNINGTON: It's part of the record, Your  
3 Honor. I think it would be handy to have, because that  
4 document was huge.

5 THE COURT: No, I understand that, but I'm  
6 saying this is -- you're just pulling out a document that's  
7 already been part of the court record.

8 MR. PENNINGTON: Yes.

9 THE COURT: Okay. I assume there's no objection  
10 to that, so I'll admit it for this hearing.

11 (Exhibit No. 21 was admitted.)

12 MR. PENNINGTON: We'll call our next witness,  
13 Mike Barry.

14 THE COURT: Mr. Barry, if you'll approach and  
15 raise your right hand and be sworn in.

16 (The witness was duly sworn.)

17 THE COURT: Mr. Aurzada, just if you'll -- when  
18 you're done looking at that, if you'll tender that back to the  
19 Court, just so that's our exhibit.

20 MR. AURZADA: May I approach?

21 THE COURT: Yeah, you're fine. I just want to  
22 make sure we got -- go ahead, Mr. Pennington.

23 MR. PENNINGTON: May I approach the witness to  
24 hand him a book of exhibits?

25 THE COURT: Yes.

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1 MR. PENNINGTON: May I proceed?

2 THE COURT: Yes.

3 **MICHAEL BARRY,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. PENNINGTON:**

7 Q. State your name, please.

8 A. Michael Barry.

9 Q. All right. And where do you live, sir?

10 A. Colorado.

11 Q. All right. And you actually office somewhere else.

12 A. I office in Chicago.

13 Q. Okay. That seems handy.

14 Are you -- are you the Barry in what has been  
15 referred to today as the Finch & Barry Group?

16 A. That's correct.

17 Q. Okay. And what is your relationship to the F & B  
18 Note Holding, LLC?

19 A. I'm one of the partners in that group. It's a group  
20 of us. We've been partners for approximately 30 years.

21 Q. Okay. And are you familiar with the other movants on  
22 the amended motion for relief from stay?

23 A. Could you clarify that.

24 Q. Yes. What are the -- are you familiar with the other  
25 movants on this motion for relief from stay, the parties who

1 are asking the Court to proceed with a lawsuit in state court?

2 A. Yes.

3 Q. Okay. And what are those entities?

4 A. There's -- there's several LLCs in that entity, so

5 I --

6 Q. Okay.

7 A. Is there a place I could look in here and read them?

8 I'm not current on the exact LLCs that were used here.

9 Q. Let me refresh your recollection. Are they MDA  
10 Realty Holdings, LLC?

11 A. That's correct.

12 Q. MVB Holdings -- Realty Holdings, LLC?

13 A. Correct.

14 Q. LF Realty Holdings, LLC?

15 A. Correct.

16 Q. And F & B Note Holding, LLC?

17 A. Correct.

18 Q. All right. And each -- you are asking this Court to  
19 allow each of those parties to file direct claims in state  
20 court against Charles Vose and the Home Solutions affiliates?

21 A. Yes.

22 Q. All right. Now, is it your understanding that  
23 F & B -- what -- I don't want to lead you.

24 What's your understanding of the transaction  
25 that F & B entered into?

1 A. We acquired 440 notes secured by -- and mortgages on  
2 residential homes.

3 Q. Okay. Very briefly, how did that come about?

4 A. Through a due diligence process. Met with Kay  
5 Thompson, met with iServe, who serviced the mortgages, met  
6 with Jay Temme. Most of my time was at the Halo offices.  
7 Went through the AMX platform. Impressive platform, how it  
8 laid out these 440 notes. And so we went through a due  
9 diligence process. The group came down here a couple of times  
10 to Dallas, met with the different parties and made a decision  
11 to go ahead and acquire the 440 notes.

12 Q. Okay. Was that the -- was the transaction as it  
13 closed the way you originally thought it was going to be?

14 A. No.

15 Q. How was it -- how did you understand it was initially  
16 going to be?

17 A. At the 11th hour, we set up an entity called F & B  
18 Holding, which then actually acquired the notes. This was  
19 after our due diligence and my conversations with iServe.  
20 There's an exhibit here you referenced earlier today. My  
21 conversation with the gentleman there, Brad, he shared with me  
22 the notes that he was serving, the 440 notes he was servicing  
23 for Mr. Vose. And actually, there were 600-and-some notes in  
24 that pool. iServe indicated they had gone through an  
25 assignment of this type before, and the parties involved were

1 Vose, Temme and Kay Thompson.

2 Q. Okay. Now, did you -- have you ever had a  
3 conversation with Charles Vose?

4 A. No.

5 Q. Okay. Now, what is the transaction as it happened?

6 A. We acquired the 440 notes in F & B Holding rather  
7 than the original entity that we had set up, which was going  
8 to be Equitas.

9 Q. Okay. All right. And let me show you Exhibit 21.  
10 Is Exhibit 21 or the attachment, Exhibit 3 to Exhibit 21, a  
11 true and correct copy?

12 A. Yes, it is.

13 Q. Is it a true and correct copy of the contract between  
14 Stewardship and Home Solutions Partners, LP?

15 A. Yes.

16 Q. Purchased the 440 mortgages?

17 A. Yes.

18 Q. Okay. And was there an assignment of that -- of that  
19 contract to F & B Note Holding company?

20 A. Yes.

21 Q. And is that document reflected in that notebook as  
22 Exhibit 4?

23 A. Yes.

24 Q. Okay. And is this the -- is this the contract under  
25 which you understood that F & B Note Holding acquired the

1 right to purchase the 440 mortgages from Home Solutions  
2 Partners, LP?

3 A. That's correct.

4 MR. PENNINGTON: We'll offer Exhibit 4, Your  
5 Honor.

6 THE COURT: Any objection?

7 MR. KRYSTINIK: No objection, Your Honor.

8 THE COURT: Okay.

9 MR. FLEGLE: None.

10 THE COURT: Okay. It will be -- it will be  
11 admitted.

12 (Exhibit No. 4 was admitted.)

13 Q. (BY MR. PENNINGTON) All right. Do you -- did you  
14 have -- do you recall why the transaction changed, to your  
15 understanding?

16 A. My sense was from my conversations with Brad from  
17 iServe that there was a timing -- that this transaction needed  
18 to be moved up. There was a time line that Vose was setting  
19 to close it at a certain time. So to facilitate that, we set  
20 up the F & B to hold it -- to hold these entities in that LLC  
21 until one of the items -- because there was a merger happening  
22 between Halo and Stewardship. We were in the midst of that.

23 Q. Okay.

24 A. A major -- a major element of this transaction was  
25 the AMX platform to monitor and to develop and improve these

1 440 notes.

2 Q. Okay.

3 A. And so we needed to allow time for that to take  
4 place.

5 Q. All right. And look, if you will, at Exhibit 5. And  
6 I'll ask you if this is a true and correct copy of the wire  
7 transfer to the Home Solutions Partners, LP.

8 A. Yes. Yes, it is.

9 Q. And pursuant to this wire transfer, did the movants,  
10 as we're calling them here, take \$3,139,667.20 of their money  
11 and send it to Home Solutions Partners, LP, to your  
12 understanding?

13 A. We were confirmed -- it was confirmed by our bank,  
14 Parkway, that the funds had been transferred and received.

15 Q. All right. And this particular document shows as the  
16 sender 48th Street Holdings, LLC. Why does that not say F & B  
17 Note Holding?

18 A. F & B was set up specifically for this transaction.  
19 We're -- again, we're -- been partners for 30 years, and this  
20 is how the funds in our partnerships is pooled under that  
21 entity --

22 Q. Okay.

23 A. -- at Parkway Bank.

24 Q. But to your understanding, based on this Exhibit 5 I  
25 think it is -- I'm sorry, Exhibit 4 -- it was F & B Note

1 Holding that had the right to buy the mortgages?

2 A. Correct.

3 Q. And that's who the money was intended to be sent for?

4 A. It -- 48th sent it on behalf of F & B Holding, LLC.

5 Q. Okay.

6 MR. PENNINGTON: We'll offer Exhibit 5 at this  
7 time, Your Honor.

8 THE COURT: I assume no objection?

9 MR. FLEGLE: No objection, Your Honor.

10 THE COURT: Okay. It will be admitted.

11 (Exhibit No. 5 was admitted.)

12 Q. (BY MR. PENNINGTON) Okay. Briefly -- you've already  
13 talked about this a little bit. You said you had a  
14 conversation with iServe and a Mr. Staley with that company?

15 A. Yes.

16 Q. Did you receive a -- did you receive a copy of a  
17 letter from Mr. Staley after you had talked with him?

18 A. Yes. And what exhibit is that --

19 Q. Okay.

20 A. -- so I can refer to it?

21 Q. Yes. Let me make sure. Did you talk to Mr. Staley?

22 A. Yes, I did.

23 Q. Okay. Yeah, look at Exhibit 17. And where did you  
24 get this document?

25 A. There isn't an exhibit in my binder.



1 Q. Man --

2 THE COURT: This is one --

3 A. I think I can refer to it. I've seen it enough.

4 THE COURT: This is one you've added, so --

5 MR. PENNINGTON: Yeah.

6 THE COURT: Exhibit 17.

7 MR. PENNINGTON: This is not in, I don't think,

8 Your Honor.

9 THE COURT: Let's go back and look and see,

10 but --

11 (Sotto voce discussion ensued between the Court  
12 and Ms. McCord.)

13 THE COURT: It's already been admitted.

14 MR. PENNINGTON: Okay. All right.

15 Q. (BY MR. PENNINGTON) So looking at Exhibit 17, you'll  
16 see that -- when you received this, what did you make of the  
17 term "Home Solution Partners"?

18 A. This was the entity that was holding the 440 notes we  
19 were acquiring.

20 Q. Well, but the -- no. But the entity you had the  
21 contract with was Home Solutions Partners, LP. That's not the  
22 same, is it?

23 A. Again, I think it's just -- as it's been referenced  
24 here today, and from my own point, it's -- when Brad spoke  
25 about it, he spoke about Home Solution Partners --

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1 MR. KRYSTINIK: I'm going to object to the  
2 answer as nonresponsive, and it's bringing in hearsay.

3 THE COURT: Sustained. If you want to ask  
4 another question.

5 MR. PENNINGTON: Sure.

6 Q. (BY MR. PENNINGTON) Did that concern you that it  
7 said Home Solutions Partners and not Home Solutions Partners,  
8 LP?

9 A. No.

10 Q. Why not, without referring to something somebody else  
11 said?

12 A. It just did not draw any attention to me that -- and  
13 so, to me, it looked like this was an entity that held the  
14 notes and, you know, my -- my impression is that there were --  
15 that there were different entities. I didn't get into which  
16 specific entity owned it, so --

17 Q. Okay. And you're buying 440?

18 A. 440 notes.

19 Q. And Staley says that there's 645 being serviced.

20 MR. KRYSTINIK: Your Honor, I'm going to object  
21 on this as hearsay. My notes also don't indicate that  
22 Exhibit 17 was actually admitted.

23 THE COURT: I'm not sure it has been admitted.

24 MR. KRYSTINIK: And I was going to object to  
25 hearsay if it was offered.

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1 MR. PENNINGTON: Can -- can we approach the  
2 bench?

3 THE COURT: Yes.

4 MR. PENNINGTON: Thank you.

5 (Off-the-record bench conference.)

6 Q. (BY MR. PENNINGTON) All right. And when you  
7 received Exhibit 17, did you note that at least it appeared  
8 that a copy went to Chad Vose?

9 A. I did, because much of our conversation revolved  
10 around Brad's experience, the notes that he had been managing  
11 for Mr. Vose for some time and the transition that was going  
12 to take place from these notes that were now being managed  
13 from iServe to now Halo. And so Mr. Vose clearly knew about  
14 the conversation, the notes and the conveyance that was going  
15 to take place.

16 THE COURT: But how can you say that? You never  
17 spoke to Mr. Vose. You never had a conversation with  
18 Mr. Vose.

19 THE WITNESS: That's right, so --

20 THE COURT: So how can you say he knew -- or  
21 what -- what he knew or didn't know?

22 THE WITNESS: Because originally, I had called  
23 Brad to speak with him, and he wouldn't speak with me until  
24 Mr. Vose approved this conversation. And so when Brad was --

25 THE COURT: You spoke -- Brad?

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1 THE WITNESS: Oh, the gentleman at the bottom  
2 here, Brad Staley, who managed the notes on behalf of  
3 Mr. Vose.

4 THE COURT: Okay. So -- okay. Thank you.

5 Q. (BY MR. PENNINGTON) All right. Has Exhibit 17 been  
6 maintained in the business records of F & B Note Holding  
7 company?

8 A. Yes.

9 Q. And are you the custodian of those records?

10 A. I am.

11 Q. And have -- is it the regular course of business for  
12 F & B to make and maintain records of this type in your  
13 business records?

14 A. Yes.

15 Q. And is this a true and correct copy of the original  
16 document that you received?

17 A. Yes.

18 MR. PENNINGTON: We'll offer Exhibit 17.

19 MR. KRYSTINIK: Your Honor, I don't believe it  
20 actually satisfies the business records predicate. It's from  
21 iServe to Stewardship Fund. It was made by iServe and  
22 delivered to Stewardship Fund, not Finch & Barry Group.

23 MR. PENNINGTON: And we're not offering it for  
24 the truth of the matter asserted. We're offering it to show  
25 that this document was received and maintained in the file,

1 and that he under -- he did his due diligence in terms of  
2 checking out Home Solutions Partners. So that's the limited  
3 purpose of this. It's not offered for the truth of the matter  
4 asserted. It's not offered to show that there are actually  
5 645 units being served -- serviced.

6 THE COURT: Okay. So now you're saying -- you  
7 didn't really try to offer it as a business record to get  
8 around hearsay. Now you're saying it's not hearsay because --

9 MR. PENNINGTON: Covering all the bases, Your  
10 Honor.

11 THE COURT: Well, now you're pivoting. Okay.

12 So do you want to respond to that?

13 MR. KRYSTINIK: I'm not sure what the purpose of  
14 it being offered other than for hearsay is. We've spent 10  
15 minutes discussing the understanding of what Home Solutions  
16 Partners means, and I think that's why this is being admitted,  
17 not -- not for any notice purposes.

18 MR. FLEGLE: And, Your Honor, if I could add,  
19 there's no evidence in the record that this letter was  
20 actually sent to either Ms. Gija -- Giga or for Chad Vose.

21 THE COURT: No. I mean, I agree. I mean, just  
22 because their names are on a letter does not indicate receipt  
23 by Mr. Vose or the other person mentioned.

24 MR. PENNINGTON: But we do have testimony that  
25 it was received by him, and so we're offering it for the

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1 limited purpose of showing that he received this and it's been  
2 maintained in his file for whatever relevance that may have.

3 THE COURT: I mean, I'll admit it for the  
4 limited purposes that he -- that he's saying that he received  
5 it.

6 (Exhibit No. 17 was admitted.)

7 MR. PENNINGTON: Fine. All right.

8 THE COURT: Otherwise, for any other purpose, it  
9 would be hearsay --

10 MR. PENNINGTON: I understand.

11 THE COURT: -- for today's hearing.

12 MR. PENNINGTON: Okay. May I proceed?

13 THE COURT: Yes.

14 MR. PENNINGTON: Okay.

15 Q. (BY MR. PENNINGTON) In June of 2011, did anything  
16 start happening to show that this purchase of mortgages from  
17 Home Solutions Partners had gone through?

18 A. We now received the password to the AMX platform, and  
19 so we were able to access these 440 notes. If my memory  
20 serves me correctly, approximately 400 of the 440 notes were  
21 on the platform. We looked through them. My son in the back  
22 here, Paul Barry, Pat Nash, when we -- we had a password, so  
23 now we were able to look at these notes.

24 Q. Okay. And did those notes on the system show that  
25 they were owned by Equitas or do you recall?

1 A. I'm not sure about that.

2 Q. Were you able to look -- using the passwords that  
3 were given to you, were you able to look at any notes besides  
4 the 440?

5 A. No. We were just -- we were just -- we just had  
6 access to our notes.

7 Q. Okay. Do you have an Exhibit 18 there?

8 A. No.

9 Q. Okay.

10 MR. PENNINGTON: May I approach?

11 THE COURT: Yes.

12 Q. (BY MR. PENNINGTON) Did you receive a copy of  
13 Exhibit 18?

14 A. I have seen this e-mail. It was to my staff --

15 Q. Uh-huh.

16 A. -- who -- once we had received the password to look  
17 at the AMX platform, we were now going through and looking at  
18 it. And this was a letter from Kay Thompson at Halo, an  
19 e-mail from him about the progress with these notes.

20 Q. All right. And has this been maintained in the  
21 business records of F & B Note Holding company?

22 A. Yes.

23 Q. And was it the regular practice of the company to  
24 maintain this record?

25 A. Yes.

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1 Q. And this actually is an e-mail forwarded to you  
2 directly, Michael Barry?

3 A. Yes.

4 Q. Okay. And once you received this document, what was  
5 your understanding of the status of the note sale?

6 A. It was progressing, as Kay had -- had projected, had  
7 shown in his pro forma -- as a matter of fact, there was a  
8 reference that in July, some of the notes were being sold,  
9 payments were being made, they were being restored, reset, and  
10 we could expect our first distribution in August from the  
11 July.

12 Q. Okay.

13 MR. PENNINGTON: Your Honor, we'll offer  
14 Exhibit 18.

15 MR. KRYSTINIK: Objection as hearsay again, Your  
16 Honor. The e-mail was written by a representative from Halo.  
17 It was not made or kept as a business record by the movants.

18 MR. FLEGLE: Join the objection.

19 MR. PENNINGTON: Again, we're just offering to  
20 show that it -- that it was sent to him, it was in his file,  
21 it's what he was relying on in not taking action earlier, Your  
22 Honor.

23 THE COURT: So you're just offering it for the  
24 purpose of notice to him --

25 MR. PENNINGTON: Correct.



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1 THE COURT: -- that he received it?

2 MR. PENNINGTON: Correct.

3 THE COURT: For that limited purpose -- it's  
4 hearsay otherwise in this case, but I'll go ahead and admit it  
5 for that limited purpose.

6 MR. PENNINGTON: All right.

7 (Exhibit No. 18 was admitted.)

8 Q. (BY MR. PENNINGTON) And then did you receive  
9 another -- another document for -- shortly thereafter from  
10 Halo with an actual report on the -- how these notes were  
11 performing?

12 A. At the end of August, we received some disturbing --  
13 was this -- are you talking an e-mail or a phone call?

14 Q. E-mail.

15 A. Maybe I can look at the e-mail you're referring to.

16 MR. PENNINGTON: May I approach?

17 THE COURT: Yes. Mr. Pennington, how much more  
18 time are you going to take? You told me you had short  
19 witnesses when I went down this road.

20 MR. PENNINGTON: Your Honor, about probably five  
21 minutes, eight -- eight minutes.

22 THE COURT: Okay. Go ahead.

23 A. This is an e-mail from Kay Thompson reporting on the  
24 progress of the investment and the notes.

25 Q. (BY MR. PENNINGTON) And you received this?

1 A. This was received in my office.

2 Q. And it's been maintained in the records of F & B Note  
3 Holding company?

4 THE COURT: Was it received by you or by your  
5 off- -- someone in your office?

6 THE WITNESS: It was received by my son in the  
7 back and my accountant in the office.

8 THE COURT: So it wasn't received by you  
9 personally?

10 THE WITNESS: It does not appear to have me  
11 shown on the e-mail.

12 Q. (BY MR. PENNINGTON) Once it was received in your  
13 office, did you review it?

14 A. Yeah. I would -- I would get -- eventually get a  
15 copy.

16 Q. Okay.

17 MR. PENNINGTON: I'll offer Exhibit 19 for the  
18 limited purpose of notice, Your Honor.

19 MR. KRYSTINIK: Objection, hearsay.

20 THE COURT: What's your objection as to the  
21 limited purpose of notice to him that he received it?

22 MR. KRYSTINIK: If that's the only purpose and  
23 we're not looking at the truth of the matter asserted --

24 THE COURT: Right. I'm not looking at the truth  
25 of the matter asserted. He's only offering it for the purpose

1 of notice, and I'll -- I'll admit it for that purpose.

2 (Exhibit No. 19 was admitted.)

3 THE COURT: Which exhibit is this, 19? I don't  
4 know that --

5 MR. PENNINGTON: Yes.

6 THE COURT: -- you referred to an exhibit.

7 MR. PENNINGTON: Yes.

8 THE COURT: Okay.

9 MR. PENNINGTON: And Your Honor, is -- do you  
10 show that Exhibit 16 is in evidence?

11 THE COURT: I don't know that I have a 16.

12 MR. PENNINGTON: That is the Berg lawsuit, the  
13 certified copy of the Berg lawsuit that Mr. Lunn filed.

14 THE COURT: I don't have it at the bench, but  
15 let's see if --

16 (Sotto voce discussion ensued between the Court  
17 and Ms. McCord.)

18 THE COURT: No, this has not been admitted.

19 MR. PENNINGTON: We'll offer it at this time,  
20 Your Honor. Okay. If I can -- may I proceed?

21 THE COURT: Yeah, I believe -- I think it was  
22 admitted at the beginning, so --

23 MR. PENNINGTON: I thought it was --

24 THE COURT: We've already admitted it. I'm  
25 sorry. It was early on.

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1 MR. PENNINGTON: I just want to make sure.

2 THE COURT: Yeah.

3 Q. (BY MR. PENNINGTON) Okay. Now, we're going to --  
4 we're going to move on quickly here. Did you later learn  
5 there was allegedly some problem with the sale, with your  
6 purchase of the mortgages?

7 A. I heard from my son and Pat Nash via phone call with  
8 Kay Thompson that, in fact, all these notes we had been  
9 looking at on the AMX platform --

10 MR. KRYSTINIK: Your Honor, I object to the  
11 answer as nonresponsive and bringing in hearsay as to what he  
12 was told by other people.

13 THE COURT: Okay. Sustained.

14 Q. (BY MR. PENNINGTON) Okay. Did you later learn there  
15 was allegedly a problem with the purchase?

16 A. Yes.

17 Q. Okay. Do you know if that's true or not?

18 A. Yes.

19 Q. And let me show -- let me show you in your book  
20 Exhibit 6. Is this a -- well, who is -- tell the Court who  
21 David Aufrecht is.

22 A. David Aufrecht is one of my partners. He is also an  
23 attorney.

24 Q. Okay. And did this -- did he deliver you a copy of  
25 this letter?

1 A. Yes.

2 Q. Okay. And this letter says that Barlow, Garsek &  
3 Simon represents Home Solutions, LLC, correct?

4 A. Correct.

5 Q. All right. And now, is it your understanding that  
6 Mr. Vose filed a response to the Rule 202 petition in state  
7 court saying that Home Solutions, LLC, doesn't exist?

8 A. Correct.

9 Q. And I'll ask you to turn to Exhibit 15. Is that the  
10 document in which Mr. Vose says that Home Solutions, LLC,  
11 doesn't exist that his lawyer is sending out letters on?

12 A. It appears Mr. Vose makes reference to that entity in  
13 this response.

14 MR. PENNINGTON: So we will offer Exhibit 6 and  
15 15, Your Honor.

16 MR. FLEGLE: We don't have any objection, Your  
17 Honor.

18 THE COURT: No objections? Okay. They'll both  
19 be admitted.

20 MR. PENNINGTON: Okay.

21 (Exhibits No. 6 & 15 were admitted.)

22 Q. (BY MR. PENNINGTON) And then did you receive a  
23 letter directly from Mr. Jim Flegle, Exhibit 7? You see  
24 Exhibit 7 there?

25 A. Yes.

1 Q. Okay. Is that a letter you personally received  
2 from -- via e-mail from Mr. Jim Flegle?

3 A. Yes.

4 Q. Okay. And that letter says that they represent Home  
5 Solutions GP, LP, right?

6 A. Yes.

7 Q. And I want to focus your attention on the very bottom  
8 of that page, very last line of the page. It says, further,  
9 neither Home Solutions nor any of the Home Solutions, LPs,  
10 received any portion of the purchase price reflected in the  
11 alleged sale contract or any funds from the alleged assignment  
12 of contract executed by F & B Note Holding, LLC. Do you see  
13 that?

14 A. I do.

15 Q. Do you, based on what you've seen, believe that Home  
16 Solutions Partners I, LLC, in fact, received \$3.1 million?

17 A. In fact, it did.

18 Q. And in this -- in the last -- next to last paragraph,  
19 there are lawyer-like threats made not to assert any ownership  
20 of the mortgages, correct?

21 A. Yes.

22 Q. All right. Or bad things are going to happen, right?

23 A. Yes.

24 Q. Did you ever receive any follow-up to this letter?

25 A. No.

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1 Q. Okay. Did your company -- or did F & B Note Holding  
2 company ever send any money directly to Stewardship Fund or  
3 Jay Temme?

4 A. No.

5 Q. Okay.

6 MR. PENNINGTON: Pass the witness.

7 THE COURT: Okay. Any questions?

8 MR. KRYSTINIK: Briefly, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. KRYSTINIK:**

11 Q. Mr. Barry, you've been at today's entire hearing with  
12 Mr. Pennington, correct?

13 A. Yes, sir.

14 Q. You heard the debate about whether the receiver could  
15 bring a claim or whether the receiver could recover any funds  
16 if he were to assert a claim against Home Solutions  
17 affiliates.

18 I want you to assume for purposes of my question  
19 a hypothetical, that the receiver would be able to bring such  
20 a claim. Now, with that assumption, wouldn't you agree with  
21 me that if your clients bring a claim against the Home  
22 Solutions affiliates, there's only one recovery to be had,  
23 that that will decrease the amount of money available for all  
24 of the other investors besides the Finch & Barry Group  
25 investors?

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1 MR. PENNINGTON: Relevance.

2 THE COURT: Overruled. That's --

3 Q. (BY MR. KRYSTINIK) You can go ahead and answer it.

4 A. So you'd like me to make an assumption here, assume  
5 all these facts that you've laid out. That's kind of hard for  
6 me to do, to be objective with the assumption that you  
7 propose, and I don't know if I'm capable to do that, so I  
8 would say no. Because basically the funds that I paid to Vose  
9 are not part of this estate here, and I -- it's pretty clear  
10 and I'm astounded at all the discussion that's gone on because  
11 it's pretty straightforward.

12 Q. Do you agree that the funds went to Destiny Fund II,  
13 LP?

14 A. Well, the funds went to the LP. My -- on the day  
15 I -- wire instruction to pay --

16 MR. KRYSTINIK: I'm going to object to the rest  
17 of this as nonresponsive.

18 THE COURT REPORTER: I'm sorry, sir. Say that  
19 again.

20 THE COURT: Yes. Okay. Sir, you answer the  
21 questions that are asked of you.

22 THE WITNESS: Yes.

23 THE COURT: And so let's not talk over each  
24 other. Go ahead and ask your question again.

25 Q. (BY MR. KRYSTINIK) And this is just yes or no. Do



1 you agree with me that the funds that you paid were

2 transferred eventually to Destiny Fund II, LP?

3 A. I heard that today.

4 Q. Okay. You don't hold a duty to any of the other

5 investors in this case unrelated to the Finch & Barry

6 investors, do you?

7 A. Correct.

8 Q. I want to talk about some of the due diligence that

9 you did. You admitted that you never spoke to Vose, correct?

10 A. Correct.

11 Q. Did you ever search Texas Secretary of State records

12 to see if Home Solutions Partners, LP, existed?

13 A. I did not.

14 Q. Did you ever search deed records to see if Home

15 Solutions Partners, LP, owned the mortgages that was -- if

16 that entity was named as the mortgagee of the mortgages that

17 you were purchasing?

18 A. I did not.

19 Q. And all of your dealings in this transaction were

20 with either Jay Temme or with Halo or with another servicer,

21 iServe, that were all used by Jay Temme; is that right?

22 MR. PENNINGTON: Objection, foundation.

23 MR. KRYSTINIK: Foundation is his direct

24 testimony.

25 THE COURT: Those are the only people he's

1 listed, but, I mean, he can answer the question if he can,

2 so --

3 A. Those three that you mentioned, in addition to many  
4 folks that I met at the Halo office when I visited there.

5 Q. (BY MR. KRYSTINIK) Okay. Anybody else?

6 A. People involved in the AMX platform that designed the  
7 software, those types of folks, the folks that were the  
8 servicers at Halo.

9 Q. The folks at Halo and iServe?

10 A. And iServe, yes.

11 MR. KRYSTINIK: May I have one moment to consult  
12 with the receiver, Your Honor?

13 THE COURT: Yes.

14 MR. KRYSTINIK: I'll pass the witness.

15 THE COURT: Okay. Mr. Flegle.

16 MR. FLEGLE: Yes, Your Honor, very briefly.

17 MR. PENNINGTON: Your Honor, for what it's  
18 worth, I am going to lodge an objection to Mr. Flegle being  
19 able to cross-examine my client since he chose not to bring  
20 his client to this hearing.

21 THE COURT: Well, that wasn't his choice. I  
22 granted the motion to quash because you issued the subpoena  
23 just a few days -- or were served just a couple days before  
24 the hearing. So I granted that motion to quash this morning,  
25 and if I hadn't, we would have addressed that issue at the

1 beginning of the hearing, whether we needed to continue the  
2 hearing or not. But the problem was, is that in my mind,  
3 that's not sufficient notice to serve a witness for a hearing,  
4 so that was -- that was the problem.

5 Irrespective of whether or not -- we didn't  
6 go -- we don't get into the issue of whether he wanted to  
7 bring him or not. You didn't do it timely, so that was the  
8 reason why. It's relevant for that. So go ahead.

9 MR. FLEGLE: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. FLEGLE:**

12 Q. Mr. Barry, how long have you been in business?

13 A. 35 years.

14 Q. You consider yourself a sophisticated businessman?

15 A. With a focus in real estate.

16 Q. And in that focus in real estate, you've invested  
17 over the years tens of millions of dollars in projects?

18 A. I've made substantial investments.

19 Q. Hundreds of millions of dollars in projects?

20 A. Substantial investments.

21 Q. So this wasn't your first real estate investment,  
22 this investment that F & B Note Holding was going to make with  
23 Stewardship, was it?

24 A. Correct.

25 Q. And then let me get to one thing. It's kind of at

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1 the end of a long series of events that I know were painful  
2 for you. They've certainly been painful for my clients,  
3 because my clients lost a lot of money, too.

4 In September 2011 when you got my letter, did  
5 you pick up the phone and call me?

6 A. I spoke to my partners about it -- and a couple of  
7 the partners in this group are attorneys.

8 Q. Did you pick up the phone and call me?

9 A. Did I call you?

10 Q. Yes, sir.

11 A. No, I did not.

12 Q. Did you ask anybody to?

13 A. Did I -- the tone of this letter, the -- kind of the  
14 threatening tone of the letter, sir, I would not really want  
15 to engage in a conversation with you.

16 Q. I take it you're not very happy with me, but if you  
17 would just answer the question. Did you or anybody, to your  
18 knowledge, at F & B Note Holding, LLC, or any of the Finch &  
19 Barry Group reach out to try to communicate with my clients at  
20 Home Solutions Partners I, II, III, IV, V --

21 A. I'm not sure.

22 Q. -- Mr. Vose?

23 A. I'm not sure.

24 Q. Did you attempt to call Mr. Vose and say what's up?

25 A. My partner, Leroy Finch, did have a conversation with

1 Mr. Vose.

2 Q. I'm asking about you. You're the witness here under  
3 oath --

4 A. Okay.

5 Q. -- today, sir.

6 A. Oh, okay. Yeah, I -- I did not personally.

7 Q. Okay. Now, we've -- you've been asked about whether  
8 or not you talked with Mr. Vose, and you said you hadn't. And  
9 that -- and nothing I've asked has refreshed your recollection  
10 of any conversation, has it?

11 A. No.

12 Q. Have you ever talked to Farzana Giga, who also works  
13 over at one of the Home Solutions entities?

14 A. No.

15 Q. Or did you talk to anybody during your transaction  
16 who told you that they were employed by a Home Solutions  
17 entity?

18 A. The only one would have been iServe in that role, so  
19 we're -- I'm not sure if they were employed or contracted --

20 Q. Okay.

21 A. -- by Vose.

22 MR. FLEGLE: Your Honor, may I approach the --

23 THE COURT: Yes.

24 MR. FLEGLE: -- the ELMO?

25 Q. (BY MR. FLEGLE) This is the amended motion for

1 relief from stay and brief in support thereof that were filed  
2 by your lawyer in this case. Have you seen that before?

3 A. Actually, I have not.

4 Q. Okay. Let me just ask you, did you know that this  
5 motion has been filed by -- on behalf of MDA Realty Holdings,  
6 LLC?

7 A. Yes.

8 Q. Now, in terms of the four -- and did -- do you know  
9 it's been filed on behalf of MVB Realty Holdings, LLC,  
10 LF Realty Holdings, LLC, and F & B Note Holding, LLC?

11 A. Yes.

12 Q. Are they all separate entities?

13 A. Yes.

14 Q. And you make sure that if F & B Note Holding, LLC,  
15 enters a contract, that that contract is not an obligation of  
16 MDA Realty Holdings, LLC, don't you?

17 A. Sounds like you're asking me a legal question.

18 Q. Oh, do you -- does F & B Note Holding, LLC, go out  
19 and sign contracts on behalf of your other entities?

20 A. It's signed on -- in this case here, it had acquired  
21 440 notes.

22 Q. F & B Note Holding, LLC, correct?

23 A. One of us in our group signed that LLC agreement to  
24 the assignments.

25 Q. And the person who assigned it was authorized to sign

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1 on behalf of F & B Note Holding, LLC, right?

2 A. He was authorized by the rest of us to sign it.

3 Q. And as a matter of fact, we were talking about that  
4 assignment contract just a minute ago. You did not sign it,  
5 did you, sir?

6 A. No.

7 Q. And in terms of the asset purchase agreement, that's  
8 got that long name to it, were you around when Mr. Temme  
9 signed that or when somebody signed it --

10 A. No.

11 Q. -- on behalf of Home Solutions Partners, LP?

12 A. No.

13 Q. Were you around when the assignment contract was  
14 signed?

15 A. On behalf of whom?

16 Q. On behalf of whoever you're representing.

17 A. No, I was not there when my partner signed it.

18 Q. Okay. Now, the document -- it's Exhibit 5, and I'll  
19 put it up here just to see, said -- this is a wire transfer  
20 approval. You with me?

21 A. Yes.

22 Q. Now, 48th Street Holdings, LLC, is different from  
23 F & B Note Holding, LLC, right?

24 A. Yes.

25 Q. And does 48th Street Holdings, LLC, have its own

1 funds?

2 A. Yes.

3 Q. And 48th Street Holdings, LLC, is represented in this  
4 wire transfer as the sender of funds, right?

5 A. Correct.

6 Q. Now, let me go back for a second. In the amended  
7 notice -- the amended motion for relief from stay, can you  
8 find 48th Street Holdings, LLC, up there?

9 A. No.

10 Q. Okay. Let me ask you this. You see in the  
11 beneficiary information the name is Home Solutions Partners,  
12 LP. You with me?

13 A. Yes.

14 Q. Did you check the motion today or anytime to see if  
15 Home Solutions Partners, LP, an entity, is the subject of the  
16 relief requested today by Mr. Pennington?

17 A. No.

18 Q. In fact, if you look up there, Home Solutions  
19 Partners, LP, is not in the list, is it?

20 A. Correct.

21 Q. And then you were asked about Exhibit 17, which is  
22 this April 26th, 2000 letter from Halo -- from iServe, I  
23 believe, addressed to Mr. Temme. You say you received a copy  
24 of that letter, right?

25 A. From Mr. Temme.



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1 Q. From Mr. Temme. Did you check with anybody or have  
2 anybody check to see if Farzana Giga or Chad Vose got a copy  
3 of that letter?

4 A. Mr. Staley told me that --

5 Q. Brad Staley at iServe?

6 A. Yes.

7 Q. And did he tell you that he told -- well, let me just  
8 ask you, what do you remember Mr. Staley telling you about  
9 that?

10 A. This was an important phone call in terms of the  
11 decision to proceed with this transaction. Much of what --  
12 Brad Staley carried a lot of weight in our due diligence  
13 process, and he gave -- you know, he just answered all the  
14 questions. And when I ended that conversation, I had a  
15 comfort level about the 440 notes that he was managing on  
16 behalf of Mr. Vose.

17 Q. And you were clear in that conversation in your  
18 understanding that Mr. Staley, in his conversations with you  
19 about those units, was an employee of iServe, right?

20 A. Yes.

21 Q. And iServe -- in your business when you have an  
22 iServe or a servicing agent like that, those servicing agents  
23 owe duties and make representations, right?

24 A. I don't -- I don't understand the question.

25 Q. That's all right. That's all right.

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1                   When you saw this letter from Mr. Staley and you  
2 saw that he said the Home Solution Partners loan land contract  
3 portfolio, did you ask Mr. Staley if there were more than one  
4 Home Solutions Partners entities?

5           A.    No.

6           Q.    Did you ask anybody internally at your place to say,  
7 I've got this contract, this letter from iServe -- before I'm  
8 entering this big transaction -- and it says Home Solutions  
9 Partners portfolio, better check the Texas Secretary of State  
10 or the Secretary of State somewhere to see if Home Solutions  
11 Partners as that word -- those words are put together was an  
12 entity?

13          A.    I'm not sure if that was done.

14          Q.    Now, let me just get -- let me just ask you this.  If  
15 you had been assigned a contract with Home Solutions Partners  
16 I, LP -- you with me so far?

17          A.    (No oral response.)

18          Q.    -- and there were real -- there was real estate in  
19 Home Solutions Partners III, LP, you wouldn't be claiming a  
20 right to get to Home Solutions Partners III, LP, real estate,  
21 would you?

22                   MR. PENNINGTON:  Objection -- objection,  
23 relevance, Your Honor, argumentative.

24                   MR. FLEGLE:  I'll ask another question, Your  
25 Honor.

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1 THE COURT: Are you almost finished?

2 MR. FLEGLE: Yes. One more -- one more  
3 question.

4 Q. (BY MR. FLEGLE) This Exhibit 18, sir, I just want to  
5 make sure, is Patrick Nash in all the others -- it was clear  
6 in your mind that he was not employed by any Home Solutions  
7 entity either, was he?

8 A. Patrick Nash works for me.

9 Q. Okay.

10 MR. FLEGLE: I'll pass the witness, Your Honor.

11 THE COURT: I assume, Mr. Reece, you have no  
12 questions?

13 MR. REECE: No, Your Honor.

14 THE COURT: Okay. Can the witness step down?

15 MR. PENNINGTON: Nothing further, Your Honor.

16 THE COURT: Okay. You may step down. Thank  
17 you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: That concludes your evidence?

20 MR. PENNINGTON: Almost, Your Honor. We ask you  
21 to take judicial notice of the affidavit of Jacob Faine that  
22 was with my firm. That is Exhibit 10.

23 THE COURT: Is that part of the record in --

24 MR. PENNINGTON: It is part of the record, Your  
25 Honor.

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1 THE COURT: And was --

2 MR. REECE: Where is it in -- where in the  
3 record is it, just so I know?

4 MR. PENNINGTON: It was filed in support of our  
5 motion. It's attached to --

6 THE COURT: Okay. So it's attached -- it's  
7 attached to the amended motion?

8 MR. PENNINGTON: Right.

9 THE COURT: Okay. Well, to the extent that --  
10 if I even utilize the evidence you're hearing, I'll allow it  
11 to be admitted. It's part of the record in terms of my  
12 consideration of the motions. It's about the issue whether --  
13 I don't know that we needed to have an evidentiary hearing.

14 MR. PENNINGTON: Right.

15 THE COURT: So I'll admit it for the purposes of  
16 just the hearing, but it's part of the record for my  
17 consideration of the motion, irrespective of that.

18 MR. PENNINGTON: Okay. And I -- and I  
19 appreciate your patience in letting me make a record. I  
20 wouldn't waste your time if I didn't think it was -- it was  
21 necessary, Your Honor.

22 THE COURT: I understand.

23 MR. PENNINGTON: And finally, we'll offer  
24 Exhibit 11, which is the -- which is a signature -- bank  
25 signature card for Harbour Portfolio II, LLC, Exhibit 11.

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1 THE COURT: And why is this relevant to this at  
2 all?

3 MR. PENNINGTON: Well, it -- this is another one  
4 of these accounts that the money -- this is the account that  
5 the money went back into from Destiny Fund II, and it simply  
6 shows that Mr. Vose set up bank accounts with Temme as the --  
7 as the signatory on it. This is the only one I have. I don't  
8 have them for the other entities.

9 MR. KRYSTINIK: We also object that it lacks  
10 proper foundation.

11 THE COURT: Yeah, I'll sustain the objection.

12 MR. PENNINGTON: All right. Your Honor, that  
13 concludes our witness. I'd like to -- I'd like to make a  
14 brief closing statement.

15 THE COURT: Well, I'm not sure I'm going to  
16 entertain a closing statement at this point. What else do you  
17 have to say that you haven't already said through these many  
18 hours we've been here?

19 MR. PENNINGTON: Couple of -- couple of new  
20 things, Your Honor.

21 THE COURT: Okay. Just very briefly.

22 MR. PENNINGTON: Number one -- and I'll be  
23 brief. Number one, I want to leave the Court with the case of  
24 the Estate of Peter F. Lucas versus Whitely. This particular  
25 case says --

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1 THE COURT: What cite -- do you want to give me  
2 the cite?

3 MR. PENNINGTON: Sure. I was going to give you  
4 a copy, but it's 550 Southwest 2nd 767.

5 THE COURT: Okay.

6 MR. PENNINGTON: And I apologize, I don't have  
7 the writ history on that. I'll supply that.

8 THE COURT: I can look it up.

9 MR. PENNINGTON: Okay.

10 THE COURT: That's fine.

11 MR. PENNINGTON: Very good. And this case  
12 simply stands for the proposition that one with a power of  
13 attorney can sign in that -- in the principal's name. You  
14 don't have to sign in the agent's name, that one with a power  
15 of attorney can sign in the principal's name. So that's Texas  
16 law. Do you want a copy of this or just look it up?

17 THE COURT: You can go ahead and tender a copy.  
18 That's fine.

19 MR. PENNINGTON: And then finally, Your Honor,  
20 perhaps most important --

21 THE COURT: So is this -- let me just ask, so  
22 is -- now, is your argument basically that Mr. Temme signed  
23 Mr. Vose's name? I mean --

24 MR. PENNINGTON: Under a power of attorney.

25 THE COURT: Well, no, but I'm saying is I

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1 thought before you were saying Mr. Vose was complicit and  
2 actually signed and it's not a forgery. Now you're saying  
3 it's -- the argument you're trying to make is that it's not a  
4 forgery because somehow it was authorized if he did it under  
5 the power of attorney; that Mr. Temme did sign the name?

6 MR. PENNINGTON: Until I'm able to take  
7 Mr. Vose's deposition, I really can't take a stand on that.

8 THE COURT: So you're just arguing both  
9 positions?

10 MR. PENNINGTON: I'm covering the base -- I'm  
11 covering the waterfront, Your Honor.

12 THE COURT: Okay.

13 MR. PENNINGTON: If it's -- if it's his  
14 signature, it's a good contract. If it's not a good  
15 signature, then Temme had authority to sign under power of  
16 attorney.

17 THE COURT: Okay.

18 MR. PENNINGTON: Finally, and I think most  
19 important, Your Honor, I think it's very clear that -- and  
20 it's ironic that -- I think Mr. Flegle read this into the  
21 record. When Mr. Reece was asked by you in this courtroom a  
22 few months ago, well, what was your thinking in not bringing  
23 the Home Solutions Partners in as defendants in this action?

24 And he said -- and never has a more pregnant  
25 statement been made in court -- that we couldn't find any

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1 securities law violations against them.

2 The reason for that, I suppose, is because a  
3 sale of a mortgage -- sale of a home mortgage is not a sale of  
4 a security. And you've heard testimony here today that the  
5 transaction that my client entered into was the purchase of  
6 440 mortgages. Now, that wasn't the way it was supposed to  
7 be, but that's what happened and that's what they purchased.

8 So I'm going to leave you with a case from the  
9 Fifth Circuit saying that a sale of a home mortgage is not a  
10 security. I'm going to leave you a case from the Sherman  
11 Division of the Eastern District of Texas saying that the sale  
12 of a home mortgage is not a security. And I think that that  
13 should be weighed in the Court's decision on whether this is  
14 an action which my clients can bring because the SEC didn't  
15 bring them in here because this is not the sale of a security.

16 THE COURT: And I'm sure, assuming that's a home  
17 foreclosure context -- is the Sherman Division case you're  
18 referring to a home mortgage foreclosure case?

19 MR. PENNINGTON: I think it's -- it cites the  
20 general rule. The Fifth Circuit case, the one I'm giving you,  
21 does specifically say a home mortgage is not a security.

22 THE COURT: No. I'm saying is the case from the  
23 Sherman Division, is that a home mortgage foreclosure case?

24 MR. PENNINGTON: No, it's not a fore- --

25 THE COURT: Okay.



1 MR. PENNINGTON: I don't think it's a  
2 foreclosure case, Your Honor.

3 THE COURT: That's fine. You can tender those.

4 MR. PENNINGTON: Thank you, Your Honor. I'll  
5 give copies to counsel as well. And let me just read the  
6 cites into the record. The Sherman Division case is Sunset  
7 Management, LLC, versus American Realty, Inc., Case  
8 No. 406-cv-18. The Fifth Circuit case is Trust Company of  
9 Louisiana versus NNP, Inc., and that's 104 F. 3rd, 1478. I  
10 raise that because it may draw into question whether an SEC  
11 receivership should have been established based on my client's  
12 transaction, because it appears that it was not a securities  
13 transaction.

14 Basically, the one thing we haven't talked  
15 about, Your Honor, is whether -- what part of your stay  
16 prevents us from filing this suit. And clearly, they've  
17 avoided that. Nobody wants to talk about the stay language  
18 because it clearly doesn't address claims by my client, direct  
19 claims against the Home Solutions Partners entities. Again, I  
20 think that's the beginning and end of this hearing, unless  
21 you're going to impose some very broad order prohibiting all  
22 the investors from bringing claims against third parties who  
23 directly cause them injury, as the Home Solutions Partners  
24 entities did to my client.

25 And so I think that's -- I think that's the easy

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1 answer to this case, is this stay just doesn't apply to this  
2 action that we're going to bring -- that we'd like to bring.  
3 Thank you.

4 THE COURT: Does anybody else like to make any  
5 comments?

6 MR. REECE: Your Honor, I would.

7 THE COURT: Yes. Go ahead, Mr. Reece.

8 MR. REECE: I just want to state for the record  
9 that Mr. Pennington doesn't speak for me as far as why we did  
10 or did not take certain actions on behalf of the Commission.

11 THE COURT: I didn't think he did. I know -- he  
12 doesn't. I didn't take it that way.

13 MR. REECE: Okay. I just want to make sure the  
14 record is clear on that. And quite frankly, I -- after all  
15 these hours, I've almost forgotten why we were here, but I  
16 don't have anything more to add beyond what I said before.  
17 But I wanted to make sure the record was clear that  
18 Mr. Pennington was not expressing any views from me about  
19 whether there was a securities transaction involved in this  
20 case.

21 THE COURT: Okay. I understand.

22 MR. REECE: Thank you, Your Honor.

23 THE COURT: Any other comments from any of the  
24 parties?

25 MR. KRYSTINIK: Nothing further from the

1 receiver.

2 MR. FLEGLE: Nothing further, Your Honor.

3 THE COURT: Okay. Very well.

4 MR. MINOCHA: Your Honor, before we close the  
5 hearing --

6 THE COURT: Okay. If you'll approach the podium  
7 and identify who you are.

8 MR. MINOCHA: My name is Sanjay Minocha.

9 THE COURT: You want to spell that for the  
10 record.

11 MR. MINOCHA: S-A-N-J-A-Y. I've given her --  
12 given her a card.

13 THE COURT: Oh, okay.

14 MR. MINOCHA: I'm with Kane, Russell, Coleman &  
15 Logan. I represent the Stewardship Receivership Claimants  
16 Association. We recently filed a notice of appearance in this  
17 case. Because -- it's similar to what Mr. Reece just said,  
18 about him not representing what the SEC believes in this case.  
19 I just want to clarify what counsel for the receiver has said  
20 about representing all of these investors.

21 I act- -- this association actually represents  
22 these investors, and we don't believe that the receiver's  
23 always acting in the interest of the receivers. The  
24 association is 40 -- is made up of 40 members. These members  
25 are investors, claimants in the -- in the receivership.

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1 According to the receiver's list, that's 61 of the 130  
2 investors.

3 They own approximately for -- 50 percent of the  
4 estate's assets, we believe. And we have objected to the  
5 liquidation sales that have been proposed by the receiver  
6 recently. And we feel that, as a general matter, the receiver  
7 hasn't been transparent with these investors when they've  
8 attempted -- let me back up.

9 My firm is new to this, this receivership  
10 process, but the members themselves have been work -- trying  
11 to work with the receiver to work through this process and get  
12 their assets and get some money through this process, and they  
13 feel that they've had trouble doing so. And so when the  
14 receiver is represented that he's acting on behalf of all  
15 these investors, the investors themselves, many of them, do  
16 not feel that to be the case.

17 And I just wanted to make that clear on the  
18 record, that the investors are now -- have appeared in this  
19 case because not only is the sale of assets a problem, you  
20 know, the -- Your Honor, you know, the receiver also talked  
21 about this case being in its infancy as a reason for not yet  
22 prosecuting claims against other parties -- third parties.

23 Yet, it seems odd to the association that it was  
24 ready to settle with Mr. Vose so quickly when it -- this case  
25 is so early in its infancy, according to the receiver. So,

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1 you know, it seems like the receiver at times is speaking out  
2 of both sides of its mouth -- his mouth --

3 THE COURT: Sir, how --

4 MR. MINOCHA: -- with regards to some of this  
5 stuff.

6 THE COURT: And I don't mind letting you say  
7 your piece, but how does this go to the motion that's before  
8 the Court?

9 MR. MINOCHA: It doesn't, Your Honor, but you  
10 said there would be time for the other comments at the end of  
11 the hearing, and I thought this was the end of the hearing.

12 THE COURT: No. I hadn't -- I was trying to get  
13 the hearing closed so we could go to the other matters, but --

14 MR. MINOCHA: I'm sorry for interjecting then.

15 THE COURT: Okay.

16 MR. MINOCHA: It seemed to speak to --

17 THE COURT: Is that all you have to say?

18 MR. MINOCHA: That is all I have to say. I just  
19 wanted to make an appearance and make it clear that the  
20 association doesn't -- doesn't feel that the receiver is  
21 necessarily representing all of its interests at all times.  
22 Thank you, Your Honor.

23 THE COURT: Okay. Thank you. Okay. Well, I'll  
24 close the hearing on the motion that's pending before the  
25 Court. And although the comments by the last attorney are a

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1 part of that, that's actually unrelated to the motion itself,  
2 so the Court recognizes that.

3 Okay. I said I would take a report from the  
4 receiver; if you're ready to go ahead and proceed to give me  
5 an update on where you're at.

6 MR. AURZADA: I'll preface my remarks by saying  
7 that we'll be filing an additional written report shortly.

8 THE COURT: Because the one I have is as of  
9 June 30th --

10 MR. AURZADA: Yes, Your Honor.

11 THE COURT: -- this latest report.

12 MR. AURZADA: Yes. This is a hard case. I'm  
13 glad the investors are here today. Some of them, it looks  
14 like, had to leave, but I wish they were all here to hear  
15 this. We have not brought any litigation yet. We've been  
16 successful in several settlements. I want to go through some  
17 of those and the results of them.

18 With respect to an entity called P38, we  
19 received a 40 percent interest in that LLC. That was given  
20 back to us by Mr. Vose along with a check for approximately  
21 \$5,000, and we are now getting about \$2,500 a month. That  
22 payment stream is a bit irregular because it's a very small  
23 pool of second mortgages. We intend to keep receiving those  
24 funds each month, and we'll make a decision as to whether or  
25 not it ought to be sold. I've offered it to the other

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1 partners in that limited liability company, P38 Holdings, and  
2 they are not buyers.

3 We had a long discussion at a prior hearing  
4 regarding the Cavco/Harbour settlements. As a direct result  
5 of those settlements, I have filed a sale motion for \$195,000  
6 to purchase approximately 120 mortgages. But for that  
7 settlement, we wouldn't have had them.

8 But I want to address something very directly  
9 with the Court. I have kicked up something of a firestorm as  
10 it relates to the attempts to sell these notes. And quite  
11 frankly, to the extent the investors are upset with the  
12 proposed sale price, I don't blame them. The fact of the  
13 matter is, from my perspective, until as recently as  
14 yesterday, I have not received an alternative concrete  
15 proposal on a method to sell them.

16 Mr. Lunn approached the podium earlier. I met  
17 with him yesterday. I expressed that to him and said, if you  
18 bring me a concrete proposal, a better way to sell these  
19 assets, I will do it. And I will tell you, I don't have a  
20 stake in the matter. I want to get the highest price. As it  
21 relates to transparency, any investor that signs an NDA will  
22 be given the same access to information that every other  
23 bidder has been given.

24 I don't have the exact numbers, but I'm sure  
25 we've signed about 10 or 12 of those in the last two to three

1 weeks. And that will be a transparent process. If any  
2 investor wants to make a bid, they're more than happy to --  
3 I'm more than happy to accept the bid and sell to them. It's  
4 a highest-price endeavor from my perspective.

5 Similarly -- slightly different assets, but  
6 similarly, I filed a sale motion -- a motion for sales  
7 procedures, and I'll refer to this generally as the Barrier  
8 sale motion. There were 458 legacy assets in that group.  
9 Barrier has spent a tremendous amount of time building a,  
10 quote/unquote, tape. The tape will never be the professional  
11 tape that we all want it to be because we just don't have the  
12 information, but we've done the best that we can. Barrier has  
13 done a good job in that regard.

14 Here again, the procedures that I've proposed  
15 here have been to market them on a national debt exchange.  
16 I'm happy to listen to any investor input on that as well. It  
17 seems to me that that is a pretty straightforward method to  
18 try to sell them, but I'm willing to accept any other  
19 alternatives that might be out there.

20 One of the other settlements we reached was an  
21 asset disposition agreement with Mount Vernon in which they  
22 returned 250 assets, and those are in the process of being  
23 liquidated. The estate only owns a 40 percent interest in  
24 those. We've been monitoring them to make sure that the  
25 sales, when they occur, are at as high a price as possible.



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1 We reached a settlement with ER, LLC. We are  
2 closing that transaction. I have a \$25,000 check, which, as  
3 the Court recalls, is the first of two \$25,000 installments.  
4 I have a signed copy of the assignment of the oil and gas  
5 leases that the estate obtained an interest in, but I don't  
6 have the original yet, and we expect to get that any day and  
7 we'll record that of record and start the process of trying to  
8 sell those oil and gas leases. But for the settlement, the  
9 estate would not have that interest.

10 And now probably the most important part of my  
11 status report to the Court is this. This case in --  
12 receivership cases are like bankruptcy in the sense that they  
13 make for strange bedfellows. If I were in the back of the  
14 courtroom today, I would be looking at the front of the  
15 courtroom and I would say, my goodness, you've got the Finch &  
16 Barry Group over there that wants to sue HSP, and it looks to  
17 me like HSP has teamed up with the receiver.

18 I want the investors to know that if and when it  
19 becomes appropriate, if the estate has a claim, I'm going to  
20 pursue it to my fullest ability against Mr. Flegle's clients,  
21 and he knows that, and I want the investors to know that as  
22 well. If I had that claim and the Finch & Barry Group is  
23 allowed to proceed towards their claim, I'll have to do the  
24 same thing.

25 But practically speaking, if I'm going to

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1 maximize that claim, it's much easier for me to do it in the  
2 context of a one-on-one transaction or litigation instead of  
3 two-on-one because that's going to put Mr. Flegle's client in  
4 an odd situation.

5 There is other litigation that the estate is  
6 considering, and I've touched on that in prior hearings. And  
7 that would conclude my status report. I'm happy to answer any  
8 questions the Court may have.

9 THE COURT: Well, let me ask, I know there  
10 are -- I guess finally this month have been motions to approve  
11 the sales procedures in the Lakeside portfolio?

12 MR. AURZADA: Those are the two sale motions,  
13 yes.

14 THE COURT: Right. Now, these haven't been set  
15 for hearing, yet there have been opposition to it. Now, do we  
16 have the part -- is this the only party that's -- I haven't  
17 read through these yet, so --

18 MR. AURZADA: What I would propose is that the  
19 Court give us a couple of weeks to try to work out some  
20 agreement. I'm starting to hear from the investors. I owe it  
21 to them to talk to them. And I'd like to be given, quite  
22 frankly, two weeks to come back to the Court and seek a  
23 setting.

24 THE COURT: So you don't -- you're not asking me  
25 to set it at this time? So you want me to give you a

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1 couple -- 14 days to --

2 MR. AURZADA: Yes.

3 THE COURT: That's fine.

4 MR. AURZADA: Now, I will tell you that there is  
5 one risk associated with that, and that is, we might lose the  
6 interest of our purchaser. And I've talked to the  
7 purchaser -- the Lakeside purchaser is who I'm talking about  
8 that --

9 THE COURT: Right.

10 MR. AURZADA: -- they've made a bid of  
11 \$195,000. There's a chance, as a result of the intervening  
12 delay, that we lose that purchaser. Given the objections, I  
13 think it's prudent to go ahead and have those discussions  
14 first before we set this and proceed down a path. If there is  
15 a better way to settle these, let's ferret that out now.

16 THE COURT: I understand that. And, I mean, if  
17 it's lost, that's the fault of the people objecting. So if  
18 it's lost, that's -- then there's nothing we can do about  
19 that.

20 MR. AURZADA: That's part --

21 THE COURT: So that's part -- I mean, there's a  
22 due process here, so if -- we have to play it out accordingly,  
23 and hopefully, the investor or the potential sale won't get  
24 lost if that's ultimately where we end up going. But if it  
25 is, I mean, that's --

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1 MR. AURZADA: And I think the thing working in  
2 our favor there is, presumably, the purchaser is buying at a  
3 price that he thinks he can make a profit, as I expect any  
4 purchaser will. And so, hopefully, that profit motive will  
5 remain there and we can keep him on the line, so to speak.

6 THE COURT: Well, I presume he wouldn't be  
7 trying to buy it if he didn't think he could make a profit.

8 MR. AURZADA: I think --

9 THE COURT: So I'm not sure he'll go anywhere if  
10 it's 30 days from now before we actually resolve it.

11 MR. AURZADA: Time will tell.

12 THE COURT: And then the last thing is this  
13 motion to compel, which I guess is filed by Mr. Pennington's  
14 client. Again, I haven't looked at it. I guess the response  
15 just came in, but since we're -- all the parties are here, do  
16 you want to comment on that or does --

17 MR. AURZADA: I'm going to have Mr. Krystinik --

18 THE COURT: Right.

19 MR. AURZADA: -- when the time comes, argue it.  
20 I'll give my comment, then let him address the Court, if  
21 that's acceptable.

22 THE COURT: That's fine.

23 MR. AURZADA: The estate is not -- how do I want  
24 to say it -- cash rich. I checked the bank account balance  
25 today. We have \$140,000. The actual bank account balance is

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1 \$162,000. The amount -- I haven't -- I haven't written a  
2 check since I opened that account. The reason I draw that  
3 distinction is there was a check that was given to me by the  
4 Mount Vernon Group days after the receivership was entered.  
5 It was about to stale-date.

6 They said we -- they wanted me to go ahead and  
7 at least negotiate the check. It was made out to Stewardship  
8 Fund No. II, LP. They claim the estate doesn't have an  
9 interest in it. Maybe they do, maybe they don't. We'll have  
10 to hash that out. But I just wanted to make that clear to the  
11 Court.

12 THE COURT: Okay.

13 MR. AURZADA: So my interest as it relates to  
14 discovery is the costs associated with that. We're talking  
15 about huge volumes of information. I've spent a lot of time  
16 going through it. But it's a slippery slope if every investor  
17 wants to make their own discovery request. And I'll let  
18 Mr. Krystinik deal with the full merits of that.

19 THE COURT: I understand. I've handled some of  
20 these. This is the first one I think I've had a request for  
21 discovery from the receiver. I guess this is Mr. Pennington's  
22 motion. I'll let you address that. But first,  
23 Mr. Pennington, it wasn't set for hearing, but you're here, so  
24 let's just go ahead and discuss it.

25 MR. PENNINGTON: Well, are you proposing that we

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1 have the hearing now or you just want to get some preliminary  
2 feelings and we can have a hearing later, because I --

3 THE COURT: I would -- no, I'm saying is I don't  
4 usually -- I don't always have hearings on motions to  
5 compel --

6 MR. PENNINGTON: Right.

7 THE COURT: -- so this may be your only time to  
8 ever say anything about it, and I'll just decide the motion.

9 MR. PENNINGTON: Okay.

10 THE COURT: So, you know, in federal court, we  
11 do a lot of things by paper.

12 MR. PENNINGTON: Sure.

13 THE COURT: And I don't set every motion to  
14 compel for a hearing. You're here, so I thought I might as  
15 well hear your comments, just like I --

16 MR. PENNINGTON: Sure.

17 THE COURT: -- we're going through anything  
18 that's pending on the docket. Some things have been set, some  
19 things have not been set, but if you're prepared to at least  
20 give me your thoughts on it. Again, I haven't read the  
21 materials for it, but -- for that.

22 MR. PENNINGTON: Since you brought it up, I will  
23 tell you that it is very easy to get a hearing in this court,  
24 which I don't -- we don't usually experience with federal  
25 court, so we appreciate your willingness to have hearings.

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1 THE COURT: Well, I have kind of a different  
2 policy than probably some. My view is that I'm here to try to  
3 serve and help, be user-friendly to the parties, as well as  
4 the attorneys. If both sides want a hearing, I almost always  
5 grant a hearing. If both sides want their day, I'll give them  
6 a hearing.

7 If only one side requests a hearing and the  
8 other doesn't, then I'll make a decision whether I think it  
9 would help the Court, because I don't -- I'm also cognizant  
10 of, you know, all the costs involved with everybody, and we've  
11 been here a long time and this is all costing everyone -- the  
12 investors, just their time, but everyone else, their money,  
13 and so I'm aware of that. But if I think it will aid the  
14 Court, I'll certainly have it.

15 MR. PENNINGTON: Okay. I would only ask that if  
16 you're going to rule on the motion to compel without a hearing  
17 that I have a chance to file a reply brief at some point, if  
18 that's possible.

19 THE COURT: That's perfectly fine. I mean, I  
20 haven't even looked at it, so I'm just -- it's one of those --  
21 it's one of the matters that's pending in the case, so I'm  
22 just bringing it up.

23 MR. PENNINGTON: Yeah.

24 THE COURT: So I'm not prepared to make a  
25 decision on whether I would need a hearing on not. It was --

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1 it's pending on the motion. I'm just -- pending on my docket,  
2 so I'm just merely asking, since you're here, if you want to  
3 give a comment about it -- but I will wait for your reply  
4 before I ultimately and make a decision.

5 MR. PENNINGTON: Thank you. I will -- I would  
6 like to respond. There's not a lot of law on this. I --

7 THE COURT: And I say that because I've never --  
8 I don't think I've had one of these SEC cases where I've ever  
9 had this request made, so I -- but I've never had this -- I  
10 never had this situation in here --

11 MR. PENNINGTON: Yeah.

12 THE COURT: -- ever come up before.

13 MR. PENNINGTON: And I think, clearly, I made --  
14 I made Keith mad by doing it this way, but I --

15 THE COURT: I'm sure he's -- I'm sure he's not  
16 mad.

17 MR. PENNINGTON: Well, I don't know.

18 THE COURT: I didn't have that impression.

19 MR. PENNINGTON: But at any rate, I don't --  
20 there were -- the reason that I sent out a document request  
21 was because there were a lot of statements made at this  
22 hearing on the prove-up of the Home Solutions settlements that  
23 I felt should have been backed up by some documents, such as,  
24 I guess the most -- the most prominent one was the affidavit  
25 from Mr. Vose in which he says, basically, I'm a net loser in



1 this transaction, and the Court, I think, proceeded with that  
2 at face value.

3 I'm sure the receiver has documents that support  
4 that each of these companies, which they have pointed out to  
5 us in this hearing, are not -- and in their papers that are  
6 not even affiliated; they're independent companies. And so  
7 each one, of course, would have to be a net loser to be -- to  
8 have that status in this court. They'd also have to be an  
9 innocent investor.

10 And so I was disappointed that there weren't  
11 records that came forward to demonstrate those facts and was  
12 very surprised to be rebuffed in my request for those types of  
13 documents, merely support for statements that have been made  
14 in court.

15 As I said, there's not a lot of law on this, but  
16 there is a very prominent receiver for the SEC, Tinman &  
17 Tinman in Dallas. His name's Ralph Janvey. We probably --  
18 everybody in this courtroom, all the lawyers, probably know  
19 Ralph, and he's an expert on SEC receiverships, and he  
20 published an article in the Securities Regulation Law Journal  
21 in the summer of 2010. And he specifically says what I've  
22 always understood to be the case, and that is, because a  
23 receiver is a quasi extension of the court, all books,  
24 documents and papers in the hands of a receiver are quasi  
25 public in character and are open to examination not only by

1 the court, but by persons interested in the estate.

2 Furthermore, the receiver's records themselves  
3 may at times, with the exception of the attorney-client  
4 privilege documents, be open to the public as well. All court  
5 records are open to the public. The records of a receivership  
6 are open to the public, and since a receiver is an officer of  
7 the court, his records should be open to the stockholders and  
8 creditors of the corporation and anyone interested in the same  
9 at all reasonable times. And it goes on. I'll give everyone  
10 a copy of this.

11 I mean, I completely agree that the receiver  
12 can't just be getting requests for documents to produce  
13 documents next Wednesday and then someone else the Tuesday  
14 after that, but these records that have been obtained,  
15 certainly some of these could have been used in this hearing.  
16 I suspect that Mr. Aurzada has these powers of attorney that I  
17 had such a hard time with in this hearing because I didn't  
18 have the one for Home Solutions Partners I, and I believe I  
19 should have had access to that for this hearing.

20 I believe that some procedure has to be made to  
21 make his basic documents available. And the objections that  
22 have been made are Rule 408, because he's saying that his  
23 documents are settlement discussions; that's not an objection  
24 to discovery. It's never been an objection to discovery.  
25 That's an objection to the admissibility of evidence.

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1 And the other argument is that his -- some of  
2 his items are work product. There could be things that he has  
3 that are work product, such as the summary of an interview or  
4 things like that. Perhaps if it's -- if it's not a verbatim  
5 statement, that could be a work product. But the documents --  
6 the source documents that he receives from Halo and from Home  
7 Solutions and Harbour Portfolio, there is no way that those  
8 are privileged in any manner whatsoever, and those should be  
9 made open to the Court and made open to these investors.

10 As I said, a lot of these investors are filing  
11 or considering filing claims against third parties right now.  
12 They have every right to have access to those records, and I  
13 think that, you know, it's just a cost of doing business as a  
14 receiver. I think those need to be made available in some  
15 way, put on the receivership website or put in a document room  
16 at Bryan Cave or something so that people can go in and look  
17 at the court's file, which is what they're looking at when  
18 they look at the majority of his file. So that's where I'm  
19 coming from.

20 THE COURT: Okay.

21 MR. PENNINGTON: And for the receiver to say,  
22 I'm not going to show you a single piece of paper from my  
23 file, not a single piece of paper that I've obtained, not a  
24 single anything, I just -- I think that that goes against the  
25 very spirit and purpose of an SEC receivership.

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1 THE COURT: Okay.

2 MR. PENNINGTON: May I approach the Court with  
3 this?

4 THE COURT: Yes, that's fine. Mr. Krystinik, I  
5 assume you want to respond.

6 MR. KRYSTINIK: Briefly. I want to turn to Rule  
7 408 first. Some of the documents that Mr. Pennington is  
8 requesting were obtained with the express understanding that  
9 they were pursuant to settlement communications and would be  
10 kept by the receiver as confidential. The Court can enter an  
11 order with appropriate protections regarding those kinds of  
12 documents, and the receiver will let the Court decide  
13 regarding those kinds of documents, but with respect to -- and  
14 I mean, hard documents.

15 With respect to the communications between the  
16 receiver and all of the different constituencies and potential  
17 parties that he's settling with, it would absolutely chill the  
18 receiver's ability to do his job if he has to produce all of  
19 his settlement communications. And I want to speak  
20 specifically about Mr. Flegle's clients. We don't think that  
21 some documents we obtained from him are ours to give. And  
22 I'll let Mr. Flegle talk to that because they're competitors  
23 with Mr. Pennington's clients.

24 But in order to be discoverable, documents have  
25 to be relevant or reasonably likely to lead to the discovery

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1 of admissible evidence, and I don't think that the receiver's  
2 settlement communications would fall within that definition.  
3 With -- and specifically with respect to their request for  
4 production, they're not parties. Rule 34 only applies to  
5 parties.

6 They are seeking one of two things from the  
7 receiver in their motion to compel. It's either documents to  
8 relitigate the settlement motion or it's an attempt to  
9 free-ride on the receiver's efforts in a potential claim  
10 against third parties, namely Mr. Flegle's clients. If the  
11 stay is lifted and they serve a subpoena, under the Texas  
12 Rules of Civil Procedure, the receiver would be entitled to  
13 the protections of the subpoena rules, namely reimbursement of  
14 his costs.

15 We've been negotiating with another entity  
16 regarding a subpoena that they are thinking about serving on  
17 the -- on the -- on the receiver to be issued by a Texas state  
18 court. His request that he is looking at encompass the review  
19 of thousands of e-mails. That's actual time. And the  
20 receiver is more than willing to cooperate with those  
21 individuals, but only if his costs are reimbursed.

22 And let me be very clear on that. We believe  
23 that Mr. Pennington's request is an effort to use the  
24 receiver's resources to go against third parties. That is not  
25 a cost of the receivership estate to benefit preferentially

1 one group of investors. If Mr. --

2 THE COURT: I agree. I mean, I agree with that  
3 concept. I mean, the receiver, his time -- if he has to  
4 produce documents, they're going to have to pay for it. So if  
5 I ultimately decide they get some documents, they'll have to  
6 pay, I mean, because I'm not going to let the receiver estate  
7 be diminished for production of documents for unrelated  
8 matters to this estate --

9 MR. KRYSTINIK: And with respect to --

10 THE COURT: -- if that's the way we -- I  
11 proceed.

12 MR. KRYSTINIK: Correct. And with respect to  
13 the documents as a whole, the receiver's already indicated  
14 that with appropriate protections with respect to the sale  
15 motions, signing an NDA, he will provide access gladly, but  
16 there needs to be appropriate protections both to protect one  
17 competitor from receiving documents involving another  
18 competitor, which is -- I believe Mr. Flegle may speak to, and  
19 also to protect the receiver appropriately.

20 Also, procedurally, I said that their --  
21 Mr. Flegle's (sic) attempt is one of two things. It's an  
22 attempt to relitigate the settlement motions that have already  
23 been decided by the Court, or it's an attempt to obtain  
24 presuit discovery for their case against Mr. Flegle's clients,  
25 which there is no mechanism for that under the Federal Rules

1 of Civil Procedure. There is no Rule 202 as you dealt with in  
2 state court.

3           What the appropriate mechanism would be if a  
4 stay is lifted, which we again urge that it should not be, but  
5 then the Texas subpoena rules would apply, again, and as  
6 you've already said, protect the receiver from the costs.  
7 That is the concern for the receiver, is to make sure that his  
8 costs are appropriately safeguarded and -- but he would  
9 vigorously guard his communications with other parties with  
10 whom he's trying to settle, because he sincerely believes that  
11 that would chill his efforts to try to settle with remaining  
12 parties if he has to post his settlement communications on the  
13 website, which is what Mr. Pennington requested that I do.

14           THE COURT: I understand.

15           MR. KRYSTINIK: Thank you.

16           THE COURT: Okay. Thank you.

17           MR. FLEGLE: Very briefly, Your Honor.

18           THE COURT: Okay. Very briefly.

19           MR. FLEGLE: Very briefly. Your Honor, I think  
20 the receiver and the SEC would say this, but even if they  
21 didn't, it's my perception that my clients have been as  
22 cooperative as possible with the various investigations. As a  
23 part of that cooperation in response to the order to show  
24 cause, we sat down with the receiver and gave them a lot of  
25 our business records. We've done the same with the SEC on the

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1 condition that they were confidential so that they could --  
2 they could review them.

3 We may have a time down the road where that  
4 confidence is not necessary, but at this point in time for --  
5 in particular, the Finch & Barry Group, they're in the same  
6 business as we are, and they're going to get to see our  
7 business documents about transactions willy-nilly, doesn't  
8 make sense to us, and we would urge the motion to compel be  
9 denied.

10 Two important cases; they're in our reply. The  
11 In Re: I-35W Bridge Collapse case, it's 243 F.rd.

12 THE COURT: So it's in your reply?

13 MR. FLEGLE: It is in our reply. Is spot-on  
14 that we don't get in the middle of things that the government  
15 and receivers are investigating and mess up their  
16 investigation. And in SEC versus Hardy, the orderly and  
17 efficient administration of the state -- of the estate is  
18 paramount.

19 So we would urge the Court to very -- and I know  
20 the Court will be very careful in its analysis -- to take into  
21 consideration that we do have business information that was  
22 shared with the receiver that we did not expect would be  
23 shared with third parties.

24 THE COURT: Thank you. Okay. Is there anything  
25 else we need to take up? I think that covers everything



1 that's before the Court.

2 MR. PENNINGTON: As far as replying, do you want  
3 to -- do you want to just set a date for me to do that now?

4 THE COURT: Well, the Rules provide for a time,  
5 so I'm not sure --

6 MR. PENNINGTON: Let's see.

7 THE COURT: I didn't look and see when the --  
8 when the response came in, so you can just follow the rules.  
9 I'm not -- I'm not expediting it because I'm busy and I --  
10 this is not that -- the motion to compel is not as high a  
11 priority as trying to figure out the issue of the stay.

12 MR. PENNINGTON: Well, that may be like tomorrow  
13 or something. I really wasn't prepared for that. I just  
14 assumed, like everything else, we'd have a hearing on it.

15 THE COURT: Well -- but your reply would be due,  
16 under the rules, irrespective of whether I had a hearing or  
17 not.

18 MR. PENNINGTON: Well --

19 THE COURT: So, I mean, I don't have any  
20 problem. I'm sure if you need an extension, they're not going  
21 to -- they're not -- that's not a problem. I'm very  
22 user-friendly, Mr. Pennington.

23 MR. PENNINGTON: You seem to be, uh-huh.

24 MR. KRYSTINIK: The receiver is happy to provide  
25 them another one week.

1 THE COURT: So if you want to -- is your  
2 deadline tomorrow? I don't know. I haven't looked --

3 MR. PENNINGTON: I don't know. I don't know.

4 THE COURT: Okay.

5 MR. PENNINGTON: I just --

6 THE COURT: Well --

7 MR. PENNINGTON: I'll do something. I'll  
8 file --

9 THE COURT: I mean, I'll grant you another week  
10 if your extension, but --

11 MR. PENNINGTON: A week beyond the -- a week  
12 beyond the rule extension?

13 THE COURT: That's fine. I'll extend -- orally  
14 grant you a week from whatever that -- whatever deadline that  
15 is --

16 MR. PENNINGTON: Great.

17 THE COURT: -- I'll grant it, and I'm not going  
18 to proceed till I get your reply to look at it, so --

19 MR. PENNINGTON: Thank you, Your Honor.

20 THE COURT: Okay? Well, we're making a habit of  
21 making our hearings go past the 5 o'clock hour, although this  
22 one didn't go past 6:00 like last time. You all have a good  
23 evening, and we'll be in recess.

24 (Proceedings recessed at 5:28 p.m.)  
25

1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3  
4 /s/  
LISA A. TRASLAVINA-KERR, CSR

September 24, 2012  
Date

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