

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

No. 3:22-cv-2118-X

TIMOTHY BARTON,
CARNEGIE DEVELOPMENT, LLC,
WALL007, LLC,
WALL009, LLC,
WALL010, LLC,
WALL011, LLC,
WALL012, LLC,
WALL016, LLC,
WALL017, LLC,
WALL018, LLC,
WALL019, LLC,
HAOQIANG FU (A/K/A MICHAEL FU),
STEPHEN T. WALL,

Defendants,

DJD LAND PARTNERS, LLC, and
LDG001, LLC,

Relief Defendants.

RECEIVER’S MOTION FOR SUMMARY JUDGMENT
REGARDING SOUTHERN PROPERTIES CAPITAL, LTD.’S
CLAIMED OWNERSHIP INTEREST IN CERTAIN
RECEIVERSHIP ENTITIES AND PROPERTIES

Pursuant to the Court’s Order instituting a summary proceeding,¹ the Receiver, Cort Thomas, moves for summary judgment against Southern Property Capital, Ltd. (“SPC”) regarding

¹ Dkt. 190.

its claim of ownership and/or control regarding certain Receivership Entities and Receivership Properties, and in support, respectfully shows the Court as follows.

SUMMARY

For the reasons explained in the Receiver's Brief In Support of this Motion, the Receiver requests declarations from the Court as follows:

1. Prior to the Receiver's appointment, Barton controlled each of the Receivership Entities at issue here;

2. SPC did not effectively exercise any conversion or assignment rights provided in the Pledge and Security Agreements, Assignment of Pledge and Security Agreements, or Pledge and Security Agreement with Assignment of Rights, such that any debt owed to it was converted to equity or control over the D4 Entities;

3. Following entry of the Receivership Order, SPC is not presently permitted to exercise any conversion or assignment rights to alter the ownership or control structure of any Receivership Entities;

4. The Receiver is entitled to sell each of the Apartment Developments free and clear of any claim by SPC;

5. If a claims process is established for distribution of Receivership Assets, SPC may participate as an investor, treated equally with all other investors, or, perhaps as a creditor to the extent of any unpaid loans or other fees owed to it by any Receivership Entities.

APPENDIX

In accordance with Local Rule 56.6, the Receiver submit an Appendix with supporting evidence. Under Local Rule 56.5(c), the Receiver's supporting Brief will cite to specific pages in the Appendix, as "APP__."

PRAYER FOR RELIEF

No genuine issue of material fact exists regarding the Receiver's and SPC's competing claims. The Receiver therefore respectfully requests that the Court grant his motion for summary judgment and enter judgment in his favor with regard to the competing claims by and against Southern Properties Capital, Ltd.

Respectfully submitted,

By: /s/ Charlene C. Koonce

Charlene C. Koonce

State Bar No. 11672850

charlene@brownfoxlaw.com

Timothy B. Wells

State Bar No. 24131941

tim@brownfoxlaw.com

BROWN FOX PLLC

8111 Preston Road, Suite 300

Dallas, TX 75225

Tel. 214.327.5000

Fax. 214.327.5001

Attorneys for Receiver Cortney C. Thomas

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d)(1)(B), as amended, no certificate of service is necessary because this document is being filed with the Court's electronic-filing system.