

Parc at Ingleside and Parc at Opelika have their own set of unique facts and documents. The Receiver includes these two additional projects for the purpose of confusing the issues and muddying the waters for the two projects that are at issue: Windmill Farms and Bellwether Ridge. The Receiver concedes that it does not seek to sell Parc at Ingleside or Parc at Opelika at this time; therefore, there is no cause for the Receiver, unilaterally, to inject them into its motion for summary judgment, thereby forcing SPC to incur the additional time and expense to address them in its Response. The Court should grant SPC's Motion to Strike and strike from the Receiver's Motion for Summary Judgment the two (2) additional projects known as Parc at Ingleside and Parc at Opelika.

Background Facts

1. On February 22, 2023, the Receiver filed its Motion for Appointment of Appraisers, Approval of Appraisers, Approval Hearing and Approval of Sale of Parc at Windmill Farms. ECF No. 161. Parc at Windmill Farms ("Windmill Farms") is a 272-unit apartment complex located in Forney, Texas. *Id.*, p. 2. SPC asserts an ownership interest in Windmill Farms arising through its ability to convert a loan to equity. *Id.*, p. 3.

2. Also on February 22, 2023, the Receiver filed a similar motion with respect to Bellwether Ridge. ECF No. 164. The Receiver filed its Motion for Appointment of Appraisers, Approval of Appraisers, Approval Hearing and Approval of Sale of Bellwether Ridge. *Id.* Bellwether Ridge is a 150-unit apartment complex in DeSoto, Texas. *Id.*, p. 2. SPC also asserts an ownership interest in Bellwether Ridge arising through its ability to convert a loan to equity. *Id.*, p. 3.

3. It is important to note that the Receiver did not move to sell two other apartment complexes involving SPC, namely Parc at Ingleside (located in the Corpus Christi area) or Parc at Opelika (located in Alabama).

4. On March 2, 2023, the Court ordered expedited briefing on the Receiver's motions. ECF No. 169. The Court ordered that it would hold a hearing on March 20, 2023. *Id.*

5. On March 10, 2023, SPC filed its Motion to Intervene, ECF No. 178, and its Response objecting to the Receiver's motions as to Windmill Farms and Bellwether Ridge. ECF No. 178. SPC also filed its Appendices in support. ECF Nos. 179, 180, 181, 182, 183.

6. On March 15, 2023, the Receiver filed its Motion to Continue Hearing Regarding Approval of Sales of Parc at Windmill Farms and Bellwether Ridge and Motion to Stay SPC's Motion to Intervene. ECF No. 188.

7. On March 16, 2023, the Court granted the Receiver's Motion to Continue. ECF No. 190. The Court ordered the Receiver to move for summary judgment regarding the Receivership Entities' interests in, and Southern Properties' competing claim to, Windmill Farms and Bellwether Ridge, by April 13, 2023 ("Order"). ECF No. 190.

8. On April 13, 2023, the Receiver filed its Motion for Summary Judgment on "certain Receivership Entities and Receivership Properties." ECF Nos. 206, 207.

9. In accordance with the Court's Order, the Receiver's summary judgment motion encompassed SPC's interest in Windmill Farms and Bellwether Ridge. ECF No. 207, p. 1.

10. In violation of the Court's Order, however, the Receiver included in its summary judgment motion two other apartment developments, Parc at Ingleside and Parc at Opelika, which were not previously at issue. ECF No. 207, p. 1 n. 1.

11. In a footnote, the Receiver wrote, “[T]he Receiver requests that the Court determine SPC’s interest in each, although, currently, he seeks to sell only Windmill Farms and Bellwether Ridge.” *Id.*

Argument – The Court should grant SPC’s Motion to Strike Parc at Ingleside and Parc at Opelika from the Receiver’s summary judgment motion.

12. The Court should strike the portion of the Receiver’s Motion for Summary Judgment relating to Parc at Ingleside and Parc at Opelika for the reasons set forth below.

13. The Court’s Order requires the Receiver to file its motion for summary judgment with respect to Windmill Farms and Bellwether Ridge. ECF No. 190. The Receiver failed to comply with the Court’s Order. The portions of the Receiver’s motion for summary judgment that violate the Court’s Order should be stricken, *to wit*: the portions relating to Parc at Ingleside and Parc at Opelika.

14. The Receiver did not seek leave of Court to include in its Motion for Summary Judgment Parc at Ingleside and Parc at Opelika. The Receiver could have sought leave but did not. Instead, it unilaterally injected the two additional properties, thereby seeking to force SPC to include them in its response. The Court should strike the Receiver’s summary judgment motion relating to Parc at Ingleside and Parc at Opelika and reject the Receiver’s “better to ask forgiveness than permission” course of conduct.

15. SPC is prejudiced by the Receiver’s unilateral decision to include Parc at Ingleside and Parc at Opelika in its Motion for Summary Judgment, in violation of the Court’s Order. SPC is prejudiced because the Receiver doubles the scope of its summary judgment motion, and doubles SPC’s work to respond to it, without additional time to prepare a response.

16. SPC is also prejudiced because Parc at Ingleside and Parc at Opelika involve different properties, with different facts and different documents. By including these properties in

the Motion for Summary Judgment, the Receiver seeks an undue advantage by confusing the issues with respect to the two projects that are at issue: Windmill Farms and Bellwether Ridge. The Court should grant SPC's Motion to Strike, so that the Receiver does not gain an undue advantage by "muddying the waters."

17. The Receiver concedes that it does not seek to sell Parc at Ingleside and Parc at Opelika at this time. ECF No. 207, p.1, n. 1. Therefore, the Receiver shows no cause why the Court should proceed with respect to two additional projects that are not at issue at this time.

Conclusion and Prayer

For the reasons set forth herein, Southern Properties Capital, Ltd. respectfully requests that the Court grant SPC's Motion to Strike and strike from the Receiver's Motion for Summary Judgment the two (2) additional projects known as Parc at Ingleside and Parc at Opelika, and for any additional relief to which SPC may be justly entitled.

RESPECTFULLY SUBMITTED BY:

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CERTIFICATE OF CONFERENCE

On April 24, 2023, I contacted Charlene Koonce, attorney for the Receiver, concerning Southern Properties Capital, Ltd.'s intent to file this Motion. Ms. Koonce informed me that the Receiver opposed the Motion on the grounds that resolving the ownership of all four properties at the same time was the most efficient disposition.

/s/ J. Blair Norris

J. BLAIR NORRIS

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2023, I filed the foregoing document with the clerk for the U.S. District Court, Northern District of Texas, Dallas Division using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record, who have consented in writing to accept this Notice as service of the document by electronic means.

/s/ J. Blair Norris

J. BLAIR NORRIS