

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(West Palm Beach)

Case No. 20-CV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP, INC.  
d/b/a PAR FUNDING, *et al.*,

Defendants.

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**NON-PARTY’S, LEAD FUNDING II, LLC, REPLY IN FURTHER  
SUPPORT OF AMENDED MOTION TO INTERVENE AND LIFT  
LITIGATION INJUNCTION TO ALLOW IT TO PROCEED WITH  
FORECLOSURE ACTION IN COLORADO STATE COURT**

The Non-Party, LEAD FUNDING II, LLC, a Colorado limited liability company (“Lead Funding”), hereby submits its reply in further support of its Amended Motion to Intervene and Lift Litigation Injunction to Allow It to Proceed with Foreclosure Action in Colorado State Court (the “Amended Motion”) [ECF No. 616] and in response to the Receiver’s Response to the Amended Motion (the “Response”) [ECF No. 629], along with its request for oral argument on the Amended Motion, and states:

***INTRODUCTION***

In its Amended Motion, Lead Funding, a *first* mortgage holder, seeks to intervene in this action and to lift the litigation injunction for the sole purpose of allowing it to proceed with its Foreclosure Action regarding one particular piece of real property located in Elbert County, Colorado (the “Elbert County Property” or “Property”). In his Response, however, the Receiver

conflates Lead Funding's simple straightforward request with his other activities to marshal and preserve assets of the entire Receivership Estate.

For starters, the Receiver's "asset" in this instance is not an ownership interest in the Property itself, but rather in a *second mortgage* on the Property, which may very well be worthless. To the extent the Receiver's "asset" does hold any value, he will, in fact, be paid out of the surplus proceeds of the foreclosure sale of the Property *after* Lead Funding, as the *first* mortgagee, receives payment of its outstanding debt. And, the Receiver need not expend any time or expense in recovering the value (if any) of its "asset," but rather need only appear in Lead Funding's Foreclosure Action and then wait to see if any surplus proceeds remain upon the sale of the Property. In the event the foreclosure sale extinguishes "Par Funding's junior interest [in the Elbert County Property] without a payoff," "the interest Lisa McElhone (through Pink Lion, LLC) acquired in the Elbert County Property" without a payoff, or "the entire security interest that Par Funding obtained in the Elbert County Property... with no payment whatsoever," so be it! Not all lenders, especially *second* and *third* lienholders, receive payments in a foreclosure action brought by a *first* mortgage holder. The fact that the Receiver has stepped into the shoes of that second lender does not change that reality. Moreover, Lead Funding should not be penalized for a loan one of the Receivership Entities apparently made to the Property owner *subsequent* to its (Lead Funding's) purchase money mortgage loan made to the Property owner (and, as discussed herein, in *violation* of its loan documents).

Next, any settlement the Receiver, as a *junior* lienholder, might possibly reach with the Property owner cannot possibly affect the rights Lead Funding possesses with respect to its *first* mortgage on the Property, let alone "obviating the need for Lead Funding to proceed with the Foreclosure Action." (Response p. 2). No matter the terms of any such settlement between those

parties, Lead Funding, as a non-party thereto, remains in first position, and not subject to the dictates of the Receiver or the Court when it comes to determining how it will liquidate its collateral. Accordingly, as it relates to Lead Funding's request herein, the Receiver's request for additional time to "assess and negotiate this potential settlement" should be summarily denied. (Response p. 2).

That said, the Receiver's attempts to lump Lead Funding's pursuit of its Foreclosure Action with other creditors' attempts to gain an economic advantage over him are completely misplaced. Under these circumstances, good cause exists to grant Lead Funding's Amended Motion.

#### ***SUPPLEMENTAL FACTUAL BACKGROUND***

The basic factual background underlying Lead Funding's request is set forth in the Introduction of its Amended Motion. However, given the claims the Receiver has asserted in his Response, Lead Funding would also point out these additional facts. On August 22, 2018, Colorado Farms LLC ("Colorado Farms") acquired the vacant Elbert County Property for the purpose of developing it. In conjunction therewith, Colorado Farms, its principal, Ranko Mocevic, and others, as borrowers, executed a promissory note (the "Note") in the principal sum of \$2,050,000 in favor of Lead Funding, which was secured by two separate Deeds of Trust on the Property, each in the sum of \$2,050,000.00, and each executed by Colorado Farms and Ranko Mocevic in favor of Lead Funding (collectively, the "Lead Funding Deeds of Trust"). (ECF No. 616-1, pp. 12-66). Thereafter, on October 12, 2018, Colorado Farms purportedly borrowed an additional principal sum of \$3,175,000 from one of the Receivership Entities, Complete Business Solutions Group, Inc. d/b/a Par Funding ("CBSG" or "Par Funding"), which was secured by two separate (second position) Deeds of Trust on the Property (the "Par Funding Deeds of Trust") (ECF No. 616-2), *without the consent or approval of Lead Funding* and, therefore, *in violation of*

*the terms of the Lead Funding Deeds of Trust.* (See, e.g., ECF No. 616-1, pp. 30-31 (“The occurrence of any of the following shall constitute an ‘Event of Default’ hereunder:... (c) the voluntary or involuntary sale or other conveyance of the Property, or any portion thereof, or of any legal or equitable interest therein, without the prior written consent of [Lead Funding];... or (e) the existence of any encroachment, lien or encumbrance placed on or against the Property without the prior written approval of [Lead Funding].”)).

Thereafter, Colorado Farms and several other related entities (collectively, the “Colorado Homes Entities”) purportedly acquired several other parcels of real property in Colorado (collectively, the “Projects”) and, in conjunction therewith, borrowed a total principal sum of approximately \$25,000,000 from Par Funding to fund those acquisitions. However, those other transactions *do not involve Lead Funding at all*. Indeed, the purchase money loan Lead Funding made to Colorado Farms for the Elbert County Property was a single isolated transaction, completely unrelated to any other loans the Colorado Homes Entities may have taken against any of their other Projects. Accordingly, the debt Colorado Farms owes Lead Funding on its first mortgage loan on the Elbert County Property in the initial principal sum of \$2,050,000 should not, under any circumstances, be lumped together or comingled with the purported “outstanding balance of more than \$25,000,000 that [the Colorado Homes Entities] owe to Par Funding” for the Projects. (Response p. 4). Nor, for that matter, should the debt Colorado Farms owes Lead Funding on its *first* mortgage be lumped with the debt Colorado Farms owes Par Funding on its *second* mortgage on the subject Elbert County Property.

Separately, as far as Lead Funding is concerned, it is of no import that “Lisa McElhone, through two entities she owns – Liberty 7<sup>th</sup> Avenue, LLC and Pink Lion, LLC – entered into Tenants in Common Agreements (‘TIC Agreements’) with the Colorado Homes Entities.”

(Response p. 4). The fact that Colorado Farms may have transferred an interest in the Elbert County Property to Pink Lion, LLC, or any other entity, does not change Lead Funding's interest as the first mortgage holder on the Property or diminish, in any fashion, its right to collect the full debt Colorado Farms owes it. In fact, with regard to the subject Property, the Receiver has admitted and acknowledged that "[t]he Elbert County TIC Agreement and the [Par Funding] Deeds of Trust both *post-date* the liens of Lead Funding on the Elbert County Property and, therefore, Par Funding and the other Receivership Entities and alter egos/affiliates are *junior* lienholders to Lead Funding" and that "Par Funding holds a *subordinate* position on the Elbert County Property that is the subject of the Foreclosure Action." (Response pp. 5, 6). [emphasis added] That is entirely correct and precisely the reason why Lead Funding should be allowed to proceed with its Foreclosure Action against the Property.

#### ***REQUEST TO INTERVENE***

In opposition to Lead Funding's request for intervention in this action, the Receiver merely incorporates the arguments the SEC previously made in its Response [ECF No. 409] to Lead Funding's initial Motion [ECF No. 386], specifically that "(1) Section 21(g) of the Securities Exchange Act of 1934 does not permit intervention under these circumstances, unless the SEC has consented to the proposed intervention, which it has not; and (2) Lead Funding has not otherwise established its right to intervene as of right under Rule 24(a) of the Federal Rules of Civil Procedure." (Response p. 6). However, Lead Funding has fully addressed in its Amended Motion those contentions made in response to its initial Motion. Moreover, Lead Funding only seeks to intervene for the limited purpose of lifting the litigation injunction to allow it to proceed with its Foreclosure Action against the Property in Colorado state court. To the extent this Court might grant that limited relief without the necessity of Lead Funding's formal intervention, Lead Funding

would withdraw its request to intervene. Likewise, to the extent this Court might grant that limited relief, but only after Lead Funding's formal intervention, Lead Funding would voluntarily dismiss itself, or consent to its dismissal, as a party to this action promptly after this Court authorizes it to proceed with its Foreclosure Action. Either way, Lead Funding asking to intervene in this case for a very limited purpose should not be used as grounds for the Court to summarily deny the true requested relief: the lifting of the litigation injunction as it relates to the Foreclosure Action.

***REQUEST TO LIFT LITIGATION INJUNCTION***

As set out above, Lead Funding is a party to one single loan it made to Colorado Farms regarding the Elbert County Property. Other than that first mortgage interest in that Property, Lead Funding has nothing to do with the Colorado Homes Entities' other Projects or the \$25,000,000 debt the Colorado Homes Entities purportedly owe Par Funding. Under the terms of the Lead Funding Deeds of Trust, Lead Funding has the right to pursue foreclosure on the Elbert County Property upon Colorado Farms' default in payment under the Note for \$2,050,000. Lead Funding should not have to wait, as the Receiver suggests, for Colorado Farms' development of the Elbert County Property or, for that matter, the other Colorado Homes Entities' development of the other unrelated Projects, to pursue its rights as the first mortgage holder on the Elbert County Property. Something like that, which could easily take *years* to come to fruition, is certainly not the deal Lead Funding entered into, or would have agreed to, with Colorado Farms.

Separately, while the Receiver may be "currently engaged in discussions with counsel for the Colorado Homes Entities to try to negotiate a settlement that would result in a substantial payment to the Receivership Estate," (Response, p. 7), no party is in discussion with *Lead Funding*

to pay off its first mortgage interest on the Elbert County Property.<sup>1</sup> In turn, absent payment in full to *Lead Funding*, the Receiver's contention that any such settlement with the Colorado Homes Entities would result in "allowing Colorado Farms to avoid losing the Elbert County Property through the Foreclosure Action" is simply untrue. Irrespective of any deal between the Receiver and the Colorado Homes Entities, until *Lead Funding* secures payment on its first mortgage loan, it has every right to, and intends to, proceed with its Foreclosure Action regarding the Elbert County Property. Moreover, notwithstanding the Receiver's purported negotiations with the Colorado Homes Entities, it does not make any economic sense for Colorado Farms to pay off Par Funding, as a *junior* lienholder on the Elbert County Property, only to lose that same Property due to its inability to pay off Lead Funding, as the *first* mortgage holder on the Property. As such, there is no reason to afford the Receiver any additional time to attempt to negotiate any such settlement with the Colorado Homes Entities, while Lead Funding is forced to forego its contractual rights under its Deeds of Trust.

Moreover, Lead Funding's pursuit of its Foreclosure Action will not, in any manner, risk the preservation of Par Funding's second lien (in this case, its "asset") on the Elbert County Property. As set forth in the Amended Motion and herein, upon the foreclosure sale of the Property, should any sale proceeds remain after Lead Funding receives payment on its first mortgage interest, the Receiver, on behalf of Par Funding, will indeed receive payment as well on its second mortgage interest, so long as he simply appears in the Foreclosure Action. Otherwise, if no proceeds remain after Lead Funding receives its payment, the Receiver's "asset" is, in all sense, worthless. Under these circumstances, unlike Par Funding's "1,300 merchants" with cash

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<sup>1</sup> Lead Funding has no intention of settling its first mortgage interest on the Elbert County Property without receipt of payment in full, including all principal, interest, costs and fees.

advance agreements secured by collateral belonging to them, Lead Funding has a first mortgage interest in real property, which has never been challenged, such that the Receiver would *not* “be required to expend significant resources to evaluate [the Foreclosure Action] and, where appropriate, litigate to protect its security interests in the collateral.” (Response, p. 8). In fact, in this case, all the Receiver would need to do to “protect its security interest” would be to file a notice of appearance and wait to receive any surplus proceeds, if any, in the Foreclosure Action. No “marshaling,” “untangling” or “investigating” of assets would be necessary.

Incidentally, Lead Funding would also point out the debt Par Funding owes it constitutes approximately fifteen percent (15 %) of its total operating capital as a lending entity, meaning it cannot survive as a viable entity much longer without getting paid. And, considering the current state of the real estate market in Colorado, right now may be the most advantageous time to complete the foreclosure and offer the Property for sale to the public. In short, Lead Funding made a purchase money mortgage loan to one entity on one piece of real property, with its rights set forth in its Deeds of Trust. At this time, Lead Funding seeks only to enforce those contractual rights through the Foreclosure Action. Notwithstanding the Receiver’s pleas, its request to lift the litigation injunction should not be denied.

Finally, Lead Funding would also point out the Receiver, himself, has filed no less than twenty (20) motions to lift the litigation injunction in this action. (*See*, EFF Nos. 111, 145, 198, 232, 264, 318, 319, 320, 321, 370, 371, 421, 485, 511, 546, 556, 557, 575, 584, 621). Inasmuch as the Court granted many of those requests by the Receiver, the Court should likewise grant this request by Lead Funding.



***CONCLUSION***

Based on the points and authorities set forth in the Amended Motion and herein, this Court should enter an order allowing Lead Funding to intervene as a party Defendant in this action and lifting the litigation injunction for the limited purpose of allowing it to proceed with its Foreclosure Action in Colorado state court.

***REQUEST FOR ORAL ARGUMENT***

Lead Funding, pursuant to this Court's Local Rule 7.1(b)(2), hereby requests oral argument on its Amended Motion. To the extent the Rule states that such a request should be made "within the motion," Lead Funding would state that, at the time it filed its Amended Motion, it did not believe oral argument would be necessary. However, upon its review of the Receiver's Response and its filing of this Reply, Lead Funding now believes oral argument will, indeed, be helpful to the Court in its determination of the Amended Motion. In particular, Lead Funding believes oral argument will aid the Court in its understanding of the unique facts and issues raised in the parties' motion papers, including, without limitation, the clear distinction between, on the one hand, Lead Funding's rights over Par Funding in connection with its \$2,050,000 first mortgage interest on the Elbert County Property and, on the other hand, the Receiver's preservation of assets, investigation of claims and negotiations for settlement in connection with all of Par Funding's other merchant loans, including its \$25,000,000 interests in several other real estate Projects for the Receivership Estate. Lead Funding estimates that each side will require 15 minutes, for a total of 30 minutes, for oral argument on the Amended Motion.

WHEREFORE, Lead Funding respectfully requests that the Court enter an order allowing it to intervene as a party Defendant in this action, lifting the litigation injunction for the limited

purpose of allowing it to proceed with its Foreclosure Action in Colorado state court and granting such other and further relief as the court deems just and proper.

Dated: July 1, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Notice of Electronic Filing by CM/ECF transmission to all counsel and parties who are registered to receive such service in this case on July 1, 2021.

By: /s/ Ronald M. Gaché

Ronald M. Gaché, Esq.