UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v-

PLATINUM MANAGEMENT (NY) LLC; PLATINUM CREDIT MANGEMENT, L.P.; MARK NORDLICHT; DAVID LEVY; DANIEL SMALL; URI LANDESMAN; JOSEPH MANN; JOSEPH SANFILIPPO; and JEFFREY SHULSE,

Defendants.

No. 16-CV-6848 (BMC)

ORAL ARGUMENT REQUESTED

MEMORANDUM OF MARK NORDLICHT IN OPPOSITION TO RECEIVER'S MOTION REQUESTING CLARIFICATION THAT THE RECEIVER ORDER DID NOT REQUIRE HER TO SEEK LEAVE PRIOR TO FILING A DISCHARGE ACTION AGAINST MARK NORDLICHT, OR IF LEAVE WAS REQUIRED THEN THE COURT SHOULD GRANT LEAVE TO RETROACTIVELY PERMIT THE FILING

BACKENROTH, FRANKEL & KRINSKY, LLP
Abraham Backenroth, Esq.
Scott Krinsky, Esq.
800 Third Avenue, 11th Floor
New York, NY 10022
Tel: (212) 593-1100
Attorneys for Defendant Mark Nordlicht

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Defendant Mark Nordlicht submits this memorandum of law in opposition to the Receiver's Motion (Dkt No. 569) which seeks clarification that the Receiver was not required to seek leave under this Court's Second Amended Order Appointing Receiver dated October 16, 2017 ("Receiver Order")(Dkt No. 276) prior to filing her action objecting to Mr. Nordlicht's discharge on December 7, 2020; and/or, if leave was required, then the Court should now lift the stay to retroactively permit the filing. The Receiver's Motion should be denied because:

(1) The Receiver Was Barred By The Clear Terms Of The Receiver Order From Filing The Discharge Action;

(A) The Receiver Was Required To Obtain This Court's Permission Prior To Filing The Discharge Action Which She Failed To Do;

(B) The Receiver's Failure To Seek Leave On Prior Litigations Does Not Excuse Her Current Failure To Seek Leave On The Discharge Action;

(C) The Receiver's Discharge Action Is Not Merely A Defensive Action. But Even If It Is, Judge Drain Ruled That It Would Still Require This Court's Permission; **and**

(D) The Receiver Cannot Show That The Discharge Action Is Cost-Effective And Necessary To Recover And Conserve Receivership Property; and

(2) The Stay Should Not Be Lifted To Retroactively Permit The Filing Of The Discharge Action; and

(A) The Receiver Has Failed To Even Allege, Much Less Satisfy, The Relevant Factors To Lift The Stay, Including Showing Substantial Injury If The Stay Is Not Lifted.

The Receiver Order Sets Forth Conditions For A Receiver To File Litigation

Section VII of the Receiver Order, which is entitled "**Stay of Litigation**", stays all proceedings "***until further Order of this Court***," (emphasis added), except for 4 inapplicable proceedings (Dkt No. 276, § VII, ¶ 24).[1] The stay encompasses all civil legal proceedings,

[1] The four inapplicable proceedings are (i) the instant action; (ii) all police or regulatory actions and SEC Actions related to the instant action; (iii) Cause No:'s FSD 118/2016 (NAS) & 131 of 2016 (ALJ), pending before the Grand Court of the Cayman Islands, and (iv) the Bankruptcy Cases, In re Platinum Partners Value Arbitrage Fund L.P., 16-12925 (Bankr. S.D.N.Y.), & In re Platinum Partners Value Arbitrage Fund International

bankruptcy proceedings or actions of any nature involving the Receiver, and any Receivership Property (Id). The Receiver Order further enjoins all Courts having jurisdiction over the proceedings from permitting any action "***until further Order of this Court***." (Id, ¶ 26)(emphasis added).

Moreover, Section IX of the Receiver Order, which is entitled "***Investigate and Prosecute Claims***", sets forth conditions that the Receiver must satisfy prior to lifting the stay and instituting new legal actions and proceedings. For example, the Receiver Order states in at least two places that the Receiver must first obtain leave or approval from this Court prior to filing a new action or proceeding. Id, § IX, ¶ 34 ("***Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation*** ...")(emphasis added); & Id, ¶ 35.

The Receiver Order further states that any new action or proceeding filed by the Receiver must be cost-effective, as well as necessary and appropriate. *See*, Id, ¶ 35 ("***Subject to the Receiver's obligation to expend Receivership funds in a reasonable and cost-effective manner***, the Receiver is authorized ... and (***after obtaining leave of this Court***) to institute such actions and legal proceedings for the benefit and on behalf of the Receivership Estate [that are] ***necessary and appropriate***.")(emphasis added and parenthetical in original).

Additionally, the Receiver Order requires the Receiver to consider the expected time horizon for the disposition of Receivership Property (Id, § VIII, ¶ 31); and for the Receiver to file Quarterly Status Reports with this Court (Id, § XII, ¶'s 48-49), including a description of unliquidated claims and the "***anticipated or proposed methods of enforcing such claims*** (including ***likelihood of success in***: (i) reducing the claims to judgment; and (ii) ***collecting such judgments***)" (emphasis added and parenthetical in original)(Id, ¶ 48[E]).

Ltd., 16-12934 (Bankr. S.D.N.Y.)(Dkt No. 276 § VII, ¶ 24).

The Receiver's Thirteenth Status Report (10/20/20) Concluded That The Receivership Was In Its End Stages And That There Would Be No Additional Litigation

On April 20, 2020, the Receiver filed the Eleventh Status Report which contained a conclusion stating that "the ***Receivership is currently entering the final stages*** in which ... ***the significant litigations have concluded or will be concluding***..."; and "[t]he next stage of the case will be focused on preparing a plan of distribution of assets to creditors and investors, ***making final determinations regarding the commencement of any additional litigations*** and resolving any claim issues." (emphasis added)(Dkt No. 529, p. 22).

On July 20, 2020, the Receiver filed the Twelfth Status Report which contained the virtually identical conclusion, again stating that: "the ***Receivership is currently entering the final stages*** in which ... ***the significant litigations have concluded or will be concluding***..."; but stating that "[t]he Receiver is ***now focused on*** preparing a plan of distribution of assets to creditors and investors, ***making final determinations regarding the commencement of any additional litigations*** and resolving any claim issues." (emphasis added)(Dkt No. 539, p. 20).

On ***October 20, 2020***, the Receiver filed the Thirteenth Status Report which modified the conclusions from the Eleventh and Twelfth Status Reports, eliminating the prior statements that "***the Receivership is currently entering the final stages*** ... [and] ***making final determinations regarding the commencement of any additional litigation*** ..." (emphasis added)(Dkt No. 544, p. 22). Instead, the new conclusion stated that "***[t]he Receivership is now in its end stages*** with the focus on the analysis and reconciliation of claims and the preparation of a plan of distribution of assets to creditors and investors to present to the court for approval." (emphasis added)(Id).

The Stadmauers' State Court Action And Attachment Of Assets

On February 5, 2020, Richard and Marisa Stadtmauer (the "Stadtmauers") filed an action against Mr. Nordlicht and others, including his wife, Dahlia Kalter, and 535 W.E.A. Group LLC ("535 WEA"), in Supreme Court, Westchester County (Index No. 51825/20)(the "Stadtmauer Action"). The Stadtmauers' Complaint alleged, *inter alia*, that 535 WEA owned the condo located at 535 West End Avenue, Unit No. 15, New York ("NY Condo")(Compl. ¶'s 13, 39 & 50); that Mr. Nordlicht exercised dominion/control over the NY Condo (Id, ¶ 39); and that the last will and testament of Jules Nordlicht (the "Will"), contained a trust provision for Mark which was subject to multiple spendthrift restrictions (the "Trust")(Id, ¶ 48).

On February 5, 2020, the same day the Stadtmauers' filed the Complaint, they obtained an Ex-Parte Order of Attachment against the NY Condo and Mr. Nordlicht's residence located at 245 Trenor Drive, New Rochelle, New York ("New Rochelle Property"), owned by Trenor Trust.

On June 25, 2020, the Stadtmauers filed a Motion to Supplement the Complaint with a proposed supplemental complaint (the "Supplemental Complaint"), which sought to add new defendants, including 16th Avenue Avenue Associates, LLC ("16AA"), and which alleged, *inter alia*, that: 16AA made payments of approximately $1M to law firms for their legal fees in representing Mr. Nordlicht (SuppCompl. ¶'s 20 & 32); in August 2019, Barbara Nordlicht made a payment of $1.4M to Dahlia Kalter (Id, ¶'s 6 & 45); Barbara Nordlicht's payments were "gifts" (Id, ¶ 85[b]); and that the NY Condo lacked equity above its mortgage liens (Id, ¶ 85[h]).

Mark Nordlicht's Chapter 7 Bankruptcy Case

On June 29, 2020, Mr. Nordlicht filed a Chapter 7 Bankruptcy, Case No. 20-22782 (Bankr. S.D.N.Y.)("Nordlicht Bankruptcy"), which stayed the Stadtmauer Action. With his Petition Mr. Nordlicht filed Schedules and a Statement of Financial Affairs ("SOFA") which disclosed, *inter alia*,

the Stadtmauer Action (BCase, Dkt No. 1, p. 35), and Barbara Nordlicht's significant monthly contributions of approximately $25,000 per month, including $23,750 per month to Dahlia Kalter (Id, p. 27). Mark. S. Tulis became the permanent Trustee of Mr. Nordlicht's estate.

Moreover, on July 31, 2020, the Stadtmauer Action was removed to the Bankruptcy Court together with a copy of, *inter alia*, the Stadtmauers' Complaint (Adv. Pro. 20-06489, Dkt No. 1)(the "Removed Action"). Thus, the Removed Action and all pleadings therein, including Stadtmauers' Complaint and Supplemental Complaint, were now an adversary proceeding pending in the Nordlicht Bankruptcy.

On August 24, 2020, Mr. Nordlicht appeared through Zoom for his continued second meeting of creditors which went on for almost 90 minutes from about 10:00 am to 11:22 am, and consisted of questioning by the Trustee; Nathaniel J. Kritzer ("Kritzer"), counsel to Stadtmauers; counsel for the Receiver; and counsel for the PPVA Parties;[2] including questions as to, *inter alia*, the NY Condo, 16AA's payments, the Trust, and Barbara Nordlicht's payments to Dahlia Kalter. The Trustee also requested information from Mr. Nordlicht which he complied with as evidenced by the Trustee's settlement with Mr. Nordlicht and others, as set forth below.

The Trustee emailed a stipulation requesting an extension for himself and the United States Trustee ('UST") to object to Mr. Nordlicht's discharge under 11 U.S.C. § 727 from October 5, 2020 to December 7, 2020, but not to dischargeability under 11 U.S.C. § 523 (the "Trustee Stipulation"). Mr. Nordlicht executed the Trustee Stipulation which the Court "So Ordered" on September 8, 2020

[2] PPVA is defined as the current and duly appointed joint official liquidators and foreign representatives ("JOLS") of Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation)("PPVA" and collectively with the JOLs, the "PPVA Parties").

(BCase, Dkt No. 28). The time for the Trustee and U.S.T. to object to discharge has since expired.

Upon electronic receipt of the Court's September 8th Order, Receiver's counsel emailed Mr. Nordlicht's counsel requesting an "identical stipulation." The Receiver then prepared a Stipulation (the "Receiver Stipulation") which likewise requested an extension to object to Mr. Nordlicht's discharge under § 727 from October 5, 2020 to December 7, 2020, but not to dischargeability under § 523. Mr. Nordlicht executed the Receiver Stipulation which the Court "So Ordered" on September 15, 2020 (BCase, Dkt No. 29).

On or about October 1, 2020, counsel for the PPVA Parties emailed a stipulation which in contrast to the Receiver Stipulation, requested extensions to object to both Mr. Nordlicht's discharge under § 727, and/or dischargeability under § 523, from October 5, 2020 to December 7, 2020 (the "PPVA Stipulation"). Mr. Nordlicht executed the PPVA Stipulation which the Court "So Ordered" on October 1, 2020 (BCase, Dkt No. 38).

On October 23, the Stadtmauers filed a Proof of Claim for $15,459,849.82, asserting that they are ***secured up to $14,896,316.16*** (BCase, Claim No. 3-1)("Secured Proof Of Claim"). On October 25, 2020, the PPVA Parties filed a Proof of Claim for ***$305,100,000***, plus interest, fees and costs (Id, Claim No. 5). As per its Proof of Claim, the PPVA Parties are Mr. Nordlicht's largest creditor. The PPVA Parties to object to discharge has expired, but their time to object to dischargeability is extended to August 13, 2021 (BCase, Dkt No. 93).

On October 26, 2020, the Trustee entered into a Stipulation of Settlement ("Settlement") with Mr. Nordlicht and various other parties, including 535 WEA, 16AA, Dahlia Kalter, Barbara Nordlicht and Trenor Trust (Adv. Pro. 20-06489, Dkt No. 7, Ex. A). On November 6, 2020, the

Trustee filed a Motion to Approve the Settlement (Id), in which he confirmed that he reviewed the Removed Action and its pleadings, including the Complaint & Supplemental Complaint (Id, ¶ 31).

On November 25, 2020, the Receiver filed a Proof of Claim with an Addendum (BCase, Claim No. 12). Apparently unaware that the Receiver Stipulation did not extend her time to object to dischargeability which ran on October 5, 2020, the Addendum stated that the Proof of Claim was not "waiving or releasing ... rights to seek non-dischargeability of its claims against Debtor" (Id, Add. ¶ 70).

On November 30, 2021, the Receiver's counsel emailed Mr. Nordlicht's counsel requesting a second extension to object to Mr. Nordlicht's discharge. On December 1, 2020, Erik Weinick, counsel for the Receiver, spoke with Scott Krinsky, counsel for Mr. Nordlicht. During the telephone call, Mr. Weinik mistakenly believed that the Receiver had preserved her right to object to the dischargeability of the alleged debt owed by Mr. Nordlicht to her as, opposed to Mr. Nordlicht's general discharge. Moreover, since the Receiver had concluded seven weeks earlier in her Thirteenth Status Report (10/20/20) that the Receivership was in its "***end stages***" (emphasis added) and would not be commencing additional litigation (Dkt No. 544, p. 22), and since Mr. Nordlict was settling with the Trustee, he declined to grant the Receiver a second extension to object to his discharge.

On December 7, 2020, Stadtmauer filed a second proof of claim for $17,988,582.22 on December 7, 2020 (BCase, Claim No. 13), which is in addition to the Secured Proof Of Claim, and based on different debt.[3] As per the Claims Register, there have been Proofs of Claims filed in the

[3] Previously, on November 25, 2020, the Stadtmauers filed a Letter/Motion in this Court requesting leave to file a proof of claim against Mr. Nordlicht in the Nordlicht Bankruptcy (Dkt No. 552) which the Receiver consented to (Dkt No. 551). By Order dated November 30, 2020, this Court granted the Stadtmauers' Motion.

Nordlicht Bankruptcy totaling $985,846,757.52, including Stadtmauers' Secured Proof Of Claim for $14,896,316.16. To date, the Receiver has not objected to any of the Proofs of Claims.

On May 26, 2021, the Trustee entered into a Modified Stipulation of Settlement (the "Modified Settlement") with Mr. Nordlicht and various other parties, including 535 WEA, 16AA, Dahlia Kalter & Barbara Nordlicht (Adv. Pro. 20-06489, Dkt No. 35-1).[4] On June 2, 2021, the Court issued an Amended Order approving the Modified Settlement (Id, Dkt No. 35).

The Modified Settlement requires the Trustee to release all claims on behalf of himself and Mr. Nordlicht's estate, whether known or unknown, against the Settling Parties, including the claims asserted in the Removed Action, and any claims that Mr. Nordlicht's property and assets are being held by the Settling Parties, and any fraudulent conveyance and alter ego claims against the Settling Parties (Id, Dkt No. 35-1, ¶ 3). Moreover, since the Trustee has the exclusive right to bring fraudulent conveyance and/or alter ego claims on behalf of Mr. Nordlicht's estate, the Modified Settlement precludes any other creditor from bringing such claims against the Settling Parties. The Receiver did not object to either the Modified Settlement or Amended Order, or seek an appeal, and her time to do so has expired.

The Receiver's Discharge Action And Complaint

On December 7, 2020, the Receiver filed a complaint objecting to Mr. Nordlicht's discharge ("Discharge Complaint") in the Bankruptcy Court, Adv. Pro. 20-07025 ("Discharge Action"). Neither the Trustee nor Mr. Nordlicht's other creditors, including the PPVA Parties, have objected

[4] Aside from the Trustee, the complete list of the settling parties are as follows: Mark Nordlicht, Dahlia Kalter, 535 WEA, OBH 2308 LLC, NYFLA Investors LLC, Gilad Kalter Cook Islands Trust Limited, Trenor Investment Partners LP, Henley Investment Partners LP, John Does 1-50, 16AA, Trenor Trust, Jerome Management LLC and Barbara Nordlicht (collectively, the "Settling Parties").

to Mr. Nordlicht's discharge under § 727, and their time to do so has expired. Although the Receiver's Motion suggests that she filed the Discharge Action to, *inter alia*, "'***recover***'" "'Receivership Property'" (emphasis added)(Dkt No. 569, p. 1), the Discharge Complaint does not seek to recover any property, let alone Receivership Property or Mr. Nordlicht's property, or even a money judgment against Mr. Nordlicht. Instead, the Discharge Complaint contains one count, to to deny Mr. Nordlicht a discharge under § 727(a)(4)(A)(Compl. ¶'s 65-67; & Wherefore Clause).

The Discharge Complaint merely alleges upon information and belief that Mr. Nordlicht made false statements in his Schedules,[5] which were four alleged omissions, and primarily relies upon a Kritzer Declaration (defined below)(Compl. ¶'s 45-47, 50-51, 53, 55-57, 59-61 & 63) which was withdrawn to avoid sanctions.[6] Moreover, the Discharge Complaint's four alleged omissions are of assets that Mr. Nordlicht either does not own or are exempt (Compl. ¶ 65), as follows:

(a) an alleged ownership interest in the NY Condo, despite admitting that 535 WEA has been the owner of the NYC Condo since 2010 (Compl. ¶'s 49 & 51);

(b) alleged payments by 16AA of approximately $1M in legal fees to Mr. Nordlicht's lawyers in the 13 month period prior to the Nordlicht Bankruptcy, despite admitting that Dahlia Kalter is the managing member and owner of 16AA (Compl. ¶'s 47-48);

(c) the Trust established in Jules Nordlicht's Will, despite admitting that the Trust

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[5] *See*, Discharge Complaint ¶ 44 ("Upon information and belief, the statements in the Schedules were false").

[6] In that regard, the Discharge Complaint repeatedly refers to and primarily relies upon the Kritzer Declaration executed November 2, 2020 ("Kritzer Declaration")(BCase, Dkt No. 51) and certain Exhibits thereto, filed in support of Stadtmauer's Motion for, *inter alia*, Affirmative Injunctive Relief against Mr. Nordlicht and Related Parties dated November 2, 2020 (the "Injunction Motion")(Id, Dkt No.'s 49-51). On November 11, 2020, Michael Levine, counsel to Dahlia Kalter and others, wrote a Safe Harbor letter to Kritzer stating that the Injunction Motion was frivolous and that he would move for sanctions if the Stadtmauers did not withdraw it. Moreover, on November 16, 2020, Objections were filed against the Injunction Motion by, *inter alia*, Barbara Nordlicht (BCase, Dkt No. 59), Mr. Nordlicht (BCase, Dkt No. 61), and Dahlia Kalter and others (BCase, Dkt No. 63). Later that night, the Stadtmauers, in apparent recognition that their Injunction Motion was sanctionable, filed a Notice of Withdrawal of the Injunction Motion, which likewise included a withdrawal of the Kritzer Declaration (BCase, Dkt No. 62).

contains spendthrift restrictions (Compl. ¶'s 59-60); and

(d) monthly contributions from Barbara Nordlicht in excess of $25,000 for tuition and other expenses based solely on Barbara Nordlicht's $1.4M payment to Dahlia Kalter in August 2019, ten months prior to the Nordlicht Bankruptcy (Compl. ¶'s 40, 45 & 65).

Judge Drain Partially Grants Mr. Nordlicht's Motion To Dismiss

On March 3, 2021, Mr. Nordlicht filed a motion to dismiss the Receiver's Discharge Complaint ("Dismissal Motion")(Adv. Pro. 20-07025, Dkt No. 11). On April 12, 2021, the Receiver filed opposition to the Dismissal Motion (Id, Dkt No. 13), including a memorandum of law in opposition (the "MOLOpp")(Id, Dkt No. 13-4). On May 10, 2021, Mr. Nordlicht filed reply papers in further support of the Dismissal Motion (Id, Dkt No.'s 14 & 15).

On June 14, 2021, Judge Drain held a Hearing on the Dismissal Motion, including oral argument. Mr. Nordlicht basically argued in motion papers and during oral argument that the Receiver was barred by the Receiver Order from filing the Discharge Action since she failed to obtain this Court's prior permission and/or to show that it was a cost-effective and necessary proceeding to recover and conserve Receivership Property; and/or that the Discharge Complaint fails to state a claim, since, *inter alia*, Mr. Nordlicht's omission of

(a) a purported ownership interest in the NY Condo was not a false oath because the Discharge Complaint and documentary evidence show that 535 WEA acquired the NY Condo in 2010, and the Receiver failed to show that 535 WEA's acquisition was due to Mr. Nordlicht suffering a money judgment or other financial pressure;

(b) 16AA's payments were not a false oath since they do not constitute regular income under the Bankruptcy Code because they were not made to Mr. Nordlicht directly but to his legitimate creditors, were not made on a regular basis with the last payment made on February 20, 2020, more than four months prior to the Bankruptcy, and the Discharge Complaint and/or documentary evidence show that Mr. Nordlicht neither owns 16AA nor capitalized, formed or made any transfers to 16AA;

(c) the Trust was not a false oath because the Receiver conceded that it was a Spendthrift

Trust which is excluded from property of the debtor's estate under 11 U.S.C. 541(c)(2), and false statements concerning property that is not property of the debtor's estate are not material,[7] and Mr. Nordlicht was not required to disclose a Spendthrift Trust;[8] and

(d) Barbara Nordlicht's $1.4M payment in August 19, 2020 to Dahlia Kalter was not a false oath because it was not material, since the debtor's estate had no interest in the payment. 6 Collier § 727.04[1][b], p. 39 (16th ed).

Mr. Nordlicht further argued that none of the omissions were fraudulent or material since he disclosed the Stadtmauer Action in his SOFA (BCase, Dkt No. 1, p. 35) which contained all of the omissions; the Stadtmauer Action and all pleadings therein, including the Complaint & Supplemental Complaint, were removed to and became an adversary proceeding in the Nordlicht Bankruptcy (Adv. Pro. 20-06489, Dkt No. 1); the Trustee and Stadtmauer knew of the omissions and questioned Mr. Nordlicht at the 341 meeting as to the omissions; and Mr. Nordlicht entered into the Settlement with the Trustee and the various parties involved in the omitted transactions, including Dahlia Kalter, 535 WEA, 16AA, Barbara Nordlicht and Trenor Trust.

At the conclusion of the Hearing, Judge Drain issued a ruling from the bench (Dkt No. 569-1), noting that one can certainly read paragraphs 24 and 34 of the Receiver Order as enjoining the Discharge Action and requiring the District Court's approval (Id, p. 56, L's 4-8), and concluding that the Discharge Action should be stayed unless the District Court grants permission, "if it is to be granted" (Id, L's 3-6). Judge Drain further noted that if the District Court refuses to grant permission, then the Discharge Action is over (Id, p. 71, 14-15), and if it does grant permission to lift the stay as of the filing, then the remainder of his ruling is final (Id, p. 58, L's 1-3). Judge Drain then

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[7] *See In re Kuchecki*, 2010 WL 6259966 * 5 (9th Cir. BAP Nov. 29, 2010); *In re Swanson*, 36 B.R. 99, 100 (9th Cir. BAP 1984); *see also, In re Keck*, 363 B.R. 193, 201 (Bankr. D. Kan. 2007).

[8] *See In re Portner*, 109 B.R. 977, 989 (Bankr. D. Col. 1989)(Conrad, J.).

proceeded to dismiss the claims for a false oath based on Mr. Nordlicht's omissions of an alleged ownership and/or equitable ownership in the NY Condo (Id, pp. 60[L's 21-25]-63[L's 1-14); and/or the 16AA payments (Id, pp. 63[L's 15-25]-65[1-24]); but upheld the claims for omissions based on the Spendthrift Trust, despite noting that the Receiver concedes that it is a Spendthrift Trust which is not property of the debtor's estate, since the materiality of the disclosure was an issue of fact (Id, pp. 67 [L's 3-7], 68, L's 14-25), and/or Barbara Norlicht's August 2019 $1.4 payment to Dahlia Kalter, despite observing that there was no allegation that the money originated from Mr. Nordlicht (Id, p. 66, L's 3-4, 7-11).

I. THE RECEIVER WAS BARRED BY THE CLEAR TERMS OF THE RECEIVER ORDER FROM FILING THE DISCHARGE ACTION

A. The Receiver Was Required To Obtain This Court's Permission Prior To Filing The Discharge Action Which She Failed To Do

The Second Circuit has held that "a receiver" "[a]s a court-created entity," "has only those powers provided for in the appointment order and may perform only those acts expressly authorized by the appointing court." *Security Pacific Mortg. And Real Estate Services, Inc. v. Republic Of Philippines*, 962 F.2d 204, 211 (2d Cir. 1992); *see also*, *Federal Home Loan Mortgage Corporation v. 1795 Riverside Drive Owners Inc.* 1994 WL 481928 * 1 (S.D.N.Y. Sept. 2, 1994)(*quoting*, *Citibank, N.A. v. Nyland (CF8) Ltd.*, 839 F.2d 93, 99 (2d Cir. 1988))(a receiver's "'authority is wholly determined by the order of the appointing court'"). Thus, a receiver is prohibited from performing acts that are not authorized by the appointment order. *Security Pacific*, 962 F.2d at 211 ("Since the receiver lacked authorization to incur *any* expenses, much less maintenance and repair costs, he could not enter into an enforceable agreement with Nico [italics in original].")

Here, the Receiver Order expressly required the Receiver to obtain leave from this Court prior to lifting the stay and instituting a new legal action and/or proceeding, including any civil or bankruptcy proceeding, or any action involving either the Receiver and/or Receivership Property (Dkt No. 276, ¶'s 24, 34 & 35). The Receiver failed, however, to even seek, let alone obtain, this Court's permission prior to filing the Discharge Action. *See, Federal Home Loan Mortgage Corporation v. Tsinos*, 854 F.Supp. 113, 115-16 (E.D.N.Y. 1994)("'[g]enerally a receiver may not sue ... without the express permission of the Court that appointed him.'")*(quoting Federal Home Loan Mortg. Corp. v. Spark Tarrytown, Inc*., 829 F.Supp. 82, 88 (S.D.N.Y. 1993)).

The Receiver basically argues – rehashing certain arguments that she raised before the Bankruptcy Court – that she was not required to comply with the leave provisions of the Receiver Order prior to filing the Discharge Action because (a) she failed to comply with the leave provisions on prior Receiver litigations and merely reported the litigations in Quarterly Status Reports (Dkt No. 569, pp. 2-3); (b) her filing of a separate adversary proceeding, the Discharge Action, was merely a defensive action to the Bankruptcy Petition (Id, p. 3); and (c) she has authority to recover and conserve Receivership Property (Id). The Receiver's arguments lack merit as set forth below.

B. The Receiver's Failure To Seek Leave On Prior Litigations Does Not Excuse Her Current Failure To Seek Leave On The Discharge Action

The Receiver essentially argues that she was not required to comply with the leave provisions because her failure was consistent with her conduct on prior Receiver litigations where she merely advised this Court of the litigation in Quarterly Status Reports (Dkt No. 569, pp. 2-3). Before the Bankruptcy Court, however, the Receiver detailed the names of the Receiver litigations and the public documents confirmed that the Receiver likewise failed to seek prior leave from this Court in

those Receiver litigations and also failed to disclose at least three of the proceedings in Quarterly Status Reports until ***after*** the proceedings had been filed.[9]

Thus, the Receiver really argues that her failure to comply with the leave provisions should be excused because she previously disregarded the same provisions on multiple occasions without any repercussions. But the Receiver's prior non-compliance with the leave provisions does not allow the Receiver to continue to disregard and/or unilaterally waive those provisions.

The Supreme Court has stated that "a court should enforce a court order, a public governmental act, according to its unambiguous terms." *Travelers Indemnity Co., v. Bailey*, 129 S. Ct. 2195, 2204 (2009). Therefore, "absent amendment or vacation, a court must carry out and enforce an order that is clear and unambiguous on its face, whether or not the inscribed language reflects the court's recollection of its actual intent." *Negron - Almeda v. Santiago*, 528 F.3d 15, 23 (1st Cir. 2008)(*citing, United States v. Spallone*, 399 F.3d 415, 421 (2d Cir. 2005)). Thus, "when a court's order is clear and unambiguous, neither a party nor a reviewing court can disregard its plain language 'simply as a matter of guesswork or in an effort to suit interpretative convenience,' [citation omitted]." Id. Moreover, "'[c]ourt orders 'must ordinarily be interpreted by examination of only the 'four corners' of the document' [citation omitted]." *Spallone*, 399 F.3d at 424; *United States v. Acquest Wehrle LLC*, 2010 WL 3788050 * 3 (W.D.N.Y. Sept. 23, 2010)(rejecting party's assertion

[9] For example, the Receiver's (1) Sixth Status Report, which was not filed until ***January 23, 2019,*** subsequently advised this Court of the (a) earlier actions *Cyganowski v. Beechwood Re Ltd., et al.,* Case No. 18-cv-12018-JSR (which was filed previously on ***December 19, 2018***), and 18-cv-06658-JSR (which was filed previously on ***July 24, 2018***)(Dkt No. 450, pp. 8-9); and (2) Ninth Status Report, which was not filed until ***October 21, 2019***, subsequently advised this Court of the earlier action *Bakken Development Opportunities, I, LLC v. Greehey & Co.*, 19-cv-04438-JSR (which was filed previously on ***August 1, 2018***)(Dkt No. 495, p. 18).

that court must look at "a matter extrinsic" to the Order, since "Judge Curtin did not specify that construction of the ... Order was constrained by anything").[10]

Here, the Receiver does not allege that the leave provisions are ambiguous, and could not because she submitted and even modified the Receiver Order. Thus, on August 24, 2017, the Receiver filed a Notice of [Proposed] Second Amended Order Appointing Receiver and accompanying Declaration (Dkt No.'s 254 & 254-1) which attached as Exhibit 2 a redline marking the changes from the Current Amended Order Appointing Receiver (Dkt No. 254-3). The Receiver's proposed changes show that the Receiver submitted proposed revisions to paragraphs 34 and 35 of the Receiver Order, ***but did not seek to modify the leave provisions that are required in both paragraphs 34 and 35 of the Receiver Order***. (Id, p. 14). Moreover, the Receiver submitted a new paragraph 31 which requires her to consider the expected time horizon for the disposition of Receivership Property (Id, p. 13). The Receiver's proposed changes were accepted by this Court which resulted in the Receiver Order. Thus, the Receiver was required to comply with the leave provisions and her prior avoidance cannot excuse her current non-compliance herein.[11]

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[10] In fact, the "Supreme Court has held that an order ... must be obeyed by the parties ... even if the order was erroneously issued, unless reversed by 'order and proper proceedings.'" *In re Metz*, 231 B.R. 474, 480 (E.D.N.Y. 1998)*(quoting, United States v. United Mine Workers of America*, 67 S. Ct. 677 (1947)). Thus, even if an order "was in error" or plaintiff "'believes that [an] order is incorrect,'" it can not "simply ... ignore the Court's Order"; rather its "'remedy is to appeal, but, absent a stay [it] must comply ... with the order pending appeal.'" *United States v. Pescatore*, 637 F.3d 128, 144 (2d Cir. 2011)(*quoting, Maness v. Meyers*, 419 U.S. 449, 458 (1975)).

[11] In fact, by Letter/Motion dated November 25, 2020, the Stadtmauers requested leave from this Court to file a proof of claim against Mr. Nordlicht in the Nordlicht Bankruptcy Case (Dkt No. 552) which the Receiver consented to (Dkt No. 551) and which this Court granted. Moreover, since the Discharge Complaint relies primarily upon the Kritzer Declaration submitted in support of the Stadtmauers' Injunction Motion (Adv. Pro. 20-07025, Compl. ¶'s 45-47, 50-51, 53, 55-57, 59-61 & 63), the Receiver should be precluded from taking the opposite position asserted by the Stadtmauers on this specific issue.

If the Receiver did not want to comply with the leave provisions she should have sought to modify the Receiver Order as shown in the preceding paragraphs. In fact, the Receiver did seek to subsequently modify the Receiver Order to add three other Receivership Entities (Dkt No. 291) which this Court approved (Dkt No. 297). Thus, if the Receiver believed that the leave provisions were not necessary, she should have simply sought to modify them as opposed to ignoring them.

Additionally, the Receiver's purported notice in the Thirteenth Status Report was clearly deficient because it merely stated that the "Receiver obtained an extension of the deadline to object to discharge" (Dkt No. 544, p. 9). But the few words were clearly negated by the Conclusion to the Thirteenth Status Report which confirmed that the Receivership was now in its "***end stages***," (emphasis added) and eliminated the prior statements in both the Eleventh and Twelfth Status Reports that the next stage of the case will be focused on determinations regarding the commencement of any additional litigation (Dkt No. 544, p. 22). Thus, the Receiver concluded that there would be no additional litigation against Mr. Nordlicht. The Receiver Order further required the Receiver to describe the alleged claim against Mr. Nordlicht, including the likelihood of success in collecting on such claim (Dkt No. 276, § XII, ¶ 48[E]), which she failed to do.

C. The Receiver's Discharge Action Is Not Merely A Defensive Action. But Even If It Is, Judge Drain Ruled That It Would Still Require This Court's Permission

The Receiver also alleges that she was not required to comply with the leave provisions because her filing of a separate adversary proceeding was merely a defensive action to Mr. Nordlich's Petition which does not trigger the leave provisions (Dkt No. 569, p. 3). To bolster her claim, the Receiver incorrectly characterizes the Discharge Action as an "***objection to the discharge action***," (emphasis added)(Id, p. 1), and refers to it as a "Discharge Objection" (Id, pp. 1-3).

The Receiver fails, however, to cite any federal authority for her position and Bankruptcy Courts have rejected the argument that the filing of an adversary proceeding is merely a defensive measure. *In re Lebya*, 12 B.R. 773 (Bankr. D. Colo. 1981); *In re Bradford*, 14 B.R. 722, 725 (Bankr. N.D. Ill. 1981)(rejecting the plaintiff, creditor's contention that "it should be viewed as a defendant [and] not as a plaintiff" based on being forced to defend against the debtor in the Bankruptcy Court, since the "Debtor did not institute an action against GMAC [the plaintiff] by filing a petition ...," and the Plaintiff filed its own Bankruptcy Court complaint).

In *Lebya*, the Bankruptcy Court observed that "a complaint objecting to the debtor's discharge" is not "defensive in nature," even though it can "occur only in the context of bankruptcy." *Id*. at 774. In support of its ruling, the Bankruptcy Court likewise reasoned that "the filing of a petition does not commence a legal proceeding against creditors," and the creditor's determination that filing an independent action or proceeding is the best way to protect its rights in Bankruptcy Court does not mean that the creditor is acting defensively, but rather is the aggressor seeking affirmative relief. *Id*, at 775. The Bankruptcy Court stated:

> "A creditor's decision that the initiation of an independent lawsuit is the most favorable way to assert the creditor's rights does not mean that the creditor is defending. In my view, such a creditor is the aggressor ..." *Id*, at 775.

Thus, the Receiver's filing of a separate adversary proceeding, the Discharge Action, was not merely a defensive measure. But even if the Receiver's filing of the Discharge Action was merely a defensive measure, Judge Drain ruled that the Receiver was still required to comply with the leave provisions. In that regard, Judge Drain concluded that "it appears ... that the injunction (contained in paragraph 24 of the Receivership Order) extends two (sic) ***defense*** as well as claims." (emphasis added)(Dkt. No. 569-1, p. 56, L's 22-23). Moreover, Judge Drain earlier noted that paragraph 24 of

the Receiver Order stays all civil legal proceedings of any nature and bankruptcy proceedings, and a bankruptcy proceeding includes ***"contested matters"*** and adversary proceedings ***"whether its defense"*** "or offense" (emphasis added). Id, pp. 43 [L's 20-25], & 44 [L's 1-2]).[12]

D. The Receiver Cannot Show That The Discharge Action Is Cost-Effective And Necessary To Recover And Conserve Receivership Property

The Receiver further suggests that she was not required to comply with the leave provisions because she is authorized to "'recover and/or conserve Receivership Property.'" (Dkt No. 569, pp. 1 & 3). But the Discharge Complaint does not seek to recover any property, let alone Receivership Property or Mr. Nordlicht's property, or even seek a money judgment against Mr. Nordlicht. Moreover, the Receiver Order expressly states that the Receiver's authority to recover and conserve Receivership Property is "[s]ubject to the requirement, in Section VII above, that leave of this Court is required to recover or conserve certain litigation." (Dkt No. 276, § IX, ¶ 34).

The Receiver Order further requires that any new action or legal proceeding filed by the Receiver must be both (a) cost-effective, and (b) necessary (Id, ¶ 35). But the Receiver's Motion fails to even allege, must less show, that the Discharge Action is a cost-effective proceeding to conserve Receivership Property. Nor could it, since if the Receiver succeeds on the Discharge Complaint it will revive all claims for all of Mr. Nordlicht's creditors, including those that are barred for failing to file timely proofs of claims. Thus, even if successful, the Receiver's alleged claim against Mr.

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[12] The Receiver also appears to allege that Mr. Nordlicht should have arguably consulted with this Court before exercising his constitutional right to file the Nordlicht Bankruptcy. The Receiver provides no authority for her position. Moreover, pursuant to ¶ 23 of the Receiver Order, the Receiver was required to "***promptly notify*** the Court ... of any failure or apparent failure of any person ... to comply in any way with the terms of this [Receiver] Order" (emphasis added)(Dkt No. 276, § VI, ¶ 23). Here, the Receiver ***failed to notify***, let alone ***promptly notify***, this Court that the Nordlicht Bankruptcy filing on June 29, 2020, approximately 12 months ago, was arguably improper.

Nordlicht would only dissipate in value since it would now comprise a smaller percentage of Mr. Nordlicht's entire creditor body.

Additionally, the Receiver's success on the Discharge Action would lift the automatic bankruptcy stay as to Mr. Nordlicht which would further dissipate the Receiver's alleged claim, since it would allow Mr. Nordlicht's more aggressive creditors, like the Stadtmauers, to continue to seek relief against Mr. Nordlicht and deplete any alleged assets that he might have.

The Receiver Order also requires that the Receiver consider the expected time horizon for the disposition of Receivership Property (Id, ¶ 31). Here, the Receiver admittedly concluded in her Thirteenth Status Report (10/20/20) that the Receivership was in its "***end stages***" (emphasis added)(Dkt No.'s 544, p. 22). Thus, in contrast to Mr. Nordlicht's other creditors that are not subject to such time limitations, the Receiver will not be able to enforce her alleged claim against Mr. Nordlict, especially since she never sued Mr. Nordlicht to recover money damages.

Furthermore, simply proceeding on the Discharge Action dissipates Receivership Property due to the Receiver's substantial legal fees in connection therewith. For example, for the limited period of ***November 30, 2020 to December 17, 2020***, during which the only relevant event was the filing of the Discharge Complaint on December 7, 2020, the Receiver's counsel incurred ***$45,908.50*** in legal fees among ***five different attorneys, including two Partners***, and one paralegal, basically limited to drafting, filing and discussing the Discharge Complaint, much of which was lifted from the Receiver's Proof of Claim (BCase, Claim No. 12) and the Stadtmauers' Injunction Motion (BCase, Dkt No. 50), which was withdrawn to avoid sanctions.[13] The above time does not include

[13] The breakdown of time and hours are as follows: (1) William M. Moran ("WMM"), a Partner, billed 10.1 hours at an hourly rate of $925.20 for $9,342.50; (2) Jennifer S. Feeney ("JSF"), Of Counsel, billed 9.4 hours at an hourly rate of $895.00 for $8,413.00; (3) Erik B. Weinik ("EBW"), a Partner, billed 16.3 hours at an

any other period or the Receiver's substantial opposition to the Dismissal Motion (Id, Dkt No. 13), including her MOLOpp which listed a sixth attorney, Andrew S. Halpern (Adv. Pro. 20-07025, Dkt No. 13-4), with an hourly rate of $795.00 (Dkt No. 567-2). Conversely, the Receiver has not recovered anything in connection with the Discharge Action. Thus, the Receiver's Discharge Action is not conserving Receivership Property, but dissipating it on a substantial basis.

The Receiver Order further requires the Receiver to set forth proposed methods for enforcing her claims, including the ***"likelihood of success*** in" ***"collecting"*** on such claims (emphasis added)(Dkt No. 276, § XII, ¶ 48[E]). The Receiver has failed, however, to allege any proposed methods of enforcing, let alone collecting, on her alleged claim against Mr. Nordlicht. In fact, even if the Receivership was not in its end stages, the Receiver's alleged unsecured claim is currently subordinate to the Statdmauers' Secured Proof Of Claim against Mr. Nordlicht for ***$14,896,316.16*** (BCase, Claim No. 3-1); and the Stadtmauers' have further asserted that they have a valid attachment lien against the NY Condo and the New Rochelle Property. To date, the Receiver has not objected to the Stadtmauers' Secured Proof Of Claim.

Furthermore, the Receiver cannot even sue on any alleged claims that Mr. Nordlicht fraudulently transferred assets or is the equitable owner of assets, since those claims belong exclusively to the Trustee of Mr. Nordlicht's estate, *See, Helicon Partners, LLC v. Kim's Provision Co., Inc.,* 2013 WL 1881744 * 9 (Bankr. S.D.N.Y. May 6, 2013)(collecting cases), and he settled

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hourly rate of $845.00 for $13,773.50; (4) Michael A. Pantzer ("MAP"), an Associate, billed 2.1 hours at an hourly rate of $450.00 for $1,440.00; (5) Gabriela S. Leon ("GSL"), an Associate, billed 32.1 hours at an hourly rate of $395.00 for $12,679.50; and (6) Jessica K. Hildebrandt, a Paralegal, billed .8 hours at an hourly rate of $325.00 for $260.00 (Dkt No. 576-5, pp. 57-73; see also, Dkt No. 567-2 for hourly rates).

them pursuant to the Modified Settlement and Amended Order which the Receiver failed to object to and/or take an appeal from. Thus, even if Mr. Nordlicht was found to be the equitable owner of the NY Condo or that he fraudulently transferred the NY Condo to 535 WEA way back in 2010, any such claim belongs exclusively to the Trustee which he settled and released.[14]

Therefore, based on the foregoing, the Receiver has failed to show – and cannot possibly show – that the Discharge Action is a cost-effective proceeding to either recover or conserve Receivership Property. For similar reasons, the Receiver cannot possibly show that the Discharge Action is necessary and appropriate to either recover or conserve Receivership Property. In fact, the Receiver tacitly conceded this in her Thirteenth Status Report – filed on ***October 20, 2020***, ***a mere seven weeks prior to the filing of the Discharge Complaint*** – since the Conclusion confirmed that the Receivership was now in its "***end stages***," (emphasis added) and eliminated the prior statements contained in both the Eleventh and Twelfth Status Reports that the next stage of the case will be focused on determinations regarding the commencement of any additional litigation (Dkt No. 544, p. 22). Thus, the Receiver concluded, as per her Thirteenth Status Report, that additional litigation against Mr. Nordlicht was not necessary and appropriate.

Moreover, Mr. Nordlicht disputes that the Receiver is even a legitimate creditor of his Bankruptcy estate, especially since the Receiver failed (in contrast to other creditors) to sue Mr. Nordlicht prior to the Nordlicht Bankruptcy. But even if the Receiver is a legitimate creditor, the

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[14] The Stadtmauers are the only party to object to and/or to appeal from the Modified Settlement and Amended Order. Should the Stadtmauers succeed on their appeal, they will claim that they are the successful purchaser of the Trustee's claims that are being released under the Modified Settlement. Thus, under either scenario, the Receiver (even if the Receivership was not in its end stages) would be barred from asserting any fraudulent conveyance or alter ego claims against the Settling Parties.

Receiver Order, which the Receiver submitted and modified, does not contain an exception to the leave provisions based on the Receiver's creditor status; rather it contemplates that the Receiver would not file any action unless she was a creditor, since it requires (a) the Receiver to expend funds in a cost-effective manner, and (b) that any new action/proceeding be necessary and appropriate.

Based on all of the foregoing, the Receiver was required under the clear terms of the Receiver Order to seek and obtain this Court's permission prior to filing the Discharge Complaint.

II. THE STAY SHOULD NOT BE LIFTED TO RETROACTIVELY PERMIT THE FILING OF THE DISCHARGE ACTION

The Receiver argues that if leave was required, then the stay should be lifted to allow her to "***continue***" (emphasis added) the Discharge Action (Dkt No. 569, pp. 1 & 3). The Receiver's request for relief is incorrect, however, because the stay must be further lifted to retroactively permit the filing which occurred on December 7, 2020, approximately seven months ago.

The Receiver Order, however, which was submitted and modified by the Receiver, does not contain any provision for lifting the stay after the fact to permit an improperly filed action. Moreover, the Receiver clearly had sufficient time to either seek to lift the stay prior to filing the Discharge Action or to modify the Receiver Order to permit filing on a retroactive basis, since the Nordlicht Bankruptcy was filed on June 29, 2020; the Bankruptcy Court approved the Receiver Stipulation on September 15, 2020 (which extended her time to object to discharge to 12/7/20); and the Stadtmauers' filed their Letter/Motion on November 25, 2020 requesting this Court to lift the stay. Despite all of the above, the Receiver still failed to seek either form of relief prior to filing the Discharge Action and therefore her Motion must be denied.

A. The Receiver Has Failed To Even Allege, Much Less Satisfy, The Relevant Factors To Lift The Stay, Including Showing Substantial Injury If The Stay Is Not Lifted

Even if the Receiver Order could be read to provide for retroactive permission seven months after an improper litigation filing, the Receiver has failed to even allege, much less satisfy her burden to prove the relevant factors to lift the stay.

This Court previously set forth the relevant three factors needed to lift a litigation stay during a receivership as follows: "(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim." *Securities and Exchange Commission v. Platinum Management (NY) LLC*, 2018 WL 3442550 * 1-2 (E.D.N.Y. July 17, 2018). This Court further noted that "'[t]he movant bears the burden of proving that the balance of the factors weighs in favor of lifting the stay.' [citation omitted]." Id, at 2.

As to the first factor, Receiver cannot possibly show any injury, let alone substantial injury, if the Discharge Action does not proceed because (a) she is not seeking to recover any property from Mr. Nordlicht, only to preserve her alleged claim; and (b) even if she succeeds and blocks Mr. Nordlicht's discharge, she will only dissipate her alleged claim by (i) reviving Mr. Nordlicht's creditors that were barred for failing to file timely proofs of claims; (ii) terminating the automatic stay which will allow Mr. Nordlicht's more aggressive creditors that are not in their end stages, like the Stadtmauers, to deplete any of Mr. Nordlicht's alleged assets; and (iii) continuing to incur substantial legal fees with no potential recovery, especially since the Receiver's alleged claim is subordinate to the Stadtmauers' Secured Proof Of Claim for approximately $15M, and she cannot sue for fraudulent conveyance and/or alter ego claims which belong exclusively to the Trustee, *See, Helicon, supra*, and are being settled pursuant to the Amended Order approving the Modified

Settlement which the Receiver failed to object to or seek an appeal from. Thus, the first factor weighs heavily against lifting the stay.

For the second factor, the Receiver admitted in her Thirteenth Status Report (on 10/20/20), that the Receivership was in its "***end stages***." (emphasis added)(DKt. No. 544, p. 22). Conversely, the Discharge Action is merely in its preliminary stages, and there has yet to be any discovery, let alone summary judgment motions or Trial. Thus, the Receiver will continue to incur substantial legal fees with no recovery in sight, which will further dissipate Receivership Property and prejudice creditors of the Receivership. Therefore, the second factor also weighs against lifting the stay.

In regards to the third factor, the Receiver's remaining claim to block Mr. Nordlicht's discharge is not meritorious since it involves omission of assets that either do not belong to Mr Nordlicht (his wife's income) and/or are exempt assets (a Spendthrift Trust), neither of which are material. But even if the Receiver's alleged claim to block discharge was strong (which is not the case), it would still be insufficient to lift the stay. *S.E.C. v. Byers*, 592 F. Supp.2d 532, 537 (S.D.N.Y. 2008), *aff'd* , 609 F.3d 87 (2d Cir. 2010)("Even assuming the Movants' claims are strong, however, the other two *Weinke* factors weigh heavily against lifting the injunction"). This especially applies here since if the Receiver succeeds on her claim she will only dissipate Receivership Property.

Based on all of the foregoing, the Receiver's Motion, to the extent that it seeks to lift the stay to retroactively permit the filing of the Discharge Action, should be in all respects denied.

CONCLUSION

For all the reasons set forth herein, the Receiver's Motion must be denied in all respects.

Dated: New York, New York
July 7, 2021

BACKENROTH, FRANKEL & KRINSKY, LLP
Bankruptcy Counsel for Defendant Mark Nordlicht

By: s/Abraham Backenroth
Abraham Backenroth
Scott Krinsky
800 Third Avenue, 11th Floor
New York, New York 10022
(212) 593-1100