

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Third District Case No. 3D2024-1366
Lower Court Case No. 2024-008942-CA-01

CARIBBEAN SUN AIRLINES, INC.
d/b/a WORLD ATLANTIC AIRLINES,
INC. and MIAMI AIR
INTERNATIONAL, INC.

Appellants,

vs.

HALEVI ENTERPRISES, LLC

Appellee.

**APPELLANTS' OPPOSITION TO APPELLEE'S EMERGENCY MOTION
TO LIFT STAY AS TO THE RECEIVER ORDER**

Appellants hereby file this response in opposition to Appellee's emergency motion to lift the stay as to the receiver order, based on the September 9, 2024 Order Granting Halevi Enterprise, LLC's Emergency Motion for limited modification of the stay to allow the Receiver to maintain the status quo as follows:

SUMMARY OF ARGUMENT

This is an appeal of a Florida trial court's receiver order stemming from a Delaware judgment that is currently on appeal and will be heard *en banc* by the Delaware Supreme Court seven weeks from today or on November 6, 2024. A true

and correct copy of the Delaware Supreme Court's letter is attached hereto as Exhibit A. The only court with exclusive jurisdiction over a stay of the Florida receiver order is this Court by virtue of this appeal. Appellee has done a masterful job of conflating the issues in this case through its improper ping-ponging between Delaware and Florida courts at their own whim and convenience. Indeed, the Delaware Court has yet to rule on Appellants' motion to stay heard on September 5, 2024. However, none of Appellee's attempts detract from the inevitable truth that this Court has exclusive jurisdiction over this receiver order and that valid reasons exist under Florida law to grant a stay of that receiver order. Those reasons are wholly independent from the proceedings in Delaware.

First and foremost, the trial court below applied the wrong law in finding that a receiver was appropriate here. Appellee urged the trial court below to apply Florida's less stringent receiver standard and not the more demanding standard under Delaware law. It was Delaware law that was required in this matter. Further, Appellee provided over Appellants' filed objections an extremely broad receiver order which was more akin to a standard liquidation order and completely unnecessary in this situation. In light of the well-documented misconduct of the receiver even in the face of this Court's stay orders (both on August 7, 2024 and again on August 15, 2024), it is simply scary to imagine how such a broad receiver order might be employed by this receiver. Indeed, the receiver has even attempted

to fire the undersigned counsel who is prosecuting this appeal. The trial court accepted Appellee's proposed order without any changes. Finally, the trial court's findings of fact and the evidence submitted by Appellee does not support the entry of a receiver order, an acknowledged drastic and last resort remedy while a judgment is on appeal.

Turning next to Delaware, it is unclear why Appellee continues to pursue this forum shopping, break-neck pace for receiver; a receiver who has proven time and again through its repeated violations of this Court's own stay orders. One plausible explanation could be Appellee's lack of confidence in their Delaware Judgment. At the September 5, 2024 hearing, Appellee conceded to the court that it never provided any support for its calculation of interest that was in the final judgment and recently apologized to the Court for its inability to provide that calculation when requested by the Court. Del. Tr. 64:19-21. In addition, and reflecting the significance of Appellants' issues on appeal, the Delaware Supreme Court has set oral argument *en banc* for November 6, 2024 – just seven weeks from now. Lastly, presently before the Delaware Superior Court is Appellants' motion for reconsideration of its recent order lifting the temporary stay to allow receiver. A true and correct copy of the motion for reconsideration is attached hereto as Exhibit B. The motion has yet to be ruled on by the Court. This motion to reconsider was invited by the Court and in fact the Court has set a defined briefing schedule for the parties.

ARGUMENT

I. **Valid Reasons Exist to Stay Separate and Apart from Any Proceedings in Delaware.**¹

1. **This Court possesses exclusive jurisdiction over the receiver order and any stay thereof pending appeal.**

Issues regarding the propriety of the receiver order and a motion to stay pending this appeal are squarely and exclusively the jurisdiction of this Court to decide.²

The Florida trial court that issued the receiver order denied perfunctorily Appellants motion for stay and motion to reconsider its ruling on the motion to stay. In the first instance, it is improper for Appellee to urge the Delaware superior court to lift its stay order to allow a Florida Receiver under an order that is currently on

¹ This court applies an abuse of discretion standard in reviewing a lower tribunal's order on a motion for stay. *Lampert-Sacher v. Sacher*, 120 So. 3d 667, 668 (Fla. 1st DCA 2013); see *Polar Ice Cream & Creamery v. Andrews*, 159 So. 2d 672 (Fla. 1st DCA 1964). The burden is on the movant to demonstrate such an abuse of discretion. *Id.* A party seeking to stay the lower tribunal order pending appeal should demonstrate a likelihood of prevailing on appeal, irreparable harm to movant if the motion is not granted, or a showing that a stay would be in the public interest. *Id.*; *White Constr. Co. v. State, Dep't of Transp.*, 526 So. 2d 998 (Fla. 1st DCA 1988).

² Because the Receivership Order is on appeal to the Florida Appellate Court, the Florida Circuit Court is divested of jurisdiction. *Schultz v. Schickedanz*, 884 So. 2d 422, 424 (Fla. 4th DCA 2004) (“A trial court is divested of jurisdiction upon notice of appeal.”); see also *State v. Johnson*, 13 Fla. 33 (Fla. 1869) (holding that an order staying proceedings upon an appeal from an order appointing a receiver “does not discharge the receiver, but suspends him and all his powers and duties as an officer of the circuit court. The order is, of necessity, a mandate to that court, and its effect is a prohibition; otherwise, it is an idle ceremony.”) (citation omitted).

appeal to this Court. It is even more egregious that at the September 5, 2024 hearing Appellee discussed with the Delaware superior court and the court entertained and advised its limitations to the Florida receiver order.³

2. The Florida trial court applied the wrong legal standard in appointing the receiver.

It is clear under both Delaware and Florida law that the proper standard for appointing a receiver here would have been Delaware's more demanding standard. Appellants' initial appellate brief is due on September 27, 2024 according to this Court's order which will detail all the reasons why Appellants have demonstrated a likelihood of success on appeal in support of the stay. But the keys reasons include the incorrect application of Florida law at the evidentiary hearing and in the papers in addition to the improper judicial notice of the adjudicative facts of hearsay documents in support of Appellee's emergency allegations. *See FTE Networks, Inc. v. Szkaradek*, 2023 WL 8650002, at *3 (D. Del. Dec. 14, 2023) ("Delaware law makes clear that under the internal affairs doctrine a request to appoint a receiver is governed by the law of the state of incorporation.") (citations omitted); *see also Romay v. Caribevision Holdings, Inc.*, 147 So. 3d 125, 126-127 (Fla. 3d DCA 2014)(the Florida trial court lacked jurisdiction to grant such relief with respect to

³ According to paragraph 20 of the Receiver Order entitled Jurisdiction: "The Court reserves jurisdiction to enforce full compliance with the terms and conditions of this Order and with respect to clarification, interpretation, or modification of this Order."

the entities, organized as they were in Delaware, contending that the Florida court thereby impermissibly regulates "the organization or internal affairs of a foreign corporation).

Appellee's cite to the *Romay* case in their brief to show that the appointment of a receiver should be upheld but the *Romay* case involved litigation pursued only in Florida against Delaware corporations. The Florida Court in *Romay* recognized that it did not have the proper jurisdiction to enter a receiver order but recognized that it only had the jurisdiction to appoint a "referee" who would serve ancillary to any appointment of a Receiver made by a Delaware court after a proper evidentiary hearing in front of a Delaware Court and in consideration of the internal affairs doctrine. Further, all motions filed in the *Romay* case concerning the referee or receivership relied solely and properly on Delaware law. That did not occur here.

For this reason alone, and to correct a misapplication of law, there exists more than a substantial likelihood of success on the merits.

II. Delaware Court Improperly Assumed Jurisdiction over the Receiver Order by Modifying the Order to reflect the Delaware Court's Interpretation of "Status Quo."

The Delaware Superior Court's order improperly and without jurisdiction modifies the lower Florida court receiver order to "maintain the status quo" and to not allow the Florida appointed receiver to carry out the judgment through liquidation or termination. Opposing counsel assured the Delaware Superior Court

that this Court will find the liquidation receiver order valid and modify the order with the Delaware Superior Court's restrictions of no liquidation, no terminations of counsel and employees, and no other modification of the status quo. *See* a true and correct copy of the September 5, 2024 hearing transcript attached to the motion for reconsideration as Exhibit B("Del. Tr.") at 93:11-19.

However, this directly contradicts provision 20 of the Receiver Order providing the lower Florida Court with the jurisdiction to enforce full compliance with the terms and conditions of this Order and with respect to clarification, interpretation, or modification of this Order.”⁴

The Delaware Superior Court repeatedly reiterated its grave due process concerns as to the potential firing of Appellants' counsel pending appeal in violation of their appellate rights and due process rights.⁵ Appellants protected their appellate rights in Florida by filing objections to the liquidation receiver order before it was

⁴ To further show the irreparable harm faced by Appellants are exemplified in the provisions of the Receiver Order. Provision one of the Receiver order, allows Sage Popovich, Inc. and its owner, Nick Popovich who exclusively specializes in the repossession of aircrafts to assist in the Receiver's performance of his duties. Nick Popovich is also known as the reality tv show star of "Airplane Repo". When the Delaware Superior Court issued its temporary stay order on August 1, 2024, Nick Popovich accessed the premises in with the Receiver. Provision 3 of the Order, allows the Receiver who the Delaware Superior Court has no jurisdiction over to transfer, set off, receive, change, sell, pledge, assign, liquidate, or otherwise dispose of or withdraw Appellants' assets.

⁵ I am interested in that question because one of the things that I don't want to do is prejudice the defendant's ability to prosecute their appeal or to prosecute an exercise to due process rights in any court in the United States. Del. Tr.16:5-10.

entered by the lower Florida Court. As part of those objections, was the disallowance of any termination of Appellants' counsel related to the appeal process.

The Delaware Superior Court's order improperly and without jurisdiction modifies the lower Florida court receiver order to "maintain the status quo" and to not allow the Florida appointed receiver to carry out the judgment through liquidation or termination despite the Receiver order containing such provisions. The Delaware Superior Court is not the Court with adequate jurisdiction to enter a Receivership without a proper hearing or to modify a foreign order. The Delaware Chancery Court can only make that determination after an evidentiary hearing.⁶

However, Appellee's Delaware's counsel misrepresented to the Delaware Court that no actions had been taken by Appellee to dismiss Appellants' attorneys despite Appellee's representations made in the August 2, 2024 motion for sanctions filed in the lower Florida Court dismissing the Appellants' counsel. Del. Tr. 73:2-4. It is significant that Appellee's counsel reiterated that the Receiver Order disallowed the firing of Appellants' counsel regarding their representation of Appellants in the Delaware Superior Court or the Delaware Supreme Court. There are no such protections as to counsel's representation of Appellants in this Florida appeal despite

⁶ Delaware law required Plaintiff to seek a receivership in the Court of Chancery. See 8 Del. C. § 291 (providing jurisdiction in the Court of Chancery for receivers of insolvent Delaware corporations). Instead, Plaintiff sought relief in Florida to obtain an unfair advantage

Appellants' objections filed in the lower Florida court. In fact, opposing counsel misinformed the Delaware Superior Court that if the Receiver terminated counsel for Appellants that, "there would be a process that I'm sure Judge Sanchez [Judge Butcho] would first administer based on her understanding of the record and what it meant to her Honor." Del. Tr. 87:11-20. Further, Appellee's counsel informed the Delaware Superior Court that the receiver will make various decisions in the coming days or weeks that would be adjudicated by the lower Florida Court and not this Court. Del. Tr. 88:19-23.

For this same reason, Appellee's Delaware counsel cannot provide assurances to this Court that any modifications requested by this Court will be honored by the Receiver. Del. Tr. 93:20-94:1. Appellee's counsel's assurances mean nothing. More importantly, the Receiver's actions to date should be the primary focus showing the irreparable extent of irreparable harmed faces by Appellants. Despite the status quo order being issued, immediately after his appointment, the Florida Receiver took extreme steps that included, among other things, firing Appellants' counsel, contacting key clients, and attempting to access Appellants' premises in direct defiance of the Florida Appellate Court stay order and at the expense of Appellants. The ramifications extend well beyond this however and are further explained in Appellants' motion for reconsideration filed before the Delaware Court. See Exhibit B, hereto. The prejudice to Appellants in having to run between two states and four

different courts to perfect this stay in the face of Appellee's improper form shopping is more than apparent and should not be countenanced any further by this Court.

III. Issue of Bond

The Delaware superior court presently has before it Appellants' original motion to stay which carries with it the issue of the appropriate bond under Delaware law. Likewise, this Court also possesses the discretion to set an appropriate bond to stay execution pending appeal. Whereas Appellants are not suggesting that a bond be set in both cases, Appellants do suggest that should this Court reach the bond issue first then the fact that the Delaware court has not, should not deter this Court in setting an appropriate bond. Appellants also urge this Court that the fact that the Supreme Court is hearing this matter on appeal together with the fact that the interest calculation is severely suspect -- \$21 million dollars pre-judgment interest over three years on a \$4 million dollar principal amount -- weighs heavily in favor on a bond in an amount substantially less than the final judgment amount.

IV. Delaware Proceedings

a. Delaware Supreme Court

As mentioned above, the final judgment issued by the Delaware Superior Court is on appeal to the Delaware Supreme Court. The notice of appeal was filed on May 20, 2024. As this court no doubt has seen throughout the briefings to this Court, the issues on appeal in Delaware are significant. The Delaware Supreme

Court is proceeding with all due dispatch to resolve this appeal. Indeed, on September 9, 2024, the Supreme Court of Delaware notified the parties that this appeal will be heard on oral argument *en banc* on November 6, 2024. The fact that this matter will be heard *en banc* bears its own significance. By its own internal guidance, the Delaware Supreme Court provides that *en banc* signifies: “The Court sits en banc in cases of special seriousness (e.g., cases involving very serious felony appeals), where the case may require re-evaluation of prior precedent, or where the area of law is one that the Court and trial courts believe requires special attention to establish clear and predictable precedent.” *See* Supreme Court Case Scheduling FAQs - Supreme Court - Delaware Courts - State of Delaware.

b. Pending Motion to Stay before the Delaware Superior Court

Currently pending before the Delaware Superior Court is Appellant’s original motion to stay pending appeal. On September 5, 2024, the superior court heard argument and concluding the hearing by advising the parties that it would be issuing a ruling, including if required a ruling on the appropriate bond. The superior court has yet to issue its stay ruling. Depending on the ruling, Appellants also have available to them the procedural avenue of bringing the stay issues before the Delaware Supreme Court; however, admittedly the procedure requires a ruling from the Delaware superior court.

In addition, the Delaware superior court also has before it Appellants’ motion

to reconsider her modification of her temporary stay order of September 9, 2024 to allow receiver. *See* Exhibit B, attached Motion to Reconsider, dated September 11, 2024.

WHEREFORE, Appellants respectfully request that this Court deny the Appellee's Emergency Motion to lift the stay as to the receiver order on appeal before this Court and to further allow this Court to focus on this direct appeal and not on ancillary receiver enforcement issues.

Dated: September 11, 2024.

Respectfully submitted,

/s/ Aileen M. Carpenter

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Certificate of Service

I certify that a copy of the foregoing has been furnished via electronic mail to Brian Dervishi, Esquire, Weissman & Dervishi, P.A., 1 SE 3rd Avenue, Suite 1700, Miami, Florida 33131 at brian@wdpalaw.com on September 11, 2024.

/s/ Aileen M. Carpenter

EXHIBIT A

SUPREME COURT OF DELAWARE

EFiled: Sep 09 2024 03:05PM EDT
Filing ID 74263160
Case Number 199,2024

LISA A. DOLPH
Clerk

SUPREME COURT BUILDING
55 THE GREEN
DOVER DE 19901

DANIELLE M. DRAKE
Chief Deputy Clerk
JOANNE K. HASTINGS
Senior Court Clerk
BERYL B. NYAMBURI
Senior Court Clerk
KATHERINE E. SKINNER
Senior Court Clerk

(302) 739-4155

September 9, 2024

David B. Anthony, Esquire
Zachary J. Schnapp, Esquire
Brian Gottesman, Esquire
Kevin S. Mann, Esquire
Christopher P. Simon, Esquire

RE: *Caribbean Sun Airlines Inc. d/b/a World Atlantic Airlines Inc., et al.
v. Halevi Enterprises LLC, No. 199, 2024*

Dear Counsel:

The above captioned matter has been called for argument on **Wednesday, November 6, 2024, at 12:45 p.m. before the Court en Banc in Dover.** Please arrive prepared at the Court no earlier than **twenty minutes before** your scheduled starting time.

Please complete and e-file the enclosed oral argument scheduling acknowledgment form within seven days of receipt of this notice. If you have a conflict with the scheduled date of oral argument, please try to reschedule the conflicting engagement. If exceptional circumstances make it necessary to ask the Court to reschedule the oral argument, please e-file such application within five days of the date of this letter. The application should fully explain the exceptional circumstances which make rescheduling necessary.

Furthermore, if your respective clients wish to attend the oral argument, please advise them to arrive in a timely fashion.

Very truly yours,
/s/ Lisa A. Dolph

Enclosure

**DELAWARE SUPREME COURT
SCHEDULING ACKNOWLEDGMENT**

Please E-file this oral argument acknowledgment within seven days of receipt. This form or an application for rescheduling must be returned even if you inform the Clerk by telephone of your availability for argument or of your intent to apply for a rescheduling. Please check the appropriate box(es) and fill in the corresponding blanks.

() I, _____, Esquire, will be present in
(Attorney)

the Supreme Court Chambers in **Dover** at _____ on
(Time)

_____, to represent my client, _____,
(Date) (Name of Client)

at oral argument in Supreme Court Case No. _____.
(Number and Year)

() I have filed/will file a motion under Supreme Court Rule 71 to move the admission *pro hac vice* of out-of-state counsel in order that he/she may present oral argument. The following is the name and address of out-of-state counsel:

_____.

() I have read and understand the enclosed courtroom protocol sheet.

Date: _____
(Arguier or Local Counsel's Signature)

cc:

In case of inclement weather, please provide your home phone number so that you may be contacted if the Court determines that the oral argument must be postponed. (November through March)

Cell Phone:

SUPREME COURT OF DELAWARE COURTROOM PROTOCOL

FOR LAWYERS AT COUNSEL TABLE

- Dignified attire is required. This means conservative clothing one would wear on a serious occasion.
- Only attorneys listed on the briefs, including those admitted Pro Hac Vice, are permitted to sit at counsel tables.
- As you enter the courtroom, the appellant's counsel of record and any other person permitted to sit at the counsel table will sit at the table on the left side of the courtroom.
- As you enter the courtroom, the appellee's counsel of record and any other person permitted to sit at the counsel table will sit at the table on the right side of the courtroom.
- Delaware counsel for each side should introduce Pro Hac Vice counsel presenting argument before the argument. Attorneys must stand when the Court enters and exits the courtroom, when addressing the Court, and when being introduced to the Court.
- For attorneys who have reserved rebuttal time, the yellow podium light means you are using your rebuttal argument time. Otherwise, the yellow light warns you are nearing the end of argument time. The red light means no more time is allowed for argument.

FOR ALL PERSONS ATTENDING ORAL ARGUMENTS

- All persons must submit to a security check to enter the courtroom. No one may enter or exit the courtroom after an argument has started. The Court requests the full attention of everyone during the argument.
- People may choose to wear face masks and should do so if they have symptoms, a positive test, or exposure to someone with COVID-19.
- No outward display of emotion may be made during the argument. Anyone who creates a disturbance must leave the courtroom and may not return. (Examples: chronic coughing, child crying)
- No cameras, recording devices, or cellular phones are allowed in the courtroom (except that credentialed media representatives may make satisfactory advance arrangements with the Clerk consistent with the Court's media access order). Counsel of record may bring computers which shall only be used in support of oral argument.
- No food or drink are allowed in the courtroom, except that counsel of record may bring water for the attorney presenting argument.

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

HALEVI ENTERPRISES LLC,)	
)	
<i>Plaintiff,</i>)	
v.)	C.A. No. N21J-04427-KMV
)	
WAA HOLDINGS, INC., <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DEFENDANTS’ MOTION FOR RECONSIDERATION
OF SEPTEMBER 9 ORDER MODIFYING STATUS QUO**

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Counsel for Caribbean Sun Airlines Inc.

Dated: September 11, 2024

Defendants, by and through their undersigned counsel, respectfully move for reconsideration of the Court’s September 9 order modifying the status quo (the “September 9 Order”)¹ pending a final determination on the motion to stay. For the reasons stated herein, Defendants maintain that the Court cannot make the modification and that the Court erred.²

The Court is confronted with a narrow issue: whether to enter a stay pending appeal pursuant to Supreme Court Rule 32. *See Radulski for Taylor v. Delaware State Hospital*, 541 A.2d 562, 566 (Del. 1988) (“With the exception of interlocutory appeals, the proper perfection of an appeal to this Court generally divests the trial court of its jurisdiction over the cause of action.”). Other than that narrow issue, the Court lacks jurisdiction and cannot act. Moreover, the Court cannot modify an order entered by a Florida court.

Plaintiff’s improper self-help efforts—specifically, leaving this jurisdiction to seek relief in Florida during the pendency of Defendants’ appeal—has created a

¹ At the September 5 hearing, the Court advised that it had drafted a proposed order, but had not docketed that order. After reading the order into the record, Defendants orally moved for reconsideration. The Court granted leave to file this expedited briefing. On September 9, the Court docketed the September 9 Order.

² A motion for reargument is governed by Superior Court Rule 59(e). *See Gillenardo v. Connor Broad.*, 2000 WL 703016, at *1 (Del. Super. Mar. 9, 2000) (“To prevail on reargument, the moving party must demonstrate that the Court ‘overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.’”) (citation omitted).

procedural nightmare. The parties are currently litigating in four courts spread over two-jurisdictions when they should be addressing only matters related to Defendants’ appeal. Plaintiff’s self-help has now potentially irreparably damaged Defendants’ business. Indeed, the Florida Appellate Court, recognizing the harm, has ordered that the status quo be preserved and that the Receiver do nothing.

By rushing to Florida, Plaintiff obtained what they could not obtain from this Court—entry of a receivership order (albeit an improper order³) over a Delaware corporation. *See* Ex. A (“Receivership Order”). Delaware law required Plaintiff to seek a receivership in the Court of Chancery. *See* 8 *Del. C.* § 291 (providing jurisdiction in the Court of Chancery for receivers of insolvent Delaware corporations). Instead, Plaintiff sought relief in Florida to obtain an unfair advantage because the standard for obtaining a receiver in Florida is much lower than in Delaware. *See* Dkt. 145 at pp. 5-6.

Now Plaintiff wants this Court to bless the improper Receivership Order. The Court cannot do so. Although the Court was obviously concerned about the breadth of the Receivership Order (*see* Ex. B (Sept. 5 Tr.) at 91:16-92:3), this Court lacks jurisdiction to modify the Receivership Order despite its concerns.

³ The Florida Circuit Court that entered the Receivership Order failed to apply Delaware law and instead incorrectly applied Florida law. *See FTE Networks, Inc. v. Szkaradek*, 2023 WL 8650002, at *3 (D. Del. Dec. 14, 2023) (“Delaware law makes clear that under the internal affairs doctrine a request to appoint a receiver is governed by the law of the state of incorporation.”) (citations omitted).

The Receivership Order is a liquidation order. By its terms, the Receivership Order forbids modification of the Receivership Order except by the Florida Circuit Court.⁴ Therefore, paragraph 4 of the September 9 Order—which lifts the stay as to receiver’s “full exercise of all his powers” “except that the receiver shall not carry the judgment into effect pending further order of this court”—does not work. The Full Faith and Credit Clause of the U.S. Constitution requires that this Court must respect the provision of the Receivership Order requiring modification by the Florida court alone. *See* U.S. CONST. ART. IV § 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”). The Receivership Order is on appeal to the Florida Appellate Court—which has ordered that the status quo be preserved. This Court lacks the authority to modify the Receivership Order.⁵

For this same reason, Plaintiff’s counsel cannot provide assurances to this

⁴ *See* Ex. A at ¶ 20 (“Jurisdiction. The Court *reserves jurisdiction* to enforce full compliance with the terms and conditions of this Order and with respect to *clarification, interpretation, or modification of this Order.*”) (emphasis added).

⁵ Because the Receivership Order is on appeal to the Florida Appellate Court, the Florida Circuit Court is divested of jurisdiction. *Schultz v. Schickedanz*, 884 So. 2d 422, 424 (Fla. 4th DCA 2004) (“A trial court is divested of jurisdiction upon notice of appeal.”); *see also State v. Johnson*, 13 Fla. 33 (Fla. 1869) (holding that an order staying proceedings upon an appeal from an order appointing a receiver “does not discharge the receiver, but suspends him and all his powers and duties as an officer of the circuit court. The order is, of necessity, a mandate to that court, and its effect is a prohibition; otherwise, it is an idle ceremony.”) (citation omitted); *Powell v. Florida Land & Improv. Co.*, 41 Fla. 494 (Fla. 1899); *Miami Beach v. Lansburgh*, 217 So.2d 348, 349 (Fla. 3rd DCA 1969).

Court that any modifications requested by this Court will be honored by the Receiver. *See* Ex. B at 93:20-94:1. Plaintiff’s assurances made through its counsel mean nothing. Plaintiff took irreconcilable positions, stating both that that (i) the Florida Receiver is not before this Court and that Plaintiff has no control over what the Receiver does (Ex. B at 71:14-15), while (ii) simultaneously promising that the Receiver will not take actions that this Court noted were problematic (*id.* at 93:21-94:1). Plaintiff cannot have it both ways.

More importantly, the Receiver’s actions to date should be the primary focus. Despite the status quo order being issued, immediately after his appointment, the Florida Receiver took extreme steps that included, among other things, firing Defendants’ out-of-state counsel,⁶ contacting key clients, and attempting to access Defendants’ premises in direct defiance of the Florida Appellate Court stay order.⁷

Because this Court does not have jurisdiction over the Receivership Order, it cannot limit the harmful effects of that order. A respect for comity requires that this Court not elevate the Florida’s Receiver’s activities and allow the Florida Appellate

⁶ Defendants’ counsel are duty-bound to continue their representation of the Defendants until such time as this Court or the Delaware Supreme Court excuses such counsel. *See, e.g.*, Supreme Court Rule 12(b) (“Except as permitted by order of the Court, no attorney may withdraw and all appearing attorneys are required to continue as such and to perform the duties of counsel imposed by law, by The Delaware Lawyers’ Rules of Professional Conduct, and these Rules.”).

⁷ Defendants are prepared to prove these facts at an evidentiary hearing if required to do so.

Court to review the propriety of the Receivership Order. Unquestionably, the actions taken to date have violated the status quo. Indeed, clients of Defendants were notified of the Receivership Order. On September 5, 2024, Defendants' key client advised that it is now ceasing business operations with Defendants. *See* Ex. C (email correspondence). Moreover, the entry of a receivership order triggers a default on certain lending relationships, causing further hardship to Defendants.

Finally, as previously noted, this Court did not have jurisdiction to enter a receivership order. Jurisdiction for that would rest in the Court of Chancery. The soul issue before this Court was a question under Supreme Court Rule 32 whether to enter a stay pending appeal. *See Radulski*, 541 A.2d at 566 (“With the exception of interlocutory appeals, the proper perfection of an appeal to this Court generally divests the trial court of its jurisdiction over the cause of action.”). Plaintiff’s backdoor effort to have Delaware’s imprimatur on what was a procedurally and substantively improper action in a foreign jurisdiction should not be further countenanced. The procedural morass that has resulted is of Plaintiff’s own making. Having chosen to proceed in Florida, Plaintiff cannot seek help in this Court.

For these reasons, the Court must deny the modification of the status quo, enter the stay pending the outcome of Defendants’ appeal, which is now scheduled for an *en banc* hearing on November 6, 2024, and direct the parties to take no action that interferes with the operation of Defendants’ business.

Dated: September 11, 2024

BERGER MCDERMOTT LLP

/s/ David B. Anthony

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Counsel for Caribbean Sun Airlines Inc.

CERTIFICATE OF SERVICE

I, David B. Anthony, hereby certify that on September 11, 2024, the foregoing document was served upon the following party in the manner set forth below:

VIA FILE & SERVE

Kevin S. Mann, Esq.
Cross & Simon, LLC
1105 N. Market Street, Ste 901
Wilmington, Delaware 19801

VIA FILE & SERVE

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/s/ David B. Anthony
David B. Anthony (No. 5452)

EXHIBIT A

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-008942-CA-01
SECTION: CA22
JUDGE: Beatrice Butchko Sanchez

Halevi Enterprises LLC

Plaintiff(s)

vs.

Caribbean Sun Airlines Inc et al

Defendant(s)

ORDER APPOINTING F. DARRELL RICHARDSON AS RECEIVER

THIS CAUSE came before the Court on July 26, 2024, for an evidentiary hearing upon Judgment Creditor’s Emergency Motion for Appointment of Receiver and to Overrule Judgment Debtors’ Objection to, and Request to Stay Enforcement of, a Foreign Judgment [DIN 11] (“Motion”). The Court considered the Motion, the Judgment Debtors’ response [DIN 13], the testimony of Judgment Creditor Halevi Enterprises LLC’s witnesses and the showings of the parties, and argument of counsel and finds, based on the record in these proceedings, the appointment of a receiver is necessary and appropriate for purposes of marshalling and preserving all assets of the Judgment Debtors and to carry the judgment into effect. Therefore, for the reasons stated on the record, it is now

ORDERED and **ADJUDGED** as follows:

1. Motion Granted. The Motion is **GRANTED**. The Court takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Judgment Debtors. F. Darrell Richardson, 1851 Hayes Leonard Road, Valparaiso, IN 46385 (the “Receiver”), who is qualified and independent, is appointed as Receiver of Judgment Debtors, Caribbean Sun Airlines, Inc. d/b/a World Atlantic Airlines and Miami Air International, Inc. (together,

“Judgment Debtors”), and all of the personal property and assets including without limitation the accounts receivable, and inventory of Judgment Debtors, of whatever kind, now existing and hereafter arising, wherever located, including the property more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the “Receivership Assets”), and is given authority to retain Sage-Popovich, Inc., to assist him in performance of his duties as Receiver.

2. Findings. The Court finds that the Motion was properly served on the Judgment Debtors, who received actual and reasonable notice of the hearing, and that all of the necessary parties have been properly served or received notice of the hearing on the Motion. The Judgment Creditor holds a Final Judgment lien interest in the Receivership Assets, and has demonstrated its right to and need for the Receiver to protect and preserve the Receivership Assets pursuant to Florida law.
3. Asset Freeze. Except as otherwise specified herein, all Receivership Assets are frozen until further order of the Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.
4. Primary Tasks. The primary tasks of the Receiver shall be to: (a) operate the airlines in a manner compliant with all federal regulation and in a manner to ensure the continued business operations and revenue generation of the assets; (b) collect as much as possible of the accounts receivable; and (c) use reasonable efforts to determine the nature, location, and value of all property interests of Judgment Debtors, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable

thereto, of whatever kind, which Judgment Debtors own, possesses, have a beneficial interest in, or control directly or indirectly and make a report to the Court and the parties regarding same. Judgment Debtors, as well as Iraq Pacheco and Tomas Romero, shall fully and promptly cooperate with the Receiver in carrying out these primary tasks and provide him all the assistance and information that he shall reasonably request from them. The Receiver shall maintain the Judgment Debtors' business and Federal Aviation Administration Operating Certificates.

5. Management. The powers of Judgment Debtors' managers are suspended. Such persons shall have no authority with respect to Judgment Debtors' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of Judgment Debtors and shall pursue and preserve all of Judgment Debtors' claims. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Entities under applicable state, federal, or foreign law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver under Florida law. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entities are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Judgment Debtors and shall pursue and preserve all their claims. Notwithstanding the foregoing, Judgment Debtors may continue to pursue the motion and appeal in the Superior Court and Supreme Court of Delaware. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities.

6. Possession and Control of the Receivership Assets. The Receiver is authorized to immediately take possession and exclusive control of the Receivership Assets. The Receiver is granted all of the usual, necessary, and incidental rights and powers of receivers for the purpose of carrying out the provisions of this Order, as he considers necessary or appropriate. The Receiver's powers include, but are not limited to, the powers to: (a) take and maintain possession of all accounts, records, data, reports, and other information, whether in paper or native format, and including electronically stored information, pertaining to the Receivership Assets; (b) open receivership accounts in the names of Judgment Debtors; (c) borrow money, issue receiver's certificates, incur debt, issue any class of stock, debenture or other financial instrument as required to finance the administration of the estate; (d) deposit checks that are made payable to Judgment Debtors; (e) open mail that is addressed to Judgment Debtors; (f) obtain liability and such other types of insurance in such amounts and with such insurers as the Receiver deems necessary; (g) hire and employ consultants, managers, brokers, agents, attorneys, accountants, or professionals, as the Receiver deems necessary to carry out the rights and powers herein granted and his responsibilities under this Order; (h) enforce, modify, or terminate any contracts related to the Receivership Assets; (i) sell and convey all or any portion of the Receivership Assets, subject to Court approval upon notice and hearing; (j) execute and deliver such documents and instruments as are necessary or appropriate to exercise the rights and powers herein granted or to consummate authorized transactions; (k) institute legal actions in the name of Judgment Debtors to protect and preserve the Receivership Assets, to recover any part of the Receivership Assets that is improperly or illegally held by another, and for such other purposes as may be necessary, subject to Court approval; (l) use Judgment Debtors' federal employer identification numbers; and (m) otherwise take any reasonable actions deemed necessary or appropriate to take possession of, exercise full control over, to prevent waste of, and to otherwise preserve, manage, maintain, secure and safeguard the Receivership Assets. The Receiver may apply to the Court for

further instructions and directions.

7. Banks, Brokerage Firms, and Financial Institutions. All banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets, securities, funds, or accounts held by Judgment Debtors, in the name of Judgment Debtors, or for the benefit of Judgment Debtors, whether directly or indirectly, and whether Judgment Debtors' interest is legal, equitable, or beneficial, shall cooperate expeditiously in providing information and transferring the assets, securities, funds, or accounts to the Receiver or at the direction of the Receiver, upon receipt of notice of this Order by personal service, overnight courier, email transmission, or otherwise.
8. Turnover of Receivership Assets. Judgment Debtors, and all of their managers, members, employees, and agents, are directed and ordered to turn over to the Receiver all records, files, documents, bank statements, tax returns, insurance policies, keys, login credentials, passwords, and access codes necessary for the Receiver to obtain possession and manage the Receivership Assets as provided in this Order, excluding attorney-client privileged information.
9. Cooperation with Receiver. All parties are directed and ordered to honor the requests of the Receiver in the discharge of his duties and shall not hinder, obstruct, or otherwise interfere with the Receiver in the performance of the Receiver's duties. Such prohibited actions include, but are not limited to: (a) concealing, destroying, or altering records or information; (b) dissipating or otherwise diminishing the value of any Receivership Assets; (c) releasing claims; (d) disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Assets; and (e) attempting to modify or cancel any agreement that affects any Receivership Assets.
10. Bond. The Receiver shall post a bond in the amount of \$100,000.00 (one-hundred thousand dollars).

11. Use of Funds. The Receiver is authorized to utilize the proceeds of the Receivership Assets to fulfill any obligations of Judgment Debtors and otherwise as may be ordered by the Court.
12. Reporting. The Receiver shall file and serve on all parties a monthly report of all of his activities within twenty (20) days after the end of each calendar month. The first such report shall meet the requirements for filing a true and complete inventory of the Receivership Assets under oath pursuant to Fla. R. Civ. P. 1.620.
13. Bank Account. The Receiver shall maintain a bank account at a federally-insured institution in which all proceeds of the Receivership Assets shall be deposited and from which all expenses shall be paid.
14. Compensation of Receiver and Agents. The Receiver shall be paid for his time at a reasonable and customary hourly rate. All persons whose services are utilized by the Receiver, if any, shall be compensated at their reasonable and customary hourly rates. The Receiver shall be reimbursed for any reasonable out-of-pocket expenses, including travel expenses. The Receiver shall submit a monthly invoice to Judgment Creditor within twenty (20) days after the end of each calendar month, and subject to its right to object, Judgment Creditor shall initially be responsible for compensating the Receiver and his professionals. All sums advanced by Judgment Creditor shall be evidenced by certificates of indebtedness and secured by Judgment Creditor's security interest in and lien on the Receivership Assets.
15. Access to Books and Records. The Receiver shall permit Judgment Creditor, its agents and counsel access to the Receivership Assets at all reasonable times, to inspect the Receivership Assets and the books and records of Judgment Debtors, excluding attorney-client privileged information.
16. Exercise of Powers under Applicable Law. Without limiting or expanding the foregoing, the Receiver is authorized to exercise all powers generally available under the laws of the State of Florida, which may be incidental to the powers described in this Order, and to act on

behalf of and in the name of Judgment Debtors, as applicable, as the Receiver shall deem appropriate.

17. Receiver as Fiduciary. The Receiver shall faithfully discharge all of the duties outlined in this Order and shall obey all other orders of the Court. The Receiver shall be deemed a fiduciary for the benefit of all persons having or claiming an interest in the Receivership Assets and shall exercise his office accordingly.
18. Duration of Receivership. This receivership shall continue until further order of the Court.
19. Final Accounting. Upon submission of a final report and accounting, the Receiver shall be completely and fully discharged of all duties and responsibilities under this Order. The Receiver and his agents, employees, representatives, counsel, and accountant shall not be liable to anyone for their good faith compliance with their duties and responsibilities in connection with this Order, including, without limitation, the Judgment Creditor or the Judgment Debtors, and shall not be liable to anyone for the acts or omissions of the Judgment Creditor or the Judgment Debtors.
20. Jurisdiction. The Court reserves jurisdiction to enforce full compliance with the terms and conditions of this Order and with respect to clarification, interpretation, or modification of this Order.

Exhibit A – Receivership Assets

1. ALL ACCOUNTS, CHATTEL PAPER, CONTRACTS, CONTRACT RIGHTS, ACCOUNTS RECEIVABLE, TAX REFUNDS, TAX CREDITS, NOTES RECEIVABLE, PLEDGED EQUITY, DOCUMENTS, CHOSSES IN ACTION AND GENERAL INTANGIBLES, INCLUDING, BUT NOT LIMITED TO, PROCEEDS OF INVENTORY AND RETURNED GOODS AND PROCEEDS FROM THE SALE OF GOODS AND SERVICES, AND ALL RIGHTS, LIENS, SECURITIES, GUARANTIES, REMEDIES AND PRIVILEGES RELATED THERETO, INCLUDING THE RIGHT OF STOPPAGE IN TRANSIT AND RIGHTS AND PROPERTY OF ANY KIND FORMING THE SUBJECT MATTER OF ANY OF THE FOREGOING;
2. ALL CERTIFICATES OF DEPOSIT AND ALL TIME, SAVINGS, DEMAND, OR

OTHER DEPOSIT ACCOUNTS IN THE NAME OF PLEDGORS OR IN WHICH PLEDGORS HAVE ANY RIGHT, TITLE OR INTEREST, INCLUDING BUT NOT LIMITED TO ALL SUMS NOW OR AT ANY TIME HEREAFTER ON DEPOSIT, AND ANY RENEWALS, EXTENSIONS OR REPLACEMENTS OF AND ALL OTHER PROPERTY WHICH MAY FROM TIME TO TIME BE ACQUIRED DIRECTLY OR INDIRECTLY USING THE PROCEEDS OF ANY OF THE FOREGOING;

3. ALL INVENTORY AND EQUIPMENT OF EVERY TYPE OR DESCRIPTION WHEREVER LOCATED, INCLUDING, BUT NOT LIMITED TO ALL RAW MATERIALS, PARTS, CONTAINERS, WORK IN PROCESS, FINISHED GOODS, GOODS IN TRANSIT, WARES, MERCHANDISE, FURNITURE, FIXTURES, HARDWARE, MACHINERY, TOOLS, PARTS, SUPPLIES, AUTOMOBILES, TRUCKS, OTHER INTANGIBLE PROPERTY OF WHATEVER KIND AND WHEREVER LOCATED ASSOCIATED WITH THE PLEDGORS' BUSINESS, TOOLS AND GOODS RETURNED FOR CREDIT, REPOSSESSED, RECLAIMED OR OTHERWISE REACQUIRED BY PLEDGORS;
4. ALL DOCUMENTS OF TITLE AND OTHER PROPERTY FROM TIME TO TIME RECEIVED, RECEIVABLE OR OTHERWISE DISTRIBUTED IN RESPECT OF, EXCHANGE OR SUBSTITUTION FOR OR ADDITION TO ANY OF THE FOREGOING INCLUDING, BUT NOT LIMITED TO, ANY DOCUMENTS OF TITLE;
5. ALL KNOW-HOW, INFORMATION, LABELS, PERMITS, PATENTS, COPYRIGHTS, GOODWILL, TRADEMARKS, TRADE NAMES, LICENSES AND APPROVALS HELD BY PLEDGORS, INCLUDING ALL OTHER INTANGIBLE PROPERTY OF PLEDGORS;
6. ALL ASSETS OF ANY TYPE OR DESCRIPTION THAT MAY AT ANY TIME BE ASSIGNED OR DELIVERED TO OR COME INTO POSSESSION OF PLEDGORS FOR ANY PURPOSE FOR THE ACCOUNT OF PLEDGORS OR AS TO WHICH PLEDGORS MAY HAVE ANY RIGHT, TITLE, INTEREST OR POWER, AND PROPERTY IN THE POSSESSION OR CUSTODY OF OR IN TRANSIT TO ANYONE FOR THE ACCOUNT OF PLEDGORS, AS WELL AS ALL PROCEEDS AND PRODUCTS THEREOF AND ACCESSIONS AND ANNEXATIONS THERETO;
7. THE SPECIFIC ASSETS IDENTIFIED ON EXHIBIT 1 ATTACHED HERETO;
8. ALL PROCEEDS (INCLUDING BUT NOT LIMITED TO INSURANCE PROCEEDS) AND PRODUCTS OF AND ACCESSIONS AND ANNEXATIONS TO ANY OF THE FOREGOING;
9. CONSUMER ELECTRONICS (CE), FURNITURES (FF), GENERAL EQUIPMENT (G1), GENERAL EQUIPMENT (GE), OFFICE IMPROVEMENTS (LI), OPERATING ELECTRONICS (OE), MAINTENANCE EQUIPMENT (RP), SOFTWARE DEVELOPMENT (SC), WINGLET SYSTEM (W8), WINGLET SYSTEM (W9), REPAIR STATION CERTIFICATES, REPAIR STATION MANUALS, MANUFACTURER MANUALS, PROPRIETARY TOOLS, CERTIFIED TOOLS & TEST EQUIPMENT,

MACHINE/WELDING/NOT EQUIPMENT, MOTORIZED/NON-MOTORIZED EQUIPMENT, OTHER TOOLS & EQUIPMENT, ENGINE PARTS & ENGINE INVENTORY, TEST CELLS, OPERATING CERTIFICATES & MANUALS, AIRCRAFT FLEET, UNSERVICEABLE TURBINE SPARE ENGINES, SERVICEABLE TURBINE SPARE ENGINES, PARTS, INVENTORY, ACCOUNTS RECEIVABLES, MAINTENANCE, AND EQUIPMENT; AND

10. THE FOLLOWING AIRCRAFT: N802WA, MCDONNELL DOUGLAS AIRCRAFT CO. MD 83, SERIAL NUMBER 53052 N803WA, MCDONNELL DOUGLAS DC-9-82 (MD-82), SERIAL NUMBER 49345 N804WA, MCDONNELL DOUGLAS DC-9-83 (MD-83), SERIAL NUMBER 49345 N805WA, MCDONNELL DOUGLAS AIRCRAFT CO. MD 83, SERIAL NUMBER 53470 N808WA, MCDONNELL DOUGLAS DC-9-83(MD-83), SERIAL NUMBER 53044 N306F A, MCDONNELL DOUGLAS DC-9-83 (MD-83), SERIAL NUMBER 49344 N807TR, MCDONNELL DOUGLAS AIRCRAFT CO. MD 83, SERIAL NUMBER 53295 PRATT & WHITNEY CANADA JT8D-217A, SERIAL NUMBER 717449 PRATT & WHITNEY CANADA JT8D-217C, SERIAL NUMBER 725007 PRATT & WHITNEY CANADA JT8D-219, SERIAL NUMBER 728183.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 30th day of July, 2024.



2024-008942-CA-01 07-30-2024 1:07 PM

Hon. Beatrice Butchko Sanchez

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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Physically Served:

EXHIBIT B

THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HALEVI ENTERPRISES LLC,)
)
Plaintiff,)
)
v.) C.A. No. N21J-04427 KMV
)
WAA HOLDINGS, INC., WAA)
HOLDINGS, LLC, CARIBBEAN)
SUN AIRLINES, INC. d/b/a)
WORLD ATLANTIC AIRLINES INC.,)
MIAMI HOLDINGS, LLC, MIAMI)
AIR INTERNATIONAL INC.,)
TIMCO ENGINE CENTER, INC.,)
ALAN BOYER, and JOEL PLASCO,)
)
Defendants.)

* * * * *

BEFORE: HON. KATHLEEN M. VAVALA, Judge

* * * * *

TRANSCRIPT OF CIVIL MOTION HEARING
Thursday, September 5, 2024

ANDREA M. SAATMAN, RPR
Official Court Stenographer

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APPEARANCES:

CROSS & SIMON, LLC
Kevin S. Mann, Esquire

GRIFFIN LAW, LLP
Oliver Griffin, Esquire

on behalf of the Plaintiffs

BERGER MCDERMOTT LLP
David B. Anthony, Esquire

ALEXANDER ANGUEIRA PLLC
Alexander Angueira, Esquire (pro hac)

CARPENTER LAW
Aileen Michelle Carpenter, Esquire (pro hac)

HALLORAN FARKAS KITTILA, LLP
Theodore A. Kittila, Esquire

on behalf of the Defendants Caribbean Sun
Airlines and Miami Air International, Inc.

1 Thursday, September 5, 2024
2 2:06 p.m.
3 Courtroom 4E

4 - - -

5 THE COURT: I thought that it might make
6 sense to sort of orient everyone in the courtroom
7 regarding where we stand with several pending
8 motions at this point.

9 And I know that we met on August 22nd and
10 heard argument on two motions -- or, actually, one
11 motion because I think one was determined to be
12 moot -- and that you've been awaiting a decision
13 from me on that matter. So I wanted to dispense
14 with that without any further ado.

15 So the Court has granted Halevi Enterprises'
16 emergency motion for limited modification of the
17 stay to allow the receiver to maintain the status
18 quo in the interim before the Court issues a
19 decision on the motions that we're going to take
20 up today.

21 I think it might also be helpful for the
22 court reporter, given the number of folks that we
23 have in the room and I'm not sure who is going to
be making argument, if you would be just so kind,

ANDREA M. SAATMAN, RPR
Official Court Stenographer

1 Counsel, as to indicate your name before you make
2 argument so that we can sort of keep track of
3 everything that's happening.

4 So, as I indicated previously -- and maybe
5 this might have come through my administrative
6 assistant, so I just want to make clear -- this
7 Court is not going to take up the Rule 60(b)
8 motion that was filed today.

9 Instead, today we're going to focus on
10 Defendants' motion to stay that was filed, I
11 believe, June 18 and then Defendants' motion to
12 quash the subpoenas, I think, that was filed as of
13 July 3, 2024.

14 It would also be helpful for the Court to
15 have some information from counsel regarding the
16 status of things in Florida and in terms of
17 anything that might be happening with those
18 courts.

19 And I'll leave it to you to perhaps do that
20 during your argument, but it would be helpful for
21 me to know that as well as I consider the motions.
22 All right?

23 Is there anything that you want to take up

1 before we begin arguments on the motions
2 themselves? Okay. Then, hearing nothing, is
3 Mr. Anthony going to be making the arguments,
4 then?

5 MR. ANTHONY: Your Honor, I'm happy to make
6 introductions quickly --

7 THE COURT: Very good. Thank you.

8 MR. ANTHONY: -- if Your Honor would like.

9 And, good afternoon, and may it please the
10 Court. David Anthony of Berger McDermott on
11 behalf of Defendants Caribbean Sun Airlines and
12 Miami Air International.

13 THE COURT: Good afternoon.

14 MR. ANTHONY: And with us today to my left is
15 Alexander Angueira.

16 MR. ANGUEIRA: Thank you.

17 MR. ANTHONY: And to his left is Aileen
18 Carpenter. They are both from the state of
19 Florida and have been admitted pro hac vice.

20 THE COURT: Very good.

21 And it's very nice to meet you both in person
22 versus over Zoom.

23 MS. CARPENTER: Nice to meet you, Your Honor.

1 MR. ANTHONY: And to Ms. Carpenter's left is
2 Ted Kittila.

3 THE COURT: Nice to see you.

4 MR. KITTILA: Good to see you, Your Honor.

5 MR. ANTHONY: Behind Mr. Angueira is Ricardo
6 Fines, and to his left is Iraq Pacheco, and to
7 Mr. Pacheco's left is Tomas Romero.

8 THE COURT: Very good.

9 Thank you, gentlemen, for being here today.

10 MR. ANTHONY: Thank you, Your Honor.

11 THE COURT: Okay.

12 And it is Defendants' motion, so I will allow
13 you to proceed. In terms of which one goes first,
14 it makes some sense to me to go forward with the
15 stay motion first because that has a derivative
16 effect on the subpoenas, but I'm also happy to
17 hear you separately on that issue.

18 MR. ANTHONY: Thank you, Your Honor.

19 MR. ANGUEIRA: Thank you, Your Honor. Your
20 Honor, I appreciate the Court asking us to give a
21 precipe, if you will, on Florida because I think
22 it bears a lot of relevance to this conversation
23 today, not only to the conversation with respect

1 to the stay but also -- and not necessarily
2 suggestive that your ruling this morning or this
3 afternoon when you came out was the right or wrong
4 ruling, but I think I am going to touch on some of
5 the law in Delaware that makes the Florida
6 receivership improper.

7 And maybe to the extent that it's necessary,
8 I would ask that to be part of maybe even a
9 reconsideration because this argument on the law
10 is different than I think what you heard on the
11 22nd. And so, I will proceed, if you will, Judge,
12 and dovetailed in my argument will be those
13 particular issues.

14 THE COURT: Thank you, Counsel.

15 MR. ANGUEIRA: As you can see, Your Honor, my
16 client's CFO and CEO are here. This is an
17 important issue to their ongoing business.

18 And this Court heard a lot of argument on the
19 22nd, and the courts in Florida heard a lot of
20 argument about the bad actors concealing,
21 dissipating, mismanaging the company.

22 And we've countered those arguments, but the
23 clients felt necessary to come and show the Court

1 they are not dishonest, they are not mismanaging,
2 they are not dissipating.

3 There is a powerplay underneath this case by
4 the judgment creditor, a hard equity lender from
5 New York, that really drives the entire boat, not
6 just with respect to the confession of judgment,
7 but also with the judgment enforcement that goes
8 back way before you even took the bench in this
9 court.

10 And I will get into that as well. And I pray
11 the Court's patience with respect to that because
12 there are a lot of intricate details with respect
13 to that.

14 But to get into my argument, Judge, since
15 this Court issued its stay on -- I'm sorry -- the
16 order setting the hearing for today back in July
17 17, the briefing and litigation has been on
18 multiple fronts.

19 It is has been quite extensive and
20 exhaustive. I think at the least hearing, I told
21 you before the Third District Court of Appeals,
22 they filed an appendix of 1,400 pages on a motion
23 to stay issue. They also filed a 182-page

1 exhibits to another, their second motion, on the
2 motion to stay issues to the Third DCA. And it's
3 been exhaustive.

4 And sort of like when you issued your order
5 saying September 5 is going to be our hearing, it
6 lit a fuse on a dynamite stick because they,
7 immediately two days after, filed an emergency
8 motion in Florida.

9 And they got a receivership appointed -- and
10 I'll go into that in a minute -- under Florida
11 law, not under Delaware law. This is a Delaware
12 corporation -- both companies are Delaware
13 corporations -- and they got a Florida
14 receivership appointed under Florida law knowing
15 that the Florida standard is much more loose and
16 lax than in Delaware.

17 That judgment, Judge, not to be boastful,
18 will be reversed for the reasons I am going to
19 tell you shortly. But after considerable and
20 exhausting briefing in the Florida appellate court
21 on the very same issues, of the exigency, of this
22 dissipation, of the concealment, of the
23 mismanagement, on those very same issues, the

1 Florida appellate court twice stayed this action.

2 And you're going to hear from Halevi that
3 that's probably because of your order saying
4 maintain the status quo. But if you look closely
5 at the Florida appellate court stays, they say
6 this is stayed -- now, we'll consider briefing if
7 that court changes its mind with respect to the
8 receiver -- but this action is stayed until
9 further order of our court, the Third District
10 Court of Appeals.

11 There was, as I said, significant briefing in
12 Florida until August 15 when the court issued its
13 last stay. And basically that stay order -- you
14 have it. I think all the orders were provided to
15 you -- that second stay order is cut it out, we've
16 had enough, it's stayed. Even the receivership is
17 stayed, again, until further order of this court
18 until the Delaware court rules on September the
19 5th.

20 All of that being said, it highlights the --
21 I don't want to say improper forum shopping. It
22 just highlights the ping-ponging back and forth
23 because immediately when the Third District Court

1 of Appeals issued its order staying on August 15,
2 they had, that very same day, filed the motion
3 that was before the Court, clarify and modify,
4 that we heard on August 22.

5 They did that. They argued the same facts,
6 the same dissipation. And because they were
7 unsuccessful in Florida, they tried to pigeonhole
8 it in under the Delaware standard saying that this
9 was a concealment, a gross concealment, and all
10 kinds of allegations of gross concealment, of
11 wasted assets, conspiracy were the allegations.

12 The bottom line is, however, what they were
13 asking you to do -- and if you really consider the
14 procedure of it, they had their evidentiary
15 hearing in Florida under the wrong standard. And
16 the Florida court has jurisdiction over that. The
17 Florida appellate court has jurisdiction over
18 that.

19 Because they were unlawful in getting the
20 receivership appointed, because they were
21 unsuccessful in that regard, they came here and
22 they are trying to get you to, in a summary
23 fashion, to basically approve a receivership under

1 Delaware law. And they can't do that.

2 To get a receivership, number one, you have
3 to have an evidentiary hearing before you with
4 this new concealment argument and this new
5 concealment evidence. And I can tell you with all
6 confidence you will find the weight of their proof
7 to be quite slim.

8 And then secondly, Judge, they tried to
9 pigeonhole this case as a quick summary decision
10 on your part with respect to the receivership.
11 It's not. And I'd ask this Court in light of our
12 arguments today to reconsider the argument with
13 respect to the August 22nd motion or the August
14 22nd hearing.

15 Now, where are we today? Okay. We have two
16 courts that are currently reviewing, number one,
17 the merits of this underlying judgment; and number
18 two, the receivership order in Florida. Those are
19 the Delaware Supreme Court and the Florida Third
20 District Court of Appeals.

21 THE COURT: And forgive me for interrupting
22 you, Counsel.

23 MR. ANGUEIRA: Yes, ma'am.

1 THE COURT: What is the status in the
2 Delaware Supreme Court?

3 MR. ANGUEIRA: I was just going to get to
4 that, Judge. Long-winded as I am, I was just
5 about to get to that.

6 THE COURT: That's fine.

7 MR. ANGUEIRA: The briefing was closed on
8 August 23, 2024. We are waiting to hear -- as I
9 understand by Delaware counsel, we are waiting to
10 hear whether we are going to have oral argument on
11 it, which should be in the short term of this
12 month or so to hear whether we're going to have
13 oral argument.

14 THE COURT: Okay.

15 MR. ANGUEIRA: Now, the Third District Court
16 of Appeals, the briefing on the initial brief is
17 set for September 27. And because it's an
18 interlocutory appeal, I imagine that to go quite
19 quickly as well, especially because of the issues
20 in the case.

21 But I think, Judge, the stay in this case,
22 including the stay of the receivership, I think is
23 consistent with the strong Delaware foreign public

1 policy.

2 And I'm not a Delaware lawyer, as I confessed
3 to you on August 22nd. I'm not a Delaware lawyer,
4 but I think I understand -- I've got a good
5 understanding that Delaware prefers to preserve
6 the court's power to decide an issue completely in
7 lieu of risking not entering a stay.

8 And the reason why that's important, and
9 you'll see it today because we're going to go into
10 the details of the receivership order -- we're
11 just not going to talk about the receivership
12 order today. We're going to go into the details
13 as well, even though I tell you it's going to be
14 reversed on the law.

15 The reason why is because that public policy
16 is no more important than it is in this case. The
17 receivership order is broad in this case. And I
18 think I mentioned it to you on the 22nd, it is
19 more than liquidation receivership, not a status
20 quo receivership.

21 The receivership has powers to go into the
22 business, the receiver has powers to sell assets,
23 the receiver has the power to fire anyone,

1 including the CEO and the president. And I don't
2 understand how that would maintain status quo, in
3 my own opinion.

4 But, more importantly, and this is an ethical
5 problem that is built into this receivership
6 order, it had the power to fire the lawyers for
7 the appellates, for the judgment debtors.

8 And, Judge, those aren't just words. The
9 second day after the receivership order was filed,
10 the judgment creditor, Halevi, filed a motion for
11 sanctions in the state court advising the court
12 that the lawyers were dismissed.

13 MR. MANN: Your Honor, I'm going to object to
14 this testimony here. I know Your Honor asked for
15 a status of the Florida litigation, but this is
16 clearly testimony. This is not giving Your Honor
17 the status of when a complaint was filed or when
18 an order when entered or when a stay was entered.

19 THE COURT: That, I understand.

20 MR. MANN: Thank you, Your Honor.

21 THE COURT: But I am going to ask you to
22 answer that question. Is there a provision in the
23 receivership order that allows for counsel to be

1 fired, and has there been any action taken in that
2 regard? You can respond to that during your
3 argument.

4 MR. MANN: Okay.

5 THE COURT: But I am interested in that
6 question because one of the things that I don't
7 want to do is prejudice the defendant's ability to
8 prosecute their appeal or to prosecute an exercise
9 to due process rights in any court in the United
10 States.

11 MR. MANN: Thank you, Your Honor.

12 MR. ANGUEIRA: Your Honor, and I apologize to
13 Mr. Mann if he feels I'm testifying because I am
14 not. I am citing directly from a pleading that
15 was filed in the case. And I have a copy of that
16 pleading if you want to see it. It's the motion
17 for sanctions where they say the attorneys were
18 dismissed.

19 Which leaves me in an ethical quandary
20 because my client -- and the timing of this was
21 just delicate. And why do I say delicate?
22 Because we were in the process of drafting a reply
23 brief to the Delaware Supreme Court. And if we

1 were, in fact, dismissed, then that appellate
2 brief would be in the hands of the receiver.

3 And the receiver -- I will tell you this, and
4 I have evidence to prove it -- the receiver was
5 the receiver not a neutral for the court. He was
6 the receiver paid for by the judgment creditor
7 pursuant to the order, which you have, Judge, and
8 he was being represented by the judgment creditor
9 on all these motions for sanctions, motions for
10 writ of assistance.

11 The bond -- and I have a copy of the bond.
12 This was filed by the receiver in the state court.
13 The state trial court in Florida has the attorney
14 for the creditor signing as attorney in fact for
15 the receiver.

16 So, in essence, what our dismissal would have
17 been would have been to put Halevi on both sides
18 of the "V" on this appeal. So even though the
19 receivership order says the appeal should go
20 forward, it would no longer go forward with the
21 judgment debtor's attorneys or people impartial to
22 the judgment debtor's position or favorable to the
23 judgment debtor's position. It would have been

1 pretty much an aesthetic appeal, or could have
2 even been dismissed for that matter.

3 So, Judge, now I want to get to the merits of
4 the Florida appeal. And I told you that it's
5 based on Delaware law. As I said to you, the loan
6 documents -- well, first of all, the loan
7 documents and the confession of judgment here tie
8 themselves to Delaware law.

9 And so, if there's a receivership to be
10 applied, it would be using Delaware law by the
11 documents that they drafted, the note, the
12 confession of judgment.

13 In addition, Judge, both corporations that
14 are Defendants before you are Delaware
15 corporations. That's why we're here in Delaware.
16 They are Delaware corporations.

17 And Delaware law -- and I'll cite *FTE*
18 *Networks v. Szkaradek* -- I'm sorry if I butchered
19 the last name -- it is a Delaware case and it's
20 cited in our pleadings.

21 "Delaware law makes clear that under the
22 Internal Affairs Doctrine in Delaware" -- and most
23 states have this doctrine -- "a request to appoint

1 a receiver is governed by the law of the state of
2 incorporation." And that will be Delaware's more
3 stringent standard on receivership.

4 And in that case, Judge, not only does the
5 court say that, but the court agrees with one of
6 the parties in the pleading. I will quote -- one
7 of the party's name was FTE -- "accordingly, FTE
8 is correct that this court cannot appoint a
9 receiver over a Nevada cooperation based on
10 Delaware law." So the same would hold true, that
11 a Florida court could not appoint a Florida
12 receiver under Florida law for a Delaware
13 corporation.

14 Now, at very least -- and I'm going to
15 suggest this to the Court with all respect to the
16 Court -- at very least, that case, that Delaware
17 case that's precedent in this state would suggest
18 that with respect to the motion to modify -- and I
19 guess this is part of my inherent reconsideration
20 but answering your questions -- that case suggests
21 we ought to stop and let the Florida court rule on
22 this because the Florida court is the only one
23 that has jurisdiction to say, hey, Florida judge,

1 Florida trial judge, we were wrong in applying the
2 law because it's so clear that you have to do this
3 internal affairs. And, by the way, Florida honors
4 that doctrine as well.

5 So, at very at least, caution and prudence is
6 the word of the day, if you will, on this one.
7 And to the extent that you might feel any sympathy
8 for Halevi, they created this mess.

9 Halevi created this mess when it didn't come
10 to you for the receivership, when it went to
11 Florida; when it didn't come to you to clarify
12 your order but they went to the Florida judge,
13 like they tried to enforce the stay saying we know
14 what you meant by status quo. The created this
15 mess -- not to be in a diminutive or a pejorative
16 method, but that's what, in effect, occurred in
17 this particular case.

18 Now, I think I've belabored that. I think
19 I've beat that pony a little too hard. Let's get
20 on, if the Court will allow, to the motion to
21 stay.

22 And I'm not going to recite the *Kirpat*
23 standards. In fact, I'm learning as I'm being

1 more involved in Delaware law that everybody knows
2 the *Kirpat* standards, even the man that sold me
3 coffee this morning in the coffee shop. It was
4 almost to that extent.

5 So I'm just going to go right to the issues
6 because I know this Court knows how to apply the
7 *Kirpat* standards. I'm sure the Court has much
8 more experience in it than I do.

9 So let's talk about likelihood of success on
10 the merits. The case law in Delaware: "When
11 considering an appeal's likelihood of success on
12 the merits, this court is called upon not to
13 second-guess its decision but to assess as
14 objectively as possible whether the case presents
15 a fair ground for litigation and more deliberative
16 investigation." And it's that tail end of that
17 quote that's important, a fair ground for
18 litigation and more deliberative investigation.

19 Now, I know this Court was not the Court that
20 heard the case, the confession of judgment. And I
21 know this Court is also the Court that has the
22 substantive counts that Halevi has brought against
23 my clients, which haven't been ruled on yet.

1 But I will say this, with respect to -- and
2 they are on our appeal and the appellate brief has
3 our issues of apparent authority; it has the
4 confession of judgment, the errors of the
5 confession of judgment; the infirmities in
6 interest, which I will get to, which are quite
7 shocking to the extent of punitive; and the issues
8 with respect to the interest calculations, again,
9 which are punitive.

10 But let's talk about the first one, apparent
11 authority. The backdrop of apparent authority in
12 this case is the unauthorized negotiation and
13 signing of Halevi's loan documents by individuals,
14 an individual by the name of Boyer, Alan Boyer,
15 and Joel Plasco that has led my clients in Florida
16 as a result of -- that were as a result of fraud.
17 A fraud not only on Halevi but a fraud also on our
18 clients.

19 Boyer has admitted he was never CEO, even
20 though he signed the loan documents as CEO. He
21 admitted that in the trial before Judge Johnston.

22 There were no principal manifestations at the
23 time of due diligence regarding the authority of

1 Boyer. Halevi, the record evidence is clear, only
2 accepted the manifestations of the agent.

3 And there were also no public manifestations
4 from the principal, a website, a letter, some type
5 of advertisement, nothing to that effect. And
6 Halevi never contacted the principals.

7 Even though they had documents in the records
8 that Mr. Romero was the owner of the company,
9 never contacted the principal to say, hey. The
10 only time they contacted him was after the fact
11 when the loan defaulted and they contacted him and
12 said your loan is in default, you need to pay.
13 And they were immediately advised by Mr. Romero
14 that Mr. Boyer had no such authority.

15 So the defaulted Defendants came to my
16 clients sometime in 2020 and offered them services
17 in helping them in the airline business and
18 especially offering them financial acumen and
19 access to financial markets.

20 During this same period of time, and
21 unbeknownst to my clients, these defaulted
22 Defendants -- and there's several of them because
23 there's some companies that they own too which

1 they help to accomplish their fraud -- and I don't
2 mean to suggest a word that's improper, but that's
3 basically what it was.

4 The defaulted Defendants approached Halevi
5 represented by Boyer and represented, Boyer, he
6 was the executive of the company and that he had
7 authority to sign loan documents. And he
8 proceeded, again, unbeknownst to my clients, to
9 sign these loan documents.

10 And they signed loan documents for \$7
11 million, although only \$4 million was funded. The
12 only representation of authority reviewed by
13 Halevi during their prefunding due diligence in
14 this case and the only ones relied upon by the
15 trial judge to the exclusion of contradictory
16 documents from Boyer alleged that Boyer was the
17 CEO. None came from the principal, as I said
18 before.

19 Involved in this first issue are questions.
20 Remember, I said the standard was a fair ground
21 for litigation and more deliberative
22 investigation.

23 How does Boyer's production of fraudulent and

1 contradictory loan documents to Halevi and how
2 does Boyer's execution of all of Halevi's drafted
3 underlying loan documents -- which themselves are
4 contradictory, and I will show you -- how does
5 that -- and the confession of judgment affidavit,
6 which, by the way, is wrong as well, and I'll show
7 you -- without the actual authority of Caribbean
8 Sun and Miami Air, how could Halevi rely upon
9 this, especially when Delaware case law says that
10 Halevi is duty bound to ascertain the extent of
11 the authority?

12 And the case law in Delaware, there's not
13 legions of it, but there is case law in Delaware
14 that says if there's contradictory documents, that
15 duty to verify or to ensure the authority is
16 proper requires them -- if there's contradictory
17 documents, it requires them to further investigate
18 to verify the authority and then clarify the
19 content.

20 So, Judge, we have here in the apparent
21 authority argument this entire conflicting
22 document scenario. We have conflicting
23 representations of the CEO authority. Just by all

1 these documents alone, they contradict each other.

2 And we have a failure to say, okay, well,
3 let's talk to the principal. Let's check public
4 records, you know. There is a public document
5 that they referring to. It's a document from
6 2020, not at the time the loan was done.

7 And it's a document where Boyer, in part of
8 his machinations to do this scheme, if you will,
9 he puts himself as president of the company on the
10 public record. Three weeks later, he was removed
11 by my clients.

12 THE COURT: Counsel, I understand the
13 argument that you're making with regard to
14 apparent authority that's been expressed in the
15 briefs, and this court has already considered that
16 argument twice but my colleagues.

17 And I am aware that that's on appeal, and you
18 have that right to raise those issues on appeal,
19 but I'm going to ask you in this instance -- I
20 realize it is part of the *Kirpat* factors -- I'm
21 going to ask you to move on from apparent
22 authority to some of the other issues you raised
23 concerning the calculation of interest and

1 otherwise.

2 MR. ANGUEIRA: Very well, Judge. So let's go
3 to the confession of judgment, the actual
4 judgment; what I would call, if I were still in my
5 prosecutor days, the charging document here. And
6 if I may, Judge, I have a copy of that that I can
7 hand the Court for the purposes of our discussion
8 here.

9 THE COURT: Certainly.

10 MR. ANGUEIRA: It's, obviously, a document
11 that's in the court file. May I approach, Your
12 Honor?

13 THE COURT: You may.

14 MR. ANGUEIRA: Oh, thank you, ma'am. I
15 didn't think I was going to make it through there.

16 THE COURT: And this is a document that was
17 already admitted during the course of the hearing
18 before Judge Johnston, correct.

19 MR. ANGUEIRA: I believe it was. It was part
20 of the record.

21 Yes, Mr. Anthony is confirming.

22 MR. ANTHONY: Yes, it's part of the trial
23 record, Your Honor.

1 THE COURT: Very good.

2 MR. ANGUEIRA: So in this document, Judge,
3 the confession of judgment, we have Caribbean Sun
4 as a Florida corporation. Caribbean Sun is a
5 Delaware corporation. We have Miami International
6 as a Florida corporation. It is a Delaware
7 cooperation.

8 The confession of judgment, much like a
9 charging document, must be precise and exact, and
10 it should be strictly construed. In this
11 particular case, Judge, it is not. It is wrong.
12 And they are trying to now correct it after the
13 fact.

14 Now, if they want to correct the mistake,
15 there's a process and procedure for doing it.
16 It's not this one. It's not what they are trying
17 to do now. It's not ignoring it, by the way, for
18 that matter.

19 The other things with respect to the
20 confession of judgment are the lack of
21 consideration. This judgment was signed a week
22 after all the monies were paid to Mr. Boyer
23 through his company, WAA Holdings.

1 Also, the violation of the due process, my
2 client never did a knowing, voluntary, or
3 intentional waiver for this confession of
4 judgment, a requirement that's required in
5 Delaware.

6 And the wrong defendant issue is significant.
7 It's significant in this case because they have
8 done this on the other loan documents. "They,"
9 being Halevi, have done this on the other loan
10 documents.

11 And I have that, a compendium that I
12 prepared. Let me see if I have it here. I do.
13 If I may, Judge, show you this document. These
14 are all in the appendix on appeal. These all were
15 before the trial court judge.

16 THE COURT: Okay.

17 MR. ANGUEIRA: What I did was a summary of
18 these documents that they are referring to.

19 THE COURT: Okay. Thank you.

20 MR. ANGUEIRA: These are Halevi-drafted
21 documents in this case.

22 THE COURT: All right.

23 MR. ANGUEIRA: And if I can describe the

1 chart just for orientation purposes, the first
2 column is Caribbean Sun Airlines, CSA. And you
3 see all the documents that were prepared by the
4 judgment creditor in this particular case.

5 And you see they intersperse the corporation
6 name. There is no Caribbean Sun Airways that's a
7 Florida corporation. There is none. There
8 absolutely is none. Yet, the confession of
9 judgment says the Florida corporation. The pledge
10 agreement says the Florida corporation.

11 Again, there's a way to correct this, but
12 it's not by just ignoring it. This is going to
13 come back on appeal because this issue is
14 significant. Because you can't in Delaware attach
15 a judgment to an entity that doesn't exist or that
16 is not the entity that's listed on the confession
17 of judgment.

18 And the same thing goes with Miami Air
19 International. It's a Delaware corporation, but
20 the confession of judgment says Florida. And you
21 can see even their internal documents, their loan
22 documents are conflicting in that regard.

23 So, now, let's go to other conflicting

1 documents in that particular court filing. And
2 we're talking about the interest issue we're going
3 to talk about now.

4 You have a \$4 million principle that was
5 found in August or March of 2021, and in March of
6 2024, \$21 million in interest was applied to that.
7 In the three-year period of time, that \$4 million
8 judgment ballooned to \$21 million.

9 There's no calculation in the record.
10 There's no notice in the record, as I am normally
11 accustomed to seeing, an affidavit from the
12 judgment creditor saying this is now we calculated
13 interest. None of that exists.

14 Just their submitting a letter saying we want
15 interest at five percent a month -- which, by the
16 way, doesn't even add up to \$21 million. If you
17 do five percent a month on \$4 million, it adds up
18 to, like, \$7 million. It's not \$21 million.

19 There's no explanation. So we're left to wonder a
20 fair ground for further litigation and further
21 discussion.

22 We don't even know if the interest is
23 compound, which I understand now in Delaware is an

1 issue that's going, whether compound or simple.
2 It appears to be, the way it's so large, that it's
3 a heavily compounded judgment.

4 The other thing I wanted to discuss with
5 respect to conflicting documents are the judgments
6 themselves in this case, Judge. And if I have a
7 copy of the documents -- you have the judgments.
8 They are in the court file. But I have a copy so
9 you can see them side by side because it's rather
10 remarkable.

11 As you recall, I said they were defaulted
12 Defendants. As you recall, I said they were
13 defaulted Defendants. And that's the Boyer,
14 Plasco, and their company's group.

15 If you look at the judgment that was
16 submitted by Halevi just two years prior, it has a
17 principle amount of \$7 million and interest of \$8
18 million. Actually, I'm sorry, it has a principle
19 amount 8.9 -- eight nine million and 7.9 million.

20 If you look at the judgment, in this case, it
21 has a judgment amount more fitting the facts of
22 the unpaid principal and but an interest number of
23 almost \$21 million. These are inconsistent

1 judgments.

2 I know Delaware public policy has to be the
3 same as every other jurisdiction in the United
4 States of America. The courts do not want to have
5 inconsistent judgments in the same particular
6 case.

7 This is an appeal issue, Judge. This is a
8 reason to stay this case. This is a reason why
9 this Halevi judgment is going to come back. And
10 this is why there's going to be further hearing on
11 this particular issue. This alone is reason to
12 grant the stay. But that's not alone. That's not
13 the only issue with respect to --

14 THE COURT: Is your client prepared to adjust
15 the bond accordingly based upon what the
16 appropriate calculation as to interest is? I
17 think you said 7 million is closer to the figure.

18 MR. ANGUEIRA: Well, Your Honor, I'm not sure
19 the 7 million. I just did a paper \$7 million
20 adjustment on these.

21 THE COURT: Okay.

22 MR. ANGUEIRA: My client a willing to post
23 the bond. My client is willing to discuss that

1 issue of posting a bond. I'm not sure it's on the
2 \$7 million judgment.

3 Because if you look at the note itself, if
4 you look at the notice of -- interest is
5 calculated substantially different than how it was
6 calculated by the letter that was submitted to the
7 Court.

8 And it contradicts -- again, not to be
9 surprised -- the note contradicts the confession
10 of judgment on how interest is calculated. There
11 is no five percent --

12 -- well, first of all, the note doesn't
13 discuss compounded interest. The judgment,
14 confession of judgment, doesn't discuss compounded
15 interest. The note has different interest
16 calculations for default remedy as opposed to the
17 interest that charged during the term of the note.

18 And as this Court knows from dealing
19 anywhere, anything to do with notes, once there's
20 a default, you go to the default provisions to see
21 what the proper default remedies are. And these
22 are substantially different than what's calculated
23 as interest in this case.

1 And, again, adjusting the interest on a case
2 that's on appeal on the interest issue, I don't
3 know procedurally the makeup for that, but I do
4 know that jurisdiction is vested with the court of
5 appeals, and it should be giving them the
6 opportunity to follow Delaware public policy and
7 make a final decision.

8 And what's what I think is more appropriate
9 in this particular case, that's readjusting the
10 interest now and then sending some type of an
11 interlocutory message to the Supreme Court. My
12 own thoughts on that one, and I think that's
13 probably right.

14 THE COURT: So leaving that argument aside
15 for a moment, Counsel, one of the things this
16 Court's being asked to consider is whether the
17 bond that's being offered or suggested by your
18 clients is sufficient to cover the judgment here.

19 And it's my understanding that that bond is
20 quite low by comparison to even the numbers that
21 we've been throwing around in the last few
22 minutes.

23 I have no interest in, respectfully, you

1 know, adjusting the interest amount -- no pun
2 intended -- but at the same time, it is this
3 Court's obligation to try to determine whether the
4 bond that has been suggested is appropriate.

5 MR. ANGUEIRA: And I'm at that particular
6 part of the argument, and I will address it now.
7 And I'm not suggesting the Court was willing to do
8 an adjustment. I just was willing to discuss the
9 other side of the coin in the discussion with the
10 Court.

11 THE COURT: Yes.

12 MR. ANGUEIRA: That's all. I'm not
13 suggesting the Court was going to do something
14 improper, at all, in that respect.

15 Now, with respect to the bond issue, yes, my
16 client is willing to entertain. My client has a
17 reason for the bond that it proposed to the Court.
18 My client has a reason that is good, grounded, and
19 true to the law as to why the bond should be
20 revisited and why the bond should never have been
21 considered at \$25 million nor even less than that,
22 for that matter, in that respect.

23 A lot of it has to do with the merits on this

1 appeal. A lot of it has to do with this Court's
2 discretion. And I'll get to that at that
3 particular point when we have a full and fair
4 discussion about that.

5 But I fully understand. I've done these bond
6 hearings before on supersedeas bonds. I fully
7 understand. In my ways, it's sort of like a
8 discussion with the court and a free discussion
9 with the court. So, again, if you follow the
10 note, it's substantially different.

11 Now, I want to talk about the third -- I
12 think it's the second -- because I want to get
13 away from the likelihood of success on the merits.
14 I do believe I've addressed most of the issues. I
15 could go back -- unfortunately, Judge, I could go
16 back and talk for two days on apparent authority.
17 I don't think you want me to do that.

18 So, in any event, let's talk about
19 irreparable harm for my clients if the stay is not
20 granted. And not only that, it's more relevant
21 now that the Court has made its original or
22 initial ruling this morning, okay?

23 The standard is: Do you assess whether the

1 petitioner will suffer irreparable injury if the
2 stay is not granted. And all you have to look at
3 is the collections efforts in this case.

4 The receivership motion that was filed before
5 the Florida court -- and I've discussed the
6 legality of it. Now I'm going to get into the
7 practicality of it a little more.

8 Even -- what was I going to say? -- the
9 CEO -- I'm sorry. The Third DCA knew the clear
10 import of your order. The Third DCA knew that you
11 said status quo.

12 I think everyone knew what you meant then,
13 except for Halevi, who suggested they could still
14 go in. It took the Third DCA's clerk to get on
15 the phone and say, you guys got to stand down.

16 MR. MANN: Your Honor, he's testifying again.

17 MR. ANGUEIRA: It's in the pleadings, Judge.

18 MR. MANN: It's in the pleadings, but it's
19 irrelevant.

20 MR. ANGUEIRA: I'll just rely on the
21 pleadings, Judge. It's in the pleadings what the
22 Third District Court of Appeals did. It's
23 offensive.

1 MR. MANN: Your Honor, this is evidence that
2 he's trying to put in front of the Court without a
3 witness.

4 THE COURT: Okay. The objection is
5 sustained.

6 MR. MANN: Thank you.

7 THE COURT: To the extent that it's
8 represented in one of the pleadings, I'm sure that
9 you can supply that to me at another time. I'll
10 accept counsel's representation for the moment,
11 but at the same time, I agree that I don't want to
12 hear testimony right now. I made that clear when
13 we discussed this matter two weeks ago that this
14 is legal argument that's to be made today.

15 MR. ANGUEIRA: Okay. Your Honor, I'm going
16 to turn next then to the receivership order, the
17 one that was entered by the court. And I think
18 there's as much irreparable injury as you can get
19 in this particular case.

20 A receivership order was entered on July 30.
21 The receivership order I have already mentioned
22 discusses that while this appeal is going on,
23 while these cases are pending, while the Rule

1 60(b) motion is before you, that the receiver can
2 fire the lawyers for the judgment debtors.

3 It also provides that -- and this is quite
4 unusual for a receivership order -- that's
5 supposed to be maintaining the stay while on
6 appeal.

7 And I will say -- I don't want to testify,
8 but this receivership order, from what counsel
9 told us -- and it's in the transcript of the
10 hearing before the trial court judge -- he got
11 this receivership order from a liquidation
12 receivership order of the federal court. It's a
13 different beast. And this Court knows receivers
14 are different beasts in different --

15 THE COURT: Certainly.

16 MR. ANGUEIRA: This receivership order, in
17 Paragraph No. 15 -- remember, this is a
18 liquidation receivership draft. It came from a
19 draft of that -- "The receiver shall permit the
20 judgment creditor, its agents, and counsel access
21 to the receivership assets -- "

22 While it's on appeal, while there's pending
23 motion 60(b), while my clients are fighting to

1 vindicate their rights because there was an
2 improper award of an apparent authority -- "at all
3 reasonable times to inspect the receivership
4 assets and the books and records of the judgment
5 debtors."

6 That's, again, letting the fox in the
7 henhouse. I don't know any other way to describe
8 it.

9 THE COURT: How is that different from any
10 other receivership where a receiver is going in,
11 and the first thing they are going to do is
12 inventory and determine what assets and what debts
13 the entity has? You know, how is that any
14 different?

15 MR. ANGUEIRA: So I would say it's vastly
16 different, and for this reason. One is the
17 receiver doing it and the other is the judgment
18 creditor doing it, a party who is a litigator in
19 the case, Judge. I think that is like night and
20 day difference, okay?

21 We've gone from a receivership status or a
22 receiver preservation. And many jurisdictions
23 call them not even receivers. They call them

1 referees. Just to sit there and make sure
2 everything goes fine.

3 But this order was presented by Halevi to the
4 court and it was signed by the court. In this
5 order, they can fire all the employees. Again,
6 that doesn't appear to be a status quo or even
7 attempt to just keep things normal while the
8 appeal goes on.

9 And, well, I will say this. Without trying
10 to be too much of a -- or incurring the ire of
11 Mr. Mann and testifying, I will say this. That
12 it's in our pleadings as well. It's in the
13 pleadings before you. The receiver also, even
14 after the stay orders, continued to contact the
15 employees and the third party.

16 MR. MANN: Your Honor, I'm sorry to
17 interrupt. This is testimony again.

18 MR. ANGUEIRA: No, it's in the pleading. The
19 pleadings fairly --

20 MR. MANN: He wrote the pleadings. He put it
21 in the pleadings. He's testifying. There's no
22 evidence in the record of any of this happening.

23 THE COURT: Okay. The argument here is what

1 is the irreparable harm that is going to be to the
2 Defendants. And in this instance, I am required
3 to consider whatever harm that is going to be.

4 It is in the pleadings. I have read the
5 pleadings in connection with this matter. I have
6 read that argument. I think counsel should
7 presume that I've read that argument and then
8 build upon that, if necessary.

9 One of the questions that arose for the
10 Court, however, since you're mentioning contact
11 with employees or contact with other people, is
12 that in one pleading, there is a reference to 100
13 employees, and then in a second pleading in
14 connection with the same matter, there are 250
15 employees.

16 So the Court would like to know -- and this
17 is a factual matter, so perhaps I am asking
18 counsel to testify -- how many employees does this
19 organization have?

20 MR. ANGUEIRA: They have 250. I'm not sure
21 of the 100 reference. I'm not sure where it came
22 from. I know there's 250.

23 A CORPORATE REPRESENTATIVE: Between 220 and

1 250.

2 THE COURT: Thank you.

3 And I have read that argument in your
4 pleadings where you said that there is contact
5 that's being made with others and with employees
6 regarding this matter.

7 MR. ANGUEIRA: And I think, Judge, with
8 respect to the receivership order itself, it's
9 clear from the receivership order that the
10 receiver is the judgment creditor's receiver.

11 And I do have -- and this is not in the
12 record, but I do have the bond that judgment
13 creditor's attorney filed saying he was the
14 attorney, in fact, for the receiver. I have that.
15 It was filed. I can pull that up.

16 I certainly don't want to give testimony. I
17 certainly don't want to testify before this Court.
18 But I do have a court-filed document that I think,
19 at minimum, you could take judicial notice of it.

20 I think that's a significant prejudice to the
21 Defendant. I think the Defendant -- and, Judge,
22 in light of the fact that there is also evidence
23 in the record -- there's an affidavit from my

1 client's outside accountants that says that they
2 are aware of the judge's orders, that they know
3 the financial status of the company, that they are
4 maintaining the status quo, that they are paying
5 their bills, and that they are an ongoing
6 business.

7 And I will also say to the Court that in
8 Judge Butchko, the state court trial judge in
9 Florida, in her transcript, she does refer to the
10 testimony of the CFO of the judgment debtors that
11 the company is running well. That's the only
12 evidence that was in the record and testified
13 about. This company is running well.

14 I would say to the Court, again, there's no
15 need to appoint a receiver. There are allegations
16 that although, before you, aren't testimony
17 because they are just thrown in in a pleading and
18 exhibit and would require an evidentiary hearing,
19 there are allegations that do need a full, fair
20 hearing if you're going to accept the allegations
21 or if anyone were to accept the allegations as
22 true.

23 But this testimony of the CEO that it's

1 running well is unrefuted, and the testimony of
2 the accountant is that they are maintaining the
3 status quo.

4 THE COURT: The testimony from the
5 accountants that are the Defendants?

6 MR. ANGUEIRA: Outside public accountants,
7 correct.

8 THE COURT: They are outside, independent
9 certified public accountants.

10 MR. ANGUEIRA: Correct.

11 THE COURT: And Defendant employees, correct?

12 MR. ANGUEIRA: Correct. And that's attached
13 to -- that's correct. I'm not suggesting they are
14 not.

15 THE COURT: Okay.

16 MR. ANGUEIRA: They are employees but they
17 are outside accountants.

18 THE COURT: All right.

19 MR. ANGUEIRA: That declaration is in the
20 pleadings that are also before you. And, as
21 you've said, you've read them.

22 I think, Judge, public policy here promotes
23 the granting of a stay. I think the need -- as I

1 said, that case I cited first off about allowing
2 the Delaware Supreme Court to timely and
3 adequately solve this matter favors a stay.

4 I believe that Delaware public policy for
5 conformity of judgments certainly weighs heavily
6 to allowing a stay so that the Florida Supreme
7 Court can make this determination.

8 I believe that the arguments about compound
9 interest and the high net level of this interest,
10 I think this is one supremely -- to use that
11 word -- supremely before the Supreme Court that
12 they really do, I think, would want to get to
13 this, especially in light of the cases I've been
14 reading about the discussions between the Chancery
15 Court and the Supreme Court about compound
16 interest.

17 THE COURT: I read those.

18 MR. ANGUEIRA: This might be ripe for them,
19 this case. So for all these reasons, I think a
20 stay should be granted. And I also think that
21 stay should extend to the receivership. I think a
22 standstill as it is now is exactly what this case
23 requires.

1 And it's just further briefing because we're
2 going to have to go back to the -- because your
3 order today doesn't change what happens in
4 Florida. There's still pending stay orders.

5 Just going to be more briefing and more
6 litigation because, obviously, our clients are
7 going to fight their rights because they feel
8 strongly about this judgment, number one, and they
9 feel strongly about their ability to run their
10 company in a manner that they have run it
11 professionally.

12 Again, this is an airline. It's not flying
13 into the ground. There have been no accidents,
14 crashes or anything. Like, they are running an
15 airline. There's every challenge with airlines,
16 but they are running their airline.

17 And in any of the documents submitted,
18 nothing shows that they have sold assets or any
19 conspiracy to do that. Nothing of what's been
20 presented before you.

21 Now, with respect to the issue of the bond, I
22 think it's within the --

23 THE COURT: Before we broach the bonds, can

1 you address the issue -- and maybe you're going to
2 just stand on the record that's already been
3 provided to the Court in your motion and in your
4 response.

5 Is it your contention that there's no harm to
6 the judgment creditor here? And, if so, that's
7 fine. I'm happy to rely upon what you've already
8 articulated.

9 MR. ANGUEIRA: So let's go to that third
10 factor of *Kirpat*, if you will. With respect to
11 the issue of whether there's any prejudice to
12 another party because of their claims of
13 mismanagement -- let me just dovetail this as to
14 how I finished off just a minute ago with their
15 claims of mismanagement, dissipation, and
16 concealment, which aren't evidence and have not
17 been presented in an evidentiary fashion other
18 than allegations.

19 There's an allegation in there about how they
20 changed the signs. I don't know how that
21 dissipates assets by changing the signs when there
22 was a valid lease which was presented to you,
23 which was presented to you in the pleadings.

1 That there's a company in the space that --
2 not the whole building -- but in the space where
3 that company wanted to say this is where our space
4 is, you know. And they are entitled to because
5 they are the tenant.

6 So every matter raised -- there's 14 liens.
7 In the pleadings, about 14 liens. Those liens,
8 the declarations that were submitted to the Court
9 show that there are minority liens. They are
10 junior liens to Halevi.

11 The persons who instituted those liens are
12 third party companies, again, affiliated with the
13 Defendants, but they had bills, and every company
14 has -- so they submitted their liens, but it
15 doesn't affect Halevi's judgment because they are
16 inferior to Halevi, those liens.

17 So it's sort of like saying the house is on
18 fire when it really isn't. It's just the sun
19 shining. You know, they are trying to make stuff
20 that isn't there.

21 The other arguments they have about -- I
22 believe it was in the pleadings -- about how they
23 canceled the class or the pilots' classes were

1 canceled, it's because the machine was broken that
2 day, if you really want to get into the facts.

3 Again, these are those fact-intensive things,
4 the discussions that you have to have. You can't
5 just rely on a pleading.

6 THE COURT: Well, I'm being asked to rely on
7 pleadings on both sides for those facts.

8 MR. ANGUEIRA: I know.

9 THE COURT: So both sides' objections are
10 noted with regard to facts and testimony, but both
11 of you are relying upon those facts in order to
12 show the existence or nonexistence of harm or
13 prejudice or nonprejudice to one party or another.

14 Go ahead.

15 MR. ANGUEIRA: And that goes to my point,
16 Judge, underscoring the need to have an
17 evidentiary hearing. And that's why I mentioned
18 it to the Court, because, at the end of the day,
19 the only way to do this is in the light of day,
20 not an exhibit that's attached to a pleading. But
21 that's the position with respect to that.

22 There are other arguments in the receiver
23 order that can be made with respect to how far

1 this receiver can go. For instance, with respect
2 to dismissing the lawyers, there is the language
3 about the lawyers being dismissed, about the CFO
4 being dismissed, about the CEO being dismissed.

5 But I don't want to mislead this Court. It
6 also says, oh, it also says the judgment debtor
7 can pursue the appeal. That's the argument I made
8 to you, well, who is going to pursue it if we're
9 out other than the receiver's lawyer. And the
10 receiver's lawyer right now is Halevi, as
11 referenced in those documents.

12 THE COURT: No, I appreciate you raising that
13 issue.

14 Go ahead.

15 MR. ANGUEIRA: And, plus, the receiver order
16 has other language in it. I think it's a ten-page
17 order. So, obviously, I grabbed two or three
18 pieces.

19 But in addition, in the receiver order, it
20 says that the receiver is to invoice the judgment
21 creditor to get paid. So those are issues that I
22 think are relevant before this Court.

23 Now, with respect to -- I think I was getting

1 to the bond. I don't know if the Court was
2 finished or if my answer was sufficient to the
3 Court.

4 THE COURT: It was. Go ahead.

5 MR. ANGUEIRA: Thank you, Your Honor. With
6 respect to the bond, Your Honor, I think I've
7 already mentioned to the Court in my initial
8 arguments about the bond, about the need for the
9 Court to invoke its discretion in setting a bond
10 that's appropriate in this case because of the
11 significance of the issues on appeal.

12 I mean, I tried to deal with the apparent
13 authority in a summary fashion, but, frankly, this
14 is a conversation that is going to take -- it took
15 55 pages in our opening brief to really get into
16 all of the documents.

17 I tried to do it in a manner that was
18 respectful to the Court and quick and in short
19 fashion, but I could go on and on about this, as I
20 said before.

21 Because of the issues being significant, not
22 just with respect to apparent authority, the
23 compound interest, the conflicting judgments,

1 those are issues I think that affect the Court's
2 determination or weigh in the Court's
3 determination on the size of the bond.

4 The one directly is the interest. To me --
5 again, and it's clearly illegal interest and it
6 should be not be considered in the bond.

7 There are 250 employees. We've already
8 confirmed today. We're looking for a bond that
9 doesn't zap the company of its operating capital
10 so it can continue to run. And that's what we're
11 looking for.

12 Because a bond would be posted. Receiver or
13 not, we're going to post this bond. To try to get
14 this -- because we still have a court down in
15 Florida that we're going to have to have these
16 same arguments there before the appellate court.

17 THE COURT: And I just want to make sure I
18 understand. The bond that's been posted there is
19 \$407,000?

20 MR. ANGUEIRA: No. The bond in Florida --

21 THE COURT: Ten percent. I'm sorry.

22 MR. ANGUEIRA: You mean the bond that was
23 there? The bond that was posted by the receiver

1 was only \$100,000. And if you can believe that,
2 that dovetails us into an entirely different
3 conversation.

4 Here is a receiver that is going to take over
5 an airline company, going to fire the CEO, run the
6 business while it's on appeal, and they only had
7 to post \$100,000. So that's a conversation and an
8 argument we're going to have on appeal down in
9 Florida. And it's not your jurisdiction, I
10 understand.

11 But the bond that was proposed here was
12 \$407,000, which is ten percent of the principle
13 amount. And the reason for that is it was a bond
14 that was consistent with what the Delaware statute
15 says on interest, five percent above the federal
16 discount rate. And it would be the cost of money
17 while the appeal is running, while the appeal
18 before the Supreme Court of Delaware is running.

19 Again, we are looking for a bond that doesn't
20 zap the operating working capital of the company
21 so they cannot only prosecute their grounds on
22 appeal but also take care of the 250 employees
23 that they have and make sure that they continue to

1 work and continue to have a job.

2 So we felt it was a significant enough bond.
3 The Court may feel different. Willing to
4 entertain that discussion.

5 THE COURT: Right. What's the purpose of the
6 supersedeas bond in your client's' estimation?
7 Because you've given an argument as to why it's
8 appropriate for your client to post ten percent of
9 the original judgment in this matter but nothing
10 as to interest, nothing as to the judgment, or not
11 the amount of the judgment that's been entered as
12 a general matter. So what's the purpose of
13 supersedeas bond, at least according to your point
14 of view?

15 MR. ANGUEIRA: Well, according to my point of
16 view, the initial reason for supersedeas bond is
17 to protect the judgment when the judgment is a
18 solid judgment or when the judgment is on appeal.

19 THE COURT: Right. And the judgment here is
20 at least over \$4 million, correct?

21 MR. ANGUEIRA: Well, it's 4 point -- yes.

22 THE COURT: Okay. Go ahead. I'm sorry I
23 interrupted you.

1 MR. ANGUEIRA: No, no. It's quite all right.
2 Those judgments, it is sort of like -- a perfect
3 example would be what happened recently in New
4 York with the former President of the United
5 States where the judgment was such a high number
6 and he petitioned the court to reduce the number
7 to get it to a point of where I think the court
8 said it was one-third of the money judgment of the
9 case that was posted as bond. I think it was 185
10 million.

11 But, nonetheless, it's enough to provide
12 significant enough security while on appeal to the
13 judgment creditor, but also keeping in mind that
14 that judgment can't be so onerous as to basically
15 cripple the judgment debtor or the appellant while
16 he tries to perfect what he thinks --

17 And I think, hopefully, Judge, what I have
18 shown you today are some meritorious defenses.
19 And they don't have to be defenses, Judge, that I
20 can tell you we're going to win. I don't have to
21 come to you and certify they are going to win. I
22 just have to show it's a fair ground. And I think
23 I did that, and I hope I did, Your Honor, for that

1 matter.

2 So I think I'm very mindful of what the
3 original reason for the supersedeas bond, but I'm
4 also aware of the Court's wide discretion in this
5 in light of the facts and the circumstances. And
6 I'm not suggesting in any way that we ignore that
7 first factor, you know.

8 I believe I'll save on the subpoenas until
9 after this, or do you want me to go forward with
10 it?

11 THE COURT: No, that's fine. I think it
12 would make sense to do one and then the other, and
13 I appreciate your argument.

14 MR. ANGUEIRA: Thank you, Your Honor.

15 THE COURT: Thank you.

16 All right. You may proceed.

17 MR. MANN: Thank you, Your Honor. Good
18 afternoon, Your Honor. Kevin Mann from Cross &
19 Simon on behalf of Halevi, the Plaintiff and
20 judgment creditor here.

21 As an initial matter, I wasn't planning on
22 arguing a motion to reconsider today, but I can
23 say that the standard for a motion to reconsider

1 is that the Court has overlooked a precedent or a
2 legal principle that would have a controlling
3 effect or has misapprehended the law or the facts
4 such that it would affect the outcome of the
5 decision.

6 And motions for reconsideration should not be
7 used to merely rehash arguments already decided by
8 the Court or to present new arguments not already
9 raised.

10 And that's what you've heard today, Your
11 Honor. There is nothing outside of what counsel
12 argued that should change Your Honor's decision as
13 to the motion that was heard a couple weeks ago.

14 As far as what's happening in Florida, I will
15 leave that to my co-counsel, Mr. Griffin, who is
16 on Zoom. Maybe we will get to that at the end, as
17 he is one of the attorneys handling the Florida
18 matter. I am not. I'm only handling the Delaware
19 matter, and I have since day one.

20 So, Your Honor, getting to the motion that's
21 before Your Honor today, we know we talked about
22 the *Kirpat* factors.

23 We know the first factor is the likelihood of

1 success on the merits. I know Your Honor didn't
2 want to hear anymore about the authority issue.
3 If you'd like, I can expound upon it a little bit
4 or I can just move on to the next point.

5 THE COURT: Well, since I gave counsel an
6 opportunity -- Defendants' counsel an opportunity
7 to discuss that, at least in part, if you want to
8 address any of the arguments that he's presented
9 here today that are different and outside of the
10 arguments that you've already presented to the
11 Court in your responses, I'll allow you to do
12 that.

13 MR. MANN: Your Honor, it's really the same
14 argument that we've presented to the Court several
15 times and that the Court has approved several
16 times.

17 It was approved by Judge Johnston after an
18 evidentiary trial testimony, documents. It was
19 approved by Judge Scott on the motion for
20 reconsideration. So I don't think there's
21 anything that, really, I need to add beyond what
22 was argued there and what was argued in our
23 papers.

1 I do want to point out one thing -- and no
2 fault to my colleague over here, as he wasn't at
3 the trial, but he did say that Mr. Boyer testified
4 at trial that he was never CEO. That is not true,
5 Your Honor. Mr. Boyer did not testify at trial.
6 We subpoenaed him. He didn't show up.

7 THE COURT: Okay.

8 MR. MANN: So if that's a factor that Your
9 Honor is looking at, the record would support that
10 Mr. Boyer didn't --

11 MR. ANGUEIRA: -- well, Judge, if I may, just
12 a quick response?

13 THE COURT: Afterwards what we'll do is I'll
14 allow you to address those issues, okay? And
15 that's perfectly fine. And I understand this
16 is -- I spent the last few days in a rape trial.
17 I understand how hard it is to contain emotions
18 sometimes, but let's just try to do it in an
19 orderly fashion, especially so that there's a good
20 record of this matter.

21 Mr. Mann, one thing that I would like you to
22 maybe perhaps address?

23 MR. MANN: Yes.

1 THE COURT: I understand the apparent
2 authority argument, and I think I understand the
3 second argument that was made with regard to the
4 content of the document and the identification of
5 parties.

6 MR. MANN: Yes.

7 THE COURT: But I would like you to address
8 perhaps the interest rate and the argument that
9 was raised by counsel that there really wasn't
10 sort of a foundation for that interest
11 calculation, that it wasn't in the note, that it
12 wasn't in any of the other documents.

13 Give the Court a sense of -- or, if you
14 would, rebut sort of that unconscionable argument
15 that's been made by Defendants' counsel as to the
16 amount of interest here.

17 MR. MANN: Your Honor, before we get to that,
18 I did want to point out a couple of things about
19 the documentation argument.

20 THE COURT: Certainly.

21 MR. MANN: The first is that counsel gave you
22 this document, which is a copy of the affidavit,
23 highlighted. He also gave you this document

1 talking about what states the companies are
2 incorporated in. And he said, quote, this is
3 going to come back on appeal because this issue is
4 significant.

5 Well, I will tell Your Honor I think there's
6 a zero percent probability that this will come
7 back on appeal because it wasn't argued on appeal.
8 It's not in the briefs, Your Honor.

9 And if you go through the briefs, like I did
10 yesterday, looking for this argument, it is
11 nowhere to be found. There's no argument about
12 that Caribbean Sun isn't a party to this agreement
13 because it says that it's a Florida corporation,
14 not a Delaware corporation. There's no arguments
15 about Miami Air to that effect. So that will not
16 come back on appeal because it wasn't argued on
17 appeal.

18 The other thing -- well, getting to the
19 interest calculation, there is one thing I want to
20 point out before I answer Your Honor's question.
21 This was argued in the brief and argued a little
22 bit by counsel, that this Court doesn't have
23 authority to award compounded interest.

1 That is another point that was not argued in
2 the appeal. That is not in the appeal briefs.
3 There was never an argument at any point until
4 very recently that this Court didn't have
5 jurisdiction to enter the award that it did. So I
6 think those arguments can be completely put aside.

7 The case that's cited, *Brown v. Court Square*,
8 was entered in April by the chancellor, so it was
9 clearly out there when counsel was preparing their
10 briefs.

11 So those are two arguments that Your Honor
12 can completely ignore because there's no
13 probability of success on the merits of those
14 arguments because they weren't made.

15 And, as counsel mentioned, briefing is
16 complete in the Supreme Court matter, and we're
17 just waiting on the court to tell us whether they
18 want argument or not.

19 As far as the interest calculation, I will
20 admit that we didn't have any argument, briefing,
21 motions, or anything about the interest. The
22 Court entered its opinion on the matter. The
23 opinion stated that the judgment was going to be

1 entered.

2 And I'll tell you the exact words, Your
3 Honor. It says: "The Court finds that Halevi has
4 proved by a preponderance of the evidence against
5 the remaining Defendants" -- meaning Miami Air and
6 Caribbean Sun -- "entitlement to a judgment in the
7 principle amount of funds actually advanced,
8 \$3,725,000 to WAA, and \$350,000 to third party
9 brokers totaling \$4,075,000, plus interest, fees,
10 and costs as set forth in the loan documents."

11 So, after that, Your Honor, we provided the
12 court with a proposed form of judgment that
13 included the calculation that my client had done
14 as to what the interest should be, and that order
15 was signed by Judge Scott. I can't tell you that
16 there was any evidence, testimony, anything about
17 that.

18 THE COURT: Okay.

19 MR. MANN: The defense never -- I'm sorry,
20 the Defendants never argued that there should be
21 no interest at any point in this. Just after that
22 judgment was entered, they argued that the
23 interest was incorrect.

1 And now it seems in the papers that they are
2 arguing that there should be no interest to the
3 point where --

4 Well, just give me a second, okay?

5 THE COURT: Yes. I'm going to have to ask
6 that counsel refrain from commenting and making --
7 again, I understand that tempers can flare, but
8 we're going to keep this as professional and civil
9 as we possibly can.

10 I will ask you, though, however, was there an
11 interest figure that was provided by the
12 Defendants as appropriate in that matter that was
13 considered by the Court?

14 MR. MANN: No, Your Honor.

15 THE COURT: Okay.

16 MR. MANN: What I was going to say is that
17 the Defendants are arguing now that there should
18 be no interest by how they have decided to
19 calculate the bond by saying that the bond should
20 be based on solely the principle and not have any
21 interest or fees or costs included.

22 So I'm not saying that they have argued
23 specifically that there should be no interest at

1 all. I am saying that that's what they are
2 implying by indicating to Your Honor that the
3 judgment principle amount should be what Your
4 Honor uses to calculate the bond.

5 As far as the interest rate, it's our
6 position that it's a five-percent interest rate
7 compounding monthly. That's in the documents.
8 That was in the pleadings. That was in the
9 complaint. There was never an objection to it
10 until after the judgment was entered.

11 Also, Your Honor, it's our position that even
12 though this judgment is large, it's not a windfall
13 because it's the amount that was anticipated by
14 the parties in their contract, and it was a
15 contract that was signed by Mr. Boyer with
16 apparent authority to enter into this loan
17 agreement.

18 And as was presented by evidence and
19 testimony at trial, this was intended to be a
20 short-term loan. Then, through no fault of
21 Halevi's, the interest has accrued for three years
22 before the judgment was entered.

23 So, yes, I recognize that you look at this

1 judgment and you say, well, it's only \$4 million,
2 how is interest so much? It's because the parties
3 entered into this agreement where they agreed to
4 this amount of interest and then it sat for three
5 years.

6 UNIDENTIFIED SPEAKER: Yeah, I saw that.
7 Volleyball and piano.

8 THE COURT: Okay. Folks who are on the Zoom,
9 if you could please mute your microphones. Thank
10 you.

11 MR. MANN: So, Your Honor, it's our position
12 that the interest calculation is correct, but even
13 if it isn't, what will happen is the Supreme Court
14 will send this case back to Your Honor to
15 determine what the correct interest amount should
16 be. And if we change it from compound interest to
17 simple interest, it's still a magnitude above
18 \$475,000 or \$400,750.

19 THE COURT: Right.

20 MR. MANN: So, as far as the likelihood on
21 success on appeal, you know, with the authority
22 issue, we think there's no likelihood of success.
23 With picking apart the affidavit, we think there's

1 no likelihood of success.

2 With the interest rate, we're hopeful that
3 we'll be successful, but we do recognize that
4 there are some questions there with how the Court
5 entered the judgment. We presented an amount to
6 the judge. The judge signed it. So that's where
7 we ended up with that.

8 So if Your Honor wouldn't mind, I'd like to
9 move on to the second *Kirpat* factor.

10 THE COURT: Please.

11 MR. MANN: Which is whether Defendants will
12 suffer irreparable harm without a stay. And I'll
13 tell Your Honor Defendants have provided no proof
14 or evidence of harm and they just rehash their
15 windfall argument again here.

16 As Your Honor pointed out, we don't even know
17 how many employees they have. I had that in my
18 notes, are there 100 employees or 250 employees.
19 We don't know.

20 And we don't know which entities these
21 employees are employed by. We have two entities
22 here, but we know that there's plenty more. So
23 there's been no support, no admitted evidence that

1 shows how they will suffer any harm again.

2 THE COURT: All right. But you just objected
3 to that evidence as well.

4 So, go ahead. All right.

5 MR. MANN: Yes, Your Honor. If they wanted
6 an evidentiary hearing, there's a process to get
7 that, and this has been pending for months and
8 nobody has requested an evidentiary hearing until
9 last week.

10 THE COURT: Okay.

11 MR. MANN: Or two weeks ago, whenever our
12 last hearing with you was.

13 THE COURT: I'm not sure that was a formal
14 request made at that point either.

15 MR. MANN: Fair enough.

16 THE COURT: But I could be corrected on that
17 point.

18 Go ahead, Mr. Mann.

19 MR. MANN: Thank you. They also argue again
20 that the receivership is destroying their business
21 without any evidence or citing the record. We can
22 look at the receivership order and see that the
23 receiver was appointed by a court as a fiduciary

1 of the court. This is not Halevi's receiver, as
2 we keep hearing. It's two separate parties here.

3 And I think that goes back to what this
4 motion is actually asking for. The motion that
5 was filed asked that Halevi not be allowed to
6 continue to execute on its judgment.

7 I know that was before the receivership was
8 entered, but there is nothing in there asking for
9 other parties to take any action or other parties
10 be barred from taking any other action against
11 these debtors.

12 It's not like they filed bankruptcy and they
13 get an automatic stay and nobody's allowed to go
14 after them. The receiver's also not in front of
15 this Court, Your Honor, not in front of Your Honor
16 today, isn't appearing today, isn't here to defend
17 himself. So --

18 THE COURT: I might ask you, though -- and
19 maybe it's not a question that you're prepared to
20 answer on behalf of your client -- by why was the
21 receivership not sought in the state of Delaware?
22 Why was it sought in the state of Florida instead?

23 MR. MANN: Your Honor, I would have to defer

1 to the Florida counsel on that. It's my
2 understanding that they sought a receivership in
3 Florida because the assets are in Florida.

4 THE COURT: Okay.

5 MR. MANN: And they wanted a court there to
6 be able to --

7 THE COURT: All right.

8 MR. MANN: -- take, not ownership, but be in
9 charge of those assets.

10 THE COURT: Presumably, Mr. Griffin will be
11 able to answer that?

12 MR. MANN: I hope so, Your Honor.

13 THE COURT: All right. And then the next
14 question is regarding the receivership order
15 itself.

16 MR. MANN: Yes.

17 THE COURT: Which does, at least based upon
18 defense counsel's representation, appear to have
19 some liquidation type provisions in it. Have
20 there been any efforts to terminate counsel in
21 connection with this matter?

22 MR. MANN: I don't know, Your Honor. I'd
23 have to ask Mr. Griffin.

1 THE COURT: All right. That's fine.

2 MR. MANN: But I can tell you those efforts
3 weren't made by Halevi. They would have been made
4 by the receiver.

5 THE COURT: Noted. Okay. And I'm sorry to
6 interrupt you.

7 Proceed.

8 MR. MANN: No, it's no problem. It's no
9 problem. I can say that the receiver was
10 appointed after an evidentiary hearing, which
11 infers that enough evidence was provided to cause
12 concern that there's some sort of an issue here,
13 and that is the first paragraph of the Florida
14 court's order on receivership.

15 It states: "The Court considered the motion,
16 the judgment debtor's response, the testimony of
17 judgment creditor Halevi Enterprises, LLC's
18 witness, and the showings of the parties and
19 argument of counsel and finds based on the record
20 in these proceedings the appointment of a receiver
21 is necessary and appropriate for purposes of
22 marshaling and preserving all assets of the
23 judgment debtors and to carry the judgment into

1 effect."

2 So I don't think it's unfair to say that
3 someone had a concern about this company. And
4 Halevi filed that motion, so obviously Halevi had
5 a concern. After a hearing with evidence and
6 witnesses, the judge obviously had that concern.

7 So, yes, I know I'm kind of getting into the
8 next *Kirpat* factor, but I think it's pretty clear
9 here that there is a concern that there was going
10 to be some sort of harm to the debtors' assets
11 unless a receiver was appointed.

12 And, you know, we can also look to the record
13 in the underlying case where we can say, at trial,
14 it was shown through evidence and testimony that
15 the Defendants did not keep great corporate
16 records.

17 And that could lead someone to infer that the
18 assets might be moving among companies, that
19 there's not corporate separateness, that an asset
20 that maybe was Caribbean Sun's yesterday is
21 another entity's tomorrow.

22 So that's getting into the third *Kirpat*
23 factor, which is the harm to Halevi. I will say

1 this case was filed in June of 2021, and then
2 trial was held in May of 2022, and then a decision
3 wasn't issued until almost two years later.

4 So Halevi has waited for at least three years
5 to be paid back, and each day that goes by is an
6 opportunity for Defendants' assets to disappear or
7 to dissipate.

8 THE COURT: Noted. To the extent that there
9 is a receivership in place and that a receivership
10 is for the purpose of preserving the status quo in
11 this matter, what is the harm to Halevi at that
12 point?

13 MR. MANN: If the receiver is in place and is
14 able to actually oversee the operations of the
15 business and oversee its assets and is given, for
16 lack of a better term, run of the place, then the
17 harm to Halevi definitely goes down.

18 There's still assets that are losing value
19 just because of the time. But, yes, if a
20 receivership is in place, there's a lot less harm
21 to Halevi, Your Honor.

22 THE COURT: Thank you.

23 MR. MANN: All right. As far as the fourth

1 *Kirpat* factor, the public interest, I always have
2 trouble arguing public interest from either side,
3 to be honest with you. It's always something that
4 when it's not a case that's in the public sphere,
5 who cares.

6 But I can say, in this case, allowing the
7 stay would show the public that they can avoid or
8 delay payment of a judgment by filing meritless
9 motions and appeals and just keep doing the same
10 thing over and over again to keep a party from
11 actually collecting.

12 So the public interest would not be served
13 but allowing judgment debtors to continue
14 stringing along the creditors, and the Court
15 should allow for a prompt and fair administration
16 of justice.

17 As far as the bond, I think Your Honor
18 understands the point. I can get into the law a
19 little bit on this, but the point of the bond is
20 to protect the judgment debtors' interest -- I'm
21 sorry -- the judgment creditors' interest.

22 And you have a judgment creditor here that
23 has a judgment that is over \$4 million in

1 principle plus some amount of interest. I mean,
2 ultimately, if the only issue that the Supreme
3 Court is going to send back is interest, there's
4 going to be some interest added, whether it's the
5 20 million that was entered in the judgment or
6 some lower amount.

7 So the Defendants' proposal is -- I hate to
8 use the phrase -- it's ridiculous on its face.
9 They propose a bond that doesn't take into account
10 any interest, it doesn't take into account any
11 costs or attorneys' fees that were ordered by the
12 court.

13 Even if they are successful in convincing the
14 Supreme Court that the interest amount is
15 incorrect or the calculation is incorrect, I'm
16 sorry, that wouldn't get rid of interest
17 altogether.

18 And, secondly, they arbitrarily propose that
19 a bond be set at only ten percent of the
20 principle, with, in the papers, no explanation of
21 how that amount was chosen, why it's fair, or how
22 that provides security for Halevi.

23 Counsel did identify some sort of calculation

1 that he did to come up with that ten percent
2 number, but I haven't seen a case that says that's
3 the formula that the Court should use.

4 I recognize that the Court can, in extreme
5 circumstances, allow for a bond that's less than
6 the full amount, but this is a percentage of a
7 percentage here. It's such a small amount that it
8 doesn't protect the interests at all.

9 Counsel also talked about that they wanted to
10 come up with a figure that would, you know, keep
11 the company alive while they were still pending
12 this appeal -- which, again, was not in the
13 papers -- but we don't know the company's
14 financials, we don't know what bond amount would
15 allow them to continue operating, we don't know
16 what they can or cannot put up. So --

17 THE COURT: What would be a sufficient amount
18 of bond?

19 MR. MANN: Well, Your Honor, I'd argue that
20 the full amount would be sufficient.

21 THE COURT: And if the Court's not inclined
22 to grant that?

23 MR. MANN: If the Court is not inclined to

1 grant that, then I would argue that it's the full
2 amount of the judgment, the principle of the
3 judgment, plus reasonable interest that the Court
4 does decide.

5 And, also, Your Honor, they haven't made a
6 showing that an adequate bond is impossible or
7 impractical and haven't shown that their meager
8 proposal will provide any adequate security to
9 Halevi.

10 Rule 32(c) makes clear that granting
11 exception to the general rule that bond should be
12 in the full amount of judgment is rare and limited
13 to where the movant can show that a lesser amount
14 is sufficient under the circumstances, and that's
15 not the case here.

16 If a stay is granted, the Court should set
17 the bond at, we think, the full amount of the
18 judgment, but at least the amount of the principal
19 plus some sort of interest figure, Your Honor.
20 There's just no protection here.

21 THE COURT: All right. And is there any case
22 law or industry standard that might be helpful to
23 the Court in determining an appropriate amount of

1 interest, judgment, and/or costs associated with
2 this case? Or is there a calculation that's
3 present in the trial record that I'm unaware of?

4 MR. MANN: No, there's nothing in the trial
5 record, Your Honor, and I'm not aware of any case
6 law that talks about this specific issue. If Your
7 Honor is concerned about the amount of interest
8 that we've asked for, maybe just the legal
9 interest rate on the pre-petition from the date of
10 the breach -- I'm sorry, prejudgment interest from
11 the date of the breach.

12 I can provide Your Honor with backup of our
13 costs and attorneys' fees if that would be helpful
14 as well.

15 THE COURT: I'll ask for that, if necessary,
16 but I appreciate the offer.

17 MR. MANN: Okay. Absolutely. So, Your
18 Honor, long story short, the Defendants paint
19 themselves as the victims here when Halevi is the
20 party that's been harmed.

21 They have tried to do everything in their
22 power to stop Halevi from getting paid for three
23 years, and they have been unsuccessful on the

1 merits several times now, and they try to convince
2 Your Honor that this time will be different.

3 They try to paint Halevi as an aggressive
4 judgment creditor when Halevi has only taken
5 action to collect what rightfully belongs to them.
6 Defendants' stall tactics really need to end here,
7 Your Honor.

8 With that, Your Honor, Halevi respectfully
9 requests that the stay of execution be denied or
10 only be granted subject to an appropriate and
11 adequate bond.

12 From here, I'll pass the mic to my colleague
13 Mr. Griffin to talk about the Florida action.
14 Thank you, Your Honor.

15 THE COURT: Thank you very much.

16 Go ahead, Mr. Griffin.

17 MR. GRIFFIN: Good afternoon, Your Honor.
18 And I want to thank the Court again for indulging
19 the Zoom. As I noted two weeks ago, I am
20 preparing for a jury trial in Orange County.

21 In fact, the jury trial looks like it's been
22 moved about five days, so I'm not in Orange County
23 today, but there was no way for me to be able to

1 get back because we are still engaged in trial
2 prep.

3 So I wanted to be clear that I'm not in
4 Orange County as anticipated, but I am in nine
5 hour days of trial prep because we're ready to go
6 maybe as soon as September 11. And so, we're
7 preparing as though we are going any day. So,
8 thank you.

9 So that being said, I want to address a
10 couple of the questions that Your Honor has
11 raised. I noted that you raised similar questions
12 to both counsel, and the answer to those questions
13 may fall on me.

14 And so, I took some notes, and without having
15 to just go back and argue what everybody's argued
16 today, I thought I would try to be a little bit
17 streamlined about answering the questions that
18 I've written down here that Your Honor has been
19 asking. So that's how I thought I would address
20 my time with the Court.

21 The first one is, why Florida? And I think
22 that's an important question that Your Honor was
23 asking, and I can disclose to Your Honor without

1 getting into a lot of attorney/client confidential
2 communications regarding strategy that we believed
3 that a court of competent jurisdiction in Florida
4 would have access to enforcement actions as
5 necessary to be effective with this judgment,
6 including third parties or nonparties to this what
7 I'll call current litigation.

8 Specifically, the principals of the company,
9 they were at the hearing for the receiver petition
10 for a reason. And they wanted to make a showing
11 and they wanted to talk about what they did or
12 didn't do and what they could and couldn't do.

13 Judge Sanchez listened to all of that. It
14 gave her the opportunity to understand what
15 collection effort might look like, what an
16 enforcement action might look like.

17 And we believed that the court of competent
18 jurisdiction for all enforcement possibilities was
19 going to be in Florida. That was after
20 significant analysis of law and strategy and
21 moving the judgment to Florida.

22 There was, of course, as Your Honor knows, an
23 objection to that transfer of a judgment. We

1 filed a motion to overrule that and essentially
2 hashed out the why Florida/why Delaware at that
3 time, the motion to overrule the transfer of the
4 judgment to Florida.

5 Once that had been determined by Her Honor,
6 we then went forward with the hearing. And I
7 think that Her Honor was thoughtful about that,
8 addressed whether or not she had jurisdiction and
9 why it would be appropriate for Her Honor to hear
10 it and for Her Honor to assist potentially in the
11 enforcement of it.

12 So, again, that's the reasons. If you'd like
13 some law on it, if Your Honor would like to read
14 some law on that, I'm sure we can dig it up, but
15 those are the reasons.

16 The second question that Your Honor seems to
17 raise that would fall within my ambit of knowledge
18 would be this firing of lawyers. Now, in the
19 receiver order itself, there's a carve-out that
20 the Delaware litigation can continue forthwith.

21 The thought, I believe -- because I'm not Her
22 Honor -- was that nobody wanted to impede a
23 judgment debtor's ability to pursue various

1 remedies in Delaware, specifically at that time,
2 the appeal to the Delaware Supreme Court.

3 And, you know, I don't speak for the
4 receiver. In fact, the receiver has a lawyer.
5 His name is Steven Solomon. I referenced that the
6 last time we were all together.

7 The receiver is represented. The receiver's
8 lawyer presumably would have a position on how
9 that appeal would be administered one way or the
10 other.

11 But the intent of the order, I believe, was
12 the no prejudice intent, and nobody has sought to
13 prejudice the judgment debtors in this court.
14 That was the specific reason for the carve-out,
15 was for no prejudice order to Delaware.

16 Now, the receiver is the one that has the
17 power, obviously, not the judgment creditor. I
18 don't know what the receiver's plans are for
19 counsel. I haven't heard anything that I could
20 repeat that would indicate that counsel for the
21 judgment debtors is on the chopping block.

22 Although, when you look closely at what the
23 receiver's powers are and what kind of duty of

1 confidentially that the receiver now has with the
2 entity, which means that it steps into the shoes,
3 it can read the e-mails, the attorney/client
4 communications are no longer confidential, you
5 know, they go to the receiver, you know, all of
6 that is very powerful.

7 And, potentially, the receiver, in his wise
8 judgment or not -- not for me to decide -- would
9 make a determination as to whether or not counsel
10 for the entity should remain in place.

11 And that would be something that the receiver
12 would decide, not Halevi. And that was something
13 that could potentially be litigated, presumably,
14 in front of Her Honor in Florida.

15 So I can't speak to that hypothetical because
16 that's all it is. It's a scare tactic
17 hypothetical. But it hasn't happened yet. And if
18 it were to happen, it wouldn't be happening by the
19 orders or directive or Halevi.

20 THE COURT: Noted. May I ask you one
21 question.

22 MR. GRIFFIN: Of course.

23 THE COURT: And I'm sorry to interrupt.

1 Presumably, then, that also gives Defendants the
2 ability to question to the extent that the
3 receiver is not acting in good faith, is not
4 appropriately executing their duties, in the state
5 of Florida, there would be the ability to
6 challenge that.

7 And as I understand it, that's being at least
8 exercised in the sense that Defendants have filed
9 a challenge to the receivership order in the state
10 of Florida.

11 MR. GRIFFIN: Yes. That's correct, Your
12 Honor. And I think what Your Honor is getting at
13 is there is some kind of due process available for
14 the judgment debtors to challenge whatever action
15 the receiver and its counsel takes, although,
16 none's been taken yet.

17 And so, if that were to transpire, there
18 would be a process that I'm sure Judge Sanchez
19 would first administer based on her understanding
20 of the record and what it meant to Her Honor.

21 That would have to be really where we would
22 go to determine whether or not somebody could be
23 fired or not fired and where the prejudice would

1 lie, and there would be objections, challenges.

2 What I do know is that counsel for the
3 judgment debtor also represents the principals
4 sitting behind him in court. I was able to ask
5 him that question a number of weeks ago, and he
6 was able to tell me yes.

7 And so, at the extent that he has an
8 engagement with the principals and the principals
9 may have a different point of view as to what
10 would happen with the receiver, that's for them to
11 figure out. It's a situation I wouldn't want to
12 find myself in, frankly, but that's a situation
13 that they are in.

14 And when I talked to them about that a number
15 of weeks ago, it's because I had those concerns,
16 and I was, you know, respectfully told, you know,
17 those weren't my concerns, and I guess technically
18 they are not.

19 But when the receiver will make various
20 decisions in the coming days or weeks, they'll be
21 adjudicated, no doubt in my mind. Judge Sanchez
22 is a very quick and effective judge. She
23 entertained motions almost immediately.

1 Which gets me, by the way, to the motion for
2 sanctions. It's all part of why we transferred
3 the judgment to Florida, moved on the objections,
4 and then had a receiver petition.

5 The motion for sanctions was before there was
6 any kind of resolution as to whether the stay was
7 appropriate with or without a receiver. And it
8 was our opinion that, barring entrance to the
9 facilities, changing signs, all the things that we
10 talked about last time -- and I don't want to do
11 last time again. I really try not to do that kind
12 of thing.

13 But all of the things that we talked about --
14 that I talked about last time that are going on in
15 Florida that are indicative of the avoidance of
16 payment, we thought that Judge Sanchez would be
17 the proper enforcement for her order because she's
18 on the ground there. And for all the reasons I've
19 already talked about today, the motion for
20 sanctions presumably will be heard and ruled upon.

21 One of the things to address my next point,
22 Your Honor, I know that Your Honor granted our
23 motion, but I've been, for the last 90 minutes, a

1 little bit unsure as to the actual language,
2 because that matters. And that gets to my next
3 kind of procedural comment about Florida.

4 If Your Honor's order is that the stay, the
5 emergency motion, the stay is with a receiver --
6 and I just didn't hear the language, you know,
7 because I was trying to process what would happen
8 next.

9 And if Your Honor could just tell me what
10 that language is, then I have a very clear answer
11 for Your Honor on procedural -- the strategy in
12 Florida.

13 THE COURT: That's fine.

14 And I'll say this for the benefit of everyone
15 in the courtroom because it hasn't been entered
16 into File&Serve yet.

17 Upon consideration of Halevi Enterprises,
18 LLC's emergency motion for limited modification
19 and stay, to allow receiver to maintain status
20 quo, the motion, and response thereto, if any, it
21 is hereby ordered the motion is granted.

22 The Court's July 30, 2024, order granting
23 Defendants' motion to stay execution is modified

1 to permit the Florida receiver to maintain the
2 status quo. This Court's stay of execution is
3 lifted as to the appointment of the Florida
4 receiver.

5 Further, this Court's stay of execution is
6 lifted as to receiver's full exercise of all
7 powers pursuant to the July 30, 2024, order
8 appointing F. Darryl Richardson as receiver of the
9 circuit court of the Eleventh Judicial Circuit in
10 and for Miami-Dade County, Florida, to maintain
11 the status quo and protect judgment debtors'
12 property, except that the receiver shall not carry
13 the judgment into effect pending further order of
14 this Court."

15 MR. GRIFFIN: Okay. Thank you, Your Honor.

16 THE COURT: So the order that's been entered,
17 I mean, I don't know that it could say "status
18 quo" on it more times. What I am, candidly,
19 concerned about, though, is whether status quo
20 includes potential firing of lawyers who are
21 involved in the litigation of this matter.

22 It is comforting to have counsel's assurance
23 that, no, that won't happen, but I am very

1 concerned about that. And I think that you've
2 made the argument that this is an independent
3 receiver.

4 We're not privy to everything that's been
5 shared, that the receiver has looked at, and that
6 he's got to make decisions in the best interests
7 of this corporation, but so long as that is being
8 done with the aim of preserving the status quo in
9 this matter, the Court is comfortable with that.

10 So I understand that there have been serious
11 concerns raised today. I'm not sure that you're
12 going to be able to address what the receiver
13 does.

14 To the extent the receiver is doing something
15 that doesn't maintain the status quo, I think that
16 is something where there is a remedy available to
17 judgment creditors to pursue within the Florida
18 courts.

19 So you can proceed with your argument. I
20 probably just said more than...

21 MR. GRIFFIN: Okay, Your Honor. It's
22 extraordinarily, extraordinarily helpful because
23 what I would then suggest or submit to the Court

1 will happen is we'll have a copy of this order,
2 we'll bring it to the DCA's attention.

3 And, you know, opinions differ, but it's my
4 opinion and the opinion of my client that the
5 Third DCA is waiting for this clarification as to
6 whether or not receiver or no receiver regarding
7 stay.

8 And they are very respectful of Delaware, and
9 they are very respectful of Your Honor and now
10 they are going to hear from Your Honor.

11 So what are they going to do? Nobody really
12 knows, but my expectation is that they are going
13 to say that this order is valid and that the
14 receiver can go in and that the receiver can do
15 what it needs to do pursuant to the order with the
16 restrictions being that no liquidation, no
17 modification of the status quo such to protect the
18 business and to protect judgment creditors'
19 position.

20 I think, Your Honor, that order was very
21 clear. You just read it to me. I heard it. To
22 the extent that I have any influence over making
23 sure that nothing crazy happens, Your Honor has my

1 assurances on that.

2 And what I mean by that is our client is
3 highly invested in the receiver being successful,
4 not getting out of control and selling things and
5 getting fired by the Court and more litigation,
6 more litigation. Our client's not vested in a
7 result like that.

8 Our client's vested in the result that the
9 airline survives and thrives because that's the
10 only way that the client can collect the money
11 that's due. The wholesale firing, liquidations,
12 things of that nature are antithesis of that.

13 The receiver knows that because I have spoken
14 to him about it prior to him getting his own
15 lawyer. And at no time did I ever represent the
16 receiver. Our interests were somewhat aligned in
17 the preservation of the business, but that's where
18 it ended. He is independent and he remains
19 independent.

20 As Your Honor may recall from two weeks ago,
21 there are some very expensive aviation consultants
22 that have been hired to come in and make sure that
23 everything's okay with the FAA, that everything's

1 okay with the books and records, that flights go
2 on time, that pilots continue training.

3 I mean, the entire effort in Florida is to
4 preserve the status quo and then make the airline
5 more profitable. You know, you'd think
6 potentially that the principals of the judgment
7 debtor may be interested this that.

8 It sounds ironic, but it's not. They were
9 unable to run it successfully. Maybe
10 Mr. Richardson can. And that's his charge. And
11 he's a nice person. I've never seen any
12 vindictive behavior from him.

13 So those are some comments. They may not be
14 binding on anybody. But I think Your Honor's
15 looking for some assurances that things don't get
16 out of control in Florida, and I can give you
17 absolute assurance that they won't.

18 The person to give you the absolute, absolute
19 assurance would be Mr. Richardson, and I have no
20 doubt that once he receives this order, he will be
21 strictly following it with his highly competent
22 lawyer of 40 years --

23 MR. ANGUEIRA: I am going to object.

1 MR. GRIFFIN: -- that does nothing but this
2 work and, you know, we'll see what happens.

3 So I may have spoken a little long on that,
4 but I just noticed a lot of concern.

5 THE COURT: Yes. There's been an objection.
6 There's been an objection.

7 MR. GRIFFIN: Okay.

8 THE COURT: So I am going to rule on it. And
9 that is that he is here testifying. And, again,
10 we have been sort of treading into that area
11 repeatedly. I am going to sustain the objection
12 and request that you confine your comments;
13 although, I asked the question, so I am probably
14 soliciting you providing facts that are outside
15 the record that's before me right now.

16 So go ahead with your argument.

17 MR. GRIFFIN: Okay. And that, by the way,
18 Your Honor, was the reason why I said what I said,
19 because I believe that you had asked it. And so
20 that was why. Okay. Those were the main
21 questions I saw Your Honor ask.

22 What I wanted to do was just talk a little
23 bit about our supplemental briefing because my

1 officer handled that. It deals with a little bit
2 of on-the-ground stuff, so to speak, the extra ten
3 pages that Your Honor allowed for.

4 And it's in the papers, I don't need to
5 re-read it to you, but, you know, there are other
6 judgments down there, \$9 million SBA, \$6 million
7 treasury note. These liens are very concerning to
8 us.

9 I know that they have an excuse for them and
10 a reason, but why were they all put on in the
11 midst of this whole receiver thing? It's also
12 with related entity companies. You know, it's not
13 the way that business is conducted in the ordinary
14 course.

15 Changing signs, I've thought about it a lot
16 after our last hearing. And in some ways, I
17 think, Your Honor, that's all you need to hear.
18 You know, when debtors are changing signs on their
19 building in order to prevent enforcement, then
20 there's a problem.

21 And, you know, if that's what's going on in
22 plain sight, I know the receiver and our client
23 specifically is very concerned about what's going

1 on with the books and records and many, many other
2 things that hopefully we're all going to find out
3 about now in the next couple of days.

4 So I don't have anymore to say other than
5 what's in the papers on that. I think I addressed
6 the three primary arguments that I heard Your
7 Honor raise to both parties, both parties of which
8 deferred to me.

9 If Your Honor has additional questions, I'm
10 happy to respond to them, but otherwise, I concur
11 with Mr. Mann's analysis of the law with respect
12 to both the test, the four-part test, and, of
13 course, public policy favors us. And I think,
14 frankly, that's obvious.

15 So, thank you, Your Honor.

16 THE COURT: Thank you, Mr. Griffin.

17 I am going to allow judgment creditors to
18 sort of have the last word in this matter and some
19 rebuttal because it is their motion. However,
20 Counsel, I do have a prayer conference at four
21 o'clock. I did reserve two hours for our hearing
22 today, but I do have to get up there to be able to
23 do that at four o'clock.

1 MR. ANGUEIRA: Then I will be quick, Your
2 Honor. I'll try to be as quick as possible.

3 THE COURT: Of course.

4 MR. ANGUEIRA: First of all -- and I'll
5 shorten my argument and I tread a little bit of
6 the process and procedures of the Court, forgive
7 me, just to get to the point.

8 First of all, Halevi's counsel just said that
9 there are judgments down in -- the only judgment
10 is this judgment. There are no other judgments.
11 There's a \$6 million loan for PPP, CARES Act loan.
12 Judge, that loan is not in default. It's being
13 paid.

14 In fact, the more recent report shows that
15 there's a significant difference in what was
16 reported by them to you in the government
17 document. And the government document that we
18 have from August 1 reflects that the correction
19 was some clerical error. But payments are being
20 made. It's on a payment schedule, just like all
21 these government PPP Care loans.

22 There's a statement about changing signs on
23 the building. Again, that's not what I said to

1 the Court. It's changing signs in the little
2 office area where my clients' offices are because
3 that's the tenant in that area. They haven't
4 changed the signs in the building. It's not
5 indicative of anything.

6 This Court now has issued an order that's
7 basically, according to what I hear from counsel,
8 given the receiver power and control to do things
9 that this Court has no control over that receiver.
10 It's in Florida.

11 At the appellate court level, in fact, that
12 order is stayed, and we have to go back to the
13 appellate court. Again, no problem with that.

14 Counsel for Halevi said that there was no
15 discussion whatsoever about compound interest in
16 the brief; he had read it up and down, sideways
17 and backwards. At Page 45 of the appellate brief:
18 "The Superior Court abuses its discretion when it
19 awards compound interest." Clear as day. I
20 quoted from the brief.

21 THE COURT: Thank you.

22 MR. ANGUEIRA: In addition, Judge, he
23 mentions that there's nothing in the brief about

1 the wrong companies in the confession of
2 judgment -- I mean the appeal.

3 The appeal brief is loaded with argument
4 about contradictory documents, about documents
5 incorrectly stating, and they are not verifying
6 who is the correct company or the correct
7 defendant.

8 I'm trying to be as fast as I can.

9 Halevi's counsel talked about this third
10 party that was hired, a respected individual in
11 the industry that helped in the aviation and the
12 FAA.

13 What they hired was a world-renowned aviation
14 repo man. And what they are going to do, what
15 they plan to do, regardless of what they say, was
16 to sell off assets, to gather, marshal -- they've
17 used the word "marshal" several times. And that's
18 exactly what they are going to do in this case.

19 Halevi said in his argument to you that he
20 had nothing to do with dismissing attorneys and
21 that's a decision later on, he had nothing to do
22 with it, Halevi has nothing to do with it.

23 The motion for sanctions that was filed

1 before Judge Butchko -- not Judge Sanchez. Judge
2 Butchko is the judge's name -- it says "Judgment
3 Creditor Halevi's Motion for Sanctions."

4 And I quote, "The judgment debtors' attorneys
5 continued to advise them even after they were
6 dismissed." That's what was said by Halevi in
7 Florida. In Florida, far away from your
8 jurisdiction.

9 THE COURT: I'd like you to supply me with
10 that document later today.

11 MR. ANGUEIRA: Yes. Yes, Your Honor. Here
12 you go, ma'am. And at the top is the file stamp.
13 So you see it was stamped. It's not a document
14 that -- Florida does it different than Delaware.
15 Everybody has their way of doing things.

16 Judge, I wanted to talk for a minute about
17 Judge Butchko's order because they said she was so
18 clear there was dissipation of assets. There was
19 no evidence of dissipation of assets. You have
20 that hearing transcript.

21 And I quote from Judge Butchko: "And if that
22 money is dissipated or allowed to be dissipated,
23 then I think, you know, we have a great cause for

1 great harm to the judgment creditor."

2 "If" was the operative word. And that's
3 what's going to show up on appeal, "if." There
4 has been no dissipation. There's been no evidence
5 of dissipation. There's been no evidence of
6 concealment. And, again, that's one of the major
7 issues on appeal.

8 That's why this whole Kabuki dance of running
9 to Florida -- if Halevi wants to characterize it
10 as, oh, the assets are down there, Your Honor, you
11 know from your experience Delaware courts have set
12 receivers in Delaware for companies in other
13 states.

14 In Florida, there's even a case called *Romay*
15 where there was the Delaware receiver and then
16 there was a referee and ancillary receiver set up
17 in Florida.

18 That is the proper procedure because the
19 receiver in Delaware follows receipt in Delaware
20 law and is right under the control of this court
21 where it has the judgment and where the appeal is
22 being had.

23 That's the proper mechanism. That's why I

1 cited with as much stress as possible, and I
2 apologize for overstressing the point, that case
3 in Delaware that says that you cannot appoint a
4 receiver under Florida law on a Delaware
5 corporation, it has to be a Delaware standard.

6 And that's why -- respectfully, Judge -- and
7 I want to say this respectfully because I do have
8 all the respect in the world for you -- that's why
9 your order that you read in the record a moment
10 ago is wrong, okay?

11 And that's the argument. And no surprise
12 that I am going to be making that in front of the
13 Third DCA, because, frankly, Judge, what's
14 happening here is just a lot of not wanting to get
15 down into the mud. And I'm not saying you don't
16 want to, but there is an issue here of not going
17 down in the mud.

18 Mr. Halevi's counsel suggested there was a
19 motion to reconsider and all of this was denied.
20 The standard on a motion to reconsider, as this
21 Court knows, is substantially different than a
22 standard on a motion to stay.

23 And that's not a proper argument to make

1 before this Court. And I hate to say it that
2 roughly and brusquely, but that's not the proper
3 argument to make before the Court. Many courts
4 deny motions to reconsider and grant motions to
5 stay because they know they are fair ground for
6 appeal.

7 THE COURT: I am going to consider them
8 separately. And to the extent that you want me to
9 reconsider the order that was entered today, I'll
10 expect briefing on that.

11 MR. ANGUEIRA: Yes, ma'am.

12 THE COURT: Okay.

13 MR. ANGUEIRA: When would you like the
14 briefing, Your Honor?

15 THE COURT: Since there's an imperative to
16 get this moved, how much time do you need to file?
17 I think there's a five-page limit on motions for
18 reconsideration. How long will it take you?

19 MR. ANGUEIRA: Can I talk to my partner, who
20 is probably the more important question?

21 THE COURT: Yes, go ahead. Yes.

22 MR. ANGUEIRA: Five days, Your Honor.

23 THE COURT: Five days is perfect.

1 And, Mr. Mann, to the extent that you want to
2 file a response to that, how much time do you
3 need?

4 MR. MANN: I think five days after that is
5 fine.

6 THE COURT: Perfect. All right. Then I'll
7 enter an order to that -- well, upon receipt of
8 that -- we're just going to do it right now as a
9 bench order. I'll expect your motion for
10 reconsideration within five days. And then five
11 days thereafter, I'll expect the response. No
12 rebuttal on that. And I'll consider that in due
13 course.

14 The motions that you've filed that we've been
15 discussing today will be considered separately.

16 MR. ANGUEIRA: Thank you, Your Honor. There
17 are just two items that I want to correct in the
18 record that Mr. Mann -- I'm sorry -- Halevi's
19 counsel suggested to the Court that I think I
20 maybe in my argument was short in describing it or
21 maybe he misheard me.

22 The testimony at trial of David Boyer was a
23 lodged deposition. It is testimony nonetheless

1 because it was a deposition taken in this
2 particular case where Mr. Mann was a party
3 representing Halevi at that particular deposition.
4 That's number one.

5 Number two, Judge, Mr. Mann has suggested
6 attorneys' fees and costs were available to the
7 Court by virtue of the confession of judgment. I
8 think he will recall that the confession of
9 judgment does not allow for attorneys' fees.

10 And, in fact, the original objection that was
11 filed by the original attorneys who came into the
12 case, Ballard Spahr, way back in 2021 raised that
13 specific objection, and that objection was
14 accepted by the Court.

15 So I just want to make sure the record is
16 clear and the Court's not left with a
17 misimpression either in my argument or in
18 something I might have said to the Court.

19 I have several other points. I know that I
20 can't get them done in the time and I'm smart
21 enough to know to say raise the red flag, Judge.
22 I might have worn out my parking meter here with
23 you, so I don't want to belabor those points.

1 I think the major points that I needed to
2 make were made, and I appreciate the opportunity
3 to give you the extra briefing, we'll certainly
4 take advantage of that.

5 THE COURT: All right. And let me say this.
6 I really appreciate the arguments of counsel
7 today. I appreciate the judgment debtors'
8 appearing in person. It's sometimes helpful to
9 put a name to a face, and I appreciate you doing
10 that.

11 I also know that this is a fairly heated
12 matter, and so, I understand to the extent that
13 counsel might have interrupted or made faces,
14 which I feel like has been the whole day for me
15 right now, you know, with my other case. And so,
16 I appreciate you accommodating the Court's
17 schedule this afternoon.

18 I am going to obviously take the motion to
19 stay under advisement. I think that the motion
20 to -- although we didn't get into it today, I'll
21 rely upon your briefs as far as the subpoenas go.
22 I think that's going to be governed in large part
23 by whether the stay is entered.

1 In any respect, I'll look for your motion for
2 reconsideration. I'll consider that first and
3 then also issue an order on the stay. As soon as
4 practicable, I intend to do that.

5 So thank you very much for your presentations
6 today and your professionalism.

7 MR. MANN: Thank you. Your Honor, before you
8 go off, just one housekeeping matter.

9 THE COURT: Yes.

10 MR. MANN: Your Honor did mention the 60(b)
11 motion earlier. I think it's appropriate to wait
12 until after the appeal is complete.

13 THE COURT: It is, and the Superior Court is
14 not going to take that matter up pending the
15 appeal before the Supreme Court. If one of the
16 parties has authority for me that permits me to
17 consider a Rule 60(b) motion while there's an
18 appeal pending in a higher court, let me know what
19 that is, but this Court doesn't intend to consider
20 it until the appeal is done.

21 MR. MANN: Thank you, Your Honor.

22 THE COURT: All right. Thank you very much
23 for your time.

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MR. MANN: Thank you, Your Honor.

MR. ANGUEIRA: Thank you, Your Honor.

(This matter concludes at 3:54 p.m.)

EXHIBIT C

Transmittal Email Chain to Attorney Redacted

From: Janine McCormick <McCormickJ@mvminc.com>
Sent: Thursday, September 5, 2024 9:32 AM
To: Patrick Joseph <patrick.joseph@flywaa.com>
Subject: FW: WAA Representations regarding Notice of Assignment
Importance: High

Good morning Patrick,

I am following up on my previous email regarding the WAA representations. When we last spoke your legal team was working on this. We will need to have this documentation as soon as possible.

Additionally, the Stay of Execution of Judgment provided by WAA was granted and in effect until September 5, 2024 **OR** upon a decision made by the Superior Court of Delaware. Please provide if there has been decision made and provide any legal documentation.

We will not be able to move forward with any flights until this documentation is in place and we have confirmation of a decision from the Superior Court of Delaware.

Please let me know if you have any questions.

Thank you,
Janine

Janine McCormick | Sr. Contract Specialist | **MVM, Inc.** - **EST Timezone**

Janine B. McCormick (She/Her/Hers)

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