IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT 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.
_____/

APPELLEE'S RESPONSE TO APPELLANTS'
EMERGENCY MOTION TO STAY PENDING APPEAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

In accordance with this Court's Orders dated August 2, 2024 and August 7, 2024, Appellee, Halevi Enterprises, LLC ("Halevi"), files this Response in Opposition to the Emergency Motion to Stay Pending Appeal filed by Appellants, Caribbean Sun Airlines, Inc. ("Caribbean Sun") d/b/a World Atlantic Airlines, Inc. and Miami Air International, Inc. ("Miami Air").

I. INTRODUCTION

Appellants have failed to demonstrate either a likelihood of success on the merits, or a likelihood of harm absent a stay.

Appellants have no likelihood of success on the merits because the trial court acted well within its discretion in appointing a receiver. After an evidentiary hearing, the trial court found that "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" and that Appellee "demonstrated its right to and need for the Receiver to protect and preserve the Receivership Assets pursuant to Florida law." The testimony and exhibits introduced at the hearing amply support the trial court's findings.

Appellants will not suffer any harm absent a stay because the receiver is a neutral arm of the court. Contrary to Appellants' arguments, a receivership is not "execution" on the judgment, is entirely consistent with the Delaware court's temporary stay of execution and is urgently needed to preserve Appellants' assets pending final determinations in Delaware and this Court.

The Court should deny Appellants' motion. At the very least, if the Court is inclined to grant a stay on execution, it should leave the receiver in place and/or alternatively condition that stay on Appellants' compliance with provisions needed to prevent further dissipation and deterioration of assets, as discussed in the final section of this response.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

On or about March 17, 2021, Appellees executed a $7,000,000.00 Senior Secured Promissory Note (the "Note") in favor of Halevi. (App. 10-28). On or about March 24, 2021, Miami Air received $3,725,000 of loan funds from Halevi. Appellants sought a short-term bridge loan for three months from Halevi for a management buy-out of the company. (App. 1238-1241). Appellees

have never made a single repayment of principal or interest. (App. 1239, Lns. 8-14).

B. Procedural Background

1. Delaware Proceedings

On June 3, 2021, Halevi filed a Notice of Entry of Judgment by Confession with the Superior Court of Delaware. (App. 29-88).[1] Trial was held on May 12, 2022. On March 19, 2024, the Delaware court entered an order granting judgment in favor of Halevi and against Appellants. (App. 89-94). On April 22, 2024, the Delaware court entered an order denying Appellants' motion for reconsideration, and entered a final judgment against Appellants in the principal amount of $4,075,000.00, plus interest on principal at the contract rate of 5% per month from March 23, 2021, or $20,958,232.59, for a total judgment of $25,033,232.59, plus post-judgment interest accruing at the contract rate of 5% per month from after March 19, 2024, plus

[1] References to "App." are to the Appendix, which is being filed with this Response.

allowed fees and costs identified in the relevant contract.[2] (App. 96-97).

2. Proceedings in the Florida Trial Court

a. Recordation of the Judgment

Halevi recorded a certified copy of the judgment with the Clerk of the trial court on May 16, 2024, under the Florida Enforcement of Foreign Judgments Act, sections 55.501-.509, Florida Statutes. (App. 95-120). Appellants failed to comply with Florida's procedures for challenging a foreign judgment. Appellants failed to file an action contesting the trial court's jurisdiction within 30 days, and to record a lis pendens directed toward the final judgment. Instead, Appellants

[2] Pursuant to 6 Delaware Code § 2301, there is "no limitation on the rate of interest which may be legally charged for the loan or use of money, where the amount of money loaned or used exceeds $100,000, and where repayment thereof is not secured by a mortgage against the principal residence of any borrower." Appellants' Delaware attorney testified the Halevi loan did not violate the Delaware interest statutes. App. 1319:11–22; and 1321:1–112:2. *See also, Cont'l Mortg. Invs. v. Sailboat Key, Inc.*, 395 So. 2d 507, 508 (Fla. 1981) ("We conclude that in an interstate commercial loan transaction with which several states have contacts and in which usury is implicated, Florida courts will recognize a choice of law provision provided by the parties so long as the jurisdiction chosen in the contract has a normal relationship with the transaction).

improperly filed an untimely "Objection" on June 18, 2024, 33 days after recordation of the judgment.

b. <u>July 26 Hearing and Appointment of the Receiver</u>

On July 19, 2024, Appellee filed an Emergency Motion for Appointment of Receiver and to Overrule Judgment Debtors' Objection to, and Request to Stay Enforcement of, a Foreign Judgment (the "Receiver Motion"). (App. 168-296).

On July 26, 2024, the trial court conducted an evidentiary hearing on the Receiver Motion. The hearing lasted more than three hours and included sworn testimony by four witnesses (two called by Halevi, and two called by Appellants). A copy of the transcript of the hearing is included in the Appendix at 1211-1375.

Halevi introduced a number of Exhibits at the hearing, including, *inter alia*:

- Results of a search of the records of the Clerk of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, showing that Caribbean Sun has been a party to 54 cases, nine (9) of which were currently open. (App. 743-748);

- An order from one of those cases, granting the plaintiff's ex parte writ of garnishment in the amount of $1,380,260.00 and an order of attachment of Appellants' assets. (App. 819-821);

- An action by a lessor of aircraft engines alleging that one of the Caribbean Sun leased 11 Pratt & Whitney aircraft engines and "notwithstanding the fact that WAA did not have title to any of the JT8D Engines … executed a Bill of Sale purporting to transfer title to the JT8D Engines to Trip Airline, as buyer" executed by Iraq Pacheco (Appellants' CFO) as seller and Tomas Romero (Appellants' purported sole owner and CEO) as buyer. (App. 852 at ¶¶ 31-33 and Ex.4, Case No. 22-3556-CA-01); Trans 1358:21–1361:6;

- A United States Department of Treasury Report Under Section 4026(b)(1)(C) of the CARES Act on Loans to Air Carriers, Eligible Businesses, and National Security Businesses dated October 1, 2023, reporting that Caribbean Sun failed to make a single payment on its Total Outstanding Loan Amount of $6,768,749. Footnote 11 to the report states that the loan is in default. (App. 986);

- A March 6, 2004 order of the United States Department of Transportation denying Miami Air's application for a certificate of authorization which states that (a) Miami Air's only aircraft was repositioned to Europe, having been repossessed by the aircraft owner; (b) the Federal Aviation Administration had asked Miami Air to voluntarily surrender its operating certificate, since it had not conducted any operations and was no longer capable of conducting any kind of operations for which it was authorized, and that **the Federal Aviation Administration was also investigating Miami Air to determine if it was able to properly staff and able to operate safely; and (c) Miami Air's nondisclosure of material fitness information reflects negatively on its compliance, disposition, and managerial competence** (App. 989);

- Articles of dissolution filed by Miami Air with the Florida Secretary of State Division of Corporations on April 8, 2024. (App. 992-993); and

- A Final Judgment issued by Judge Michael Hanzman on November 18, 2022, imposing sanctions on Appellants' purported sole owner and CEO, Mr. Romero, in the amount of $300,000.00, **finding Mr. Romero's "lack of credibility", with testimony that was "untruthful and, in many instances, contrary to sworn testimony offered in this and other judicial proceedings", and the submission of written evidence that the Court found "was altered, manipulated and/or incomplete." Judge Hanzman also found that Mr. Romero "forfeited [his] rights to 'avail [himself] of the benefits of our court system' in order to resolve the question or who owns/controls" Caribbean Sun dismissing the case**. (App. 994-999).

Halevi's representative, Avi Geller, testified at the hearing about the need for the appointment of a receiver to protect and preserve Appellants' assets. Mr. Geller testified about, *inter alia*, (1) the pending actions brought against Appellants by other creditors (App. 1243-1259); Caribbean Sun's default under the loan from the United States Department of the Treasury (App. 1259-1261); and (3) the Department of Transportation order (App. 1261-1263).

The trial court also heard testimony from F. Darrell Richardson, whom Halevi had identified as a potential receiver.[3] Mr. Richardson testified about his 50 years in the aviation industry (App. 1284), including, *inter alia*:

[3] Appellants did not identify any alternative potential receivers. (App. 1371-1372).

- Serving as chief restructuring officer in the Gulfstream International bankruptcy case. (App. 1285);

- Serving as CEO of several US airlines. App. 1284);

- Becoming the founding CEO of Silver Airways in Fort Lauderdale in March 2011. Eighteen months later, Silver Airways won the airline of the year award and was one of the top airlines in the world. (App. 1284-1285);

- Running Pace Airlines in North Carolina, growing Pace from four airplanes to 21 airplanes, and increasing revenue from 6 million to 65 million in three years. (App. 1284-1285);

- Experience with Aerodynamics Inc. in Atlanta, where Mr. Richardson went from serving as a consultant to becoming Chairman, President, and CEO – at DOT's insistence – after the owner was convicted of fraud. (App. 1286-1287);

At the conclusion of the hearing the trial court found that Halevi met its burden of showing the need for a receiver to protect the property and denied Appellants' ore tenus motion to stay the Receivership Order. (App. 1370, Lns. 18-24).

On July 30, 2024, the trial court entered its Order Appointing Mr. Richardson as Receiver (the "Receivership Order"). (App. 1135-1144). On August 1, 2024, Appellants filed a Notice of Appeal of the Receivership Order. (App. 1149-1160).

III. STANDARD

"The Florida Rules of Appellate Procedure envision that a motion for a stay on appeal be presented in the first instance to the trial court." *Sunbeam Television Corp. v. Clear Channel Metroplex, Inc.*, 117 So. 3d 772 (Fla. 3d DCA 2012) (citing Fla. R. App. P. 9.310). "In order to prevail on such a motion, a party must establish: (1) a likelihood of success on the merits, and (2) a likelihood of harm absent the entry of a stay." *Id.* (citing *Perez v. Perez*, 769 So. 2d 389, 391 (Fla. 3d DCA 1999)). "The trial court's decision is then subject to review by this Court under the highly deferential abuse of discretion standard. The idea is that the court most familiar with the controversy is in the best posture to determine the appropriateness and conditions of a stay." *Id.* (citations omitted).

The decision to appoint a receiver is reviewed for an abuse of discretion. *Fed. Nat'l Mortg. Ass'n v. JKM Servs., LLC for Cedar Woods Homes Condo. Ass'n, Inc.*, 256 So. 3d 961, 966 (Fla. 3d DCA 2018).

IV. ARGUMENT

A. Appellants Have Not Established a Likelihood of Success on the Merits

Appellants have failed to meet either of the requirements for entry of a stay pending appeal. First, Appellants have not established a likelihood of success on the merits.

1. Halevi Indisputably Satisfied the Standard for Post-Judgment Appointment of a Receiver

The court in *Warshall v. Price*, 617 So. 2d 751, 752 (Fla. 4th DCA 1992), articulated a minimal standard for appointment of a receiver after entry of a judgment: "We find no error in this trial judge's decision to grant a receiver of the judgment debtor's property on this judgment creditor's simply showing that he holds an unsatisfied writ of execution and without showing any 'exigent circumstances.' The unsatisfied writ was all the exigent circumstances he needed."

It is undisputed that the final judgment remains unsatisfied. Thus, the standard for appointment of a receiver after the entry of a judgment has been satisfied in this case. Halevi also established an urgent need to protect the property from waste and dissipation. Accordingly, Appellants have no likelihood of success on the merits

of their appeal, and their motion for a stay pending appeal should be denied.[4]

2. Appellants' "Forum Shopping"/"Insolvency Plus" Argument Fails as a Matter of Law

Appellants cannot dispute that Florida's standard for post-judgment appointment of a receiver was satisfied. Instead, Appellants base their "likelihood of success on the merits" argument on the accusation that Halevi has engaged in "forum shopping," and that therefore a different standard should apply. Specifically, Appellants maintain that Halevi moved for the appointment of a receiver in Florida, instead of Delaware, because Florida's standard for

[4] Two courts have required an additional showing beyond an unsatisfied writ to justify the appointment of a receiver after judgment. *See Zahav Refi LLC v. White Hawk Asset Management, Inc.*, 378 So. 3d 1192, 1197 (Fla. 2d DCA 2023) ("But even with this lessened concern, there must still be some need to protect the property from waste or depreciation before a receiver may be appointed post-judgment"), and *Storey Mountain, LLC v. Freestone Enterprise, LLC,* 368 So. 3d 473, 474 (Fla. 1st DCA 2023) ("the considerations dictating a cautious approach to the appointment of a receiver may carry less weight after the entry of final judgment, but nevertheless, there must still be some need to protect the property before the court can appoint a receiver in equity"). The trial court found in its Receivership Order that Halevi has made the additional showing of the need to protect the property from waste and dissipation. (App. 1135 and 1138, paragraph 6(m)).

appointment of a receiver is "more lenient" than an "insolvency plus" standard applied in some Delaware cases.

Appellants' "forum shopping"/ "insolvency plus" argument fails as a matter of law, for a number of reasons. First, Halevi moved for appointment of a receiver in Florida for the same reasons it sought to enforce its Delaware judgment here. Not because Halevi was "forum shopping," but instead because Appellants' assets – the assets that would satisfy the judgment, and that require protection and preservation by the Receiver – are located in Florida.

Appellants' Delaware counsel testified during the July 26 hearing that Appellants operate out of Miami. (App. 1322). He further admitted that if a receiver were appointed in Delaware, that receiver would need to hire professionals "near South Florida." (App. 1323-1324). It is far more efficient and practical to have a receiver appointed in Florida – particularly since a Florida receiver has access

to the Florida courts if the debtor refuses to cooperate with the receiver (as has already happened in this case).[5]

Second, the "insolvency plus" standard is not the only standard for the appointment of a receiver in Delaware. The Delaware cases discussing an "insolvency plus" test generally involve the appointment of receivers under Section 291 of the Delaware General Corporation Law ("DGCL") – which, by its express terms, applies only to "insolvent" corporations.[6] However, the DGCL is not the only source of a Delaware court's authority to appoint a receiver. Under Delaware common law, a receiver may be appointed even for solvent

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[5] Halevi was forced to file a Motion for Sanctions with the trial court on August 2, 2024 as a result of Appellants' refusal to comply with the Receivership Order. (App. 1168-1171).

[6] 8 Del. C. § 291 provides: "**Receivers for insolvent corporations; appointment and powers**. Whenever a corporation shall be insolvent, the Court of Chancery, on the application of any creditor or stockholder thereof, may, at any time, appoint 1 or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary."

corporations. Thus, the court in *Arbitrium (Cayman Islands) Handels AG v. Johnston*, No. CIV. A. 13506, 1995 WL 606310, at *3 (Del. Ch. Oct. 6, 1995), stated: "The common law standard for appointing a *pendente lite* receiver (in the case of a solvent corporation) requires a showing of fraud, gross mismanagement or extreme circumstances causing imminent danger of great loss that cannot be otherwise prevented" (citing, *inter alia*, *Vale v. Atlantic Coast & Inland Corp.*, 34 Del. Ch. 50, 57 (1953)).[7]

In addition, other Delaware cases suggest that, as in Florida, a more lenient standard may apply for appointment of receivers post-judgment. In *26 Cap. Acquisition Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434 (Del. Ch. 2023), the court stated that a court ordering specific performance can "mitigate the difficulties involved in overseeing compliance with a complex undertaking by appointing a

[7] Numerous other decisions articulate the same principle. *See*, *e.g.*, *Bible v. EN Enterprises, Inc.*, No. CIV. A. 12,397, 1992 WL 296451, at *3 (Del. Ch. Oct. 16, 1992); *Delaware State Hous. Auth. v. Hillside Ass'n, L.P.*, No. CIV. A. 11,035, 1992 WL 127503, at *1 (Del. Ch. June 9, 1992); *Voege v. Anderson*, No. 5639, 1978 WL 2500, at *1 (Del. Ch. July 11, 1978); *Drob v. National Memorial Park, Inc.*, 28 Del. Ch. 254, 270 (1945).

judicial agent, such as a receiver or monitor." *Id.* at 466. The court cited the following treatises in support of this proposition:

> 1 [Dan B.] Dobbs, [*Law of Remedies*] *supra*, § 1.4, at 20 (discussing the court's authority to appoint a post-judgment receiver); 1 Ralph Ewing Clark, *The Law and Practice of Receivers* § 240, at 349 (3d ed. 1959) (explaining that a receiver can be appointed 'after judgment … either for the purpose of carrying the judgment into effect, or for the preservation of the property until judgment shall be executed.'); 2 John Norton Pomeroy, *Equity Jurisprudence*, § 1335, at 931 (5th ed. 1941) (noting that a court has the power to appoint a receiver 'after judgment' in order 'to carry into effect a special decree, which could not otherwise be efficiently executed by ordinary process').

Id. at 466 n.18. Likewise, in *In re Oxbow Carbon LLC Unitholder Litig.*, No. CV 12447-VCL, 2018 WL 3655257 (Del. Ch. Aug. 1, 2018), *aff'd in part, rev'd in part, vacated in part sub nom. Oxbow Carbon & Mins. Holdings, Inc. v. Crestview-Oxbow Acquisition*, LLC, 202 A.3d 482 (Del. 2019), the court quoted the same language from the Pomeroy and Clark treatises. 2018 WL 3655257, at *8.[8]

Finally, ***even if*** the "insolvency plus" test applied in this case, it would be more than satisfied. Appellants cite *In re Geneius Biotech., Inc.*, 2017 WL 6209593, at *5 (Del. Ch. Dec. 8, 2017), for the

[8] The Delaware Supreme Court's opinion in *Oxbow Crossing* did not discuss any receivership issues.

proposition that "[u]nder the 'insolvency plus' standard, the court will appoint a receiver only if the company is insolvent and exigent circumstances warrant such relief." Mot. at 8. The evidence in this case clearly demonstrates both that Appellants are insolvent,[9] and that exigent circumstances warranted the appointment of a receiver.

The evidence demonstrating Appellants' insolvency includes, *inter alia*, (1) the $25 million unsatisfied judgment in this case, stemming from a 2021 loan for which Appellants have not repaid even a penny, and (2) Appellants' default on a loan from the United States Treasury Department according to an October 2023 Treasury Report that showed $8,556,935 as the total outstanding amount (App. ex. 13);[10] and (3) numerous actions by creditors seeking to

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[9] The DGCL does not define "insolvency." Under Delaware case law, insolvency may be proven by showing either "1) a deficiency of assets below liabilities with no reasonable prospect that the business can be successfully continued in the face thereof, or 2) an inability to meet maturing obligations as they fall due in the ordinary course of business." *Prod. Res. Grp., L.L.C. v. NCT Grp., Inc.*, 863 A.2d 772, 782 (Del. Ch. 2004). Delaware's fraudulent transfer statute, 6 Del. C. § 1302, provides that (a) a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, and (b) a debtor that is generally not paying debts as they become due is presumed to be insolvent.

[10] Appellants owe more than $9 million under the loan and have repaid only $47,262 in principal and paid only $102,738 in interest

execute on Appellants' property. Appellants' motion in the Delaware proceedings to post a bond in the amount of less than 2% of the Halevi judgment itself is an admission of insolvency. (App. 1067, ¶¶ 15 and 18).

Exigent circumstances warranting the appointment of a receiver are established in this case by the overwhelming evidence of Appellants' mismanagement and misconduct, as shown by, *inter alia*, the Department of Transportation Order against Miami Air, the default on the Treasury Department loan by Caribbean Sun, the actions by other creditors pending against Caribbean Sun, and the Final Judgment and Sanctions Order in which Judge Hanzman found that Appellants' owner and CEO had given untruthful testimony and altered evidence to such extremes that he had "forfeited [his] rights to avail [himself] of the benefits of our court system." *See supra*, App. 995-996. Indeed, the trial court expressly found that exigent circumstances warranted the appointment of a receiver support by ample evidence in the record. In its Receivership

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according to the most recent Treasury Report from July 1, 2024. https://home.treasury.gov/system/files/136/4026b1CLoanReport07012024.pdf.

Order, the trial court found that "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" and that Halevi "demonstrated its right to and need for the Receiver to protect and preserve the Receivership Assets pursuant to Florida law." (App. 1135).

3. Appellants Were Not Entitled to a Stay without a Stay in the Rendering State or the Posting of a Supersedeas Bond in Florida

Appellants did not meet the requirements of the Florida Enforcement of Foreign Judgments Act to stay enforcement of Halevi's Delaware Judgment. Appellants failed to timely file an action and record a lis pendens directed toward the foreign judgment, as required by section 55.501, Florida Statutes. At the time of the hearing, there was neither a bond nor a stay in place.

Appellants misconstrue *SCG Travel, Inc. v. Westminster Fin. Corp.*, 583 So. 2d 723 (Fla. 4th DCA), *cause dismissed,* 591 So. 2d 185 (Fla. 1991), its discussion of the Uniform Enforcement of Foreign Judgments Act and the holding of the case: "[W]e have no trouble in concluding that appropriate bonds should have been required in this case … We therefore reverse the trial judge's denial of a bond as a

condition of the section 55.509 stay and remand this cause to him for the entry of orders requiring bonds in the appropriate amounts." *SCG Travel, Inc.,* 591 So. 2d at 726.

Because there was neither a bond nor a stay in place at the time of the July 26, 2024 hearing, the lower court correctly denied the objection to enforcement of the Delaware Judgment. *Cmty. Builders, Inc. v. Indian Motorcycle Assocs., Inc.,* 658 So. 2d 146, 147 (Fla. 3d DCA 1995) ("[S]tay of execution which requires bond in rendering state likewise requires bond in subsequent state"); *Jackson v. Alexander*, 706 So. 2d 364, 364-65 (Fla. 1st DCA 1998) (holding that, under section 55.505(3), Florida Statutes, a judgment creditor's enforcement of a recorded foreign judgment is automatically stayed upon filing an action challenging the judgment and recording a lis pendens against the judgment *only after* the judgment debtor posts a bond as required under section 55.509(2), Florida Statutes); *Ashkenazy v. LSREF2 Clover REO 2, LLC,* 2012 WL 12931941, at *1 (S.D. Fla., Oct. 18, 2012) (Fla. Stat. § 55.509 requires the posting of a bond as a condition to stay the enforcement of a foreign judgment); *Expedia, Inc. v. McKenney's, Inc.*, 611 So. 2d 98, 100 (Fla. 1st DCA

1992) (Unbonded stay cannot be granted under §55.509(1) because of the bond requirement in §55.509(2)).

B. Appellants Have Failed to Demonstrate a Likelihood of Harm Absent a Stay

Appellants also have failed to demonstrate a likelihood of harm absent a stay pending appeal. Appellants base their "harm" argument on the fantastical proposition that their business is doing well and running smoothly.

Most egregiously, Appellants claim that "[t]he lower Florida court in its ruling even acknowledged that, 'the company [Caribbean Sun Airlines] is running well'." Reply at 5. The trial court did no such thing. Instead, in the passage cited by Appellants, Judge Butchko stated that "Mr. Pacheco [Appellants' CFO] says that the company is running well." (App. 1373, Ln. 16).

Contrary to Appellants' assertion, Judge Butchko did not endorse or express any agreement with Mr. Pacheco's testimony. To the contrary, Judge Butchko expressly found in her oral ruling and in the Receivership Order that "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" and that Halevi "demonstrated its right to and need for the Receiver to protect and preserve the Receivership Assets pursuant to Florida law." (App. 1135-1136). The exigent circumstances that made the trial court's appointment of a receiver necessary belie Appellants' claim that their business is doing just fine.

Appellants also claim that they are already suffering harm because the trial court's Receivership Order is contrary to a July 30, 2024 order of the Superior Court of Delaware, temporarily staying execution on the judgment and preserving the status quo which included the appointment of a receiver by the Florida court, pending resolution of Appellants' motion to stay the Delaware proceedings pending resolution of their appeal to the Delaware Supreme Court. (App. 1134).

Appellants are wrong. The trial court entered its Receivership Order before the Delaware court issued its temporary stay order. And, the temporary stay of execution has no effect on the Receivership Order. The appointment of a receiver does not constitute execution on a judgment.

Florida law defines execution as process issued by the Clerk and "directed to all and singular the sheriffs of the state and shall be in full force throughout the state." Section 56.031, Florida Statutes. "All executions shall be returnable when satisfied, and the officers to whom they are delivered shall collect the amounts thereof as soon as possible and shall furnish the judgment debtor with a satisfaction of judgment." Section 56.041, Florida Statutes. See Fla. R. Civ. P. Form 1.914(a), Execution.

The only writ sought on behalf of the receiver was a writ of assistance to effectuate the order appointing the receiver. (App. 1167).

The distinction between a court appointed receiver and execution is well-recognized. *See CFTC v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279 (9th Cir. 1983) (upholding the district court's appointment of a receiver and finding that it did not constitute "the enforcement of a money judgment" in violation of a bankruptcy stay).

Moreover, the Delaware court expressly stated that the purpose of its temporary stay was "to preserve the status quo until a hearing on the merits can take place." The trial court's Receivership Order is entirely consistent with the Delaware court's Stay Order; both have

the purpose and effect of preserving the status quo. "[T]he appointment of a receiver—like the issuance of a preliminary injunction—is ordinarily a step taken to preserve the status quo pending the ultimate resolution of the dispute between the parties." *Klak v. Eagles' Rsrv. Homeowners' Ass'n, Inc.*, 862 So. 2d 947, 953 (Fla. 2d DCA 2004) (emphasis added).

The appointment of a receiver puts the property in the hands of the court. As stated in *Sunland Mortg. Corp. v. Lewis*, 515 So. 2d 1337 (Fla. 5th DCA 1987):

> A receiver is an arm of the court and the funds in its possession are as though they were in the hands of the court and held for the benefit of all lawful claimants. *Columbia Bank for Coop. v. Okeelanta Sugar Coop.*, 52 So.2d 670 (Fla. 1951). Once property is placed under the control of the court through appointment of a receiver, no creditor may obtain preference by any lien rendered subsequent thereto even if the suit under which the judgment lien is acquired was commenced prior to the date of the order appointing the receiver.

Id. at 1338-39.

Courts in both Florida and Delaware have held that a stay order does not preclude the continued operation of a receivership order already in effect, provided that the receiver preserves the status quo and does not attempt to sell or liquidate the debtor's assets. *Sec. &*

Exch. Comm'n v. Kirkland, No. 606-CV183-ORL-28KRS, 2006 WL 2639522 (M.D. Fla. Sept. 13, 2006); *Matter of State Insur. Dep't v. Remco Ins. Co.*, No. CIV.A. 8220, 1986 WL 3419 (Del. Ch. Mar. 18, 1986).[11]

C. Should the Court Grant Stay Relief Regarding the Appointment of a Receiver, It Should Impose Conditions on Appellants

Should the Court extend its temporary stay of execution and stay the appointment of a receiver, it should impose conditions on the Appellants that protect Halevi which the lower court found in need of protection such as a prejudgment attachment on an airplane. Halevi requests this Court impose conditions on the stay including the prohibition of waste, transfer, concealment or dissipation of assets, an obligation to maintain the status quo and providing the receiver access to all information regarding its operations pending a final determination.

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[11] In addition, a receiver may be appointed even if a stay is already in effect – precisely because a receivership and a stay are both designed to preserve the status quo. *See Tessler v. Ayer*, No. C-930133, 1994 WL 192221, at *4 (Ohio Ct. App. May 18, 1994); *Magnolia Petroleum Co. v. Jackson*, 80 S.W.2d 388, 390 (Tex. Civ. App. 1934); *Fernandez v. People*, 15 P. R. R. 605 (1909); *Kreling v. Kreling*, 118 Cal. 421, 422, 50 P. 549, 549 (1897); *Chicago & S.E. R. Co. v. St. Clair*, 144 Ind. 371, 42 N.E. 225 (1895); *Beard v. Arbuckle*, 19 W. Va. 145 (1881).

If the court in Delaware does not grant Appellants motion or otherwise extend its temporary stay, Halevi should be allowed to proceed forthwith with enforcement of its judgment.

V. CONCLUSION

For all of the foregoing reasons, Halevi respectfully requests that the Court limit stay relief only to execution consistent with the Delaware court's order, leaving the receiver in place subject to the stay on execution pending further order of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on August 9, 2024, the foregoing was served by e-mail via the Florida Courts E-Filing Portal on the persons listed below and all others registered to receive service of court documents in this case.

/s/ Brian S. Dervishi
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