Thomas W. McNamara
info@regulatoryresolutions.com
Regulatory Resolutions
501 West Broadway, Suite 2020
San Diego, California 92101
Telephone: 619-269-0400
Facsimile: 619-269-0401

Court-Appointed Receiver

Daniel M. Benjamin (SBN 209240)
dbenjamin@mcnamarallp.com
Andrew W. Robertson (SBN 62541)
arobertson@mcnamarallp.com
McNamara Benjamin LLP
501 West Broadway, Suite 2020
San Diego, California 92101
Telephone: 619-269-0400
Facsimile: 619-269-0401

Attorneys for Receiver

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Plaintiff, v. DAMIAN KUTZNER, et al., Defendants.	Case No. LACV16-00999 BRO (AFMx) **RECEIVER'S STATUS REPORT REGARDING RESIDENCE HELD IN THE NAME OF TIME OUT MANAGEMENT LTD., LLC AND REQUEST FOR INSTRUCTIONS** JUDGE: Hon. Beverly Reid O'Connell CTRM: 7C

RECEIVER'S STATUS REPORT AND REQUEST FOR INSTRUCTIONS

The primary physical asset of the Receivership Estate is a residence in Newport Beach held in the name of Time Out Management Ltd., LLC ("Time Out"), one of Defendant Jeremy Foti's companies. The house is the subject of three mortgages with face amounts totaling roughly $4.77 million. No payments are being made and it was necessary in December to stave off the foreclosure sale by the holder of the third trust deed. Real estate taxes on the property are delinquent.

Defendant Foti and his family are living in the residence.[1] Nevertheless, he has refused to even pay for the homeowners insurance. This seems to be a conscious decision – and not one driven entirely by economic necessity. Indeed, while refusing to pay the homeowners insurance, the Fotis are apparently paying the insurance on their three luxury automobiles (Lamborghini Huracan, Maserati Quattroporte, and Cadillac Escalade). In fact, in December, the Fotis initially paid the homeowners insurance, but then directed funds be used to pay the automobile policy.

In order to protect the house, the Receiver has been advancing the homeowners insurance payment each month. Given the dreadful financial straits of the Receivership Estate, this is not a long term solution. The situation has recently become dire in the Receiver's estimation. An appraisal obtained last week by the Receiver has fixed the home's value at $6 million. Given the outstanding mortgages, interest and real estate taxes stand at approximately $5 million, and continue to grow substantially every month, Time Out's equity in the property is

[1] There is a second residence owned by Chantel Foti in La Quinta, California, which is not part of the Receivership Estate. We know very little about this residence but believe that it is vacant and Chantel Foti's mother has been paying the monthly mortgage payments.

dissipating quickly. If something is not done, there will be nothing available for consumers should the FTC prevail.

1. <u>The Mortgages and Value of the Time Out Residence</u>

The Time Out residence is encumbered with three deeds of trust. The first deed of trust secures a note in the amount of $3,295,000. The second deed of trust secures a home equity line of credit in the amount of $1,000,000, which Defendant Foti has maxed out. The third deed of trust secures a note in the amount of $475,000. Thus, the outstanding mortgages total $4.77 million. However, this figure has grown and will continue to grow significantly as the last mortgage payments were made in July 2016. We estimate that Time Out owes roughly $100,000 in unpaid interest and that figure continues to grow at roughly $16,000 per month. At present, we estimate the amount due to mortgage holders is approximately $5 million and growing.

Additionally, the real estate taxes for the Time Out property are delinquent. According to the Orange County Treasurer's website, the outstanding balance is $26,019.63. By April 2017, the total outstanding amount will be $49,673.84. A true and correct copy of the Orange County Treasurer's website print out with the parcel number and property address redacted is attached hereto as Exhibit C.

In late December, we heard from counsel for the third mortgage holder about a then-ongoing foreclosure proceedings. A true and correct copy of the email correspondence with Julian Bach dated December 28, 2016 is attached hereto as Exhibit D. While counsel agreed to terminate the foreclosure sale as a result of the Orders issued in this case, he noted that there was no equity in the property according to his client, the holder of the third mortgage. Given our concerns about the precipitous monthly accumulation of interest (and corresponding decrease in equity), we sought a limited appraisal of the Time Out residence. The appraiser provided her report last week and valued the property at $6 million. A true and correct copy of the Desktop Restricted Appraisal Report dated January 21, 2017 with the parcel number and property address redacted is attached hereto as Exhibit A.[2] Even assuming the Time Out property could be sold at $6 million, the real estate commission and other costs of sale would reduce that amount by approximately $350,000, netting $5.6 million. Regardless of the ultimate market value, the equity in this house is dissipating daily – Foti has, in essence, become a squatter whose continued presence is diluting the value of a real estate asset.

2. Homeowners Insurance and Protection of the Time Out Property

I previously reported that the insurance on the Time Out residence was scheduled to lapse on October 28, 2016.[3] In order to protect the property, it was necessary that I pay the premium, and because Defendant Foti's luxury cars were on the same policy (and the insurance company required all to be brought current to reinstate the homeowners insurance), I had to pay the full premium of $1,642.44 for the residence and the cars. *See* ECF No. 147, pages 9-10; ECF No. 147-1, page 32.

Defendant Foti and his family continue to reside in the Time Out property. Nevertheless, he has made no payments towards the property – mortgages, real property taxes, or insurance – since July 2016. I was informed in November that Defendant Foti would not be making the homeowners insurance payment, so in December 2016 and January 2017, I made two additional homeowners insurance payments in the amount of $470.55 each.

---

[2] This is substantially less than the $9 million appraisal made at the time of the third mortgage in December 2015. *See* ECF No. 129, Attachment 2, pages 23. Why there is such a divergence in unclear, but in any event it seems reasonable to assume the $6 million appraisal is closer to the present market value of the Time Out home.

[3] The Temporary Restraining Order and the Preliminary Injunction both require "that insurance must be maintained for any Receivership Estate Assets that . . . are worth more than $1,000 net of liabilities." *See* ECF No. 130, Section IV(E), page 13; ECF No. 153, Section IV(F), page 27.

Notably, when my office asked Farmers Insurance about the December 2016 premium, we were initially told the homeowners insurance had been paid. Later, Farmers Insurance reported that the homeowners insurance had in fact not been paid. Apparently, Mrs. Foti made an online payment that was applied to the homeowners insurance. But she later instructed that the payment be directed to the auto policies (the Fotis had a Lamborghini, Maserati, and Escalade at the time). By paying the vehicle insurance – and purposely not paying the homeowners insurance – it appears the Fotis had the economic means to pay for homeowners insurance, but would rather rely on the Receiver to cover the expense.

In November, when I inquired about Defendant Foti reimbursing the Receivership for the first insurance premium and Foti's plans for upcoming real estate property taxes, Foti's counsel responded: "Mr. Foti has no assets and is delinquent on his mortgage, vehicle and boat payments and cannot make any payments on insurance or taxes. It appears that the Preliminary Injunction empowers you to make any insurance payments on the Receivership Estate Assets, and it would seem that the tax payments on the house would also covered by the Order." A true and correct copy of the email correspondence with Michael Thurman dated November 16, 2016 is attached hereto as Exhibit B.

3. Request for Instruction to Sell Receivership Estate Assets

As we previously reported, there are very few Receivership Estate assets and the frozen funds have not covered the expenses incurred to date. *See* ECF No. 41, page 4; ECF No. 67, pages 2-3; ECF No. 89, pages 3-4. Defendant Foti and his counsel's reliance on the Receivership Estate to pay the Time Out property expenses is therefore not feasible. At this point, the Receivership has paid all third party vendors but has insufficient funds to pay most of the Receiver's or his counsel's previously-approved fee applications. The payments for ongoing third-party expenses (including homeowners insurance) are essentially coming from the Receiver's, not Brookstone's, assets.

I request an instruction that the Time Out property be listed for sale. The situation described above reveals the property is essentially a wasting asset given that mortgage interest, taxes and related expenses continue to accumulate. A reasonably prompt sale of the property will likely result in proceeds in excess of mortgages, taxes and expenses. Allowing the status quo to continue will result in the dissipation of any remaining equity and ultimately the return of the property to the lenders. Without the sale of the property, the receivership will not be able to satisfy its outstanding obligations and there will be nothing available for consumers should the FTC prevail.[4]

Dated: January 25, 2017

By: /S/ Thomas W. McNamara
Receiver

[4] If the Court does not instruct me to sell the Time Out property, I request instruction to liquidate the jewelry the Receivership presently holds. This jewelry includes a Boucheron diamond necklace, two Chanel watches, and a Rolex watch. *See* ECF No. 137, page 5. This liquidation will generate funds to continue to pay partial receivership expenses.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

I further certify that I have caused the foregoing to be mailed by First Class Mail, postage paid, to the following non-CM/ECF participants:

Damian Kutzner
511 Cliff Drive
Newport Beach, CA 92663

S/ Andrew W. Robertson
Andrew W. Robertson