UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BANK OF AMERICA, N.A., Plaintiff, v. KEITH D. JONES, FLORESTINE EVANS JONES, AND REAL PROPERTY AND IMPROVEMENTS LOCATED AT 5115 NORTHSIDE DRIVE, SANDY SPRINGS, FULTON COUNTY, GEORGIA 30327, Defendants.	)	Case No.: **1:20-CV-00122-TCB**

DEFENDANTS KEITH D. JONES AND FLORESTINE EVANS JONES' MOTION TO VACATE AND SET ASIDE ORDER APPOINTING RECEIVER

COME NOW, Defendants, Keith D. Jones and Florestine Evans Jones (the "Joneses"), who by and through undersigned counsel, file their Brief in Support of Defendants' Motion to Vacate and Set Aside Order Appointing Receiver, showing this Honorable Court as follows:

1.

On January 9, 2020, Plaintiff, Bank of America, N.A. (the "Bank"),

filed a five-count Complaint requesting relief in the form of Expedited Declaratory Judgment, Quiet Title, Expedited Preliminary and Permanent Injunction, and Indemnification in an attempt to collect an alleged debt stemming from the Joneses mortgage of property located at 5115 Northside Drive NW, Atlanta, Fulton County, Georgia 30327 ("the Property") *See generally*, Doc. 1. By way of background, the present action arises from the following transactions or interactions between the parties.

2.

On or about April 21, 2008, the Joneses received a five-million-dollar ($5,000,000.00) loan from the Bank (the "Note") for construction and improvements to the Property, in exchange for which, the Joneses granted the Bank a security interest in the Property (the "Security Deed"). *See* Doc. 1 at ¶ 25; *see also* Doc. 1, Ex. B.

3.

On or about July 22, 2011, the parties entered a Loan Modification Agreement (the "Modification Agreement") extending the maturity date of the Note. *See* Doc. 1 at ¶ 26 and Doc. 1, Ex C, the Modification Agreement.

4.

On or about November 2, 2012, the Joneses filed an action in the Superior

Court of Fulton County seeking to enjoin the Bank from foreclosing on the Property. The Bank removed the case to this Court the same day. *See* Doc. 1 at 27.

5.

In that case, the Court, on or about May 3, 2013, entered a Final Judgment (the "Judgment") in favor of the Bank. *See* Doc. 1, Ex. E (Final Judgment, May 3, 2013).

6.

Following various other proceedings, on or about May 2, 2017, the Bank foreclosed on the Joneses' equitable interest in the Property, buying back the Property at the foreclosure sale for $4,050,000.00. *See* Doc. 1 at ¶ 31.

7.

After "validating" the sale, the Bank proceeded to evict the Joneses from the Property, and in September 2017, obtained a Writ of Possession (the "Writ") from the Fulton County Superior Court. The Bank executed the Writ on or about August 14, 2018, removing the Joneses' personal property (the "Contents") for the premises and placing that property in storage. *See* Doc. 1 at ¶ ¶ 3, 35, 44, and Doc. 1, Ex.'s G, I, and P.

8.

The Bank bases part of its case on the costs for the dispossessory proceedings

and storage fees for its placement of the Contents in storage. *See generally,* Doc. 1.

9.

In Count V of its Complaint, the Bank alleges that under Section 7.16 of the Modification Agreement (the "Indemnification Provision") the Joneses are liable to the Bank for the following expenses:

FEES AND COSTS RELATED TO DISPOSSESSORY	PROPERTY TAXES[7]	PACKING AND STORAGE CHARGES	SUM
$28,535.13	$621,908.29	$53,462.12	$703,905.54

Doc. 1 at 120; *see also,* Doc. 1 at FN 7.

10.

It requests that the Court, "enter judgment for the Bank against the Joneses" for these items in addition to "reasonable attorneys' fees, plus all other amounts advanced . . . as covered under the Indemnification Provision." Doc. 1 at 121.

11.

On or about November 2, 2018, after the Bank had already executed the Writ, the Fulton County Superior Court set aside the Writ based on the Bank's improper service. *See* Doc. 1 at ¶ ¶ 37, 45.

12.

In Count III of its Complaint, the Bank, allegedly in aid of its requested relief,

seeks the Appointment of a Receiver for the Contents. *See generally,* Doc. 1.

13.

The Bank alleges that "[e]ven after foreclosure the Jones still owe the Bank more than $2.3 million on the Judgment," Doc. 1 at ¶ 7. *See* Doc. 1 at ¶ 91.

14.

Nevertheless, on or about March 23, 2020, the Bank filed a Notice informing the Court that it had sold the Property. The Bank's Notice alleges that "The Property is the subject of some, but not all, of the relief the Bank has requested in this action" and "does moot this action as a justiciable controversy . . .". Doc. 26.

15.

Plaintiff's Notice fails to advise the Court of the sales price for the sold Property. See generally, Doc. 26.

16.

The Joneses will show in their Brief filed in support hereof (the "Brief"), that the Bank's Counts V and III are misleading, and upon close examination, do not justify the appointment of a receiver in this case. The Bank failed to confirm its foreclosure sale as required by Georgia law. Therefore, the Bank has no valid deficiency judgment, and its indemnity claims are barred by law and public policy.

17.

Additionally, on or about March 4, 2020, the undersigned counsel received a communication from Joel Murovitz, the Court's appointed Receiver in the case, indicating his intent to begin placing the Contents of the Property for sale by auction as early as March 11, 2020.

18.

The Receiver's correspondence reflects direct communication with the Joneses despite their representation by undersigned counsel. A true and correct copy of the Receiver email communication to the undersigned counsel is attached hereto as **Exhibit "B."**

19.

In light of the above, the Joneses seek the emergency intervention of the Court so that they may protect themselves against the Bank's unlawful collection actions as further outlined in their Brief.

PRAYER FOR RELIEF

WHEREFORE, the Joneses respectfully pray as follows:

a) That their Motion to Vacate and Set Aside the Court's Order appointing a receiver be GRANTED;

b) That the Court enjoin the Receiver further sale or dispossession of the

Joneses' personal property; and

c) That the Court order such other relief as deemed just and proper.

Certificate of Compliance with L.R. 5.1(c)

I certify that I created this document using Times New Roman 14-point font, which complies with the above Local Rule.

Respectfully submitted this 3rd day of April 2020.

By: ***/s/ Ronald J. Freeman, Sr.***
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CERTIFICATE OF SERVICE

I certify a precise copy of this document was filed with the Clerk on the below date, sending *ECF* notice to counsel of record, to wit:

Respectfully submitted this 7th day of February 2020.

By: ***/s/ Ronald J. Freeman, Sr.***
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BANK OF AMERICA, N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: **1:20-CV-00122-TCB**
	)	
KEITH D. JONES, FLORESTINE EVANS JONES, AND REAL PROPERTY AND IMPROVEMENTS LOCATED AT 5115 NORTHSIDE DRIVE, SANDY SPRINGS, FULTON COUNTY, GEORGIA 30327,	)	
	)	
Defendants.	)	

DEFENDANTS KEITH D. JONES AND FLORESTINE EVANS JONES' BRIEF IN SUPPORT OF THEIR MOTION TO VACATE AND SET ASIDE ORDER APPOINTING RECEIVER

COME NOW, Defendants, Keith D. Jones and Florestine Evans Jones (the "Joneses"), who by and through undersigned counsel file their Brief in Support of Defendants' Motion to Vacate and Set Aside Order Appointing Receiver, showing this Honorable Court as follows:

I.
STATEMENT OF FACTS

On January 9, 2020, Plaintiff, Bank of America, N.A. (the "Bank"), filed a five-count Complaint requesting relief in the form of Expedited Declaratory Judgment, Quiet Title, Expedited Preliminary and Permanent Injunction, and Indemnification. This Complaint attempts to collect an alleged debt based on the Joneses' mortgage for the property located at 5115 Northside Drive, NW Atlanta, GA 30327 (the "Property"). *See generally*, Doc. 1.

The pertinent facts for purposes of the present motion are as follows:

On or about April 21, 2008, the Joneses borrowed 5 million dollars ($5,000,000.00) from the Bank (the "Note") for construction and improvements to the Property. *See* Doc. 1 at ¶ 25. In exchange for the Note, the Joneses granted the Bank a security interest in the Property. *See* Doc. 1, Ex. B (the "Security Deed").

On or about July 22, 2011, the parties entered a Loan Modification Agreement (the "Modification Agreement") extending the maturity date of the Note. *See* Doc. 1 at ¶ 26 and Doc. 1, Ex C, the Modification Agreement. On or about November 2, 2012, the Joneses filed an action in the Superior Court of Fulton County seeking to enjoin the Bank from foreclosing on the Property. On the same day, the Bank removed the case to federal court. *See* Doc. 1 at 27.

In that case, on or about May 3, 2013, the Court entered a Final Judgment (the "Judgment") in favor of the Bank. *See* Doc. 1, Ex. E (Final Judgment (May 3, 2013)).

As of May 3, 2013, the Judgment provided for the following indebtedness on the part of the Joneses:

Unpaid Principal	$4,999,378.67
Accrued Interest Through May 3, 2013	$103,137.87
Property Taxes	$114,081.20
Homeowner's Ins. Premiums	$5,856.16
Attorneys' Fees	$502,510.49
TOTAL	**$5,724,964.39**

See Doc. 1, Ex. E.

The May 2013 Judgment further provides that interest shall accrue "on the unpaid principal balance and property taxes" at a rate of $420.28.00 per diem after the date of the Judgment.[1] *See* Doc. 1, Ex. E.

[1] According to its terms, the total principal and property taxes due as of May 3, 2013, is $5,113,459.87 **($4,999,378.67 + $114,081.20)**. This figure roughly returns the per diem interest set forth in the Judgment **((((($5,113,459.87 [Principal and Property Taxes] X .03 [Interest per Year]) / [52 Weeks per Year]))/ 7 [Days per Week])))** ~**$421.43)**. Note, however, the Order directing the Bank to submit a proposed judgment to the Court directed that the interest should accrue on the principal only. *See* Doc. 1, Ex. D (Order April 19, 2013) ("On or before May 3, 2013, at noon, Bank of America shall email to the Court (at alice_snedeker@gand.uscourts.gov) a proposed final judgment that awards BOA the outstanding principal under the note, accrued interest through May 3, the per diem rate of future interest at 3% per year (which shall not be calculated on interest)").

Nevertheless, at some point following the Judgment, Defendant Florestine Evan Jones filed for bankruptcy. During the bankruptcy proceedings, the Bank obtained permission from that court to foreclose on the Property. *See generally,* Doc. 1, Ex. G.

On or about May 02, 2017, the Bank conducted the foreclosure sale. At that sale, the Bank "bought-back" the Property for $4,050,000. *See* Doc. 1 at ¶ 31.

Around the time of the sale, the Property's appraised values for tax purposes were as follows:

Tax Year	Appraised Value
2017	$6,000,000.00
2016	$6,000,000.00
2015	$6,900,000.00
2014	$6,900,000.00
2013	$6,900,000.00

See Fulton County Board of Assessors, Value History, 5115 Northside Dr. NW, available at the *Fulton County Tax Assessor's website* [2] (last visited March 8, 2020), a true and correct copy of which is attached hereto as **Exhibit "A."**

Based on the May 2013 Judgment, the Joneses' total indebtedness on the date of the foreclosure sale (May 2, 2017) was the following:

[2] https://iaspublicaccess.fultoncountyga.gov/datalets/datalet.aspx?mode=value_history&sIndex=0&idx=1&LMparent=20

Judgment Debt as of May 3, 2013	$5,724,964.39
Per Diem Interest - May 3, 2013, to May 2, 2017 (*i.e.*, 1460 days)	$613,608.80
Total Judgment Debt as of May 2, 2017	**$6,338,573.19**

See Doc. 1, Ex. E.

On or about July 24, 2017, the court in Defendant Florestine Evans Jones' bankruptcy proceedings entered an order "validating" the Bank foreclosure sale. *See* Doc. 1 at 32. Shortly after that, the Bank initiated dispossessory proceedings in the Fulton County Superior Court, and eventually obtained a Writ of Possession against the Joneses (the "Writ"). *See* Doc. 1 at ¶ 35.

The Bank executed the Writ on or about August 14, 2018, removing the Joneses' personal property (the "Contents") for the premises and placing that property in storage. *See* Doc. 1 at ¶ 44 and Doc. 1, Ex. P.

The Bank bases part of its claims on its costs for the dispossessory proceedings and storage fees for its placement of the Contents in storage. *See generally,* Doc. 1.

In Count V, the Bank alleges that under Section 7.16 of the Modification Agreement (the "Indemnification Provision"), the Joneses are liable to the Bank for the following expenses:

FEES AND COSTS RELATED TO DISPOSSESSORY	PROPERTY TAXES[7]	PACKING AND STORAGE CHARGES	SUM
$28,535.13	$621,908.29	$53,462.12	$703,905.54

Doc. 1 at 120; *See* Doc. 1 at FN 7 (asserting that the alleged property taxes for which the Joneses are responsible include "taxes for the Property for 2011, and 2013-2019"); *but see* Doc. 1 at ¶ 119 (providing that Plaintiff's Property Tax claim(s) are for Tax Years "2011, 2013, 2015, 2016, and 2017 (through May 2, 2017)").

The Bank requests that the Court, "enter judgment for the Bank against the Joneses" for these items in addition to "reasonable attorneys' fees, plus all other amounts advanced . . . as covered under the Indemnification Provision." Doc. 1 at 121.

The Loan Modification Agreement's Indemnification Provision provides in pertinent part the following:

> 7.16 ***Indemnification.*** Borrower will indemnify and hold Bank harmless from any loss, liability, damages, judgment, and costs of any kind relating to or arising directly or indirectly out of (a) the Agreement . . . (b) any credit extended or committed by Bank to the Borrower

> hereunder, and (a) any litigation or proceeding related to or arising out of this Agreement . . .”

Doc. 1, Ex. C. Loan Modification Agreement at ¶ 7.16.

On or about November 2, 2018, after the Bank had already executed the Writ, the Fulton County court set aside the Writ based on the Bank’s improper service. *See* Doc. 1 at ¶ ¶ 37, 45.

In Count III of its Complaint, the Bank, allegedly in aid of this requested relief, seeks the Appointment of a Receiver for the Contents. *See generally,* Doc. 1.

The Bank alleges that “[e]ven after foreclosure the Jones still owe the Bank more than $2.3 million on the Judgment,” (Doc. 1 at ¶ 7.); and that,

> [t]he Bank is entitled to the appointment of a receiver in aid of execution on its Judgment under Fed. R. Civ. P. 66 and 69 to marshal, preserve, protect, and liquidate the . . . personal property of the Joneses . . . in light of Joneses’ insolvency and demonstrated intention to frustrate the Bank’s attempts to collect on its Judgment.

(Doc. At ¶ 91).

The Bank’s Counts V and III are misleading and, on close examination, fail to justify the appointment of a receiver in this case for the reasons set forth below.

On or about March 4, 2020, the undersigned received communication from Joel Murovitz, the Court’s appointed Receiver in the case, indicating his intent to begin placing the Contents of the Property for sale by auction as early as March 11,

2020. The Receiver's correspondence reflects direct communication with the Joneses despite their representation by undersigned counsel. A true and correct copy of the Receiver's email communication to the undersigned counsel is attached hereto as **Exhibit "B."**

Despite the foregoing, on or about March 18, 2020, the Bank filed a Notice informing the Court that it had sold "the real property located at 5115 Northside Dr., Sandy Springs, Ga., 30327 (the "Property")" and alleging that "The Property is the subject of some, but not all, of the relief the Bank has requested in this action" and "does moot this action as a justiciable controversy . . .". Doc. 26.

The Plaintiff's Notice does not advise the Court of what the Bank sold the Property for. *See generally*, Doc. 26.

Based on *Agriprocessors, Inc*. *infra*., and other authority set forth herein, the Receiver's appointment, in this case, should be vacated and set aside for the reasons further set forth below.

II.
CITATION OF AUTHORITY

Rule 66 of the Federal Rules of Civil Procedure governs the appointment of a federal equity receiver, and the appointment is within the sound discretion of the court. *See* Fed. R. Civ. P. 66 ("These rules govern an action in which the appointment of a receiver is sought . . ."); *see also Wickes v. Belgian Am. Educ. Found*, *infra*.

However, an appointment under the rule is ". . . like an injunction, **an extraordinary remedy, and ought never to be made except in cases of necessity, and upon a clear showing that . . . emergency exists, in order to protect the interests of the plaintiff in the property**." (Emphasis added.) *Wickes v. Belgian Am. Educ. Found., Inc*., 266 F. Supp. 38, 40 (S.D.N.Y. 1967); *see Gordon v. Washington*, 295 U.S. 30, 55 S. Ct. 584, 79 L. Ed. 1282 (1935); *Varsames v. Palazzolo*, 96 F. Supp. 2d 361 (S.D.N.Y. 2000); *Solis v. Matheson,* 563 F.3d 425 (9th Cir. 2009); and *LNV Corp. v. Harrison Family Bus., LLC*, 132 F. Supp. 3d 683 (D. Md. 2015).

> Although there is no precise formula for determining when a receiver may be appointed, **[six]** factors typically warranting appointment are **[(1)]** a valid claim by the party seeking the appointment; **[(2)]** the probability that fraudulent conduct has occurred or will occur to frustrate that claim; **[(3)]** imminent danger that property will be concealed, lost, or diminished in value; **[(4)]** inadequacy of legal remedies; **[(5)]** lack of a less drastic equitable remedy; **[(6)]** and likelihood that appointing the receiver will do more good than harm.

First Bank Bus. Capital, Inc. v. Agriprocessors, Inc., 602 F. Supp. 2d 1076, 1094 (N.D. Iowa 2009) (Citation omitted.); *see Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.,* 999 F.2d 314 (8th Cir. 1993).

Thus, the central determination of whether an appointment is proper under

Rule 66 is the existence of a valid claim.[3] Here, the Bank's claims under its Count III are imaginary and fail to meet the applicable standard for purposes of appointment, for the reasons provided below.

III. ARGUMENT

A. PLAINTIFF HAS NO VALID CLAIM FOR PURPOSES OF APPOINTMENT WHERE THE BANK DID NOT SEEK CONFIRMATION OF THE FORECLOSURE SALE, WHERE THE DEFICIENCY ALLEGED IN THE BANK'S COMPLAINT IS ARTIFICIAL, AND WHERE THE JONESES' INDEBTEDNESS REDUCED TO JUDGMENT IS LESS THAN THE VALUE OF THE BANK'S COLLATERAL AT THE TIME OF SALE.

1. The Bank has no valid claim where the Bank failed to confirm its Foreclosure of the Joneses' equitable interest, as required by law.

As stated above, the Plaintiff claims that "[e]ven after foreclosure the Jones still owe the Bank more than $2.3 million on the Judgment." Doc. 1 at ¶ 7. How the Bank achieves this figure is unclear, especially considering the Bank's "Judgment" is a pre-foreclosure judgment from the 2012 case and not a deficiency judgment after the Bank bought the property on the courthouse steps on May 2, 2017.

Again, the "Judgment" for purposes of the pleadings, refers to this Court's May 3, 2013 Judgment on the Note. *See* Doc. 1 at ¶ 1 (identifying its May 3, 2013 Judgment on the Note as the "Judgment" for purposes of its pleadings); ("This Court entered final judgment for the Bank and against the Joneses on May 3, 2013 (the

[3] Indeed, the first through the fifth *Agriprocessors* factors presuppose a valid claim.

"Judgment") after they defaulted on a $5,000,000 custom jumbo . . . home mortgage."). The Bank did not conduct its foreclosure sale until four years after this Court's Judgment on the Note. *See* Doc.1 at ¶ 3. ("[T]he Bank foreclosed the Property on May 2, 2017.").

As this District explains in *Redman Indus., Inc. v. Tower Properties*, "**[t]he fact that a creditor may choose not to seek foreclosure and pursue other remedies, does not alter the fact that when the creditor does foreclose, it must confirm in order to recover a deficiency judgment**." 517 F. Supp. 144, 151 (N.D. Ga. 1981).

Under O.C.G.A. § 44-14-161:

> **[N]o action** may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, **within 30 days after the sale**, report the sale to the judge of the superior court of the county in which the land is located for confirmation and approval . . .

(Emphasis added.); *see PNC Bank, Nat. Ass'n v. Smith*, 785 S.E.2d 505 (2016) and *Sockwell v. Pettus*, 228 S.E.2d 343, 344 (1976) (holding that no deficiency judgment may be pursued against the debtor there where, following foreclosure, no "confirmation . . . was had under Georgia Laws" even where "the deficiency included attorney fees which had become a part of the principal at the time of the sale.")

Although the Bank alleges that it received an order "validating" its foreclosure

sale, in Defendant Florestine Evan Jones' 2017 bankruptcy, (*See* Doc. 1, Ex. G, Order Granting Relief From Automatic Stay (April 24, 2017)), that order fails to meet the requirements of O.C.G.A. § 44-14-161. Under that provision's subsection "b", upon confirmation:

> The court **shall** require evidence **to show the true market value of the property sold** under the powers **and shall not confirm the sale unless it is satisfied that the property so sold brought its true market value** on such foreclosure sale.

(Emphasis added.)

In its order, the bankruptcy court expressly states that it "need not consider the value of the property" for purposes of its decision. Doc 1, Ex. G, *supra.*, at 9. For this reason, the order "validating" the sale fails to meet the requirements of a confirmation under Georgia law. *See Peoples Bank of E. Tennessee v. Harp*, 948 F. Supp. 2d 1335, 1342 (N.D. Ga. 2013) (construing Georgia law and finding that "[a]s the Confirmation Statute is in derogation of common law, it 'requires strict construction.'") [4] (Citation omitted.)

Based on the preceding, the Bank has no deficiency judgment, which it can

[4] Even if the bankruptcy court's order can be said to be a confirmation for purposes of Georgia law "[a] confirmation proceeding does not result in a personal judgment and it does not adjudicate the title of the property sold." *Peoples Bank of E. Tennessee v. Harp*, *supra*., at 1343. (Quotations omitted.) "Except as to the confirmed amount of the sale, it does not establish the liability of any party with regards to the indebtedness." *Id.*

actively pursue. Thus, the Bank is unlawfully retaining possession of the Joneses' personal property, which it acquired as a result of a Writ of Possession that the Superior Court vacated and set aside. *See* Doc. 1 at ¶ 45 and Doc. 1, Ex Q.

Notwithstanding the above, if a court had determined the amount of the Joneses' indebtedness following foreclosure in a proceeding to obtain a deficiency judgment, it would find the deficiency alleged by the Bank astonishingly inflated, for reasons set forth below.

2. The Bank has no valid claim where, based on the reasonable value of the Property at the time of Foreclosure, there would be no deficiency.

As stated above, as of the foreclosure sale on May 2, 2017, the Joneses' total judgment debt was $6,338,573.19:

Unpaid Principal	$4,999,378.67
Accrued Interest Through May 03, 2013	$103,137.87
Property Taxes	$114,081.20
Homeowner's Ins. Premiums	$5,856.16
Attorneys' Fees	$502,510.49
Per Diem Interest - May 03, 2013 to May 02, 2017) (i.e. 1460 days)	$613,608.80

TOTAL	**$6,338,573.19**

See Doc. 1, Ex. E (Final Judgment (May 3, 2013)).

Furthermore, the following evidence of the Property's value is of public record:

Tax Year	Appraised Value
2019	$5,600,000.00
2018	$6,000,000.00
2017	$6,000,000.00
2016	$6,000,000.00
2015	$6,900,000.00
2014	$6,900,000.00
2013	$6,900,000.00

See **Exhibit "A,"** Fulton County Board of Assessors, Value History, 5115 Northside Dr. NW, cited above. Based on these figures, the seven-year average appraised value of the Property for tax purposes is approximately $6,328,571.42; only $10,000.00 short of the Joneses' Judgment Debt as of the date of the foreclosure sale. *See Id*.

If one calculates **the average appraised value for taxes for the years**

immediately before the foreclosure sale and beginning in 2013, the average appraised value is $6,675,000.00. *See Id.* **Thus, at the time of foreclosure, the average assessed value for taxes for the years immediately prior to the foreclosure sale and beginning in 2013 results in a surplus of $336,426.81**. *See Id*.

Notably, the Bank's valuation of the Property supports these findings. For instance, the Bank, in its Motion to Validate Foreclosure Sale in Defendant Florestine Evans Jones' bankruptcy case, stated the following:

> Prior to the foreclosure sale, the Bank obtained a summary appraisal report prepared by Daniel M. Fries, as of February 28, 2017. That appraisal report reflects an orderly liquidation value for the Property of $5,700,000 and a fair market value of $6,300,000.

Amend. Mot. Relief from Automatic Stay and Mot. to Validate Foreclosure Sale, Case No 17-57886 (Bankrpt Ct. N.D Ga) (May 18, 2017).

In light of the above, the Bank's allegation that the Joneses owe the "over 2.3 million on the Judgment" (Doc. 1 at ¶ 7) is false. Again, the Bank has not obtained confirmation or a deficiency judgment for purposes of Georgia law. If the Bank had followed the law, there still would be no deficiency based on the reasonable value of the Property at that time of foreclosure on May 2, 2017. Additionally, **the Bank's Notice of its recent sale of the Property, failing to mention the amount for which the Property sold as described above, is further evidence of the arbitrariness of its claims.**

Based on the foregoing, the Bank has failed to allege a valid claim for purposes of *Agriprocessors* first five factors for the appointment of a receiver, as cited above. Therefore, the Order Appointing a Receiver should be vacated and set aside.

B. THE BANK'S CLAIMS ARISING UNDER THE INDEMNIFICATION PROVISION OF THE PARTIES' LOAN MODIFICATION AGREEMENT ARE NOT VALID CLAIMS FOR PURPOSES OF APPOINTMENT, WHERE THOSE CLAIMS REQUIRE AN UNREASONABLE INTERPRETATION OF THE PROVISION, WHERE BANK'S PAYMENTS WERE VOLUNTARY, AND THUS, UNRECOVERABLE UNDER GEORGIA'S VOLUNTARY PAYMENT DOCTRINE, O.C.G.A. § 13-1-13.

As stated above, the Bank's justification for its request for a Receiver stems from its alleged claims arising under the Indemnification Provision of the parties' Loan Modification Agreement. The Bank claims that under the Provision, the Joneses should pay the Bank's fees and costs related to Dispossessory, packing and storage charges, and property taxes for the years 2013-2019.

With the exception of the taxes through May 2, 2017, (i.e., the date of Foreclosure) —the Bank's assertion of the Joneses' liability for these items is simply wrong.

1. Indemnification Under Georgia Law

In an action under an indemnification clause in a contract, a federal court will apply the law of the state where the agreement was made. *See Hall v. Chrysler Corp.*, 526 F.2d 350, 352 (5th Cir. 1976) (finding that the district court "properly chose the law of Michigan, where the contract was made, as the applicable law.").

In Georgia, state public policy "seeks to encourage people to exercise due care in their activities for fear of liability, rather than to act carelessly cloaked with the knowledge that an indemnity contract will relieve such indifference." *Park Pride*

Atlanta, Inc. v. City of Atlanta, 541 S.E.2d 687, 689 (2000). Thus, under Georgia law, "[t]he words of a contract of indemnification . . . must be construed strictly against the indemnitee. '[A]nd every presumption is against such intention.'" *See Id.* Thus, "[w]hen an indemnity agreement is ambiguous, such ambiguity must be construed against the drafter." *Id.*

In *SRG Consulting, Inc. v. Eagle Hosp. Physicians, LLC*, Georgia's Court of Appeals examined a similar indemnification provision:

> SRG agrees to indemnify . . . Eagle from any and all claims . . . losses, liabilities, costs or damages, whatsoever, including attorney's fees and expenses incurred or sustained, **which relate to the services provided** . . . **under this Agreement**.

(Emphasis added). 640 S.E.2d 306, 308 (2006); *Compare* Doc. 1, Ex. C, Loan Modification Agreement at ¶ 7.16 ("Borrower will indemnify and hold Bank harmless from any loss, liability, damages, judgment, and costs of any kind **relating to or arising directly or indirectly out of** . . . **the Agreement** . . .").

Under the agreement between those parties, SRG was to provide sales and marketing services to Eagle, "a company that contracts with hospitals to provide medical care and management services," whereby "SRG would market Eagle's services to hospitals" in exchange for commissions. *Id.* at 307. That agreement also provided, "SRG shall also sub-contract with other persons or entities to assist in

performing its obligations under this Agreement, subject to Eagle's prior consent." *Id*. at 308.

A dispute between the parties arose over commissions after "Eagle purported to terminate its Agreement with SRG," but "SRG allege[d] that Eagle continued to accept marketing and sales efforts from SRG and [its sub-agent] for another four months." *Id.* The dispute resulted in the parties' participation in multiple proceedings in multiple jurisdictions.

The proceedings before the *SRG* court related to the following:

> SRG . . . sued Eagle, seeking an inspection of Eagle's books and records and asserting related claims. Eagle counterclaimed and moved for summary judgment on two of its counterclaims. The trial court granted summary judgment to Eagle on its counterclaim for indemnification against SRG in two lawsuits Eagle is defending in other jurisdictions.

Id. at 307. Reversing the trial court in part, the Court of Appeals stated the following:

> Assuming this question is properly before us, '[t]he scope of a written indemnification contract is a question of law for the court, which must strictly construe the contract against the indemnitee . . . .
>
> Applying the rules of contract construction, we find that SRG is not required to indemnify Eagle for the cost of defending against SRG's claims in the two lawsuits. Under its plain terms, the indemnity provision applies only to costs, damages, and fees "which relate to the services provided" under the Agreement. Looking to the contract as a whole, it is clear that the word "services" relates to the marketing and sales efforts undertaken by SRG. Although Eagle asserts that "both the Alabama and Kentucky lawsuits 'relate to the services provided by SRG under' the Agreement," this is circular logic. SRG's claims against

> Eagle, which are ultimately disputes over Eagle's liability for commissions, only relate to the services provided by SRG in the sense that SRG would not have earned commissions if it did not provide services to Eagle. However, the purpose of an indemnity clause in a contract is not to protect the parties to the contract from legal action by each other to enforce the contract.
>
> It is thus not a reasonable interpretation of the contract to require SRG to indemnify Eagle for the cost of defending litigation between them over the payment of commissions.

Id. at 308-09.

As explained below, the Bank's indemnity claims are unwarranted.

2. The Bank's claims allegedly arising under the Indemnification Provision are not valid where those claims require an unreasonable interpretation of the Provision.

The Bank claims the Joneses are liable to it for fees and costs related to Dispossessory, packing and storage charges, and property taxes for the years 2013-2019 under the "Indemnification Provision" of the parties' Loan Modification Agreement. *See* Doc. 1 at ¶ 119 and Doc. 1 at 121, cited above. The Bank has failed to state a claim upon which relief may be granted.

a) Fees and Cost Related to Dispossessory

Like the Defendant in *SRG*, the meaning the Bank seeks to assign to the Indemnification Provision leads to absurd conclusions in light on the reasonable expectations of the parties. By claiming the Joneses are liable for its fees and costs related to Dispossessory via the Indemnification Provision, the Bank is primarily

using the Provision to make the Joneses responsible for the Bank's post-foreclosure carrying-cost. The Bank recorded its Deed Under Power in 2017. It failed to seek the proper relief from the Fulton Superior Court to conduct its unlawful and unjustified collections tactics in violation of the Fair Consumer Debt Collection Act.

By deciding to "buy back" the Property at foreclosure, the Bank — having superior knowledge of the facts — made an independent choice to (re)invest in the Property. Put differently, following the foreclosure; the Joneses became tenants at sufferance. The Bank made the conscious decision to step into the shoes of a landlord. The Bank cannot now recover its dispossessory costs, absent a lease. The Bank has flagrantly sought the protection of this Court to justify its malicious, unlawful, and inequitable seizure of the Joneses' personal property without any legal authority.

Certaintly, if a third-party had purchased the Property and commenced eviction proceedings, no one would reasonably assert that the third-party could recover its fees and expenses absent a lease providing the same.

Therefore, the Bank's claim for its fees and costs related to Dispossessory under the Indemnification Provision is unmeritorious where its unreasonable interpretation of the Provision — shifting the Bank's post-foreclosure carrying charge to the Defendants — would make the Joneses responsible for the Bank's poor

business decisions. As such, it is unenforceable under *SRG Consulting, Inc*, *supra*.

In light of the above, this claim is not a valid claim for purposes of appointment of a receiver under *Agriprocessors, Inc., supra*.; *see, e.g.*, *Park Pride Atlanta, Inc. v. City of Atlanta*, 541 S.E.2d 687, *supra.*, at 689 ("Due to public policy concerns, absent explicit language to the contrary, an indemnity agreement cannot be interpreted to hold an indemnitee harmless from its own negligence.").

b) Property Taxes From May 2, 2017, through 2019

As with its Dispossessory costs, the Bank attempts to use the Indemnification Provision against the Joneses in support of its claim for taxes for the years following the foreclosure sale. The Bank's tactics are absurd and beneath the dignity of judicial enforcement. Under O.C.G.A. § 48-5-9, "[t]axes shall be charged against the owner of property if the owner is known and against the specific property itself if the owner is not known." Thus, the Bank cannot credibly assert that under the Indemnification Provision, the Joneses are responsible to the Bank for property taxes following foreclosure where the Bank decided to buy back the Property. *See Rhodes v. Anchor Rode Condo. Homeowner's Ass'n, Inc*., *supra*., ("A valid foreclosure of a security deed . . . vests legal title in the purchaser. . . .); *see also Herren v. Sucher*, 750 S.E.2d 430, 435 (2013) (holding that **although the indemnity provision at issue there "clearly required Mellor to indemnify and hold Barrin harmless, such an**

agreement is not synonymous with an agreement to assume another's liabilities."); and *Reading & Bates Corp. v. United States*, 40 Fed. Cl. 737, 749 (1998) ("[I]ncome results from a tax indemnification agreement . . . whereby one party contractually assumes responsibility for another's taxes.) ("Another person's payment of the taxpayer's . . . taxes constitutes gross income to the taxpayer . . .").

Thus, the Bank's indemnity claims for property taxes from May 2, 2017, through 2019, are invalid claims for purposes of *Agriprocessors, Inc.*

c) Property Taxes for 2013 through May 2, 2017

Although the Joneses might have been liable for the Property's taxes until the date of the foreclosure sale, the Bank had an obligation to include all past taxes in the amount advertised by the Bank as its asking price at the foreclosure sale. The Bank's failure to confirm the transaction and obtain a deficiency judgment under *Redman Indus., Inc.,* precludes it from pursuing a judgment on these amounts, as further explained below. This claim is also not a valid claim for purposes of *Agriprocessors, Inc.*

d) Property Taxes for 2011

Concerning the property taxes for 2011, said amounts, based on Plaintiff's sworn statements, were already included in the May 2013 Judgment: "On December 21, 2012, the Bank advanced funds for $114, 081.20 to satisfy certain tax liens for

delinquent taxes for 2011 and to satisfy delinquent taxes for 2012 . . .". Def. Mot. Default J. (February 13, 2013) Ex. A, Supplemental Aff. Joseph R. Linus, Senior Vice President at ¶ 11; *see* Doc. 1, Ex. D at 7-8 ("BOA has offered through the affidavit of Joseph R. Linus, a senior vice president, evidence that BOA paid $114,081.20 in overdue property taxes . . . Accordingly, the Court will enter judgment in favor of BOA and against Plaintiffs for $114,081.20 . . .").

Furthermore, where the Bank failed to confirm the sale and obtain a deficiency judgment, this claim is also precluded under *Redman Indus. Inc*. For these reasons, the Bank's request for 2011 Property Taxes is not a valid claim for purposes of *Agriprocessors, Inc.*

3. The Bank's payment of Property Taxes from May 2, 2017, through 2019 and Packing and Storage Charge Payments were Voluntary Payments for purposes of Georgia's Voluntary Payment Doctrine.

Under O.C.G.A. § 13-1-13,

> **Payments of claims made through ignorance of the law or where all the facts are known, and there is no misplaced confidence and no artifice, deception, or fraudulent practice used by the other party are deemed voluntary and cannot be recovered unless made under an urgent and immediate necessity therefor** or to release person or property from detention or to prevent an immediate seizure of person or property. Filing a protest at the time of payment does not change the rule prescribed in this Code section.

(Emphasis added.)

Following its eviction of the Joneses, the Bank, *if it complied with the*

statutory procedure, was under no obligation to maintain or preserve the Joneses' personal property:

> Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property . . . .

O.C.G.A. § 44-7-55(c).

Yet again, the Bank seeks to hold the Joneses liable for its unilateral business decisions. The Bank was under no legal obligation to pay the packing and storage charges it now complains of; therefore, it cannot recover those payments under the Indemnification Provision of the parties' Modification Agreement where its payments were voluntary:

> [N]o indemnity claim exists where the party seeking indemnity was not legally obligated to make the payment. In the absence of allegations showing a legal necessity for payment . . . we must assume that such payment was made voluntarily and not under the compulsion of law; and such being true, the . . . plaintiff had no standing to seek indemnity from the . . . defendant. This same principle applies to a claim for indemnification.

Emergency Professionals of Atlanta, P.C. v. Watson, 654 S.E.2d 434, 436 (2007); *see Grp. Res., Inc. v. City of Waycross*, 812 S.E.2d 141 (2018), *reconsideration denied* (Mar. 23, 2018); *BellSouth Telecommunications, Inc. v. Key Equipment*

Finance, Inc., Slip Copy (2009); *Gulf Life Ins. Co. v. Folsom*, 907 F.2d 1115, 1117 (1990); *Culbreath v. Culbreath*, 7 Ga. 64 (1849); and *Applebury v. Teachers' Retirement Sys. of Georgia*, 620 S.E.2d 452 (2005).

A. THE PLAINTIFF IS NOT ENTITLED TO THE EXTRAORDINARY REMEDY OF THE APPOINTMENT OF A RECEIVER, WHERE THE APPOINTMENT WOULD DO MORE HARM THAN GOOD FOR PURPOSES OF THE *AGRIPROCESSORS, INC.* FACTORS.

As expressed above, in addition to a determination of whether the moving party has a valid claim and other related factors, a district court will consider the "likelihood that appointing the receiver will do more good than harm." *Agriprocessors, Inc.*, 602 F. Supp. 2d 1076, *supra*., at 1094. As the Joneses have demonstrated above, the Bank has no real claims where it failed to confirm the sale within 30 days of foreclosure on the Joneses' equitable interest in the Property, as required by Georgia Law, and where the Bank's indemnity claims are unjustified.

Again as *Redman Indus., Inc. v. Tower Properties, Inc.* explains, "[t]he fact that a creditor may choose not to seek foreclosure and pursue other remedies, **does not alter the fact that when the creditor does foreclose, it must confirm in order to recover a deficiency judgment**." 517 F. Supp. 144, *supra.* at 151. (emphasis added).

The facts of that case are strikingly similar to those of the present action and provide a great example of why the appointment of a receiver here would do more

harm than good for purposes of *Agriprocessors, Inc*.

In *Redman Indus. Inc.*,

> Wachovia foreclosed on property owned by defendant Tower Properties. The foreclosure sale allegedly left a deficiency of at least $700,000.00, but instead of confirming the foreclosure sale and seeking a deficiency judgment against Tower, Wachovia exercised its rights under the Deficiency Debt Agreement with plaintiffs and increased plaintiffs' obligation to it by $700,000.00 as provided by that agreement. Now plaintiffs seek to recover the $700,000.00 from defendants under the indemnity contract.

Id. at 149. The plaintiffs were guarantors of a loan to the defendant, by which they pledged to indemnify Wachovia as expressed below. *See Id*. In adjudging the propriety of the indemnity agreement in question, the court framed the issue as follows:

> Count I of plaintiffs' complaint arises under the indemnity agreement by which defendants indemnified plaintiffs for certain losses that plaintiffs might incur because of the Quail Creek transaction. The exact scope of the indemnity agreement is disputed, but the court need not determine that scope precisely or finally. Rather, the court turns to defendants' argument that plaintiff cannot recover against them under the indemnity because the foreclosure sale was not confirmed as required by Georgia law.

Id. at 148.

Construing Georgia's confirmation statute, the court found that the state's strong public policy required that the court carefully scrutinize Wachovia's indemnity claims:

> **The strongest ground of public policy which occurs for the enforcement of statutes requiring confirmation in foreclosure proceedings is to protect the debtor from being subjected to double payment in cases where the property was purchased for a sum less than its market value.** Indeed, confirmation statutes are thought necessary to prevent inequities that arise when a creditor buys property on which it has foreclosed at a low price when property values are depressed and the economy is recessionary, and then proceeds to seek a personal judgment against the debtor for the difference between the low price the creditor has paid for the property at the foreclosure sale and the balance of the debt. Thus, the statute is designed to protect debtors from deficiency judgments when their property has been sold at a foreclosure sale for less than its fair market value.

Id. at 148–49. (Citations omitted.) (Quotations omitted.)

The court further stated:

> [i]n light of this public policy . . . the court wishes to assure that the Deficiency Debt Agreement between plaintiffs and Wachovia does not operate so as to be a subterfuge of the confirmation statute and the public policy of this state. Under the Deficiency Debt Agreement involved in this case there is a danger that defendants will be subjected to double payment and that the confirmation statute will be a mere matter of form easily circumvented by clever draftsmanship and artful structuring of transactions. The court does not wish to contribute to the construction of a formal trap by which debtors may be stripped of the protection intended for them to have by the General Assembly under the confirmation statute.

The court held: "**If [a] suit [on an] indemnity agreement . . . resembles a deficiency judgment action in substance, the court must deny" the requested relief where "the initial foreclosure sale was not confirmed**." (Emphasis added.) *Id*. at 150.

In the instant action, the fact that the Bank's indemnity claims, in substance, resemble a deficiency judgment action is undeniable.

As expressed above, the Bank bought back the Property at well below the historic value and now seeks to employ indemnity provisions to recoup an artificial deficiency. **Thus, the Bank's conduct here is precisely the type of conduct the court in *Redman* warned against, and against which Georgia's General Assembly sought to protect.** Therefore, the appointment of a receiver here does more harm than good for purposes of *Agriprocessors, Inc*. Again, **the Bank's Notice of its recent sale of the Property, failing to mention the amount for which the Property sold as described above, is further evidence of the arbitrariness of its claims.**

Furthermore, the Bank's collection practices in pursuit of an artificial deficiency violated the Joneses' Due Process rights. As set forth above, the Bank, after evicting the Joneses, removed their personal property (the "Contents") from the premises and placed the property in storage. Although the Bank claims to have allowed the Joneses to retrieve the Contents, it imposed many arbitrary requirements for them to do so. *See* Doc. 1, Ex. P, Letter from Paul Alexander, Miller & Martin PLLC to Andy Clark, Esq. October 29, 2018, cited above.

In this regard, Georgia's dispossessory statute requires strict compliance.

Indeed, as Georgia's Court of Appeals explained in *Washington v. Harrison*:

> [w]hile the statute provides that the landlord shall not be a bailee and shall owe no duty to the tenant with regard to his personal property, we interpret that provision as being contingent upon the landlord first placing the tenant's property on some portion of the landlord's property **or on other specific property designated by the landlord and approved by the executing officer.**

682 S.E.2d 679, 683 (2009).

By removing the Contents from the Property, placing the Contents in storage, and subsequently imposing several arbitrary rules on the Joneses to access the Contents, the Bank failed to comply with the dispossessory statute, unlawfully taking possession of the Joneses' personal property for use solely by the Bank. *See Id*. (finding purchasers liable for conversion for failure to comply with Georgia's dispossessory statute strictly); *see also Cobb Exchange Bank v. Byrd*, 134 S.E.2d 871, 872 (1964) ("Any act of dominion wrongfully asserted over another's property which negatives or is inconsistent with the right of the true owner amounts in law to a conversion.")

Finally — in its attempt to use the Indemnification Provision to collect a deficiency following foreclosure where it has not obtained confirmation as required by law and prohibited under *Redman Indus., Inc.*¸ *supra*. — the Bank violates the Fair Consumer Debt Collection Act, Title 15 U.S.C.A. § 1692, *et seq*. For instance, under 15 U.S.C.A. § 1692, *et seq*,

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
> (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law . . .
>
> (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--
> (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

15 U.S.C.A. § 1692f; *see* 15 U.S.C.A. § 1692(e) ("It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors . . . and to promote consistent State action to protect consumers against debt collection abuses.")

For these reasons, the appointment of a receiver is improper where the appointment would further the Bank's unlawful acts of seizing and withholding the Joneses' property in violation of federal and state law.

IV. CONCLUSION

For the herein and foregoing reasons, the present Motion to Vacate and Set Aside the Court's Order Appointing a Receiver for the Joneses' personal property should be GRANTED.

Certificate of Compliance with L.R. 5.1(c)

I certify that I created this document using Times New Roman 14-point font, which complies with the above Local Rule.

Respectfully submitted this 3rd day of April 2020.

By: ***/s/ Ronald J. Freeman, Sr.***
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify a precise copy of this document was filed with the Clerk on the below date, sending *ECF* notice to counsel of record, to wit:

Respectfully submitted this 7th day of February 2020.

By: ***/s/ Ronald J. Freeman, Sr.***
Ronald J. Freeman, Sr.
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Attorneys for Defendants

Fulton County Board of Assessors

PARID: 17 0203 LL0786

BANK OF AMERICA N A 5115 NORTHSIDE DR NW

Appraised Values

Tax Year	Land	Building	Total
2019	926,100	4,673,900	5,600,000
2018	734,400	5,265,600	6,000,000
2017	734,400	5,265,600	6,000,000
2016	734,400	5,265,600	6,000,000
2015	568,200	6,331,800	6,900,000
2014	568,200	6,331,800	6,900,000
2013	568,200	6,331,800	6,900,000
2012	816,000	4,184,000	5,000,000
2011	816,000	4,184,000	5,000,000
2010	897,600	4,102,400	5,000,000
2009	897,600	4,626,400	5,524,000
2008	897,600	3,461,200	4,358,800
2007	897,600	200,000	1,097,600
2006	897,600	200,000	1,097,600
2005	897,600	0	897,600
2004	654,600	0	654,600
2003	654,600	0	654,600
2002	654,600	0	654,600
2001	817,900	219,800	1,037,700
2000	817,900	185,700	1,003,600

Assessed Values

Tax Year	Class	Land	Buidling	Total	Base Year
2019	R4	370,440	1,869,560	2,400,000	
2018	R4	293,760	2,106,240	2,400,000	
2017	R4	293,760	2,106,240	2,400,000	2009
2016	R4	293,760	2,106,240	2,400,000	2009
2015	R4	227,280	2,532,720	2,760,000	2009
2014	R4	227,280	2,532,720	2,760,000	2009
2013	R4	227,280	2,532,720	2,760,000	2009
2012	R4	326,400	1,673,600	2,000,000	2009
2011	R4	326,400	1,673,600	2,000,000	2009
2010	R4	359,040	1,640,960	2,000,000	2009
2009	R4	359,040	1,850,560	2,209,600	2009
2008	R4	359,040	1,384,480	1,743,520	
2007	R4	359,040	80,000	439,040	
2006	R4	359,040	80,000	439,040	
2005	R4	359,040		359,040	

2004	R4	261,840		261,840
2003	R3	261,840		261,840
2002	R3	261,840		261,840
2001	R3	327,160	87,920	415,080
2000	R3	327,160	74,280	401,440

Shayla Grayson

From: Ronald J. Freeman, Sr.
Sent: Friday, April 3, 2020 2:51 PM
To: Shayla Grayson
Subject: Fwd: BOA v Jones

Sent from my iPhone

Ronald J. Freeman, Sr
JOHNSON & FREEMAN, LLC
Managing Member

404.924.6711 direct
404.358.2386 cell
rfreeman@jfllc.com
www.jfllc.com

Begin forwarded message:

> **From:** Joel Murovitz <jmurovitz@glassratner.com>
> **Date:** March 4, 2020 at 10:54:18 AM EST
> **To:** "Ronald J. Freeman, Sr." <rfreeman@jfllc.com>, "Paul Alexander (Paul.Alexander@millermartin.com)" <Paul.Alexander@millermartin.com>
> **Cc:** "andy@andyclarklaw.com" <andy@andyclarklaw.com>, Janise Miller <jmiller1@jfllc.com>, Shayla Grayson <sgrayson@jfllc.com>, Bill DuPre <Bill.DuPre@millermartin.com>
> **Subject: RE: BOA v Jones**
>
> Ronald and Paul,
>
> Pursuant to Section 21(k) of the Receivership Order, please take this email as notice that I have engaged Peachtree-Bennett (https://www.peachtreebennett.com) to conduct an auction of the personal property including the vehicle currently in storage in Villa Rica. They have begun moving the furniture out of the storage pods into their facility to process. The art, however, will be the last pod to go as I

want to allow all parties the opportunity to produce documentation relating to other parties' interest in the art or any other personal property.

The strategy will be to have Peachtree-Bennett spend a couple of weeks promoting the sale, but they have advised that it is critical that the art and vehicle be included in that promotion to make it more appealing. I will notify all parties of an auction date once it has been finalized, but they first need to process the art to complete the offering package.

Please provide me with any documentation to evidence other parties' interests in any of the personal property including the art no later than 5:00 pm on Wednesday, March 11, 2020. If none is received, I plan on allowing Peachtree-Bennett to process the art so they can complete the auction planning process.

Please confirm receipt of this email.

Thank you,

GLASSRATNER
a B. Riley Financial company

3445 Peachtree Road
Suite 1225
Atlanta, GA 30326

Joel Murovitz, LEED AP
Managing Director – Real Estate & Construction Services
Court Appointed Receiver

Direct: 470.346.6834 *(Note: my direct phone number has changed. Please update accordingly.)*
Mobile: 404.808.3252
Email: jmurovitz@glassratner.com
VCard | **LinkedIn** | **www.GlassRatner.com** | **www.brileyfin.com**

Member of BTG Global Advisory

From: Ronald J. Freeman, Sr. <rfreeman@jfllc.com>
Sent: Tuesday, March 3, 2020 7:37 AM
To: Joel Murovitz <jmurovitz@glassratner.com>
Cc: andy@andyclarklaw.com; Ronald J. Freeman, Sr. <rfreeman@jfllc.com>; Janise Miller <jmiller1@jfllc.com>; Shayla Grayson <sgrayson@jfllc.com>
Subject: Re: BOA v Jones

Joel

This firm has assumed representation of the Jones in this matter. Please direct all future communications to our attention. We will investigate this information and respond accordingly. In the interim, please ensure that all personal property is preserved and maintained.

Sent from my iPhone

Ronald J. Freeman, Sr
JOHNSON & FREEMAN, LLC

Managing Member

404.924.6711 direct
404.358.2386 cell
rfreeman@jfllc.com
www.jfllc.com

On Mar 3, 2020, at 12:02 AM, Joel Murovitz <jmurovitz@glassratner.com> wrote:

Hi Andy and Ronald,

Mrs. Jones called me on Friday and claimed that much of the art belongs to the artists and they were simply showing it. I requested documentation but have not received anything. She also said that she was not comfortable sharing the artists name so that I could reach out.

Do either of you have any evidence of other parties' interest in the art or contact info for the artists?

Thank you,

Joel Murovitz, LEED AP
Managing Director – Real Estate & Construction Services
Court Appointed Receiver

Atlanta, GA 30326

Direct: 470.346.6834 *(Note: my direct phone number has changed. Please update accordingly.)*
Mobile: 404.808.3252
Email: jmurovitz@glassratner.com
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<pastedImagebase640.png>