STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1931

BLUEPRINT 2020 OPPORTUNITY ZONE FUND, LLLP, a Delaware limited liability partnership; and WOODFOREST CEI-BOULOS OPPORTUNITY FUND, LLC, a Delaware limited liability company,

Plaintiffs,

v.

10 ACADEMY STREET QOZB I, LLC; CITISCULPT, LLC; CS-10 SOUTH ACADEMY STREET, LLC; CITISCULPT SC, LLC; 10 ACADEMY STREET, LLC; CITISCULPT FUND SERVICES, LLC; 10 ACADEMY OPPORTUNITY ZONE FUND I, LLC; CHARLES LINDSEY MCALPINE; and MICHAEL J. MILLER,

Defendants.

ORDER AND OPINION ON RECEIVER'S MOTION TO APPROVE SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES

1. **THIS MATTER** is before the Court on the Receiver's Motion to Approve Sale of Real Property Free and Clear of Liens, Claims, Interests, and Encumbrances (the "Motion"),[1] filed in the above-captioned case by The Finley Group, LLC (the "Receiver") as general receiver for Defendant 10 Academy Street QOZB I, LLC (the "QOZB").

2. Having considered the Motion, the briefs filed in support of and in opposition to the Motion, the arguments of counsel at the hearing on the Motion, and other

[1] (Receiver's Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances [hereinafter "Mot. Sell"], ECF No. 62.)

appropriate matters of record, the Court, in the exercise of its discretion, hereby **GRANTS** the Receiver's Motion as set forth below.

Parker Poe Adams & Bernstein, LLP, by William L. Esser IV, for Plaintiff Woodforest CEI-Boulos Opportunity Fund, LLC.

Womble Bond Dickinson (US), LLP, by Scott D. Anderson, for Plaintiff Blueprint 2020 Opportunity Zone Fund, LLLP.

Grier Wright Martinez, PA, by Michael L. Martinez, for Receiver The Finley Group, Inc.

Maynard Nexsen, PC, by Lex M. Erwin, David Luzum, and Kevin Zhao, for Defendants CS-10 South Academy Street, LLC, CitiSculpt SC, LLC, and 10 Academy Street, LLC.

Smith, Currie & Hancock, LLP, by Matthew E. Cox, for Defendants CitiSculpt, LLC and CitiSculpt Fund Services, LLC.

Nelson Mullins Riley & Scarborough, LLP, by Fred M. Wood, Jr., for Defendants CitiSculpt Fund Services, LLC, 10 Academy Opportunity Zone Fund I, LLC, and Charles Lindsey McAlpine.

Poyner Spruill, LLP, by John Michael Durnovich, for party in interest First Carolina Bank.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

3. Through the Motion, the Receiver seeks the authority to sell a piece of real property in Greenville, South Carolina bearing tax parcel identification number 0050000200106 (the "Multi-Family Land").[2] The Multi-Family Land is contiguous to

[2] (10 Academy Opportunity Zone Fund I, LLC's Br. Opp'n The Finley Group, Inc.'s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances Ex. A, Am. and Restated Limited Liability Company Agreement 6 [hereinafter "QOZB Operating Agreement"], ECF No. 100.1; Mot. Sell.)

another piece of real property bearing tax parcel identification number 0050000200100 that includes an existing office building (the "Office Land").[3]

4. The QOZB is a qualified opportunity zone business created in 2019 to purchase and develop the Multi-Family Land.[4] Prior to its acquisition by the QOZB on 16 December 2020, the Multi-Family Land was owned by Defendant 10 Academy Street, LLC ("10 Academy Street").[5] The Office Land, however, was transferred from Defendant CS-10 South Academy Street, LLC to Defendant CitiSculpt SC, LLC ("CitiSculpt SC") in October 2020,[6] secured by a mortgage on the Office Land and an assignment of rights under a parking lease dated 27 October 2020 that currently encumbers the Multi-Family Land (the "Current Parking Lease" or the "Lease") in favor of First Carolina Bank ("FCB").[7] Defendant CitiSculpt Fund Services, LLC

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[3] (QOZB Operating Agreement 4.)

[4] (*See generally* QOZB Operating Agreement.)

[5] (Mot. Sell Ex. C Purchase and Sale Agreement for the Property 10 South Academy Greenville, South Carolina [hereinafter "Multi-Family Land Purchase and Sale Agreement"], ECF No. 62.4.) The Multi-Family Land Purchase and Sale Agreement erroneously lists the seller and the buyer as 10 South Academy Street, LLC and 10 South Academy Street Qualified Opportunity Zone Business, LLC, respectively. The parties to this agreement attribute these misnomers to scrivener's errors, but all interested parties agree that this contract governs the terms of sale between 10 Academy Street, LLC and the QOZB. (Aff. Charles Lindsey McAlpine, dated 21 Feb. 2023, at ¶¶ 36–39 [hereinafter "McAlpine Aff."], ECF No. 16; Aff. Matthew W. Smith Supp. Mot. Sell, dated 10 July 2023, at ¶ 8 [hereinafter "Smith Aff."], ECF No. 62.2.)

[6] (Smith Aff. ¶ 5(d).)

[7] (Mot. Sell Ex. H, Agreement Regarding Parking Lease Sec. [hereinafter "Current Parking Lease Assignment"], ECF No. 62.9.) The Court recognizes, and FCB agrees, that due to FCB's interest in the Current Parking Lease, it is a "party in interest" as defined by N.C.G.S. § 1-507.20(22). (*See also* Notice Appearance, ECF No. 94.)

("CitiSculpt") was formed to serve as manager of the QOZB and solicited investments in the QOZB through a private placement memorandum.[8] CitiSculpt, CitiSculpt SC, and 10 Academy Street are all owned or controlled by Defendant Charles Lindsey McAlpine ("McAlpine").[9]

5. The Multi-Family Land is presently encumbered by four parking leases, which currently guarantee the Office Land's tenants an aggregate of 101 parking spaces and 10 visitor parking spaces:[10] a parking lease effective 1 January 2019 (the "January 2019 Parking Lease"),[11] a parking lease dated 2 April 2020 (the "April 2020 Parking Lease"),[12] a parking sublease dated 2 April 2020 (the "April 2020 Sublease"),[13] and the Current Parking Lease (together with the other parking leases and sublease, the "Parking Leases").[14] The Parking Leases all feature the right of early termination at will by their respective landlords.[15] Like the other Parking

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[8] (McAlpine Aff. ¶¶ 7–8.)

[9] McAlpine has either acknowledged his control or signed on behalf of these entities as manager. (McAlpine Aff. ¶¶ 13–15; 2d McAlpine Aff. ¶¶ 27; Current Parking Lease 16–17.))

[10] (Smith Aff. ¶ 9.)

[11] (Mot. Sell Ex. D [hereinafter "January 2019 Parking Lease"], ECF No. 62.5.)

[12] (Mot. Sell Ex. E [hereinafter "April 2020 Parking Lease"], ECF No. 62.6.)

[13] (Mot. Sell Ex. F [hereinafter "April 2020 Sublease"], ECF No. 62.7.)

[14] (Mot. Sell Ex. G [hereinafter "Current Parking Lease"], ECF No. 62.8.) There is also a Replacement Parking Lease that is to commence if and when a parking deck is constructed on the Multi-Family Land. (Current Parking Lease 24–46.) The Replacement Parking Lease's pages are not individually numbered, but they encompass pages twenty-four through forty-six of the filed PDF of the Current Parking Lease.

[15] (*See* January 2019 Parking Lease ¶ 2; April 2020 Parking Lease Sec. 2.05; April 2020 Sublease Sec. 1.02(b); Current Parking Lease Sec. 2.05.)

Leases, the Current Parking Lease grants the QOZB "the option, exercisable in [the QOZB's] absolute discretion, to terminate this Lease at any time during the Term upon giving [CitiSculpt SC] at least thirty (30) days' written notice[.]"[16] However, until FCB's mortgage is released, FCB's prior written consent is a condition of the Current Parking Lease's termination.[17] It is undisputed that FCB has not given written consent to termination—indeed, FCB opposes termination of the Current Parking Lease.[18]

6. CitiSculpt issued a private placement memorandum to spur investment in the QOZB and began soliciting investors in 2019.[19] Plaintiffs Blueprint 2020 Opportunity Zone Fund, LLLP ("Blueprint") and Woodforest CEI-Boulos Opportunity Fund, LLC (together with Blueprint, "Plaintiffs") invested $2,500,000 each in the QOZB.[20] CitiSculpt and Plaintiffs executed a final operating agreement for the QOZB on 14 December 2020 (the "Operating Agreement").[21]

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[16] (Current Parking Lease Sec. 2.05.)

[17] (Current Parking Lease Sec. 2.05.)

[18] (First Carolina Bank's Resp. Opp'n Receiver's Mot. Approve Sale Real Property 2–3 [hereinafter "FCB's Br. Opp'n"], ECF No. 93.)

[19] (McAlpine Aff. ¶ 7; Aff. Charles Lindsey McAlpine, dated Feb. 22, 2023, at ¶ 9 [hereinafter "2d McAlpine Aff."], ECF No. 20; 2d McAlpine Aff. Ex. 1 Confidential Private Placement Mem., ECF No. 20.1; 2d McAlpine Aff. Ex. 2 Suppl. the March 20, 2019 Confidential Private Placement Mem., ECF No. 20.2.) The 22 February 2023 date used for the second McAlpine affidavit reflects the date the affidavit was filed on the Court's electronic docket because the affidavit does not reflect the date that it was signed.

[20] (QOZB Operating Agreement 8, Ex. A.))

[21] (QOZB Operating Agreement.)

7. On 24 December 2020, 10 Academy Street, LLC transferred the Multi-Family Land to the QOZB for $3,000,000 as anticipated by the QOZB's Operating Agreement.[22] The Operating Agreement further provided that the QOZB would also acquire the Office Land after obtaining sufficient capital to do so.[23]

8. Relations between the parties broke down after CitiSculpt disclosed to Plaintiffs in a letter dated 7 July 2021 (the "July 2021 Letter") that a $2,000,000 deposit towards the purchase of the Office Land had been paid by the QOZB and forfeited without Plaintiffs' knowledge.[24] Plaintiffs initiated this suit on 1 February 2023 and simultaneously moved for the appointment of a receiver.[25] At the 23 February 2023 hearing on Plaintiffs' Motion for Appointment of Receiver, the parties agreed that development of the QOZB was no longer a viable plan, and the remaining question was whether liquidation of the QOZB's assets should be conducted by CitiSculpt or an independent receiver.[26] The Court thereafter appointed The Finley Group, LLC as receiver over the QOZB in an order dated 9 March 2023 (the

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[22] (Operating Agreement Sec. 3.3(d); Multi-Family Land Purchase and Sale Agreement.)

[23] (Operating Agreement Sec. 3.3(d).)

[24] (Verified Compl. Judicial Dissolution Ex. C, ECF No. 3.4; *see also* Aff. Edward Ross Baird, dated Feb. 17, 2023, at ¶ 3, ECF No. 22.)

[25] (Verified Compl. Judicial Dissolution, ECF No. 3; Pls.' Mot. Appointment Receiver, ECF No. 4.)

[26] (*See also* McAlpine Aff. ¶ 62 ("The QOZB continues to pursue efforts to sell the [Multi-Family] Land, just as all agree should happen.").)

"Receivership Order").[27] The Receivership Order allows the Receiver to market and sell the Multi-Family Land but requires Court approval prior before the Receiver may move forward with any sale.[28] The Court also determined in the same order that CitiSculpt failed to disclose the $2,000,000 deposit and concealed it from Plaintiffs.[29]

9. The Receiver filed the Motion on 10 July 2023. Through the Motion, the Receiver seeks the Court's approval of a Purchase and Sale Agreement (the "Proposed Sale Contract") to sell the Multi-Family Land to Henning Holdings, LLC ("Henning").[30] The Receiver represents that Henning is unrelated to the Receiver, Receiver's counsel, and Foundry Commercial ("Foundry")—the real estate broker the Receiver retained to sell the receivership property.[31] The Receiver further represents that the proposed purchase price and sale contract conform to the present commercial real estate market and are fair, reasonable, and serve the best interests of the QOZB.[32]

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[27] (Order Pls.' Mot. Appointment Receiver [hereinafter "Receivership Order"], ECF Nos. 28 (sealed), 33 (public).) Citations to the Receivership Order will be to the public version of the document.

[28] (Receivership Order ¶ 27(p).)

[29] (Receivership Order ¶ 10.)

[30] (Mot. Sell Ex. J, ECF No. 62.11; Smith Aff. ¶¶ 13–14.)

[31] (Smith Aff. ¶ 16.)

[32] (Smith Aff. ¶¶ 17–18.)

10. Defendants CitiSculpt[33] and 10 Academy Opportunity Zone Fund I, LLC ("Academy QOF"),[34] both primarily owned by McAlpine, and FCB (collectively, the "Opposing Parties"),[35] as CitiSculpt SC's mortgage lender for the Office Land and holder of an assignment of CitiSculpt SC's interest in the Current Parking Lease,[36] have all filed oppositions to the Motion. Plaintiffs and the Receiver filed reply briefs in support of the Motion on 15 August 2023.[37]

11. The Court convened a hearing on the Motion on 24 August 2023 (the "Hearing"), at which all parties and party in interest FCB were represented by counsel.[38] On 20 September 2023, the Receiver filed a Notice of Subsequent Facts, alleging that the Current Parking Lease has been definitively terminated "based on

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[33] (CitiSculpt Fund Services, LLC's Objection and Br. Opp'n Mot. Approve Sale Free and Clear [hereinafter "CitiSculpt's Br. Opp'n"], ECF No. 95.)

[34] (10 Academy Opportunity Zone Fund I, LLC's Br. Opp'n The Finley Group, Inc.'s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances [hereinafter "Academy QOF's Br. Opp'n"], ECF No. 100.) Academy QOF's response was due on 30 July 2023, but it was filed ten days later on 9 August 2023. Despite its untimeliness and without any objection by the Receiver, the Court has elected to consider the response.

[35] (FCB's Br. Opp'n.)

[36] (Current Parking Lease Assignment.)

[37] (*See* Receiver's Reply Supp. Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances, ECF No. 103; Pls.' Reply Br. Supp. Receiver's Mot. Approve Sale Real Property [hereinafter "Pls.' Reply Br."], ECF No. 107.) The Court notes that Plaintiffs have not filed a joinder to the Motion, yet they have filed a reply in support of the Motion. Since the Court has elected to consider Academy QOF's untimely response, and without objection from Defendants, the Court will also consider Plaintiffs' reply.

[38] At the Hearing, the Court also heard argument on the Receiver's Motion to Enforce Receivership Order and Impose Sanctions for Violations of Receivership Order, (ECF No. 65), which will be decided by separate order.

[CitiSculpt SC]'s failure to cure its fundamental non-payment of rent[.]"[39] Defendants CS-10 South Academy Street, LLC, CitiSculpt SC, 10 Academy Street, LLC, and party in interest FCB filed their responses to this Notice of Subsequent Facts on 29 September 2023.[40] Plaintiffs submitted their own response in support of the Receiver's position on the same date.[41] The parties attempted to mediate their various disputes, and the Court elected to delay issuing its ruling on the current Motion in the hope that the parties would reach a resolution. The mediator reported to the Court on 1 November 2023 that he intended to declare an impasse at the parties' request. It appears to the Court that the Motion is now ripe for resolution.

II.

ANALYSIS

12. The Motion seeks as its primary relief an order from the Court approving the proposed sale,[42] directing the Receiver to take the necessary steps to transfer the Multi-Family Land free and clear of all liens, claims, interests, and encumbrances, and authorizing the Receiver to take all actions necessary or appropriate to consummate the sale. The Motion also asks the Court to find that (i) the Proposed

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[39] (Notice Subsequent Facts ¶ 3, ECF No. 117.)

[40] (Defs. CS-10 South Academy Street, LLC, CitiSculpt SC, LLC, and 10 Academy Street, LLC's Resp. the Receiver's Notice Subsequent Facts, ECF No. 120; First Carolina Bank's Resp. Receiver's Notice Subsequent Facts, ECF No. 122.)

[41] (Pls.' Resp. Supp. Receiver's Notice Subsequent Facts, ECF No. 121.)

[42] *See* N.C.G.S. § 1-507.46(b) ("On motion by the receiver and after notice and a hearing, the court may authorize the receiver to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.")

Sale Contract was negotiated at arm's length, (ii) the proposed sale terms were not negotiated in a collusive manner, and (iii) the purchaser is a good faith purchaser under N.C.G.S. § 1-507.46(g).

13. In support of the Motion, the Receiver argues that (i) the North Carolina Commercial Receivership Act (the "NCCRA")[43] allows the Court to approve the sale, and (ii) the equities weigh in favor of the sale.

14. The Opposing Parties argue that the Motion should not be granted because (i) the Court does not have subject matter jurisdiction to approve the sale, (ii) the Receiver must obtain an ancillary receivership in South Carolina before proceeding with the sale, (iii) the NCCRA does not allow the sale to be free and clear of all encumbrances, including, in particular, the Current Parking Lease, and (iv) the equities weigh against the sale. The Court will consider each of these competing arguments in turn.

A. The Court Has Jurisdiction to Approve the Sale

15. The Opposing Parties first argue that the Court does not have subject matter jurisdiction to authorize the Receiver to sell the property.[44] They contend that the Court lacks jurisdiction over the Multi-Family Land, which is located in South Carolina.[45] This argument fails.

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[43] N.C.G.S. §§ 1-507.20–.54.

[44] (Academy QOF's Br. Opp'n 3–4; CitiSculpt's Br. Opp'n 2, 4–5; FCB's Br. Opp'n 3.)

[45] The Opposing Parties do not challenge the Court's jurisdiction to resolve controversies relating to receivership property, which is granted by N.C.G.S. §§ 7A-249 and 1-507.22.

16. As an initial matter, the Opposing Parties correctly argue that this Court does not have jurisdiction to directly convey title to the Multi-Family Land. As our courts have explained, "[i]t is accepted law in North Carolina that courts of one state cannot determine title to real property located in another state." *Kirstein v. Kirstein*, 64 N.C. App. 191, 192 (1983). "A judgment seeking to apportion the rights of the parties to property outside the jurisdiction may be given extra-state effect for many purposes, but it does not establish any right in the property itself, enforceable in the state of its situs." *McRary v. McRary*, 228 N.C. 714, 718 (1948). While the Court agrees with the Opposing Parties that it does not have *in rem* jurisdiction to transfer title to the Multi-Family Land, the Receiver does not request the Court to order a transfer of title through the Motion.

17. Instead, the Receiver seeks only the Court's leave to take appropriate steps to effect the sale of the Multi-Family Land. The requested order would exercise control over a party (the Receiver) but not over property (the Multi-Family Land itself); the Motion thus asks the Court to exercise *in personam*, as opposed to *in rem*, jurisdiction. Our courts have held that "a foreign court with *in personam* jurisdiction could render judgments that indirectly affect ownership of property over which that court would have no *in rem* jurisdiction in certain specific instances." *Green v. Wilson*, 163 N.C. App. 186, 189 (2004).

18. "[A] court of competent jurisdiction in the state of incorporation with all necessary parties properly before it in an action . . . generally has the power and authority to render a decree ordering the execution and delivery of a deed to property

in another state[.]" *Lea v. Dudley*, 20 N.C. App. 702, 704 (1974). "Such an order must be considered to be *in personam* in character[.]" *Id.*; *see also Courtney v. Courtney*, 40 N.C. App. 291, 296 (1979) (distinguishing an order to convey non-local realty, an exercise of *in personam* power, from an order partitioning or divesting title in that realty, an exercise of *in rem* power); *McRary*, 228 N.C. at 718 ("By means of its power over the person of the parties before it, a court may, in proper cases, compel them to act in relation to property not within its jurisdiction, but its decrees do not operate directly upon the property nor affect its title").

19. In sum, so long as the Court has personal jurisdiction over the relevant parties, the Court may exercise its *in personam* jurisdiction to authorize the Receiver to take appropriate steps to effect the sale of the Multi-Family Land. And here, the Court's exercise of personal jurisdiction over Plaintiffs, the QOZB, the Receiver, and CitiSculpt SC is not disputed.[46]

B. The Receiver Need Not Obtain an Ancillary Receivership in South Carolina

20. The Opposing Parties next argue that the Receiver has failed to follow proper procedure under N.C.G.S. § 1-507.41 by failing to first obtain an ancillary receivership in South Carolina before exercising control over the receivership property.[47] This statute provides that "[a] receiver appointed by a court of this State

[46] CitiSculpt and Academy QOF initially challenged the Court's personal jurisdiction over CitiSculpt SC in their briefing on the Motion, but CitiSculpt and Academy QOF withdrew that challenge at the Hearing, and Plaintiffs assert that Academy QOF withdrew the challenge in prior communications with counsel. (Pls.' Reply Br. 4 n.3). In any event, neither CitiSculpt nor Academy QOF argued personal jurisdiction at the Hearing, and the Court deems that argument now to be waived.

[47] (Academy QOF's Br. Opp'n 6; CitiSculpt's Br. Opp'n 2; FCB's Br. Opp'n 3.)

may, without first seeking approval of the court, apply in any foreign jurisdiction for appointment as receiver with respect to any receivership property which is located within the foreign jurisdiction." N.C.G.S. § 1-507.41 (emphasis added).

21. While Academy QOF concedes that the use of the word "may" in section 1-507.41 renders the statute permissive, it nonetheless argues that the requirement becomes compulsory when read in conjunction with *Pollock v. Carolina Interstate Building & Loan Association*, an 1896 decision of the Supreme Court of South Carolina holding that a North Carolina court cannot exercise more power than it is given and that a North Carolina receiver cannot exercise control over extraterritorial property. 48 S.C. 65, 74–75 (1896).

22. Academy QOF's argument is unavailing. As discussed above, the Receiver does not ask the Court to transfer title of the Multi-Family Land or otherwise exercise control over it—the Receiver merely asks the Court's permission to move forward with the proposed sale. Although it may be necessary under South Carolina law for the Receiver to obtain an ancillary receivership before consummating the sale, the Court need not and does not decide that issue at this time. But even if the institution of such an action is required before a sale can occur, N.C.G.S. § 1-507.41, by its plain terms, is permissive and does not require the Receiver to obtain an ancillary receivership in South Carolina before moving this Court to authorize it to move forward with a sale.

C. The NCCRA Permits the Court to Authorize the Sale

23. Academy QOF next argues that N.C.G.S. § 1-507.46(c), a provision of the NCCRA entitled "Sale of Receivership Property," does not permit the sale of the property free and clear of *all* encumbrances.[48] It further argues that this section is intended to govern the sale of all receivership property and that all other statutes or common law principles are preempted with respect to the sale of receivership property.[49]

24. When reviewing the language of a statute, the Court must begin with the words of the statute itself. *In re Exec. Off. Park of Durham Ass'n*, 382 N.C. 360, 363 (2022). "Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning." *C Invs. 2, LLC v. Auger*, 383 N.C. 1, 15 (2022) (citation omitted). Only when the statutory language is ambiguous must a court ascertain legislative intent. *Winkler v. N.C. State Bd. of Plumbing*, 374 N.C. 726, 730 (2020); *see, e.g.*, *In re Banks*, 295 N.C. 236, 239 (1978) ("[W]here a statute is ambiguous or unclear in its meaning, resort must be had to judicial construction to ascertain the legislative will, and the courts will interpret the language to give effect to the legislative intent."); *see also Catawba Cnty. v. Loggins*, 370 N.C. 83, 92 (2017) ("To determine legislative intent, this Court can also consider 'the legislative history of an act and the circumstances surrounding its adoption.' " (quoting *In re Banks*, 295 N.C. at 239–40)).

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[48] (Academy QOF's Br. Opp'n 7–9; *see also* FCB's Br. Opp'n 4.)

[49] (Academy QOF's Br. Opp'n 9.)

25. Section 1-507.46(c)—which is titled "Sale of Receivership Property"—provides that "[t]he court may order that the receiver's sale of receivership property is free and clear of all liens and all rights of redemption and claims of exemption of the debtor, regardless of whether the sale will generate proceeds sufficient to satisfy fully all liens and claims of exemption, unless [certain] criteria are met[.]" Academy QOF argues that this statute restricts the Receiver's power to effect sales to those that are free and clear of *liens* but not to those that are free and clear of other encumbrances like the Current Parking Lease.[50] The Court disagrees.

26. As an initial matter, the plain language of section 1-507.46(c) describes the conditions under which a receiver may sell receivership property "free and clear of all liens and all rights of redemption and claims of exemption of the debtor."[51] It does not purport to limit a receiver's authority to sell property "free and clear" of any other encumbrances, like the Current Parking Lease,[52] and there is no language limiting a receiver's ability to sell property "free and clear" of only liens and rights of redemption and claims of exemption. In short, the statute addresses a receiver's authority to engage in a particular type of sale—one which is made "free and clear of all liens and rights of redemption and claims of exemption"—and does not address or create a

[50] (Academy QOF's Br. Opp'n 7.).

[51] "Lien" is defined in section 1-507.20(b)(18) as "[a] charge against or interest in property to secure payment of a debt or the performance of an obligation."

[52] Under North Carolina law, "[a] lease is a contract, by which one agrees, for a valuable consideration, to let another have the occupation and profits of land for a definite time." *Matthews v. Fields*, 284 N.C. App. 408, 416 (2022) (cleaned up).

restriction on a receiver's authority to sell free and clear of other encumbrances, including the Current Parking Lease and the other Parking Leases.

27. This plain reading is further compelled when section 1-507.46(c) is read in the context of N.C.G.S. § 1-507.21(c). The latter statute provides that "[u]nless explicitly displaced by a particular provision of this Article, the provisions of other statutory law and the principles of common law and equity remain in full force and effect and supplement the provisions of this Article." Under North Carolina law, a receiver has historically had the power to sell property free and clear of *all* encumbrances, not simply free and clear of all liens. *See, e.g.*, *Martin v. Vanlaningham*, 189 N.C. 656, 658 (1925) (affirming a receiver's power to sell property free and clear of all encumbrances); *Joyce Farms, LLC v. Van Vooren Holdings, Inc.*, 232 N.C. App. 591, 598–99 (2014) (affirming trial court's unambiguous sale of a company's assets "free and clear of all liens, interests and encumbrances whatsoever[.]").

28. It follows that if the legislature intended in section 1-507.46(c) to foreclose a receiver's common law authority to sell property free and clear of all encumbrances, section 1-507.21(c) required the legislature to clearly indicate that intention with language expressly displacing the receiver's common law authority. *See, e.g.*, *State v. McLymore*, 380 N.C. 185, 196–97 (2022) ("[S]tatutes which alter common law rules should be interpreted against the backdrop of the common law principles being displaced . . . . It is doubtful that the General Assembly intended to completely disavow a fundamental common law principle in a statute which otherwise closely

hews to the common law."); *Dickson v. Rucho*, 366 N.C. 332, 342 (2013) ("[T]he General Assembly repeatedly has demonstrated that it knows how to be explicit when it intends to repeal or amend the common law."); *Seward v. Receivers of Seaboard Air Line Ry.*, 159 N.C. 241, 241 (1912) ("Whether the statute affirms the rule of the common law[,] . . . supplements it, supersedes it, or displaces it, the legislative enactment must be construed with reference to the common law[.]").

29. No such language appears in section 1-507.46(c), and the Court must assume its omission was intentional. *See, e.g.*, *Sonopress, Inc. v. Town of Weaverville*, 139 N.C. App. 378, 383 (2000) ("Had the General Assembly intended [a certain result], it would have been a simple matter for it to have included [an] explicit phrase [to that effect.]"). Based on the above, the Court therefore concludes that the Receiver has the authority under section 1-507.46(c) to sell receivership property free and clear of all encumbrances, including the Parking Leases.

D. Termination of the Current Parking Lease

30. The Receiver argues that the NCCRA authorizes the Receiver to terminate the Current Parking Lease, and, in any event, that the Lease is void for lack of consideration.[53] The Court will address each of these arguments in turn.

a. The Receiver's Power to Terminate Under the NCCRA

31. The NCCRA permits a receiver to adopt or reject any executory contracts to which the debtor is subject upon taking control of the receivership property. N.C.G.S.

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[53] (Receiver's Mem. Law Supp. Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances 13–16 [hereinafter "Receiver's Br. Supp."], ECF No. 63.)

§ 1-507.45. An executory contract is defined as "[a] contract that is part of the receivership property, *including a lease*, where the obligations of both the debtor and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract." N.C.G.S. § 1-507.20(b)(8) (emphasis added). "If the receiver does not request court approval to adopt or reject [an] executory contract within 90 days after the time of appointment, or such longer or shorter period as the court upon motion of the receiver or a party in interest filed during such period may order, the receiver is deemed to have rejected the executory contract." N.C.G.S. § 1-507.45(a). The Receiver argues that, by not moving for court approval to accept or reject the Current Parking Lease, it has exercised its power to reject the Lease.

32. Section 1-507.45(g) anticipates and qualifies a Receiver's ability to reject leases of receivership property. Specifically, the section provides that "[a] receiver may not reject an unexpired lease of real property under which the debtor is the landlord" in certain circumstances, including where the receiver was appointed "at the request of a person other than the mortgagee under a mortgage or the beneficiary of a deed of trust encumbering the real property." N.C.G.S. § 1-507.45(g)(2). The Receiver contends that this section is not intended to apply where, as here, there is no mortgage or deed of trust on the property.[54]

[54] (Receiver's Br. Supp. 13 n.7.)

33. The Court disagrees. Though the power to reject executory leases is granted under section 1-507.45, section 1-507.45(g)(2) serves as an explicit and unambiguous limit on a receiver's ability to extinguish unexpired leases. Here, the QOZB—the debtor—is the landlord under the Current Parking Lease,[55] and the Receiver was appointed at the request of Plaintiffs,[56] who are neither mortgagees under a mortgage nor the beneficiaries of a deed of trust encumbering the Multi-Family Land or the Office Land. Accordingly, the Court concludes that the Receiver does not have the power to reject the Current Parking Lease as an executory contract by operation of section 1-507.45(g)(2).

b. Voidance of the Parking Leases

34. The NCCRA provides that:

> The court that appoints a receiver under this Article has the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property, *wherever located*, including, without limitation, authority to determine all controversies relating to the collection, preservation, improvement, disposition, and distribution of receivership property, and all matters otherwise arising in or relating

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[55] (Current Parking Lease.) The Current Parking Lease lists 10 Academy Street, LLC as the landlord, but the QOZB acquired the property on 16 December 2020 and therefore became the landlord under the Lease at that time. (McAlpine Aff. ¶ 36; 2d McAlpine Aff. ¶ 25); *see Greaseoutlet.com, LLC v. MK South II, LLC*, 892 S.E.2d 68, 75 (N.C. Ct. App. 2023) ("When real estate is sold, any tenant 'ceases to hold under the seller' and 'becomes a tenant of the purchaser.' " (quoting *Pearce v. Gay*, 263 N.C. 449, 451 (1965) (cleaned up))); *see also Carson v. Living Word Outreach Ministries, Inc.*, 315 S.C. 64, 69 (Ct. App. 1993) ("A tenant is one who occupies the premises of another in subordination to that other's title and with his assent, express or implied."); *see also* S.C. Code § 27-33-10(7) (defining "landlord" as "the owner or person in possession or entitled to possession of the real estate used or occupied by the tenant[.]"). Academy QOF asserts that CitiSculpt SC is the landlord under the Lease, but this contention is unsupported by either the Lease itself or its undisputed chain of ownership. (*Compare* Academy QOF's Br. Opp'n 13, *with* Current Parking Lease 1.)

[56] (Pls.' Mot. Appointment Receiver.)

> to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

N.C.G.S. § 1-507.22 (emphasis added). Thus, separate from the Receiver's authority discussed above, the Court may terminate contracts under South Carolina law in certain circumstances, including where those contracts are void.[57]

35. The Receiver contends that the consideration offered for the Current Parking Lease is clearly inadequate and renders the Lease void. However, "inadequacy of consideration alone is not a sufficient basis to cancel a [contract]." *Patterson v. Goldsmith*, 292 S.C. 619, 628 (Ct. App. 1987). Indeed, a contract may only be so terminated if the consideration "is grossly inadequate and the [contract] is accompanied by either fraud, mistake, misapprehension, surprise or other circumstances which might authorize a finding that such circumstances contributed to bringing about the inadequacy [ ] that such a sale may be set aside by a court of equity." *Id.* at 628; *see also Campbell v. Carr*, 361 S.C. 258, 264 (Ct. App. 2004) (noting that "inequitable incidents," including "concealment, misrepresentations, [or] undue advantage," when combined with inadequacy of consideration, can support the refusal to award specific performance); *see Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 442 (1942) (recognizing that "inequitable incidents" may include "concealment,

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[57] The Current Parking Lease contains a choice of law provision requiring that it "be governed, interpreted, construed and regulated by the laws of the State of South Carolina." (Current Parking Lease Sec. 17.04); *See Wall v. Automoney, Inc.*, 284 N.C. App. 514, 524 (2022) ("The parties' choice of law is generally binding on the interpreting court as long as they had a reasonable basis for their choice and the law of the chosen State does not violate a fundamental policy of the [S]tate of otherwise applicable law." (quoting *Behr v. Behr*, 46 N.C. App. 694, 696 (1980))).

misrepresentations, undue advantage, oppression on the part of the one who obtains the benefit, or ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other.").[58]

36. After careful review, the Court concludes that the Current Parking Lease is void because it is supported by grossly inadequate consideration and accompanied by various "inequitable incidents" under South Carolina law.

37. To start, CitiSculpt agreed that it would pay an annual rent of $1.00 for a lease term of 129 years. By comparison, the annual property taxes for the leased property are over $60,000, and the Agreement to Secure Parking Rights attached to the purchase agreement for the Office Land calls for a cost of $62.50 per parking space along with a one-time payment of $1,000,000 to secure parking rights for 100 spaces on the Multi-Family Land once a parking deck is built.[59] This gross disparity in value for parking spaces on the same land plainly shows that the $1.00 per annum consideration in the Current Parking Lease does not reflect anything remotely close

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[58] Under South Carolina law, "[t]he discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 66 (Ct. App. 1984). The cases cited in this section arise in the context of a request for specific performance. Here, the Opposing Parties request enforcement of the Current Parking Lease and the Receiver requests its termination. As framed, the parties' competing positions are effectively requests to award or deny specific performance. *See, e.g.*, *Crews v. Crews*, 264 N.C. App. 152 (2019) (analyzing trial court's enforcement of alimony arrangement versus its rescission as sought by defendant); *Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 408 (Ct. App. 2008) (balancing buyer and seller's interests to enforce or terminate a contract, respectively, and stating that rescission of purported termination of a contract is functionally a grant of specific performance.)

[59] (Mot. Sell Ex. B Purchase Agreement 24, Agreement to Secure Parking Rights July 21, 2020, ECF No. 62.3.)

to the true value of the parking spaces. *See Royal Z Lanes, Inc. v. Collins Holding Corp.*, 337 S.C. 592, 596 (1999) (concluding that consideration of less than 20% of a property's value is "grossly inadequate consideration," which is "treated as 'a badge of fraud' " that "creates a rebuttable presumption of intent of defraud.").

38. Moreover, the record shows that even this grossly inadequate rent was not paid until long after it was due—in September 2023.[60]

39. In addition, Citisculpt SC's agreements to reimburse the QOZB for "[CitiSculpt SC's] pro rata share" of the QOZB's insurance premiums and to indemnify the QOZB for any claims made by CitiSculpt SC's tenants or other invitees[61] are, without more, insufficient consideration to support the Current Parking Lease, particularly when considered with the grossly inadequate rent. This conclusion is buttressed by the lack of evidence that CitiSculpt SC has ever been, or will be, called upon to reimburse or indemnify the QOZB.

40. The undisputed evidence also shows that 10 Academy Street falsely warranted to the QOZB that the Multi-Family Land was not subject to any leases at the time of sale[62] because the undisputed evidence also shows that all of the Parking

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[60] (Defs. CS-10 South Academy Street, LLC, CitiSculpt SC, LLC, and 10 Academy Street, LLC's Resp. Receiver's Notice Subsequent Facts Ex. A, 5)

[61] (Current Parking Lease Secs. 9.01, 10.01.) The Current Parking Lease contains three different sections titled "Section 9.01." The Court's citation refers to Tenant's obligation to indemnify Landlord at Section 9.01 on page six.

[62] (Multi-Family Land Purchase and Sale Agreement Sec. 5.07.)

Leases were in effect at that time.[63] *See, e.g.*, *Slack v. James*, 356 S.C. 479, 482–83 (Ct. App. 2003) (noting that "[t]he recipient of a fraudulent misrepresentation of fact is justified in relying on its truth, although he might have discovered its falsity through investigation" and that "[t][he recording act is not intended to protect a [party] who makes a false or misleading statement").

41. Finally, the undisputed evidence shows that entities owned or operated by McAlpine executed each of the Parking Leases as both landlord and tenant in transactions that appear to be anything but arm's length. *See, e.g.*, *Darby v. Furman Co.*, 334 S.C. 343, 348 (1999) (concluding that a broker present on both sides of a transaction must "meet the extremely high standards of his fiduciary obligation as well as carry the burden of proof to show full disclosure[.]").

42. The Court finds that the circumstances described above constitute "inequitable incidents," which, when combined with the grossly inadequate consideration evidenced here, render the Current Parking Lease void for lack of consideration.

43. Fatal defects in the remaining Parking Leases render them void as well.

44. First, the undisputed evidence shows that CitiSculpt SC entered into the April 2020 Parking Lease as lessor with another entity controlled or operated by

[63] For example, the Current Parking Lease was executed on 27 October 2020, and the transfer of the property to the QOZB occurred on 17 December 2020. (*See* Current Parking Lease.) The other Parking Leases were also executed prior to the sale in December 2020. (*See* January 2019 Parking Lease; April 2020 Parking Lease; April 2020 Sublease.)

McAlpine, Property Advocate Services, LLC,[64] even though CitiSculpt SC never owned the Multi-Family Land or any of the other parking lot parcels at any time. It is axiomatic that a lessor cannot purport to lease to a lessee property in which the lessor has no rights. *See Scalise Dev., Inc. v. Tidelands Invs., LLC*, 392 S.C. 27, 36–38 (Ct. App. 2011) (finding that appellants could not convey any interest in property they did not own).

45. It also is undisputed that Property Advocate Services, LLC purported to sublease to 10 Academy Street through the April 2020 Sublease the same parking spaces it had leased from CitiSculpt SC through the April 2020 Parking Lease—even though 10 Academy Street was the owner of land on which the parking spaces were located.[65] The April 2020 Sublease is thus invalid because its parent lease is invalid. As a result, Property Advocate Services, LLC possessed no leasehold interest it could sublease. And as to the QOZB, which now stands as the new landlord, the April 2020 Sublease is a legal nullity. *See* S.C. Code § 27-35-60 ("A sublease by a tenant without written consent of the landlord is a nullity insofar as the rights of the landlord are concerned.")

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[64] The April 2020 Parking Lease is signed by Michael J. Miller on behalf of CitiSculpt SC and by McAlpine on behalf of Property Advocate Services, LLC. (April 2020 Parking Lease 16–19.) As noted above, CitiSculpt SC is owned or operated by McAlpine.

[65] The April 2020 Sublease erroneously states that 10 Academy Street was the lessor under the April 2020 Parking Lease. (April 2020 Sublease 1.) However, the parties do not dispute that the April 2020 Parking Lease is clearly between CitiSculpt SC as purported lessor and Property Advocate Services, LLC as purported tenant.

46. The undisputed evidence also shows that 10 Academy Street purported to lease parking spaces to itself in the January 2019 Parking Lease.[66] "South Carolina law requires a meeting of the minds as to all essential and material contract terms." *Mart v. Great S. Homes, Inc.*, 441 S.C. 304, 316 (Ct. App. 2023). Such a meeting of the minds cannot exist where there is only one party on both sides of a transaction; therefore, 10 Academy Street's purported lease to itself is *void ab initio*.

47. Based on the above, the Court therefore concludes that the Current Parking Lease is void for lack of consideration and the remaining Parking Leases are void as a result of the fatal defects in those leases as discussed above. *See White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371–72 (2004) (explaining that a void contract is unenforceable).[67]

E. The Balancing of the Equities[68]

48. The Court further concludes that the balancing of the equities in this matter weighs in favor of authorizing the Receiver to sell the Multi-Family Land free and clear of all encumbrances, including the Parking Leases.

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[66] (January 2019 Parking Lease.)

[67] In light of the Court's determination, the Court need not consider the Receiver's additional contention that it properly exercised its rights under S.C. Code § 27-37-10(a)(1) to eject CitiSculpt SC as a tenant and terminate the Current Parking Lease for nonpayment of rent. (*See* Notice Subsequent Facts ¶¶ 1–10.)

[68] A receivership exists as a creature of equity. Thus, this Court must appropriately consider and examine the surrounding equities in issuing an order that affects the rights of the receivership estate. *See Haarhuis v. Cheek*, 261 N.C. App. 358, 364 (2018) (observing that a receiver's appointment "must be adjudged according to the equities of the particular case at hand."); *see also Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) ("Courts of equity have original power to appoint receivers and to make such orders and decrees with respect to the discharge of their trust as justice and equity may require.")

49. First, the Court finds from the record before it that the proposed sale was negotiated at arm's length and that the proposed buyer, Henning, is unrelated to any of the parties in this case. To sell the Multi-Family Land, the Receiver retained the services of Foundry Commercial, a real estate firm that had been attempting to sell the Multi-Family Land since before the Receiver's involvement.[69] Through Foundry, the Receiver engaged in negotiations with Henning, which ultimately led to the formation of the Proposed Sale Contract now before the Court.[70] Both Henning's letter of intent to purchase the Multi-Family Land and the Proposed Sale Contract have been circulated to all parties.[71] The Receiver represents that Henning, a Florida limited liability company, "appears to have no connection with Foundry, the Receiver, the Receiver's counsel, or any person or entity" affiliated with those entities.[72] The Receiver further represents that the purchase price and non-economic provisions of the Proposed Sale Contract are fair, reasonable, and conform to the present commercial real estate market,[73] and the record demonstrates that no party has submitted any objection contradicting the Receiver's claims.

50. In addition, when this Court placed the QOZB into receivership, the Court concluded that the circumstances surrounding the $2,000,000 deposit were indicative

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[69] (Smith Aff. ¶¶ 12–13.)

[70] (Smith Aff. ¶ 14; Mot. Sell Ex. J.)

[71] (Smith Aff. ¶ 15.)

[72] (Smith Aff. ¶ 16.)

[73] (Smith Aff. ¶¶ 17–18.)

of fraud. "Not only did CitiSculpt have a strong financial incentive to benefit its affiliate by causing the QOZB's deposit forfeiture without notice to Plaintiffs, but CitiSculpt's failure to disclose any information . . . strongly suggests that CitiSculpt acted knowingly and with the intent to deprive Plaintiffs of their rights[.]"[74] Following this finding, the Court tasked the Receiver with investigating the circumstances behind the deposit forfeiture. The Receiver in turn determined that the deposit's forfeiture was part of a strategy to avoid repaying a $2,000,000 loan from investors that had helped finance the initial purchase of the Multi-Family Land and Office Land prior to Plaintiffs' investment.[75] These circumstances also counsel in favor of authorizing the proposed sale.

51. The Opposing Parties' objections to the sale are unpersuasive, further supporting approval of the proposed sale.

52. Academy QOF argues that the sale would cause the series A investors in the QOZB to forgo tax benefits and incur tax liability for the QOZB from the proceeds of the sale.[76] But all parties agreed at the time the Receiver was appointed that development of the QOZB is no longer a viable plan and that a sale should be pursued,[77] with the parties bearing whatever tax consequences a sale might involve. Academy QOF's new-found concern over lost tax benefits is not compelling.

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[74] (Receivership Order ¶ 22.)

[75] (Smith Aff. ¶¶ 5(a)–(d).)

[76] (Academy QOF's Br. Opp'n 21.)

[77] (*See* McAlpine Aff. ¶ 62.)

53. FCB argues that the sale will render the adjacent office building non-compliant with local zoning regulations due to insufficient parking and jeopardize the value of FCB's collateral. Any such harm, however, is speculative. Indeed, not only are alternative parking arrangements available on adjacent parcels,[78] but the Current Parking Lease also contemplates that the parties would develop alternative parking arrangements in the event the Multi-Family Land became unusable.[79] Moreover, any claim that FCB will have for breach of the Current Parking Lease will transfer to the proceeds of sale, which appear to be more than adequate to cover any valid damages claim FCB may assert. *Nat'l Sur. Corp. v. Sharpe*, 236 N.C. 35, 42 (1952) ("Under the orders of the [trial] court, all property was sold free of liens, and liens were transferred from the property to the proceeds of its sale."). In these circumstances, FCB's claims of substantial harm ring hollow.

54. Accordingly, based on the above, the Court will grant the Motion, approve the Proposed Sale Contract, authorize the Receiver to take all necessary and appropriate actions to transfer the Multi-Family Land free and clear of all liens, claims, interests, and encumbrances, including the Parking Leases, order Defendants, including CitiSculpt SC and its affiliates, to take all reasonably appropriate actions to assist the Receiver in perfecting the QOZB's title and consummating the proposed sale, and order CitiSculpt SC and FCB to execute

[78] (Smith Aff. ¶ 9; Mot. Sell. Ex. I Alternative Parking Strategy, ECF No. 62.10.)

[79] (Current Parking Lease Sec. 5.04.)

cancellations or notices of termination of the four memoranda of lease[80] and Agreement Regarding Parking Lease[81] recorded with the Greenville County Register of Deeds. *See, e.g.*, *McRary*, 228 N.C. at 718 (recognizing that a foreign court with *in personam* jurisdiction "may, in proper cases, compel [the parties before the court] to act in relation to property not within its jurisdiction") (cleaned up); *Green*, 163 N.C. App. at 189 (recognizing that "a foreign court with *in personam* jurisdiction could render judgments that indirectly affect ownership of property over which that court would have no *in rem* jurisdiction[.]").[82]

III.

CONCLUSION

55. The Court, in the exercise of its discretion and having concluded that (i) the proposed sale of the Multi-Family Land to Henning upon the terms and conditions set forth in the Proposed Sale Contract is fair and reasonable and in the best interests of the QOZB's receivership estate, (ii) the Proposed Sale Contract was negotiated at arm's length, (iii) the negotiation for the proposed sale of the Multi-Family Land to Henning was not conducted in a collusive manner, and (iv) Henning is a good faith purchaser within the meaning of N.C.G.S. § 1-507.46(g), the Court hereby:

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[80] (*See* Pls.' Resp. Supp. Receiver's Notice Subsequent Facts Ex. B, ECF No. 121.2.)

[81] (Current Parking Lease Assignment.)

[82] The Court notes that Defendants have asserted various counterclaims and/or crossclaims against the QOZB and Plaintiffs since the filing of the Motion. The allegations supporting these counterclaims are unverified, however, and none of the Defendants have suggested that the Court should consider the counterclaim allegations in resolving the current Motion. Accordingly, the Court does not consider those allegations in reaching its conclusions set forth in this Order and Opinion.

a. **GRANTS** the Receiver's Motion;

b. **APPROVES** the Proposed Sale Contract;

c. **AUTHORIZES** the Receiver to take all actions necessary or appropriate, in the Receiver's discretion, to consummate the proposed sale of the Multi-Family Land to Henning free and clear of all liens, claims, interests, and encumbrances, including the Parking Leases, with all legal claims relating to such liens, claims, interests, and encumbrances transferring to the proceeds of the sale, without additional confirmation by the Court;

d. **ORDERS** Defendants, including CitiSculpt SC and its affiliates, to take all reasonably appropriate actions to assist the Receiver in perfecting the QOZB's title and consummating the proposed sale; and

e. **ORDERS** CitiSculpt SC and FCB to execute cancellations or notices of termination of the four memoranda of lease[83] and Agreement Regarding Parking Lease[84] recorded with the Greenville County Register of Deeds as more specifically identified in footnotes 83 and 84 below.

SO ORDERED, this the 15th day of December, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge

[83] (*See* Pls.' Resp. Supp. Receiver's Notice Subsequent Facts Ex. B, ECF No. 121.2.)

[84] (Current Parking Lease Assignment, ECF No. 62.9.)