

Blueprint 2020 Opportunity Zone Fund, LLLP v. 10 Academy St. QOZB I, LLC,
2024 NCBC Order 1.

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

Defendants.

**ORDER ON RECEIVER'S MOTION TO
ENFORCE RECEIVERSHIP ORDER
AND IMPOSE SANCTIONS FOR
VIOLATIONS OF RECEIVERSHIP
ORDER**

1. **THIS MATTER** is before the Court on The Finley Group, Inc.'s (the "Receiver") Motion to Enforce Receivership Order and Impose Sanctions for Violations of Receivership Order (the "Motion"),¹ filed 13 July 2023 in the above-captioned case.

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

¹ (Receiver's Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order [hereinafter "Mot. Sanctions"], ECF No. 65.)

I.

FACTUAL AND PROCEDURAL BACKGROUND

3. The background facts relevant to this Motion are set forth in the Court's Order and Opinion on Receiver's Motion to Approve Sale of Real Property Free and Clear of Liens, Claims, Interests, and Encumbrances filed on 15 December 2023 in this action (the "Sale Order"),² and those facts are incorporated herein by reference.

4. As specifically relevant here, the Court appointed the Receiver as general receiver for Defendant 10 Academy Street QOZB I (the "QOZB") by order dated 9 March 2023 (the "Receivership Order") to administer the property of the Receivership estate.³ The Receivership estate's principal asset is a piece of real property in Greenville, South Carolina bearing tax parcel identification number 0050000200106 (the "Multi-Family Land").⁴ The Multi-Family Land is contiguous to another piece of real property bearing tax parcel identification number 0050000200100 that includes an existing office building (the "Office Land").⁵ The Receivership Order specifically

² (Order and Op. Receiver's Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances [hereinafter "Sale Order"], ECF No. 156; *Blueprint 2020 Opportunity Zone Fund, LLLP v. 10 Acad. St. QOZB I, LLC*, 2023 NCBC LEXIS 170, at *2–7 (N.C. Super. Ct. Dec. 15, 2023).

³ (Order Pls.' Mot. Appointment Receiver [hereinafter "Receivership Order"], ECF No. 28 (sealed), 33 (public).) Citations will be to the public version of the Receivership Order.

⁴ (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)

⁵ (QOZB Operating Agreement 4.)

authorized the Receiver to “engage in steps to market the Multi-Family Land owned by the QOZB,” but provided that “any sale shall require the Court’s approval.”⁶

5. Importantly for the current Motion, the Receivership Order also provided that “[t]he management of the QOZB shall be vested solely in the Receiver and no other party shall have authority to act on behalf of the QOZB.”⁷ The Receivership Order also made clear that “[t]he Receiver has all the powers and duties of a receiver specified in N.C.G.S. § 1-507.28” and that “[w]hile the Receiver remains in control of the QOZB, the Receiver shall be the sole person with the powers set forth in N.C.G.S. § 1-507.28 with respect to the QOZB.”⁸ The Receivership Order specifically named Charles Lindsey McAlpine (“McAlpine”), CitiSculpt Fund Services, LLC (“CitiSculpt Fund Services”), and CitiSculpt, LLC (“CitiSculpt”) as “Responsible Parties”⁹ and required each of them to comply fully with the QOZB’s duties under the Receivership Order and N.C.G.S. § 1-507.30. The Order also expressly stated that “[t]he Court shall retain jurisdiction and supervision of all matters concerning the Receiver and the receivership.”¹⁰

6. After the entry of the Receivership Order, the Receiver retained Foundry Commercial (“Foundry”) to sell the Multi-Family Land. Through Foundry’s efforts,

⁶ (Receivership Order ¶ 27(p)).

⁷ (Receivership Order ¶ 27(c).)

⁸ (Receivership Order ¶ 27(d).)

⁹ (Receivership Order ¶¶ 27(e)–(f).)

¹⁰ (Receivership Order ¶ 27(t).)

the Receiver and Henning Holdings, LLC reached agreement on the terms of a proposed Purchase and Sale Agreement (the “Proposed Sale Contract”) to effect the sale of the property.¹¹ On 6 June 2023, the Receiver circulated the Proposed Sale Contract via e-mail to counsel for the QOZB’s investors: Plaintiffs, CitiSculpt Fund Services, and 10 Academy Opportunity Zone Fund I, LLC (“Academy QOF”).¹² In the June 6 e-mail, the Receiver asked the investors to advise as to their respective positions on the Proposed Sale Contract.¹³ Two hours after the e-mail was sent, Academy QOF advised through counsel that it opposed the sale. Eight minutes after that, Matthew Cox (“Cox”) of Smith Currie & Hancock, LLP (“Smith Currie”) advised the Receiver that CitiSculpt Fund Services likewise opposed the sale.¹⁴ Fifteen

¹¹ (Receiver’s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances Ex. J., Purchase and Sale Agreement, ECF No. 62.11.; Receiver’s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances Ex. A, Aff. Matthew W. Smith Supp. Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances, dated 10 July 2023, at ¶¶ 12–15, ECF No. 62.2)

¹² As discussed in the Sale Order, CitiSculpt Fund Services, CitiSculpt, CitiSculpt SC, LLC, and 10 Academy Street, LLC are all owned or controlled by McAlpine. (Aff. Charles Lindsey McAlpine, dated 21 Feb. 2023, at ¶¶ 13–15 [hereinafter “McAlpine Aff.”], ECF No. 16; Aff. Charles Lindsey McAlpine, dated Feb. 22, 2023, at ¶ 27 [hereinafter “2d McAlpine Aff.”], ECF No. 20; Receiver’s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances Ex. G. 16–17 ECF No. 62.8). Moreover, CitiSculpt is the manager of CitiSculpt Fund Services, and CitiSculpt Fund Services is the manager of the QOZB.

¹³ (Mot. Sanctions Ex. A, Aff. Michael L. Martinez Supp. Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order, dated 13 July 2023, at ¶¶ 6–9 [hereinafter “Martinez Aff.”], ECF No. 65.2.)

¹⁴ (Martinez Aff. ¶¶ 8–9.) Although Fred M. Wood, Jr. (“Wood”) of Nelson Mullins Riley & Scarborough, LLP noticed his and his firm’s appearance on behalf of Academy QOF and CitiSculpt Fund Services, (*see* Notice Appearance, ECF No. 51), it appears that Cox and Smith Currie are taking the lead in representing CitiSculpt and CitiSculpt Fund Services while Wood and his firm are taking the lead in representing Academy QOF and McAlpine.

minutes later, Cox and Smith Currie filed a lawsuit on behalf of CitiSculpt SC, LLC (“CitiSculpt SC”) against the QOZB in the Court of Common Pleas in Greenville County, South Carolina seeking a declaration that a parking lease entered into in October 2020 was a valid and enforceable encumbrance on the QOZB receivership estate (the “South Carolina Action”).¹⁵ That same day CitiSculpt SC and its counsel also recorded a *lis pendens* against the Multi-Family Land (the “*lis pendens*”).¹⁶

7. CitiSculpt SC and its counsel never sought or obtained leave of this Court before filing either the South Carolina Action or the *lis pendens*, nor did they serve the Receiver with the South Carolina Action or the *lis pendens*. Instead, CitiSculpt SC, Cox, and Smith Currie rather disingenuously chose to serve only the QOZB’s registered agent, Shayla Odum (“Odum”), a CitiSculpt employee in Charlotte, North Carolina, apparently acting on the theory that service of a McAlpine-controlled entity’s lawsuit on another McAlpine-controlled entity (both of which were represented by Cox and Smith Currie) would suffice, despite Cox’s and Smith Currie’s obvious conflict of interest and the fact that the Court had vested the Receiver with all the powers and duties set forth in N.C.G.S. § 1-507.28, including “[t]he power to assert rights, claims, causes of action, or defenses that relate to receivership

¹⁵ (Martinez Aff. ¶ 10); *CitiSculpt SC, LLC v. 10 Acad. St. QOZB I, LLC*, Case No. 2023-CP-2302839 (S.C. Ct. Com. Pl. June 6, 2023). The Complaint for the South Carolina Action is located between pages seven and eleven of Exhibit B to the Motion. (See Mot. Sanctions Ex. B 7–11, ECF No. 65.3.)

¹⁶ (Mot Sanctions Ex. B. 12–13.)

property.”¹⁷ Indeed, it was not until 10 July 2023—over a month after the South Carolina Action was commenced—that CitiSculpt SC and its counsel decided to advise the Receiver that the South Carolina Action and the *lis pendens* had been filed.¹⁸

8. On 13 July 2023, the Receiver filed the Motion together with its Motion to Approve Sale of Real Property Free and Clear of Liens, Claims, Interests, and Encumbrances.¹⁹ The Receiver asks through the Motion that the Court either enjoin the prosecution of the South Carolina Action or order the Receiver to participate in it.²⁰

9. The Receiver also seeks sanctions against Smith Currie, Cox, McAlpine, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC for their violation of the Receivership Order. The Receiver seeks an award of its actual damages, attorneys’ fees, and costs incurred in defending against the South Carolina Action and in bringing this Motion.²¹

10. Plaintiffs joined the Motion on 17 July 2023 (the “Joinder”) and “highlight[ed] for the Court additional facts which [Plaintiffs contend] should be

¹⁷ (Receivership Order ¶ 27(d); N.C.G.S. § 1-507.28(a)(3); Mot. Sanctions 6; QOZB Operating Agreement 9.)

¹⁸ (Mot. Sanctions Ex. B 1–5.)

¹⁹ (Mot. Sanctions; Receiver’s Mot. Approve Sale Real Property Free and Clear Liens, Claims, Interests, and Encumbrances, ECF No. 62.) As noted above, the Court entered the Sale Order granting the Receiver’s motion to approve the sale on 15 December 2023. (*See* Sale Order.)

²⁰ (Mot. Sanctions ¶ 28.)

²¹ (Mot. Sanctions ¶ 29.)

considered by the Court in deciding appropriate sanctions for the conduct of [McAlpine, CitiSculpt Fund Services, and Academy QOF].”²² Plaintiffs state the following in their Joinder:

5. McAlpine . . . stated [in an affidavit executed on 22 February 2023] that “On 21 July 2020, the QOZB entered into a purchase agreement for the Office Land from 10 Academy Street, LLC for \$11.25 million.” [2d McAlpine Aff.] at ¶ 18.

6. The purported purchase and sale agreement provided: “The sum of Two Million Dollars (\$2,000,000) (the “Deposit”) shall be delivered by Buyer [the QOZB] to the Seller [10 Academy Street, LLC], as hereinafter defined, within five (5) business days after full execution of this Agreement. (ECF 2.8 at § 2.)

7. McAlpine swore under oath [in his 22 February 2023 affidavit] that “**Pursuant to the 21 July 2020 purchase agreement, a \$2-million deposit was made.**” ([2d McAlpine Aff.] at ¶ 19 [(emphasis in original)]; *see also* QOZB[’s Response to Plaintiffs’ Motion for Appointment of Receiver 5, ECF No. 19] (arguing that “the QOZB already paid a \$2-million deposit”); [McAlpine Aff.] ¶ 29 (“A deposit of \$2 million dollars had been provided.”); [Academy QOF’s Motion to Intervene and Objection to Motion to Appoint a Receiver 4, ECF No. 14 (“Exhibit E to the Operating Agreement, clearly and unequivocally, discloses that the QOZB had already paid a \$2-million deposit, which was for the Office Land.”))].

8. McAlpine’s sworn statement was false and made for the purpose of misleading the Court and Plaintiffs and in an attempt to keep the Court from appointing a receiver.

9. The only way for a deposit to have been made “[*Pursuant to the 21 July 2020 purchase agreement*]” is if \$2 million in cash had been ‘delivered by Buyer to the Seller . . . within five (5) business days’ of the execution of the agreement (i.e. between 21 July 2020 and 28 July 2020) [(emphasis in original)]. Yet no such deposit was ever made or any cash “delivered” by the QOZB to 10 Academy Street, LLC.

²² (Joinder Receiver’s Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order [hereinafter “Joinder”], ECF No. 73.) The Court notes that neither the Receiver nor Plaintiffs request that sanctions be imposed against Academy QOF.

10. Over McAlpine and his entities' objections, the Court appointed [The] Finley Group as receiver to, among other things, "investigate, review, account for, and pursue recovery of the QOZB's \$2,000,000 deposit, in the receiver's discretion." ([Receivership Order] ¶ 22.)

11. The receiver has investigated and has now been told by McAlpine and CitiSculpt's CFO Michael Miller that, in fact, there never was any \$2,000,000 deposit made "pursuant to the 21 July 2020 purchase agreement." In other words, despite McAlpine's affidavit to the contrary, there never was any transfer of \$2 million in cash from the QOZB to any third party as a deposit. Copies of e[-]mails from Michael Miller and Matthew Cox (at the time, the only counsel in this case for CitiSculpt FS and Academy QOF) to the receiver confirming this fact are attached [to the Joinder] as Exhibit A.

12. The position of McAlpine and his entities regarding the "deposit" is laid out in the Receiver's First Status Report[, (Receiver's First Status Report 8–9,) ECF [No.] 57)[,] which relies directly upon the e[-]mails from [Michael] Miller and Matthew Cox. CitiSculpt now asserts that there were some alleged inter-company transfers in early 2019 which involved "complex accounting" and which they now assert should be viewed as a "deposit." *Id.*

13. What is now clear is that there never was any \$2 million cash deposit, there never was any situation in which "the QOZB already paid a \$2-million deposit," and there never was any transfer of cash delivered to 10 Academy Street between 21 July 2020 and 28 July 2020 "pursuant to the 21 July 2020 purchase agreement." Accordingly, McAlpine has previously presented sworn false statements to the Court.²³

11. CitiSculpt Fund Services, Cox, and Smith Currie filed the sole response to the Motion on 7 August 2023.²⁴ That response addressed the Receiver's Motion but did not discuss the additional facts and argument advanced by Plaintiffs in their

²³ (Joinder ¶¶ 5–13.)

²⁴ (CitiSculpt Fund Services, LLC's Br. Opp'n The Finley Group, Inc.'s Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order [hereinafter "CitiSculpt's Br. Opp'n", ECF No. 96.]

Joinder concerning McAlpine. No responses to the Motion or the Joinder were filed by McAlpine, CitiSculpt, or CitiSculpt SC.

12. The Receiver and Plaintiffs filed their replies on 15 August 2023.²⁵ The Court convened a hearing on both the Motion and the Receiver's motion to approve the proposed sale of the Multi-Family Land on 24 August 2023, at which all parties were represented by counsel. The Motion is now ripe for resolution.

II.

LEGAL STANDARD

13. The North Carolina Commercial Receivership Act ("NCCRA")²⁶ provides a receivership court with power to impose sanctions. N.C.G.S. § 1-507.30(a)(1) requires that entities placed into receivership "assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's duties and to comply with all rules and orders of the court." Where, as here, the receivership entity is not an individual, these duties are placed on "each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the debtor immediately before the appointment of the receiver." N.C.G.S. § 1-507.30(b).

14. "If a person knowingly fails to perform a duty imposed by [section 1-507.30], the court may (i) compel the person to comply with that duty, (ii) award the receiver

²⁵ (Receiver's Reply Supp. Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order, ECF No. 104; Reply Supp. Receiver's Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order, ECF No. 105.)

²⁶ N.C.G.S. §§ 1-507.20–.54

actual damages caused by the person’s failure and reasonable attorneys’ fees and costs, and (iii) sanction the person for civil contempt.” N.C.G.S. § 1-507.30(c).²⁷ Notably, the NCCRA further provides that “the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding . . . to obtain possession of receivership property, or to interfere with or exercise control over receivership property, or enforce a judgment against receivership property[.]” N.C.G.S. § 1-507.42(c).²⁸ The NCCRA empowers the court to “void an act that violates a stay under [section 1-507.42(c),]” “award actual damages caused by the violation, reasonable attorneys’ fees, and costs[,] and sanction the violation as civil contempt.” N.C.G.S. §§ 1-507.42(g)–(h).

15. In addition to its statutory authority to impose sanctions, it is well-recognized in North Carolina that “a Superior Court, as part of its inherent power to manage its affairs, to see that justice is done, and to see that the administration of justice is accomplished as expeditiously as possible, has the authority to impose reasonable and appropriate sanctions upon errant lawyers practicing before it.” *In re Small*, 201 N.C. App. 390, 394 (2009) (quoting *In re Robinson*, 37 N.C. App. 671, 676 (1978)). This inherent power includes the power to impose monetary sanctions. *Id.* at 394. “When sanctioning a party under its inherent authority, the court must weigh the circumstances of each case and choose a sanction that, in the court’s

²⁷ These statutory duties are also identified and referenced in the Receivership Order. (See Receivership Order ¶¶ 27(e)–(f), (h).)

²⁸ Certain exceptions to the automatic stay imposed by section 1-507.42(c) are set forth elsewhere in N.C.G.S. §§ 1-507.42(c) and .42(f). None of these exceptions are applicable here, however, and no party has argued to the contrary.

judgment, ‘properly takes into account the severity of the party’s disobedience.’ ” *Out of the Box Devs., LLC v. LogicBit Corp.*, 2014 NCBC LEXIS 7, at *10 (N.C. Super. Ct. Mar. 20, 2014) (quoting *Patterson v. Sweatt*, 146 N.C. App. 351, 357 (2001)). A trial court’s exercise of its inherent authority to impose sanctions will only be overturned for an abuse of discretion. *Dunn v. Canoy*, 180 N.C. App. 30, 45 (2006).

III.

ANALYSIS

16. The Receiver describes its core contention as follows:

McAlpine, the person with the ability to control both CitiSculpt [Fund Services] (the QOZB’s manager) and CitiSculpt SC (the plaintiff in the South Carolina Action), violated [p]aragraph 27 of the Receivership Order and N.C.G.S. § 1-507.30(a)(1) by orchestrating and executing a scheme to subvert the Receiver’s efforts to sell the Multi-Family Land in a manner other than by (a) coming to this Court for declaratory relief or (b) seeking leave from this Court to turn to the South Carolina courts for declaratory relief.²⁹

17. The Receiver argues that McAlpine, as well as Cox, Smith Currie, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC, should all be sanctioned as active participants in this misconduct. The Court agrees.

18. First, N.C.G.S. § 1-507.42(c) provides that “the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding . . . to interfere with or exercise control over receivership property.” The entry of the Receivership Order therefore operated as a stay “*applicable to all persons[,]*” precluding McAlpine, Cox, Smith Currie, CitiSculpt, CitiSculpt Fund

²⁹ (Receiver’s Mem. Law Supp. Receiver’s Mot. Enforce Receivership Order and Impose Sanctions Violations Receivership Order ¶ 16, ECF No. 66.)

Services, and CitiSculpt SC from “interfer[ing] with or exercis[ing] control over receivership property,” including the Multi-Family Land. By filing the South Carolina Action, which seeks a declaration that a parking lease on the Multi-Family Land was valid and enforceable, and by filing the *lis pendens* encumbering that same property with notice that CitiSculpt SC “has a contractual right to own or has some interest in the property which may be subject to judgment within cause,” McAlpine, Cox, Smith Currie, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC knowingly and complicitly interfered with and attempted to exercise control over the Multi-Family Land, thus violating the stay set forth in section 1-507.42(c) and subjecting them to sanctions under the enforcement provision of N.C.G.S. § 1-507.42(h).³⁰

19. Second, N.C.G.S. § 1-507.38(b) specifically mandates that “[u]nless the court orders otherwise, an action . . . relating to the receivership or receivership property shall be commenced in the court in which the receivership is pending.” The filing of the South Carolina Action and the *lis pendens*, both of which undeniably relate to the Multi-Family Land, was thus in clear violation of the mandatory venue provisions of section 1-507.38(b). Accordingly, the Court finds that McAlpine, Cox, Smith Currie, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC knowingly and complicitly violated section 1-507.38(b), further justifying the imposition of sanctions.

20. Third, N.C.G.S. § 1-507.22 vests in this Court the “exclusive authority to direct the receiver and determine all controversies relating to the receivership or

³⁰ The Court finds that CitiSculpt SC was made aware of the Receivership Order through McAlpine, Cox, and Smith Currie.

receivership property, wherever located[.]” Thus, even though the Multi-Family Land is located in South Carolina, section 1-507.22 requires any claim relating to that property be heard and decided by this Court. The filing of the South Carolina Action and the *lis pendens* in South Carolina was therefore in plain violation of this provision of the NCCRA. The Court finds that McAlpine, Cox, Smith Currie, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC knowingly and complicitly violated section 1-507.22, providing additional justification for the imposition of sanctions.

21. Fourth, McAlpine, CitiSculpt, and CitiSculpt Fund Services are specifically designated “Responsible Parties” under the Receivership Order and also have the duties set forth in section 1-507.30 as persons “exercising or having the power to exercise control over the affairs of the QOZB immediately before the appointment of the [R]eceiver.” By filing the South Carolina Action and the *lis pendens*, McAlpine, CitiSculpt, and CitiSculpt Fund Services failed to discharge their duties as Responsible Parties under the Receivership Order and as set forth in N.C.G.S. § 1-507.30, further justifying sanctions against them.

22. Finally, the Court has reviewed the evidentiary support Plaintiffs cite for their contention that McAlpine made false statements concerning the \$2,000,000 deposit that provide a further basis for the imposition of sanctions. The Court finds it noteworthy that neither McAlpine nor any of the other parties against whom sanctions were sought have filed a response challenging Plaintiffs’ contention that McAlpine made false statements about the deposit. After careful review, the Court finds that Plaintiffs’ contention is supported by the evidence of record cited in

Plaintiffs' Joinder and provides additional justification for the imposition of sanctions.³¹

23. The arguments that Cox, Smith Currie, and CitiSculpt Fund Services advance in opposition to the Motion are meritless.³²

24. First, it cannot be reasonably disputed that McAlpine, Cox, Smith Currie, CitiSculpt, CitiSculpt Fund Services, and CitiSculpt SC had knowledge of the Receivership Order and their duties thereunder. Not only has McAlpine appeared in this action and received actual notice of the Order, but his knowledge is imputed to CitiSculpt Fund Services, CitiSculpt, and CitiSculpt SC since he owns or controls them all. The same is true for Cox and Smith Currie as CitiSculpt Fund Services' counsel of record in this matter and CitiSculpt SC's counsel in the South Carolina Action and in filing the *lis pendens*. See, e.g., *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 663 (2008) (using "actual notice" and "knowledge" interchangeably); *Jay Grp., Ltd. v. Glasgow*, 139 N.C. App. 595, 601 (2000) ("Knowledge of the president or agent of a corporation is imputed to the corporation itself."); see also *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 186 (Ct. App. 2005) ("Actual notice is synonymous with knowledge.") (cleaned up); see also *Branch v. Island Sub-div. Water & Sewer Co.*, 2005 S.C. App. Unpub. LEXIS 393, at *5–6 (S.C. Ct. App. Apr. 6, 2005) (unpublished) (observing the general rule that a

³¹ (Joinder Ex. A, ECF No. 73.1.)

³² (CitiSculpt's Br. Opp'n 5–7.)

corporate officer's knowledge obtained in the course of official duty is imputed to a corporation and listing cases).

25. Next, the NCCRA is clear that any challenge to the Court's authority over the Multi-Family Land must have been made to this Court in accordance with sections 1-507.38(b) and 1-507.22, and not, as Cox, Smith Currie, and CitiSculpt Fund Services contend, through the filing of a separate action in South Carolina.³³ See, e.g., *Hudson v. All Star Mills, Inc.*, 68 N.C. App. 447, 451 (1984) (stating that "where a receivership court has jurisdiction over a matter[,] the only remedy is through the receivership proceeding" and that "[a]ttacks on the validity of receiverships by collateral actions are not permissible under North Carolina law[]"); *Joyce Farms, LLC v. Van Vooren Holdings, Inc.*, 232 N.C. App. 591, 597–98 (2014) (holding that defendants' attempt to challenge a receivership court's order approving sale of receivership assets in a different court was an impermissible collateral attack on the receivership).

26. Finally, the fact that Odum was properly served with the South Carolina Action as the QOZB's registered agent³⁴ does not excuse the failure to also serve the Receiver, particularly when that failure here strongly suggests that McAlpine, Cox, Smith Currie, CitiSculpt Fund Services, CitiSculpt, and CitiSculpt SC acted in bad faith to keep the Receiver and the Court in the dark concerning their efforts to interfere with the QOZB's property in South Carolina.

³³ (CitiSculpt's Br. Opp'n 3.)

³⁴ (CitiSculpt's Br. Opp'n 5.)

27. Accordingly, based on the above, the Court concludes, in the exercise of its discretion, that pursuant to the Court's inherent authority and its authority under N.C.G.S. §§ 1-507.30 and 1-507.42, sanctions should be imposed against McAlpine, CitiSculpt, CitiSculpt Fund Services, CitiSculpt SC, Cox, and Smith Currie (the "Sanctioned Parties"), jointly and severally, for their knowing violation of the Receivership Order and of sections 1-507.22, 1-507.30(a), 1-507.38(b), and 1-507.42(c). The sanctions awarded hereunder shall be limited to the recovery of (i) the Receiver's actual damages arising from the Sanctioned Parties' violation of section 1-507.42(g) and 1-507.30(a) and (ii) the Receiver's reasonable attorneys' fees and costs incurred in defending against the South Carolina Action and the *lis pendens* and in bringing this Motion.

28. The Court will also enjoin the Sanctioned Parties from further prosecution of the South Carolina Action and the *lis pendens* and require their dismissal and cancellation, respectively, since these actions were taken in violation of the stay set forth in section 1-507.42(c) (and thus may be declared void by this Court under section 1-507.42(g)) and in derogation of this Court's exclusive authority and jurisdiction pursuant to sections 1-507.38(b) and 1-507.22.

IV.

CONCLUSION

29. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

- a. The Receiver's Motion is hereby **GRANTED**;

- b. The Receiver's counsel shall have through and including 22 January 2024 to file a petition seeking recovery of the Receiver's actual damages arising from the Sanctioned Parties' violation of sections 1-507.42(g) and 1-507.30(a) and (ii) the Receiver's reasonable attorneys' fees and costs incurred in defending against the South Carolina Action and the *lis pendens* and in bringing this Motion.
- c. The Sanctioned Parties shall have through and including 12 February 2024 to file any response to the anticipated petition.
- d. The Receiver shall have through and including 22 February 2024 to file any reply.
- e. The petition and briefs ordered hereunder shall comply with Business Court Rule 7.
- f. The Sanctioned Parties are hereby enjoined from further prosecution of the South Carolina Action and the *lis pendens* and are hereby ordered to file a dismissal of the South Carolina Action and a cancellation of the *lis pendens* no later than 8 January 2024.

SO ORDERED, this the 2nd day of January, 2024.

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