Wells Fargo Bank, N.A. v Andalex Aviation II, LLC

2019 NY Slip Op 33338(U)

November 8, 2019

Supreme Court, New York County

Docket Number: 651415/2016

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

NYSCEF DOC. NO. 466

modified as set forth below.

Silverman LLCs themselves.

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RECEIVED NYSCEF: 11/08/2019

SUPREME COURT OF THE STATE OF NE COUNTY OF NEW YORK: PART IAS MOT	TION 53EFM		
WELLS FARGO BANK, NATIONAL ASSOCIATION,		651415/2016	
Plaintiff,	MOTION DATE	08/07/2019	
- v - ANDALEX AVIATION II, LLC, ALLEN SILVERMAN,	MOTION SEQ. NO.	014	
Defendant.	DECISION + O	AMENDED DECISION + ORDER ON MOTION	
HON. ANDREW BORROK:	X		
The following e-filed documents, listed by NYSCEF do 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 42 445, 446, 447, 448, 449, 450, 453, 463, 464, 465			
were read on this motion to/for	EXTEND - ORDER	EXTEND - ORDER	
The court's decision and order dated October 23	2019 (the Prior Decision) is a	mended and	

Following a request for clarification from the parties and a phone conference with counsel, and upon further due consideration, the temporary receiver appointed in the court's Prior Decision is appointed only over Allen Silverman's interests in the limited liability companies that Allen Silverman has an interest in (*see* NYSCEF Doc. No. 412, the **Silverman LLCs**), not in the

Further, to the extent that the temporary receiver appointed by the court in the Prior Decision, Judy S. Mock, Esq., has indicated to the court that she cannot accept the appointment, the court

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appoints Hon. Melvin L. Schweitzer, having an address of 715 Park Ave., New York, NY 10021

as the temporary receiver for Mr. Silverman's interests in the Andalex Group LLC, TAG Arris

Retail LLC, TAG Court Square LLC, TAG Management LLC, TAG Sylvan Corporate Center

LLC, Thomson Avenue Apartments LLC, NJFL Holdings LLC, NJFL Properties LLC,

Silvermark LLC, and A&E Limited Partnership and Andalex Services, Inc. (i.e., the Silverman

LLCs); and it is further

ORDERED that the temporary receiver hereby appointed shall take and hold and collect

distributions of Allen Silverman's membership interests in the Silverman LLCs and prevent

the sale, pledge, hypothecation, or other voluntary encumbrance of Allen Silverman's

membership interests in the Silverman LLCs; and it is further

ORDERED that the powers hereby granted to the temporary receiver may not be extended

except on further order of the court; and it is further

ORDERED that the temporary receivership hereby authorized shall continue only up to

satisfaction of judgment unless hereafter directed otherwise by this court upon motion; and it is

further

ORDERED that the temporary receiver, before entering his duties, shall swear or affirm that he

will faithfully and fairly discharge the trust committed to him unless the oath is waived upon

consent of all parties and that the oath may be administered by any person authorized by the Real

Property Law to take acknowledgments of deeds; and it is further

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ORDERED that the temporary receiver shall give an undertaking in the amount of \$100 that he will faithfully discharge his duties in such capacity; and it is further

ORDERED that the temporary receiver shall keep written accounts as provided under CPLR § 6404; and it is further

ORDERED that, pursuant to Section 36.1 of Part 36 of the Rules of the Chief Judge, the temporary receivership shall be subject to said Part 36; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he is in compliance with Part 36, including Section 36.2 (d) ("Limitations on appointments based upon compensation"), but if he is disqualified from receiving such appointment pursuant to the provisions of Part 36, he shall notify this court forthwith; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he is familiar with the duties and responsibilities of a temporary receiver, has experience in such area, and is fully capable of assuming, and prepared to assume, those duties and responsibilities, which are commensurate with her abilities; and it is further

ORDERED that attorneys or support staff in the appointee's office may perform tasks under the appointee's direct supervision, but all substantive appearances and reports must be made, performed, and created by the appointee; and it is further

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ORDERED that, upon receipt of this order and UCS Form 872 (Notice of Appointment and

Certification of Compliance), the temporary receiver shall complete, execute, and return the

Form 872 to the Fiduciary Clerk; and it is further

ORDERED that, pursuant to Section 36.1(a) (10) of Part 36 of the Rules of the Chief Judge, the

temporary receiver is not authorized to hire counsel, an accountant, auctioneer, appraiser,

property manager, or real estate broker (secondary appointees) without further order of this

court, and that the temporary receiver is not authorized to pay fees to any secondary appointee

without further order of this court; and it is further

ORDERED that, pursuant to Section 36.2 (c) (8), no temporary receiver shall be appointed as his

or her own counsel and no person associated with a law firm of that receiver shall be appointed

as counsel to that receiver unless there is a compelling reason to do so; and it is further

ORDERED that compensation for every secondary appointee is subject to prior court approval

upon submission of an affirmation showing experience/expertise, services rendered, time

expended, prevailing rate in the community, rate charged, and challenges presented and results

achieved; and it is further

ORDERED that counsel for the plaintiff shall, within 15 days from the date of this order, file a

copy hereof with notice of entry with the Fiduciary Clerk; and it is further

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ORDERED that such filing with the Fiduciary Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures For Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

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11/8/2019		
DATE	ANDREW BORROK, J.S.C.	
CHECK ONE:	CASE DISPOSED X NON-FINAL DISPOSITION	
	GRANTED DENIED GRANTED IN PART X OTHER	
APPLICATION:	SETTLE ORDER SUBMIT ORDER	
CHECK IF APPROPRIATE:	INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE	