

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

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 53EFM

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WELLS FARGO BANK, NATIONAL ASSOCIATION,

Plaintiff,

INDEX NO. 651415/2016

MOTION DATE 08/07/2019

- v -

ANDALEX AVIATION II, LLC, ALLEN SILVERMAN,

Defendant.

MOTION SEQ. NO. 014

**AMENDED
DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 427, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 453, 463, 464, 465

were read on this motion to/for EXTEND - ORDER.

The court’s decision and order dated October 23, 2019 (the **Prior Decision**) is amended and modified as set forth below.

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 Silverman LLCs themselves.

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

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

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

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

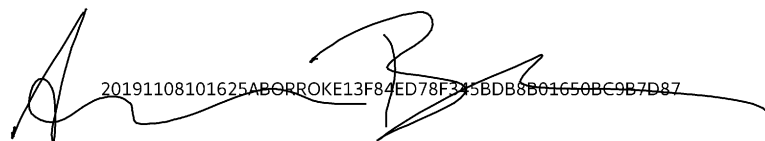
ORDERED that, pursuant to Section 36.1(a) (10) of Part 36 of the Rules of the Chief Judge, the temporary receiver is not authorized to hire counsel, an accountant, auctioneer, appraiser, property manager, or real estate broker (secondary appointees) without further order of this court, and that the temporary 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

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

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE