

**Amethyst Alt Asset Fund 2016 LLC v FDS Group
USA Corp**

2021 NY Slip Op 31120(U)

April 6, 2021

Supreme Court, Kings County

Docket Number: 504871/2019

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

At Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, NY on the 6th day of April 2021.

Present: Hon. Karen B. Rothenberg

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AMETHYST ALT ASSET FUND 2016 LLC

Plaintiff,

Index No: 504871/2019

**Order Appointing
Temporary Receiver**

FDS GROUP USA CORP, COASTAL CAPITAL CORPORATION D/B/A THE MORTGAGE SHOP D/B/A CLEARLIGHT MORTGAGE CORP and LORING ESTATES LLC

Defendants

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Upon the reading and filing of the affirmation of Sam Afra. Esq, dated July 31, 2020 and the exhibits thereto, the affidavit of Lisa Xenos, sworn to August 5, 2019, the Order to Show Cause dated August 18, 2020, and upon all of the proceedings heretofore had herein, that it is has been shown to the satisfaction of the court that Letom Management LLC is the assignee of Coastal Capital Corporation's Mortgage on the property located at 1385 Stanley Avenue, Brooklyn, NY (the "Property"), which Mortgage was created to secure a debt in the amount of \$600,000 and that the Mortgage provides for all rents and leases to be assigned to the Lender, it was further covenanted that the mortgagee should be at liberty immediately after any default, to apply for the appointment of a Temporary Receiver without notice, and that the mortgagee should be entitled to the appointment of such Temporary Receiver as a matter of right, without consideration of the value of the mortgaged premises or the solvency of any person or persons liable for the payment of such amounts; and that the mortgaged premises situated in Kings County as more fully set forth in the property description contained in Mortgage, is required to have a Temporary Receiver to preserve and protect the mortgaged property; and that the appointment of a Temporary Receiver is necessary to ensure the

mortgaged property is not lost or materially injured, for the protection of the plaintiff and the preservation of the value of the mortgaged property.

Accordingly, it is hereby

ORDERED, that Gregory Laspina, Esq. of Borchert & Laspina, P.C.,
1902 Whitestone Expy, Ste 302, Whitestone, N.Y. 11357, 718-767-3333, Glaspina@blpcny.com
be and is hereby appointed, with the usual powers and directions Temporary Receiver for the
benefit of Letom Management of all the rents and profits now due and unpaid or become due
during the pendency of this action and issuing out the mortgaged Property mentioned in the
Complaint, known by street address **1385 Stanley Avenue, Brooklyn, New York 11208 (Block:
4518, Lot: 130 (the "Property"))** and; it is further,

ORDERED, that the Temporary Receiver is authorized to forthwith take charge and enter
into possession of the property, and it is further,

ORDERED, that before entering upon his duties, said Temporary Receiver shall be sworn
to fairly and faithfully discharge the duties committed to him and shall execute to the People of
the State of New York and file with the Clerk of this Court an undertaking in the penal sum of
\$ 25,000 conditioned for the faithful discharge of his duties as such Temporary Receiver,
and; it is further,

ORDERED, that said Temporary Receiver be and is hereby directed to demand, collect
and receive from the occupants, tenants, and licensees in possession of said premises, or other
persons liable therefore, inclusive of the mortgagor, all the rents and license fees thereof now due
or unpaid or hereafter to become fixed or due, and that said Temporary Receiver be and is hereby
authorized to institute and carry on all legal proceedings necessary for the protection of said
premises or to recover possession of the whole, or any part thereof, and/or apply to the Court to
fix reasonable rental value and license fee value and to compel the tenants and occupants to
attorn to the Temporary Receiver; and it is further,

ORDERED, that the Temporary Receiver may institute and prosecute suits for the

collection of rent, license fees and other charges now due or hereafter to become due or fixed,

and summary proceedings for the removal of any tenants or licensees or other persons therefrom;
and it is further,

ORDERED, that pursuant to the General Obligation Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn same over to said Temporary Receiver within five (5) days after said Temporary Receiver shall be qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of the Court to be made and entered in this action; and it is further,

ORDERED, that anybody in possession of same shall turn over to said Temporary Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental spaces or facilities in the premises; and it is further,

ORDERED, that notwithstanding anything to the contrary contained in this order, the Temporary Receiver shall not, without the further, prior order of this Court, upon prior notice to the plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$1,000.00; and it is further,

ORDERED, that said Temporary Receiver shall promptly deposit all monies received by him at the time he receives same in his own name as Temporary Receiver in a commercial bank of his choosing, provided that the commercial bank shall be authorized to do business in New York and the relevant account shall be opened at a branch located in Kings County and that no withdrawals shall be made therefrom except as directed by this court, and the depository shall send monthly statements of deposits into and withdrawals from the account of the receiver to the receiver and plaintiff's counsel; and it is further Ordered, that the receiver provide plaintiff's counsel with monthly statement of receipts and expenditures of the Receivership; and it is further,

ORDERED, that said Temporary Receiver be and is authorized from time to time to rent and lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by the City and State of New York; to keep said premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rates, vault rents, salaries of employees, supplies and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated; and to procure such fire, plate glass, liability and other insurance as may be reasonably necessary; and it is further,

ORDERED, that the tenants, licensees or other persons in possession of said premises attorn to said Temporary Receiver and pay over to said Temporary Receiver all rents, license fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that the defendants be enjoined and restrained from collecting the rents, license fees and other charges of said premises from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing and of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such premises to the defendants, their agents, servants or attorneys; and it is further,

ORDERED, that the Temporary Receiver is prohibited from incurring obligations in excess of the monies in his hands without further Order from this Court or written consent of the Plaintiff's attorney; and it is further,

ORDERED, that the Owner turn over to the Temporary Receiver all rents collected from and after the date of this Order; and it is further,

ORDERED, that all persons now and hereafter in possession of said premises, or any part thereof, and not holding such possession under valid and existing leases or tendencies, do forthwith surrender such possession to said Temporary Receiver, subject to emergency

laws, if any; and it is further,

ORDERED, that said Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into his hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order of this Court; and it is further,

ORDERED, that said Temporary Receiver, or any party hereto, may at any time, on the proper notice to all parties who may have appeared in this action, apply to this Court for further and other instructions or powers necessary to enable said Temporary Receiver to properly fulfill his duties; and it is further,

ORDERED, that the receiver shall continue as receiver until further order of this court; and it is further,


ORDERED, that, upon proper motion of the receiver to settle his final account, the fees of the receiver shall be paid in accordance with CPLR 8004; and it is further

ORDERED, that the appointee named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of the RPAPL and Rule 36 of the Chief Judge.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, THE TEMPORARY RECEIVER IS AUTHORIZED TO APPOINT A MANAGING AGENT WITHOUT PRIOR ORDER OF THIS COURT.

NOT WITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, THE TEMPORARY RECEIVER SHALL NOT APPOINT AN ATTORNEY, APPRAISER, AUCTIONEER OR ACCOUNTANT WITHOUT PRIOR ORDER OF THIS COURT.

ENTER



Hon. Karen B. Rothenberg
J.S.C.