STATE OF NORTH CAROLINA COUNTY OF HENDERSON	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 26CV001244-440
FUSE 10, LLC, Plaintiff, v. CEDARS LODGE & SPA, L.L.C. and 719NOMAIN LLC, Defendants.	**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF RECEIVER'S MOTION TO APPROVE SALE OF PROPERTY AND SALE PROCEDURES**

All parties in interest appear to acknowledge the obvious fact that the receivership estate's partially-constructed building needs to be sold. There are no funds to complete construction, the defendants are insolvent, the building has sat inactive since at least January 2026, and Plaintiff is the only party funding receivership expenses.

All parties in interest also appear to acknowledge that there are only two possible paths for such a sale: receivership sale or foreclosure. So the options before the Court are:

(a) approve the Receiver's sale / sale procedures motion (ECF No. 42); or

(b) approve Plaintiff's request for relief from the receivership sale to foreclose on the receivership sale property (ECF No. 53).[1]

[1] Plaintiff's request for relief from the receivership stay was included in its response in support of the sale motion. ECF No. 53 at 4. The Court ruled at the 22 September 2026 hearing that Fuse was not required to file a separate motion requesting that relief, and the request would be considered at the continued hearing on 6 October 2026. ECF No. 65.

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No party in interest filed any objection to Plaintiff's request for relief from the receivership stay. *See* ECF No. 65 at 3 (setting deadline of 1 October 2026 for any briefs in opposition to Fuse's request for relief from the receivership stay). So that request is unopposed. *See* B.C.R. 7.6 (when a response brief is not filed "the motion will be considered and decided as an uncontested motion").

No party in interest objected to the ***sale*** of the property through a receivership sale process either. Rather, the objections which were filed all focused on wanting the receiver to ***change*** its proposed sale motion / sale procedures. A few (like the Defendants) wanted more time for marketing and sale. Others (parties who had contracts to purchase condo units) (the "Condo Purchasers") opposed the request that the sale be free and clear of liens and claims as permitted by N.C.G.S. § 1-507.46 in the context of a credit bid to Fuse. No other party in interest (other than Fuse) expressed a willingness to pay costs of the sale process, including a broker fee.

For Fuse, the decision is easy. It has no interest in participating in a sale process which will cost it money but does not result in finality with the title to the property being owned free and clear. (Frankly, no buyer would.) If the Court will not approve the receiver's sale motion / sales procedures as presented, then Fuse should be allowed to proceed with a foreclosure sale, which will result in a purchaser acquiring title free and clear (albeit with significantly less marketing than in the proposed receivership sale). In foreclosure, the purchaser is almost certain to be Fuse with a credit bid.

Purchasers assert that the Court should not approve the sale motion as presented and instead proceed with a claims process under N.C.G.S. § 1-507.49. But that puts the cart before the horse. A claims process in a receivership is only relevant *after* there are cash assets for distribution. Here there are none. And there never will be, unless a third-party buyer comes forward that is willing to pay more than the amount of Fuse's first priority lien debt. A claims process without cash to distribute would be a colossal waste of judicial time and resources and be completely meaningless.

The *only* possible way in which a claims process could conceivably be relevant is if some party in interest were able to make a colorable argument as to why they have a lien against the real property which is superior in priority to Fuse's October 2022 deed of trust. Nobody has raised such an argument or presented evidence to support it.[2] Indeed, in their response, Purchasers specifically admit that Fuse "financed construction under an October 2022 Construction Loan Agreement ***secured by a recorded first-priority deed of trust***." (ECF No. 67 at 3) (emphasis added)

The Court provided additional time for parties in interest to assert any argument as to how they could claim lien priority over Fuse' deed of trust and none did.[3] That is because no such argument exists. In a pure race state like North Carolina, the priority of liens is determined by the first to file. This is basic

[2] While the Sale Motion is supported by the Receiver's Affidavit (ECF No. 42.3) and by the facts in the Verified Complaint (ECF No. 3), the Purchasers have not supported their oppositions with any sworn evidence.

[3] Fuse notes that Purchasers' counsel Paul Capua first filed his notice of appearance in this case on 17 August 17 2026, almost 45 days ago (ECF No. 35). Other counsel for condo purchasers filed notices of appearance as early as 26 June 2026. ECF No. 21

blackletter law in North Carolina for over 100 years and was already applied in a case with this exact fact pattern. *See In re 222 South Caldwell Street Limited Partnership*, 409 B.R. 770 (Bankr. W.D.N.C. 2009).

> Here, the competing interests claimed in the Project by BB Syndication and the Purchasers are subject to the Recording Acts. First, BB Syndication's interest is based on the Deed of Trust. Second, the equitable liens against the Project claimed by the Purchasers ("Equitable Liens"), if they exist at all, arise from the Purchase Contracts. Indeed, the Purchasers have no connection to the Project other than through the Purchase Contracts, and those Contracts create and define the deposit payment obligations to which the Equitable Liens correspond. Accordingly, any alleged Equitable Lien resulting from the fulfillment of those payment obligations necessarily arises from the Purchase Contracts. Because the Purchasers' and BB Syndication's alleged interests in the Project arise, respectively, from the Purchase Contracts and the Deed of Trust, the priority of those interests is determined under the Recording Acts based on the order in which those interests were recorded.
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> . . . .
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> Even if the alleged Equitable Liens were valid, these alleged interests would be subordinate in priority to BB Syndication's lien under the Recording Acts, and, therefore, cut off BB Syndication's foreclosure. This is because the Deed of Trust was recorded prior to any Purchase Contracts.

Id. at 793, 795. *See also In re The McAlpine Group, LLC*, 2012 WL 6138195 at *9-10 (Bankr. W.D.N.C. 2012) (holding that equitable lien was junior to prior recorded deed of trust and "We are unaware of a court in a pure race state that has ever held an equitable lien primes a bank's recorded security interest . . .") So even if Purchasers (a) had equitable liens and (b) could conjure up a way to avoid the express lien

subordination language in their purchase contracts, there would still be no way to overcome the Recording Act / pure race provisions of North Carolina law. Any claims process to determine who has junior lien priority after Fuse would be pointless in the absence of a third-party cash purchaser and should not be a basis to deny the sale motion.

CONCLUSION

Fuse continues to believe that the Receiver's sale motion is in the best interests of creditors, and a substantially better alternative for other creditors than a foreclosure sale. If the Court agrees and approves the sale motion, then Fuse is willing to fund the costs of the process. However, in the event that the Court is unwilling to grant the sale motion on the terms presented by the Receiver, then Fuse should be granted relief from stay to achieve the same result (free and clear sale with a credit bid) through a foreclosure.

This 2nd day of October, 2026.

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CERTIFICATE OF WORD COUNT

Pursuant to Business Court Rule 7.8, the undersigned certifies that the foregoing **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF RECEIVER'S MOTION TO APPROVE SALE OF PROPERTY AND SALE PROCEDURES** does not exceed 3,750 words (including footnotes and endnotes, but excluding case caption, signature blocks and required certificates) as determined by the word count function of the word-processing system used to prepare the brief.

This the 2nd day of October, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF RECEIVER'S MOTION TO APPROVE SALE OF PROPERTY AND SALE PROCEDURES** was served upon parties through the Court's electronic noticing system and via email and/or mail to those parties listed on the receiver's certificate of service for the sale motion.

This the 2nd day of October, 2026.

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