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

1. This matter is before the Court on Limited Receiver The Liberty Solution, LLC's (the "Receiver") Motion to Approve Sale of Property and Sale Procedures (the "Motion for Sale") filed 3 September 2026 in the above-captioned case. (ECF No. 42.)

2. On 10 September 2026, the Court issued a Notice of Hearing and Conference, which set the Motion for Sale for hearing on 22 September 2026. (ECF No. 46.) On 14 September 2026, Defendants Cedars Lodge & Spa, L.L.C. ("Cedars Lodge") and 719NOMAIN LLC (collectively, the "Defendants") filed an Objection to Receiver's Motion to Approve Sale of Property and Sale Procedures (the "Objection") which contained a request for the Court to continue the hearing scheduled for 22 September 2026. (ECF No. 49.) Several interested nonparties then filed notices of adoption of the Objection between 16 September 2026 and 22 September 2026. (*See* ECF Nos. 51, 59, 63.)

3. On 17 September 2026, Plaintiff Fuse 10 LLC (the "Plaintiff") filed a Response in Support of the Motion for Sale and in Opposition to Any Request for Continuance of the Hearing (the "Response"). (ECF No. 53.)

4. Also on 17 September 2026, counsel for several interested nonparties who paid deposits for condominium units at the property (the "Condo Purchasers") filed a Motion for Continuance of Hearing on the Motion for Sale and Objection to Sale Conditions. (ECF No. 54.)

5. The Court held the hearing on the Motion for Sale on 22 September 2026 via Webex video conference. All parties and counsel were present, as well as several of the Condo Purchasers and various other interested nonparties, both represented and unrepresented by counsel. The Court ultimately continued the hearing until 6 October 2026. (ECF No. 64.)

6. On 23 September 2026, the Court issued an order directing the Defendants to provide account records, statements, and ledgers concerning the project to any parties or nonparties by request, and directing the Receiver to provide copies of a forensic accounting report to all interested parties and nonparties by 5:00 p.m. on 29 September 2026. (ECF No. 65.) The order also allowed for any parties opposing the relief requested in the Response to file a brief in opposition by 5:00 p.m. on 1 October 2026, and for Plaintiff to file a reply brief by 12:00 p.m. on 5 October 2026. (ECF No. 65.)

7. On 1 October 2026, counsel for several of the Condo Purchasers filed a Supplemental Brief in Support of Purchasers' Objections to the Motion for Sale. (ECF

No. 67.) On 2 October 2026, Plaintiff filed a Reply Brief in Support of the Motion for Sale. (ECF No. 68.) On 5 October 2026, Defendants filed a Limited Response to the Supplemental Brief in Support of Purchasers' Objections to the Motion for Sale. (ECF No. 71.)

8. On 6 October 2026, the Court held the continued hearing on the Motion for Sale via Webex video conference, at which all parties and counsel were present. Counsel for several of the Condo Purchasers, counsel for multiple interested nonparty creditors, and various other interested nonparties were also present. Having considered the Motion for Sale, the briefing in support of and in opposition to the Motion for Sale, the arguments at the 22 September and 6 October 2026 hearings on the Motion for Sale, and other appropriate matters of record, the Court finds that good cause exists to grant the Motion for Sale as set forth below:

FINDINGS OF FACT

9. A comprehensive background of the facts of this case may be found in the Verified Complaint (ECF No. 3), the Order Appointing the Limited Receiver (ECF No. 19), and the Motion for Sale itself (ECF No. 42). For purposes of this Order, the Court summarizes only those findings of fact it deems relevant to the Motion for Sale.

10. Defendants are North Carolina limited liability companies which own eight tracts of land in Hendersonville, North Carolina that are being developed as a high-end residential/hotel condominium building. (Verified Compl. ["Compl."] ¶¶ 2–4, 8–17, ECF No. 3.)

11. To fund the construction, Defendant Cedars Lodge obtained a $32 million construction loan from Fuse (the "Fuse Loan"). The Fuse Loan was evidenced by multiple loan documents and secured by a first priority lien against Defendants' real estate and personal property. (Compl. ¶¶ 18–25.)

12. On 24 June 2026 and upon Motion of the Plaintiff, the Court entered an Order Appointing Limited Receiver over the real and personal property of the Defendants. (ECF No. 19.)

13. The Defendants' Schedules of Receivership Property, Creditors, Taxing Authorities and Regulatory Authorities, filed with the Court on 25 August 2026, does not reflect any funds that may be available to the Receiver to secure and maintain the Defendants' property or pay the Receiver's expenses. (ECF No. 39.) The Receiver and Plaintiff have represented to the Court that the funds necessary to cover these expenses is currently being borne by the Plaintiff, and that the Plaintiff has agreed to continue to front the cost of marketing and selling the property as set forth in the Motion for Sale.

14. Defendants have several creditors other than Plaintiff, including Cedars Lodge and Spa EB-5 Funding LLC, a secured second priority lienholder; TAP 42 EB-5 Funding II, LLC, a secured lienholder; approximately five additional unsecured or potentially secured creditors; and approximately 43 of the Condo Purchasers who entered into Purchase and Sale Agreements ("PSA"s) with Cedars Lodge. (*See* ECF No. 39, Schedule B.)

15. The PSAs required each Condo Purchaser to make certain deposits (the "Construction Deposits") that were then placed in escrow until the Condo Purchasers' right of recission under "applicable law" had expired. (ECF No. 53.1.)[1] After such recission period had expired, the PSAs provided that Defendants were then permitted to use the Construction Deposits for "any costs, fees, or expenses related to the construction of the Residential Condominium (and Unit)." (ECF No. 53.1.)

16. The "applicable law" language of the PSAs refers to the North Carolina Condominium Act. (N.C.G.S. § 47C.) N.C.G.S. § 47C-4-110(a) requires that the Construction Deposits be placed in escrow for "such period of time as a purchaser is entitled to cancel pursuant to [N.C.G.S. §] 47C-4-108" or until the PSA is cancelled, whichever occurs first.

17. Under N.C.G.S. § 47C-4-108, the Condo Purchasers had the right to cancel the PSAs within seven days after their execution. In the event the PSA was cancelled within seven days, the respective Condo Purchaser's Construction Deposit would then be returned. (N.C.G.S. § 47C-4-108(a).)

18. N.C.G.S. § 47C-4-110(b) further provides that "except as provided in [N.C.G.S. §] 47C-4-108, nothing in subsection (a) is intended to preclude the parties to a contract from providing for the use of progress payments by the declarant during construction."

[1] The same copy of the PSA, executed by and between John and Susan Turchin as "Buyer" and Cedars Lodge as "Seller," was later filed at ECF No. 67.1. For purposes of clarity, this Order cites only to ECF No. 53.1, as it was the first-filed copy of the PSA.

19. The PSAs themselves contain the following language regarding the Condo Purchasers' right to rescission:

> If the Unit is not substantially completed by the Estimated Completion Date, the Buyer shall send written notice to complete the Unit to the Seller and the Seller shall have 180 days from the date on which the Seller receives such notice to substantially complete said Unit. If the Unit is still not substantially completed within 180 days after receipt of such notice by the Seller, the Buyer shall have the right to rescind this Agreement by giving the Seller written notice of rescission within 10 days after the expiration of said 180-day period. If the Buyer rescinds this Agreement as set forth in this paragraph, all funds paid by the Buyer hereunder . . . shall be refunded to the Buyer, as *full liquidated damages for any alleged breach or inconvenience*[.]

(ECF No. 53.1 (emphasis added).)

20. The PSAs also contain the following language regarding priority of any purported lien: "This Agreement and the Construction Deposits or Non-Contract Upfit Payment tendered herein shall, at all times, be subordinate to the lien of any lender or creditor of Seller *regardless of the dates or order of creation or recording such liens or encumbrances*." (ECF No. 53.1 (emphasis added).) The PSAs further state that "Buyer acknowledges and agrees that any lender of the Seller will have a lien interest in the Property and any improvements thereon, including the Unit, which shall be superior to the rights and interests provided under this [SPA]." (ECF No. 53.1.)

21. The Motion for Sale proposes sale of the receivership property to Plaintiff "subject to a competitive bidding process that will provide additional certainty that the Receiver maximized the Estate's recovery from the Property."

(ECF No. 42 ¶ 1.) The Condo Purchasers oppose the Motion for Sale as presented by the Receiver because they argue that it effectively extinguishes any equitable lien rights that they may have to any potential proceeds from the sale. (*See* ECF No. 67.)

22. Several of the interested nonparties have requested a longer marketing period than that included in the Motion for Sale. However, Plaintiff has indicated that it would not continue to provide funds to the Receiver for a longer marketing period than that proposed in the Motion for Sale, and none of the nonparties have offered to shoulder such expenses.

CONCLUSIONS OF LAW

23. Plaintiff and counsel for the Condo Purchasers each discuss *Cooper v. BB Syndication Servs. (In re 222 Caldwell St., Ltd. P'ship)*, 409 B.R. 770, 792 (2009) and its application to the facts of this case in their respective briefs. The Court finds this case instructive in its reasoning.

24. *Cooper* contains a factual scenario analogous to this case. In *Cooper*, the debtor owed defendant BB Syndication approximately $29 million for the balance of an unpaid loan on an unfinished residential condominium tower located in Charlotte, North Carolina. *Cooper*, 409 B.R. 770, 777. BB Syndication's loan was secured by a first priority deed of trust on the project. *Id.* Following an attempt at foreclosure and a subsequent involuntary bankruptcy petition, the court appointed plaintiff Cooper as Trustee for the debtor. *Id.* Cooper then reached an agreement with a third party to purchase the project for $19 million, which was ultimately approved by the court. *Id.* The cited action was then filed by Cooper, who sought for the court to determine

the "validity, extent and priority of certain alleged liens and/or other interests in the Project and the proceeds." *Id.* at 778.

25. The debtor in *Cooper* had also entered into pre-construction contracts with several condominium unit purchasers, none of whom recorded those contracts. *Id.* at 779. Those purchasers sought to dismiss the proceedings in the bankruptcy court so that they could assert "any equitable lien claims" in state court. *Id.* at 780. The purchasers' various theories for these equitable lien claims included unjust enrichment, constructive trust, and equitable estoppel. *Id.* at 790–92. The court found that none of these theories for imposition of an equitable lien held merit, and even if an equitable lien were to be imposed, no basis existed for any equitable lien to establish a prior interest to the first priority lienholder BB Syndication's recorded deed of trust. *Id.*

26. As *Cooper* discusses, equitable liens may arise from "(1) a written contract which shows an intention to charge some particular property with a debt or obligation, or (2) a declaration of a court of equity out of the general considerations of right and justice, as applied to the relations of the parties and the circumstances of their dealings." *Id.* at 790 (citing *Garrison v. Vermont Mills*, 154 N.C. 1, 6 (N.C. 1910)).

27. First, to the extent that an equitable lien arises from the PSAs themselves, the express language of the PSA does not demonstrate an intention to charge any such property with any debt or obligation. Second, assuming as the Condo Purchasers argue that the PSAs are void *ab initio* due to their rescission, the relations

of the parties and the circumstances of their dealings would also not support the imposition of an equitable lien. The Condo Purchasers knew at the time that the Construction Deposits were made that, unless they were rescinded within seven (7) days as required by the North Carolina Condominium Act, those Construction Deposits would be used for construction. The fact that any of the PSAs may now be void due to rescission does not negate the Condo Purchasers' knowledge of that fact.

28. To the extent that the Condo Purchasers seek to create an equitable lien under the doctrine of unjust enrichment, they have presented none of the "special factors" that justify imposition of an equitable lien under this theory. *See Cooper*, 409 B.R. 770, 790–91 (discussing the "special relationships" which North Carolina courts have found may give rise to the imposition of equitable liens, including husband-wife and parent-child relationships) (citations omitted).

29. No such confidential or otherwise special relationship existed between any of the Condo Purchasers and Defendant Cedars Lodge. These were arms-length transactions. There were also no allegations of fraudulent use of the Construction Deposits, therefore the relations between the Condo Purchasers and Cedars Lodge do not include any special circumstances warranting the decree of an equitable lien.

30. The doctrines of constructive trust and equitable estoppel discussed in *Cooper* are also insufficient. Once again, the Condo Purchasers present no argument that the Construction Deposits were not validly used by Cedars Lodge. In fact, their argument is that the Construction Deposits *were* used for construction and thus

support a request for the imposition of an equitable lien. As discussed herein, this argument cannot be squared with applicable law.

31. A constructive trust requires that the funds be "acquired through fraud, breach of duty, or other circumstances making it inequitable for him to retain such title or interest against the beneficiary of the constructive trust." *Cooper*, 409 B.R. 770, 791–92 (quoting *Wilson v. Crab Orchard Dev. Co.*, 276 N.C. 198, 211 (1970)). The Construction Deposits were not acquired by Cedars Lodge through fraud, breach of duty, or other circumstances making it inequitable for Cedars Lodge to retain the funds and use them for construction, as was envisioned by the terms of the PSAs. The Court finds "no reported cases in North Carolina . . . in which a constructive trust has been imposed absent some fraudulent or improper acquisition of property." *Graham v. Martin*, 149 N.C. App. 831, 835 (2002). It therefore declines to do so now.

32. Equitable estoppel is also inapplicable. This argument is once again premised on the improper use of the Construction Deposits, but the Condo Purchasers have not argued that the Construction Deposits were used for an improper purpose. Rather, they are specifically alleging that, because they were used for construction of the project *as they intended them to be*, they are somehow entitled to an equitable lien based on the concept of equitable estoppel. The only plausible argument, which again was not advanced by the Condo Purchasers, would be that the Construction Deposits were used for construction after any individual Condo Purchaser rescinded their respective PSA. Because this argument was not advanced, and there is also no

evidence suggesting the Construction Deposits were used after any rescission, equitable estoppel cannot apply to impose an equitable lien.

33. In addition to the foregoing failed arguments, the court in *Cooper* also highlighted the purchasers' failure to record their contracts, stating that "BB Syndication's interest in the Project is superior to the Purchasers' alleged equitable interests, because those interests arise, if at all, from contracts to convey real property, which the Purchasers acknowledge they *failed to record prior to BB Syndication's Deed of Trust*." *Cooper*, 409 B.R. 770, 792 (emphasis added). Similarly, the Condo Purchasers could have recorded their respective PSAs. Had they done so, this recordation would serve as effective notice that, if the PSAs were rescinded, the Condo Purchasers could retain the future argument that they have an equitable lien. The Condo Purchasers failed to do so.

34. Even if the Condo Purchasers had recorded their PSAs, or otherwise established an argument under any of the discussed theories of equitable liens, they would still be in line behind all of the recorded lienholders. As established by N.C.G.S. § 47-18, North Carolina is a "pure race" state, meaning that "priority is determined according to who wins 'the race to the courthouse.'" *Id.* at 793. "No court in a pure race statute state has ever held an equitable lien, in a situation akin to the present matter, primes a bank's recorded security interest." *Id.* at 795. The PSAs also explicitly state that the Construction Deposits are subordinate to any other lien, regardless of the date of creation or recordation.

35. The Court is essentially left with two choices: a foreclosure sale (in which the highest bidder is typically the lender, and in this case, Plaintiff) or the Motion for Sale brought by the Receiver. The Court finds that the sale as proposed by the Receiver presents the best chance to obtain proceeds for the various creditors in this action. The sale as proposed also puts the Condo Purchasers in no worse position with respect to any hypothetical lien rights than they were before any of the PSAs were rescinded, given the liquidated damages language of the PSAs.

36. For the foregoing reasons, the Court does not find any credible argument under which the Condo Purchasers could establish a case for an equitable lien. Therefore, the best option for all interested parties and nonparties is to proceed with the sale procedures as proposed by the Receiver in the Motion for Sale. Accordingly, the Receiver's Motion for Sale is **GRANTED**.

37. Nothing in this Order shall operate to preclude Plaintiff from bringing any future motion for relief from the sale proceedings to foreclose on the receivership property.

SO ORDERED, this the 7th day of October, 2026.

/s/ A. Graham Shirley

A. Graham Shirley
Special Superior Court Judge
for Complex Business Cases