

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(WEST PALM BEACH DIVISION)

CASE NO. 09-80190-CIV-HURLEY/HOPKINS  
(Ancillary Proceeding to U.S.D.C. Case No. 08-81565-CIV-HURLEY/HOPKINS)

JONATHAN E. PERLMAN, Esq.,  
as court appointed Receiver of  
Creative Capital Consortium, LLC, et al.,

Plaintiff,

v.

CAPTIN CONSTRUCTION GROUP,  
INC., a Georgia corporation, et al.,

Defendants.

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**AGREED MOTION FOR ABATEMENT OF CASE AND CORRESPONDING  
REQUEST FOR EXTENSION OF TRIAL DATE AND CASE MANAGEMENT  
DEADLINES**

Plaintiff, JONATHAN E. PERLMAN, ESQ., as court appointed Receiver for Creative Capital Consortium, LLC, et al. (the "Receivership Entities"), and HOMELAND TITLE SERVICES, LLC ("Homeland") hereby file this Agreed Motion For Abatement Of Case And Corresponding Request For Extension Of Trial Date And Case Management Deadlines and state as follows:

1. On August 10, 2010 (the "Petition Date"), the Defendant, Captin Construction Group, Inc. ("Captin Construction") filed a Voluntary Petition in Bankruptcy under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Case No: 10-83367-JEM (the "Bankruptcy Petition.")

2. Subsequent to filing its Bankruptcy Petition, Captin Construction filed a Suggestion of Bankruptcy in this Court to notify the Court and the parties regarding the pending bankruptcy proceedings in Georgia [D.E. #71].

3. The “automatic stay” provisions of the Bankruptcy Code at 11 U.S.C §362 became effective with respect to Captin Construction immediately upon the filing of the Bankruptcy Petition. The automatic stay prohibits the Receiver from further pursuing his claims in this case against Captin Construction for a period of 180 days from the Petition Date.

4. The Receiver’s claims in this case arise under the *Florida Uniform Fraudulent Transfer Act* at Fla. Stat. 726.101 et seq.. The Receiver seeks to avoid and recover certain alleged fraudulent transfers made by the Receivership Entities to all of the named Defendants<sup>1</sup> in this matter.

5. The transfers sought to be avoided by the Receiver arise from related real estate transactions involving, in one manner or another, all of the defendants and the Receivership Entities. The Receiver’s claims against Captin Construction and the other defendants therefore involve identical issues of fact and law.

6. The Receiver will continue to pursue his claims against Captin Construction in the Georgia bankruptcy proceedings. The prospective pursuit of the Receiver’s claims in Bankruptcy Court will include continued discovery against Captin Construction which was interrupted in this case by virtue of the filing of the Bankruptcy Petition.<sup>2</sup>

7. The Receiver’s claims against Homeland Title and Captin Construction, and the defenses raised in connection therewith, are inextricably intertwined. For purposes of judicial

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<sup>1</sup> The Receiver has been unable to locate the defendant Valentin Ardelean. Service of process upon Ardelean has not been accomplished.

<sup>2</sup> The filing of the Bankruptcy Petition occurred on the eve of scheduled depositions by the Receiver of Captin Construction and its principals.

economy, and in order that both the Receiver and Homeland Title may effectively prepare for trial and present evidence in this case, the resolution of the Receiver's claims in the bankruptcy proceedings should precede any trial on the merits in this case. Furthermore, discovery and testimony arising from the bankruptcy proceedings will be relevant and informative to the issues raised in this case.

WHEREFORE, the Receiver and Homeland Title request that this Court enter an order abating these proceedings until February 10, 2011 and that the trial date and corresponding case management deadlines be extended accordingly at least ninety (90) days thereafter.

Respectfully submitted this 9<sup>th</sup> day of September, 2010.

<p><u>s/David P. Lemoie, Esq.</u> David P. Lemoie (FBN: 188311) <a href="mailto:dlemoie@gjb-law.com">dlemoie@gjb-law.com</a> David C. Cimo (FBN: 775400) <a href="mailto:dcimo@gjb-law.com">dcimo@gjb-law.com</a>  GENOVESE JOBLOVE &amp; BATTISTA, P.A. Miami Tower, 44th Floor 100 Southeast Second Street Miami, Florida 33131 Phone: (305) 349-2300 Facsimile: (305) 349-2310 <i>Attorneys for Receiver Jonathan E. Perlman, Esq.</i></p>	<p><u>s/Dale Lynn Friedman, Esq.</u> Dale Lynn Friedman, Esq. (FBN: 854646) <a href="mailto:dfriedman@conroysimberg.com">dfriedman@conroysimberg.com</a>  CONROY SIMBERG GANON KREVANS &amp; ABEL 3440 Hollywood Boulevard, 2nd Floor Hollywood, FL 33021 Telephone: (954) 961-1400 Facsimile: (954) 967-8577 <i>Attorneys for Homeland Title Services, LLC</i></p>
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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on September 9<sup>th</sup>, 2010, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and is also being served on all counsel of record listed in the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: s/David P. Lemoie, Esq.  
David P. Lemoie

**SERVICE LIST**

**JONATHAN E. PERLMAN, Esq., as court appointed Receiver of Creative Capital Consortium,  
LLC, et al. v. CAPTIN CONSTRUCTION GROUP, INC., et al.  
CASE NO. 09-80190-CIV-HURLEY/HOPKINS  
United States District Court, Southern District of Florida**

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**ORDER GRANTING AGREED MOTION TO ABATE CASE AND FOR EXTENSION  
OF TRIAL DATE AND CORRESPONDING CASE MANAGEMENT DEADLINES**

THIS CAUSE having come before this Court upon the Agreed Motion For Abatement Of Case And Corresponding Request For Extension Of Trial Date And Case Management Deadlines [D.E. \_\_\_ ] (the "Agreed Motion"), and the Court having reviewed the Agreed Motion, having considered the record, and being otherwise duly apprised in the premises thereof, it is hereby **ORDERED and ADJUDGED** that

1. The Agreed Motion [D.E. \_\_\_] is **GRANTED**.
2. This case is abated until February 10, 2011.
3. This case is **RE-SET** for trial on the \_\_\_\_\_ **2011 Trial Calendar** which commences on \_\_\_\_\_, \_\_\_\_\_, 2011. Counsel for all parties shall appear at a calendar call commencing at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, 2011 at courtroom five at the U.S. Courthouse, 701 Clematis Street, West Palm Beach, Florida.

4. In light of the extension of trial date, pretrial discovery deadlines will be adjusted to comport with the new calendar call date for this case.

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida this \_\_\_\_ day of September, 2010.

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DANIEL T.K. HURLEY  
United States District Judge

*Copies provided to Counsel of Record:*

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