

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

MCGINN, SMITH & CO., INC.;
MCGINN, SMITH ADVISORS LLC;
MCGINN, SMITH CAPITAL HOLDINGS CORP.;
FIRST ADVISORY INCOME NOTES, LLC;
FIRST EXCELSIOR INCOME NOTES, LLC;
FIRST INDEPENDENT INCOME NOTES, LLC;
THIRD ALBANY INCOME NOTES, LLC;
TIMOTHY M. MCGINN; AND
DAVID L. SMITH,

1:10-CV-457
(GLS/RFT)

Defendants and

LYNN A. SMITH,

Relief Defendant.

**NOTICE OF MOTION TO INTERVENE UNDER RULE 24(a) and FOR A LIFT OF
THE TEMPORARY RESTRAINING ORDER**

1. CIT Lending Services Corporation moves for leave to intervene in this action pursuant to Federal Rule of Civil Procedure 24(a) and for relief from the Honorable Lawrence Kahn, Senior United States District Court Judge's April 20, 2010 Temporary Restraining Order ("TRO"). CIT Lending Services Corporation, as Proposed Intervenor, claims an interest relating to the property that is the subject of this action and is so situated that the disposition and/or continued litigation of this action may, as a practical matter, impair or impede its ability to protect that interest unless Proposed Intervenor is permitted to intervene in this action for the

limited purpose of seeking relief from the aforementioned TRO. Moreover, Proposed Intervenor's proprietary interest is not adequately represented by any existing party to this action.

2. In this federal action, Plaintiff Securities and Exchange Commission has alleged, *inter alia*, fraud, misuse of investor funds, and other violations of the Securities' Regulation and Rules against Defendants. On April 20, 2010, Judge Kahn issued a TRO freezing Defendants' assets and preventing any person or entity from taking "any action without further order of this Court to interfere with the taking, control, possession, or management of the [Defendants'] assets, including, but not limited to, the filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order."

3. Proposed Intervenor is currently prosecuting a foreclosure action in Supreme Court of Albany County, New York, to which Third Albany Income Notes, LLC, is a defendant and a junior mortgagee on the property in question in the foreclosure action with rights subordinate to those of Proposed Intervenor, who is the primary mortgagee.

4. At present, Proposed Intervenor cannot prosecute the foreclosure action given Judge Kahn's TRO and, as such, seeks relief from such Order so that it may pursue its foreclosure action unencumbered by such Order. Given the above, we ask the Court to grant this Motion to Intervene and corresponding Motion to Lift the Temporary Restraining Order to the extent it prohibits Proposed Intervenor from duly prosecuting its foreclosure action versus Third

Albany Income Notes, LLC, in state court.

Dated: November 3, 2010

Yours, etc.,

**MAYNARD, O'CONNOR, SMITH
& CATALINOTTO, LLP**

s/Benjamin W. Hill

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