

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS)
(DRH)

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, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants, and

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants and:

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

STIPULATED ORDER RESOLVING MOTION OF CIT LENDING
SERVICES CORPORATION TO INTERVENE AND VACATE STAY
(74 STATE STREET PROPERTY)

Upon the Motion of CIT Lending Services Corporation (“CIT”) to Intervene Under Rule 24(a) and For a Lift of the Temporary Restraining Order as to the real property located at 74-76 State Street, Albany, New York (Docket No. 169), and the Receiver’s Response to the Motion (Docket No. 202), the Receiver and Ittleson Trust 2010-1, the successor to CIT, stipulate as follows in order to fully resolve the Motion:

1. CIT has, since the filing of the Motion, assigned all of its right, title and interest in its (a) Amended, Consolidated and Restated Promissory Note, and (b) Consolidation, Modification and Extension Agreement, relating to certain mortgages given by State Street Hospitality, LLC with respect to the real property commonly known as 74-76 State Street, Albany, New York (“Real Property”) to Ittleon Trust 2010-1 (“Mortgagee”).

2. The Mortgagee asserts that (a) the principal amount owed on its first mortgage lien is in excess of \$9,317,655, (b) there is currently owed approximately \$500,000 in real property taxes on the Real Property, and (c) based on a recent appraisal obtained by CIT, the value of the Real Property is materially less than the amount of the Mortgagee’s first lien.

3. Third Albany Income Notes, LLC (“TAIN”) (a Receivership entity) is the holder of a contractually subordinate second mortgage lien on the Real Property (“TAIN Mortgage”). By virtue of the Preliminary Injunction Order dated July 22, 2010 (Docket No. 96), the Receiver also holds other interests relating to the Real Property and the hotel operating thereon (“Other Interests”).

4. In order to resolve the Motion, the Receiver and the Mortgagee agree as follows subject to Court approval:

- a. in consideration of the TAIN Mortgage, the Mortgagee will pay the Receiver \$50,000 in good funds upon entry of this Stipulated Order;
- b. the Receiver consents to the lifting of the stay and agrees not to assert any defenses or counterclaims as to the foreclosure by the Mortgagee of the TAIN Mortgage. The Receiver shall file an amended Notice of Appearance and Request for Service of Pleadings in the Mortgagee’s foreclosure action amending the Notice of Appearance previously filed by TAIN prior to the initiation of the Receivership;
- c. the Mortgagee shall cause 40% of any amount of consideration transferred by the Mortgagee, directly or indirectly, to any other creditor, guarantor or investor in the Real Property or in the hotel thereon

