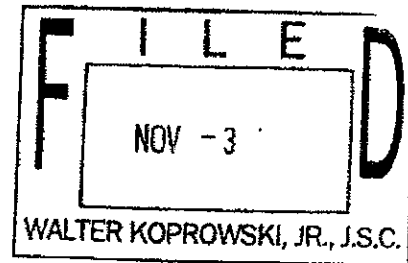


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 Attorney for Defendant
 Adenah Bayoh



SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION: ESSEX COUNTY
 DOCKET NO.: ESX-C-226-11

ESTATE OF ADEKUNLE ALLI, by
 ADENIKE ALLI, Administrator,

Plaintiff,

vs.

ADENAH BAYOH, ABKA HOLDINGS, LLC,
 KWAY PROPERTIES, LLC, NEW CAPITAL
 INVESTORS, LLC and MIDGROVE
 PROPERTIES, LLC,

Defendants.

CIVIL ACTION

**ORDER DENYING MOTION
 TO APPOINT RECEIVER AND
 GRANTING CROSS-MOTION TO
 DISMISS COUNT I OF THE
 VERIFIED COMPLAINT
 WITHOUT PREJUDICE**

THIS MATTER, having been opened to the Court upon the motion of Paul M. Bangiola, Esq., attorney for Plaintiff Estate of Adekunle Alli, by Adenike Alli, Administrator (the "Estate"), for an Order pursuant to N.J.S.A. §14A:12-7 to appoint a receiver for Defendants ABKA Holding, LLC, KWAY Properties, LLC, New Capital Investors, LLC, and Midgrove Properties, LLC (the "Limited Liability Companies"); and upon the cross-motion of John Fialcowitz, Esq., attorney for Defendant Adenah Bayoh for an Order dismissing Count I of the

Verified Complaint; and the Court having considered the parties' submissions and oral argument and for good cause shown,

IT IS on this the 3rd day of November, 2011,


ORDERED as follows:

1. The Estate's motion to appoint a receiver for the Limited Liability Companies is denied. *without prejudice.*
2. The cross-motion of Defendant Adenah Bayoh ("Adenah") is granted and Count I of the Verified Complaint is dismissed without prejudice.
3. The Estate's request for interim relief in the amount of \$50,000.00 for counsel and accounting fees is denied.
4. The Estate shall serve John Fialcowitz, Esq., Adenah's counsel, with its requests for financial records within five (5) days of its receipt of a copy of this Order.
5. Mr. Fialcowitz shall respond to the Estate's requests for records within thirty (30) days of receipt of the Estate's demands and after entry of an appropriate Protective Order.
6. Mr. Fialcowitz shall prepare a proposed Stipulated Protective Order to protect the confidentiality of the information exchanged between the parties, and the parties will work together to prepare a proposed form of Order to present to the Court.
7. Adenah shall reinstate the bi-weekly payments to Adenike Alli in the amount previously paid as shown on the records contained in Exhibit 21 of Adenah's October 24, 2011 Certification, and these payments shall continue until further Order of the Court.

8. Adenah shall have sole authority to manage the business and affairs of the Limited Liability Companies until further Order of the Court, subject to her duty to provide the financial information requested by the Estate as described above.

9. A case management conference shall be held before the Court on December 15 2011. at 1:30 p.m.

10. Mr. Fialcowitz shall serve a copy of this Order on all parties within 7 days.


Hon. Walter Koprowski, Jr., J.S.C.

This motion was: opposed.
 unopposed.

11. Application to intervene filed by TRICOMITH'S AND Rigatoni Realty Corp 15 Days
COURT CONSIDERED THE OBJECTIONS TO THE
FORM OF THE ORDER.

REASONS placed on the record.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, PROBATE PART
ESSEX COUNTY
DOCKET NO. C-226-11
A.D.# _____

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ESTATE OF ALLI,)
)
Plaintiff,)
)
vs.)
BAYOH, ET AL.,)
)
Defendant.)

TRANSCRIPT
OF
ORDER TO SHOW CAUSE
HEARING

Place: Essex County Courthouse
212 Washington St..
Newark, New Jersey 07102

Date: October 27, 2011

BEFORE:
HONORABLE WALTER KOPROWSKI, JR., J.S.C.

TRANSCRIPT ORDERED BY:
JOHN A. FIALCOWITZ, ESQ. (Law Office of John A. Fialcowitz)

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APPEARANCES:

PAUL M. BANGIOLA, ESQ.
(Bangiola Law Office)
Attorney for the Plaintiff

JOHN A. FIALCOWITZ, ESQ.
(Law Office of John A. Fialcowitz)
Attorney for the Defendant

NICHOLAS J. CANOVA, ESQ.
(Fein, Such, Kahn & Shepard)
Attorney for the Interveners, Bank of America

TIMOTHY J. FORD, ESQ.
(Einhorn, Harris, Ascher, Barbarito & Frost)
Attorney for the Interveners, Creditors

Transcriber, Sherry M. Bachmann
G&L TRANSCRIPTION OF NJ
40 Evans Place
Pompton Plains, New Jersey 07444

Sound Recorded
Recording Operator,

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1 THE COURT: This is the matter of -- 226-11
2 -- docket. This is the return date of an order to show
3 cause. My name is Judge Koprowski, and what I'm going
4 to do now is, first, ask Counsel to please enter your
5 appearances.

6 MR. BANGIOLA: For the plaintiff, Estate of
7 Alli, Paul M. Bangiola, B-a-n-g-i-o-l-a.

8 THE COURT: Thank you.

9 MR. FIALCOWITZ: Your Honor, good morning.
10 John Fialcowitz for defendant, Adina (phonetic) Bayou.

11 THE COURT: Thank you. We have Counsel here,
12 who are seeking to intervene. Counsel, do you want to
13 enter your appearances.

14 MR. CANOVA: Nicholas Canova from Fein, Such,
15 Kahn & Shepard on behalf of the Bank of America.

16 MR. FORD: Timothy Ford, Your Honor, from
17 Einhorn, Harris, Ascher, Barbarito & Frost on behalf of
18 creditors in a related and pending matter before Judge
19 Levy.

20 THE COURT: All right. Then Mr. Leiberman
21 was here and appearing on behalf of Tricominus
22 (phonetic), I guess it is, and he was -- he's also
23 filed some papers, but he's not here.

24 MR. FORD: Your Honor, he asked me to advise
25 Your Honor that he had to leave, remind Your Honor that

1 he had submitted a certification with respect to his
2 position and he apologized he needed to leave.

3 THE COURT: All right. So I guess, in terms
4 of procedure and maybe I'll -- let's do this. Let me
5 hear the order to show cause first, and then I'll hear
6 the application to intervene in this matter. I know
7 that it may impact what relief I grant on the order to
8 show cause, but -- actually, maybe it's better to hear
9 the motion to intervene first because Mr. Ford and Mr.
10 Canova know where they stand as far as their position
11 on this application. So why don't we reverse that.
12 Mr. Ford, Mr. Canova, why don't you come forward and
13 I'll let you argue your application and then we'll hear
14 from -- then I'll hear from Mr. Fialcowitz and Mr.
15 Bangiola as far as the intervention is concerned.

16 MR. FORD: Your Honor, as Your Honor is
17 aware, what I've termed as the Rigatoni plaintiffs in a
18 pending matter in foreclosure that's being handled by
19 Judge Levy is requested to intervene under Rule 4:33-1.
20 The Rigatoni plaintiffs, Your Honor, are creditors of
21 the Estate of Adaculi (phonetic) Alli, and they are
22 creditors directly of Adina Bayou and New Capital
23 Investors.

24 There is a consent order -- there's been
25 multiple consent orders before Judge Levy, the primary

1 one of which was consent order from September 23rd,
2 2009, where there is a baseline, at least some of
3 \$283,500 that is due by the Estate of Adaculi Alli,
4 Adina Bayou, and New Capital Investors. There is a
5 September 23rd, 2009, consent order. That number is
6 also reflected in a July 8th, 2011, consent order that
7 was executed by Judge Levy and I believe it may have
8 been involved or reflected in a July of 2010 consent
9 order.

10 You know, this is a minimum sum certain. The
11 Rigatoni plaintiffs are also seeking other relief in
12 those matters, including attorneys' fees and interest
13 pursuant to the consent order. The Rigatoni
14 plaintiffs, I had filed an application for Judge Levy
15 in October, 2011, for interest only payments as it
16 relates to the consent orders, Your Honor.

17 The Adina Bayou and New Capital Investors,
18 through their attorney, Mark Davis, both himself and
19 the Rigatoni plaintiffs executed a consent order, which
20 is pending before Judge Levy and I know Judge Levy
21 wanted me to raise that issue before Your Honor today.
22 The Judge indicated that he would sign off on the
23 consent order, I guess, pending what happens before
24 Your Honor today.

25 Just to be as brief as I can, Your Honor, the

1 Rigatoni plaintiffs are creditors. They are interested
2 in several of the properties that are at play in this
3 matter. New Capital Investors, which is a defendant in
4 this matter, is a defendant in our action and jointly
5 and severally owes an obligation to my clients in at
6 least the amount of \$283,500.

7 THE COURT: So why -- why should I permit you
8 to intervene in basically what amounts to a dispute
9 between the Estate and the member of the various
10 entities? Aren't you getting involved in a governance
11 kind of a situation? And why get involved -- why
12 should I let you be involved in the dispute between the
13 two members? What's the basis for that, Mr. Ford?

14 MR. FORD: Your Honor, you know, my clients
15 are creditors of all of the relevant parties in this
16 matter. You know, it's our position that, since 2008,
17 all of the parties that are involved in the matter
18 before Your Honor have done nothing but to delay and to
19 prejudice the rights of the Rigatoni plaintiffs. Some
20 of the properties that are involved, Your Honor, in the
21 matter that's pending in this action are related to the
22 properties that are the subject of the September 23rd,
23 2009, consent order.

24 THE COURT: I understand all that. But, I
25 mean, if you enter in, I mean, what are you going to

1 do? Aside from protecting your interest in the
2 property, you can't dissolve the -- I don't think you
3 have the statutory right to seek dissolution of the
4 LLCs or to seek some kind of a modification of the
5 management of the LLC. Really, you're a creditor and
6 you have an interest in the property, but that doesn't
7 give you an interest in the management of the LLC.

8 MR. FORD: Your Honor, my clients are not
9 seeking any involvement in the management or
10 dissolution of any of the entities. They're simply
11 taking the position that they're interested parties.
12 Depending on Your Honor's order as it relates to a
13 receiver being appointed, my clients are creditors of
14 the Estate of Alli and Adina Bayou and New Capital
15 Investors.

16 One of the nuances, Your Honor, is, our
17 consent order in the amount of 238,500 that has not
18 been reduced to a formal judgment and docketed as a
19 lien with the State of New Jersey. Judge Levy has
20 ordered that certain procedural mechanisms take place
21 before that occurs. For example, in my matter, Your
22 Honor, without getting into too much detail, there is a
23 property that is now owned by court order by my client,
24 which is to be sold in a procedure that was put in
25 place by Judge Levy.

1 Until that happens, Judge Levy has said that
2 the Rigatoni plaintiffs should not file the consent
3 order and have it docketed as a lien in the State of
4 New Jersey. So one of the issues, Your Honor, is,
5 although there are mortgages related to some of the
6 properties that are involved in both actions, it has
7 not yet been reduced to a formal judgment. There is a
8 consent -- there is multiple consent orders, but
9 there's been nothing that's been recorded as a lien in
10 the State of New Jersey pending the procedural
11 mechanisms that are ongoing.

12 But it's not our position that we want to be
13 involved in a fight over the control or ownership of
14 the entities or, you know, we're not seeking to
15 dissolve the entities. Your Honor, I think,
16 essentially, the Rigatoni plaintiffs want to be aware
17 as to what is going on in that matter than to be kept
18 abreast of everything that's occurring.

19 THE COURT: So if I consolidated the matters,
20 wouldn't that accomplish what your goal is? In other
21 words, you would know what's going on -- consolidate it
22 for discovery purposes and we've kept you -- you would
23 be in the mix as far as that goes, but you really
24 wouldn't be a party who -- or intervener in the
25 underlying lawsuit. No?

1 MR. FORD: I suppose, Your Honor, that may
2 accomplish -- you know, accomplish what the Rigatoni
3 plaintiffs are seeking. My only one concern is the
4 fact that, although the consent orders are in place and
5 they've been signed by the Judge, that they have not
6 been reduced to a lien and that cannot be done at this
7 point. I would do that, but that cannot be done until
8 we finish the one mechanism set forth in Judge Levy's
9 July 8th, 2011, order. So that's one area of concern
10 that I do have, just so that it's recognized as a claim
11 of both the plaintiff in this matter and the
12 defendants, Adina Bayou and New Capital Investors.

13 THE COURT: All right. Thank you. Mr.
14 Canova, you don't want your case consolidated. I know
15 that.

16 MR. CANOVA: Correct, Your Honor. It seems,
17 based on what we heard before, that it's basically an
18 accounting issue and we have a pretty plain vanilla
19 foreclosure and we would accept reinstatement or payoff
20 at any time when they come to any sort of agreement.
21 But their claims have not much to do with the
22 foreclosure action.

23 THE COURT: So what's your position as far as
24 -- what involvement do you seek in this case?

25 MR. CANOVA: Zero involvement.

1 THE COURT: You don't -- anything.

2 MR. CANOVA: I'm just here to make sure it's
3 not consolidated -- our foreclosure isn't consolidated
4 into this action.

5 THE COURT: All right. Well, there's no
6 application to consolidate at the moment. Mr. Ford
7 wants to intervene, but I don't really understand how
8 or why he should be -- his client should be allowed to
9 intervene in this action. Let's hear from -- let's
10 hear from plaintiff first. Mr. Bangiola?

11 MR. BANGIOLA: Thank you, Your Honor. In
12 this action, the plaintiff, Estate of Alli, is --

13 THE COURT: Do you want to address the
14 interven-- the application to intervene?

15 MR. BANGIOLA: Oh, the intervention?

16 THE COURT: Yes.

17 MR. BANGIOLA: On the intervention issue, I
18 think, in Mr. Ford's case and, I think, actually, in
19 the case of the Bank of America as well, they are
20 reacting to something that was in my pleadings where I
21 pointed out to the Court and I actually seek the relief
22 of the receiver to higher Counsel and manage these
23 three pieces of litigation, which in the best interests
24 of the companies and in the best interests of my
25 client, the Estate, so that instead of having three

1 lawyers, one lawyer, same lawyer in three different
2 cases managing those cases with these creditors, a
3 single receiver can actually marshal the rents that are
4 really the things that need to be marshaled to resolve
5 these cases and to resolve those litigations, their
6 foreclosures before we lose another property.

7 Mr. Ford's client has succeeded in obtaining
8 title to a property in the face of lots of litigation
9 that should not have happened, in my opinion, and
10 shouldn't have occurred and that part of that is
11 because the Estate is simultaneously -- I'm sorry --
12 the manager, Ms. Bayou, and her attorney are
13 simultaneously fighting and protecting themselves from
14 the Estate. At the same time, they should be in common
15 with us dealing with the creditors, and it could be
16 much more sensibly resolved, if there was a neutral
17 manager of those litigations in the form of a receiver,
18 and that's why in my papers I suggested a receiver
19 should take over all three of those cases --

20 THE COURT: And what's your position on his
21 application to intervene?

22 MR. BANGIOLA: Well, I think -- he didn't
23 mention this, but I'm seeking relief from the
24 companies, interim relief, and I would suspect that,
25 you know, I want to go to the front of the line on

1 that. I want to see if my client can get -- persuade
2 Your Honor for some interim relief and that conceivably
3 -- and other remedies that we put in place here, if the
4 Court were to agree with my application, could
5 conceivably affect the interest of creditors because
6 people are going to start getting paid, if that were to
7 happen. That's where I would say they might have an
8 interest. I think it's all going to be -- I
9 respectfully submit it's necessary, but I can see where
10 they would have an interest in things like compensating
11 receivers and lawyers and managing litigations because
12 those are expenses that are going to be incurred.

13 I think, when it comes to the other issues,
14 I'll address whether I think that's reasonable compared
15 to the costs that are being incurred now. But I think
16 it's a reasonable way to proceed and to include them
17 here will actually be in their interests in trying to
18 resolve their claims in a business-like way with a
19 single decision maker instead of all sides being played
20 against the middle here.

21 THE COURT: So wouldn't it be better just to
22 consolidate the actions then?

23 MR. BANGIOLA: It would -- it would be a fine
24 result. That would be a good outcome. At least, we
25 wouldn't have -- and I found out in the papers

1 yesterday some more details. It's actually four Essex
2 County cases, not three. I didn't realize that until I
3 saw Mr. Davis' certification yesterday that the fourth
4 one is still pending and it's in this courthouse and
5 this doesn't seem to make sense because it's all going
6 to come out of the same pocket, I believe, if these
7 cases have to be resolved, and my client's interest is
8 in not losing anymore properties.

9 THE COURT: All right. Thank you. What's
10 your position on that, Mr. Fialcowitz?

11 MR. FIALCOWITZ: Your Honor, to start off, if
12 I could, I made copies of all the relevant sections of
13 the LLC Act, loaded them into binders and made enough
14 binders for everyone, and it's important in my
15 presentation today, if I could give copies to everybody
16 just to follow along with the statute, which I think
17 controls all the issues in this case. Could I present
18 that to the Court?

19 THE COURT: I have no objection. Any
20 objection, Counsel? No? Go ahead.

21 MR. FIALCOWITZ: Okay. Thank you. Because I
22 think, Your Honor, when we look at the applicable law
23 and it's clearly an equitable maxim that equity follows
24 the law, that the law says that the so-called creditors
25 have no standing here today. They have no standing to

1 intervene.

2 Now, put aside the fact that under Rule 4:33-
3 3, a motion to intervene, even as a right, has to be
4 made on notice of motion by motion, which they did not
5 do. They're supposed to present a form of pleading
6 that gives us a sense as to what their interest is.
7 They didn't do that.

8 Mr. Bangiola put them on notice of his
9 application by e-mail dated October 4th. They waited
10 until October 25th to file their application. If it
11 was so urgent -- and all these events that were talked
12 about occurred in 2009. Why wasn't the application to
13 appoint a receiver made in 2009? And on top of that,
14 now, I hear it's not even reduced to a judgment.

15 But the most important thing for Your Honor
16 to focus on with regard to this motion to intervene is
17 the LLC Act itself. And if you could turn with me to
18 Tab 5, okay? In Tab 5, I have included this statute
19 because, as I said, I think when we go through this
20 today, the LLC Act addresses, basically, every issue
21 that's presented today and this talks about the rights
22 of judgment creditors, and it's N.J.S.A. 42:2B-45, and
23 the pertinent part I would like the Court to look at is
24 the fourth sentence down.

25 It says, "a court order charging the limited

1 liability company interests of a member pursuant to
2 this section shall be the sole remedy of a judgment
3 creditor." We don't even have a judgment creditor yet
4 because I just heard Mr. Ford say, it hasn't been
5 reduced to a judgment and a lien hasn't been entered.
6 "Shall be the sole remedy of a judgment creditor who
7 shall have no right under the LLC Act" -- that's what
8 all these statutory citations are referencing -- "or
9 any other state law" -- and this is the critical part
10 -- "to interfere with the management or force
11 dissolution of the limited liability company or to seek
12 an order of the Court requiring foreclosure share of
13 the limited liability company interest."

14 No right to interfere with the management.
15 They have joined an application to intervene to appoint
16 a receiver to do the management of these LLC companies,
17 and I would submit to the Court that this statute
18 prohibits that from intervening in this action. So,
19 accordingly, we would ask that the Court deny the
20 application.

21 THE COURT: All right. Thanks. Any reply,
22 Mr. Bangiola, on this issue?

23 MR. BANGIOLA: Well, we're seeking
24 appointment of a receiver, which would affect their
25 interests and we believe that the reason the receiver

1 is necessary in one sense is because the assets are
2 being depleted and we're losing our equity in the
3 companies we own because of the management of the
4 companies and we need the extraordinary remedies of --

5 THE COURT: So why let them in the case? I
6 mean, what's their interest in the case, if it's a
7 battle between the Estate of the former member and the
8 present member?

9 MR. BANGIOLA: Well, they need to have -- I
10 suppose, they need to have their claims accounted for
11 as part of whatever resolution is achieved between us
12 because one thing we know is that we've got two 50
13 percent entities and those rights have to be sorted out
14 by the Court and, when that happens, things could
15 happen in terms of payments, judgments, and we would --
16 we have an interest and they have an interest both in
17 having everything wrapped up, so that everyone knows
18 where they stand in one place. Maybe the entire
19 controversy doctrine, if nothing else.

20 THE COURT: All right. I understand. Thank
21 you. I'm going to deny the application to intervene
22 filed by Mr. Ford. I must say, Mr. Lieberman also
23 joined in that application, while Mr. Canova hasn't,
24 and I understand. I'm not stuck on the procedural
25 requirements here. I allowed this order to show cause

1 to be served on short notice based on Mr. Bangiola's
2 request and his argument that there was a need to
3 address these issues on an expedited basis because of
4 the ongoing business and the collection of rents and et
5 cetera. So I kind of set up a short return date.

6 That put Mr. Ford and Mr. Lieberman and Mr.
7 Canova's client in a spot where they, obviously,
8 couldn't file a motion in the normal timeframe and they
9 filed these papers alerting the Court to the fact that
10 they sought to intervene. I'm going to deny the
11 motion, the application to intervene.

12 I don't -- I think Mr. Fialcowitz is right.
13 I think that they -- while they may have an interest,
14 as Mr. Bangiola says, in the outcome here because,
15 obviously, what happens may set up a priority of
16 payment or may establish what assets are available. On
17 the other hand, they don't have a judgment and it seems
18 to me that the statute does indicate 42:2B-45, that the
19 judgment creditor has no right to interfere with the
20 management or force dissolution of a limited liability
21 company or seek an order of the Court requiring a
22 foreclosure sale of the limited liability company
23 interest.

24 So it seems to me that what I have here,
25 essentially, is a dispute between the two members, the

1 Estate of Mr. Alli and the defendant, Ms. Bayou, who
2 are the two members in this limited liability
3 corporation. And while, again, I concede that there's
4 an interest, I don't think it's the same interest that
5 the creditors have. The interest between these two
6 members is to resolve the management of the LLC and/or
7 the payment of the Estate's interest or payment to the
8 Estate of the value of its interest in the LLC.

9 The interest of these corp-- of Mr. Ford's
10 client, Mr. Canova's client, and Mr. Lieberman's client
11 can be paid by the LLC, but it's a different interest,
12 it seems to me, than the battle between the principals
13 here. I am -- it may be that they should -- these
14 cases should be consolidated, so that they all move
15 forward together, not that we want to delay Mr.
16 Canova's case if he doesn't want consolidation, but it
17 may be that if we get them all together, then at least
18 it would solve Mr. Ford's concern that his client know
19 what's going on.

20 But there will be -- judgment in this matter,
21 in his case, doesn't have a right under the statute, it
22 seems to me, to get involved in the management or the
23 dissolution of the limited liability company. So I'm
24 not going to allow intervention in this case, and I'm
25 basing that on 42:2B-45. Now, -- and if Mr. Ford

1 thinks an application is appropriate, he can make an
2 application for consolidation, file a motion and I'll
3 hear it and I'll make a determination.

4 MR. FORD: Your Honor, just if I may, the one
5 other issue that Judge Levy, his chambers wanted me to
6 address and I mentioned it when I addressed Your Honor,
7 was the issue of the consent order that's pending
8 before Judge Levy, which all parties have signed off
9 on. It's been submitted to Judge Levy. I didn't know
10 if he was going to address that with you or if the two
11 Judges would, but I know Judge Levy was seeking
12 direction from Your Honor with respect to that.

13 THE COURT: Yes. I know about that, and I'll
14 address that after we finish the hearing today.

15 MR. FORD: And, Your Honor, just the one
16 final thing was, part of my application, in addition to
17 seeking intervention and I will probably make a
18 consolidation motion is to just give Your Honor a
19 little bit of background and procedural information as
20 to what has happened in our matter as well, and it's a
21 part of Mr. Bangiola's application.

22 THE COURT: All right. Thank you, Mr. Ford.

23 MR. FORD: Thank you.

24 THE COURT: I appreciate it. Mr. Canova,
25 thank you. Gentlemen, you're excused, if you don't

1 want to wait around for this. Certainly, we're happy
2 to have you here, but you're also excused if you would
3 like to be excused from the rest of the proceeding.
4 All right?

5 MR. FORD: Thank you, Your Honor.

6 THE COURT: Thank you. Let's hear from --
7 well, I guess, I'll go back to Mr. Bangiola. It's your
8 application. I'll hear from you, and then I'll hear
9 from Mr. Fialcowitz. All right?

10 MR. BANGIOLA: Thank you, sir. I don't want
11 to reargue my papers. I can tell Your Honor has
12 reviewed them carefully, and they are copious, both
13 sides. I -- my client is the Estate of the decedent
14 who died this year in February. He died in testate.
15 He left behind business interests, which his widow did
16 not know about the nature or the extent of virtually
17 all of his business relationships, except for the fact
18 that his business partner was Ms. Bayou.

19 I started, after my client was appointed
20 administrator in Middlesex County, by writing to the
21 business partner, asking her to explain and account to
22 me for what the Estate's interest in these companies
23 was and, from there, we have had a very bumpy journey.
24 I didn't get a response in writing to the letter I
25 wrote to her in April until the middle of June, and

1 that letter was from the first lawyer I dealt with, a
2 Charlene Davis, and it set forth various assets, which
3 were triggers to my client's memory to some extent, but
4 the nature of the decedent's ownership interest in
5 these companies has, to a large extent, been dependent
6 upon -- our understanding, was dependent upon
7 information provided by Ms. Bayou.

8 When I contacted the accountant for the
9 companies, I quickly encountered a stonewall. Ms.
10 Bayou then changed Counsel, and I took the issue of the
11 accountant's records up with her and I got an
12 authorization from Ms. Bayou to get those records from
13 the accountant, but I didn't have a filed action and
14 when I served the authorization, we still didn't get
15 any records from the accountant.

16 We tried valiantly to resolve the issues as
17 best we could without having to seek the Court's
18 assistance because, from very early on, it became clear
19 that there were creditors and there are substantial
20 assets that have capital value and there's substantial
21 income from various rental properties and from an IHOP
22 restaurant and that it made far more sense to try to
23 resolve these matters with the business partner who was
24 in control of these entities than to seek the Court's
25 assistance for a variety of reasons. That would be

1 wasteful of the State's assets and wasteful of the
2 company's assets. So we take this step very, very
3 reluctantly.

4 What pushed us over the edge was, while we
5 have been trying to resolve these matters, the interim
6 distributions that were not going to the Estate, as
7 probably they should have but were being made in the
8 form of salary checks, which makes -- is really not
9 good accounting, but that was the way it was done of
10 approximately \$3,600 every two weeks, was being paid to
11 my client, Mrs. Alli, from February and, in the heat of
12 the discussions or -- for whatever reason, we received
13 notice that those payments were considered courtesy
14 payments and would be terminated as of September 1st.

15 That was when we were dealing with Ms.
16 Bayou's third attorney since April. I've been dealing
17 with Charlene Davis, Esq., Mark Davis, Esq., and then
18 when Robyne LaGrotta entered the case, we had a long
19 meeting at my office, followed by an explosion of the
20 negotiations and then Ms. LaGrotta advised me in early
21 August -- and I think it's attached to our papers --
22 that the courtesy payment would be stopped as of
23 September 1st.

24 I frantically tried to resolve that with Ms.
25 LaGrotta before September 1st. In that period of time,

1 the rents -- the rent collector for years on all of
2 these various properties that are owned by these four
3 defendant LLCs were all collected by one person, who
4 was the decedent's son. Now, for whatever reason, the
5 decedent's son was terminated and Ms. Bayou as of
6 September 1 started taking -- notified all the tenants
7 that she was collecting the rents and all the rents
8 have been collected by Ms. Bayou, all of them. We
9 don't know how they're being applied. We do know that
10 as of September 1, my client, the widow's means of
11 support have utterly stopped and she was dependent upon
12 those prior distributions.

13 The Estate has repeatedly -- repeatedly and
14 incessantly asked for a detailed or even a general
15 statement of the salary that Ms. Bayou draws from any
16 of these companies, the distributions that are made to
17 Ms. Bayou for any of these companies, and we have not
18 received that as of today. We still don't have that.
19 We don't know if or how much Ms. Bayou is being paid,
20 but we trust that she is not working for the IHOP
21 restaurant owned by the defendant, ABKA Holdings, for
22 free, nor would we expect her to.

23 We do not know what her distributions are.
24 We do know from some discovery, some exchange of
25 information we did get, we do know that the rents from

1 four different LLCs are being put into a single account
2 by New Capital Investors, one of the four defendants
3 and that, from that, Ms. Bayou uses that money as she
4 sees fit, to pay obligations not necessarily for each
5 individual LLC but as she -- I guess, as she needs to.
6 We don't really have detailed information on that.

7 There should be money available to have
8 satisfied four different creditors in four different
9 litigations. We did get a statement that is before the
10 Court that shows receipts into a New Capital checking
11 account for April, 2011, for rents for approximately
12 \$52,000. This \$52,000 is completely independent of
13 whatever income is generated from the IHOP restaurant.
14 The only information we obtained for the IHOP
15 restaurant stopped as of the receipt of a W-2 to the
16 Estate showing that the decedent received approximately
17 \$79,000 on W-2 income for 2010.

18 We have no financial indication as to what
19 the total revenue was for the company for 2010, nor do
20 we have anything on it for 2011. We don't have any
21 indication of what Ms. Bayou is paying herself. We
22 don't have any indication what distribution she has
23 paid to herself.

24 Now, as Your Honor can see from the
25 opposition papers and leaving aside much extraneous

1 information, which I submit is contained in that, it is
2 very clear that Ms. Bayou as a 50 percent owner is not
3 acknowledging any rights on the part of the Estate to
4 understand the assets that are under her care that she
5 is not accounting to us in any way, shape, or form,
6 that she is intentionally directing attorneys not to
7 communicate with the Estate, that the attorneys are
8 confirming that in writing, that the accountants are
9 not providing information to us, and that the assets of
10 these companies are being deployed by her against the
11 co-owner of those companies.

12 Now, I would not that there are some things
13 that are in common in our briefs. At Page 27, you have
14 to read a long way to get to this point, but at Page 27
15 of Ms. Bayou's brief, she acknowledges this. She
16 acknowledges that the threatened destruction of a
17 business constitutes irreparable harm. We agree with
18 that. We agree with that.

19 We think that all four of these LLCs are
20 threatened with destruction, and we believe that's the
21 case because three of them -- New Capital and Mid-Grove
22 Properties are facing foreclosures against their
23 properties in relatively small amounts. We have
24 tenants in these properties who are paying rent, but
25 Bank of America's mortgages was \$150,000. On its face,

1 it seems that there should be -- with \$52,000 of income
2 from rents, there should be enough to have managed,
3 certainly, a mortgage payment on a piece of property
4 that's currently rented.

5 We have that example. We have the continuing
6 problem of ABKA Holdings, which owns the IHOP. It is
7 very important to note that, while we received one
8 letter on June 13th that said we owned, yes, the Estate
9 owns half of the IHOP or the decedent owns half of the
10 IHOP, leaving aside all the successor issues for the
11 moment that there was a 50 percent interest owned by
12 the IHOP -- owned in the IHOP by the decedent when he
13 died.

14 That happened in the middle of June. From
15 June 15th until yesterday, Ms. Bayou had reversed her
16 position and taken the position that not only was the
17 IHOP owned 100 percent by her, therefore, avoiding any
18 need to account to the Estate in any form but, also,
19 the underlying piece of property. So those two things
20 together, when we have the acknowledgment today in her
21 certification that all four of these companies are, in
22 fact, 50 percent owned or there's a 50 percent
23 interest, which must be accounted for in the name of
24 the decedent, however the Court resolves that question,
25 that must be accounted for, and she has refused to do

1 that.

2 As of this date, she continues to refuse the
3 most elementary information about her compensation as
4 the manager of the IHOP restaurant, her distributions
5 as an owner of the ABKA Holdings, which owns the IHOP
6 restaurant, and she has refused our request to set up
7 separate accounts for the LLCs, so that the LLCs are
8 handling their own obligations separately, just for
9 accounting purposes, so that we have rents applied from
10 an LLC to the mortgages that are the LLC's
11 responsibilities.

12 That might have taken care of the Mid-Grove
13 Properties litigation, which the Bank of America is
14 involved in all by itself. What came in on rent that
15 was owing to Mid-Grove properties had been paid to the
16 mortgage on Mid-Grove properties, but that's clearly
17 not happening. It all gets put into one big hodge pot
18 and commingled and applied in some fashion that she
19 deems best.

20 We did receive snippets of information
21 that --

22 THE COURT: Have you made demands? Have you
23 made specific demands for information, in other words,
24 financial records, profit and loss statements, those
25 kinds of things?

1 MR. BANGIOLA: Oh, yes. But we have not had
2 a filed lawsuit to attach subpoenas to until this point
3 and the rea--

4 THE COURT: I understand but, I mean, you've
5 written letters and said, look, I need income tax
6 returns for these years. I need profit and loss
7 statements for the last two years. Have you written
8 those kind of letters?

9 MR. BANGIOLA: Absolutely, sir.

10 THE COURT: All right.

11 MR. BANGIOLA: I mean, we have -- you can see
12 -- and before -- and after those letters were written,
13 we had a four-hour meeting -- three-hour meeting at my
14 office with my client present and Ms. Bayou's attorney
15 present where we went through chapter and verse of as
16 much information as we could in the name of achieving a
17 resolution in the recognition that an application for a
18 receiver was a thermonuclear device that was not in
19 anyone's interest and would only -- the Estate would
20 only take that step, if we were forced to.

21 And at those negotiations, it has always
22 stopped at accounting for the restaurant and that may
23 well be and I suspect that that is because the engine
24 that drives this empire is the cash flow comes from the
25 IHOP restaurant and there's a lot of cash flow.

1 In 2009, the last tax return that we have, we
2 see \$2-1/2 million in annual revenue. Now, 2010's
3 revenue is redacted from their opposition. I don't
4 know why that number needs to be redacted. The rest of
5 it can be provided. It doesn't have any particular
6 secrecy. I don't understand why a co-owner has a right
7 to confidentiality from the other owner on information
8 like that, but we do have Ms. Bayou's assertion in her
9 certification that she's getting awards from IHOP for
10 sales growth, that the business is bigger than it ever
11 was before and she's getting national awards. Well,
12 that's great but that information needs to be shared
13 with us and it affects the Estate's interest in that
14 asset. Okay?

15 Now, I note that they have conceded the
16 irreparable harm caused by losing a business and,
17 unfortunately, they have driven us to the point where
18 we have to seek a receiver or intervention of the Court
19 because they have cut off all distributions. There is
20 no representation that Ms. Bayou was not being paid or
21 is not receiving distributions. Nowhere in this
22 paperwork is that assertion made and that's because it
23 can't be true.

24 They don't deny that the assets rents from
25 the LLCs are commingled. When you read the

1 certification that Ms. Bayou submitted, I don't think
2 there can be any question that there's a deadlock in
3 the management of the companies and accounting for the
4 50 percent that belongs to the Estate is central to
5 resolving the problems.

6 I don't think four different lawsuits is a
7 normal course of business, three different -- two
8 different foreclosures and two different creditors
9 where the cases are several years old. I don't think
10 those are a normal course. I think, when you read Mr.
11 Ford's certification and the history -- and I was
12 present when the tactic was stated that we're going to
13 seek adjournments and that's what we're doing with our
14 cases.

15 When the issue of managing the Estate's
16 liabilities came up, I was present for that and I had
17 already seen some of these cases. I think I even
18 appeared in Your Honor's courtroom one time on one of
19 them in August when I got wind of it, and I had seen
20 them and I had seen the rents, some idea what the rents
21 were. I know they're manageable, and they should be
22 managed. But, instead, the Estate's assets, the
23 company's assets are being wasted. So we have a
24 deadlock in that regard.

25 What is the total revenue? Well, if we have

1 gross revenue of \$2-1/2 million for 2009 and Ms. Bayou
2 is certifying that it went up, we'll just stay with \$2-
3 1/2 million in revenue and take that until we get what
4 I believe they're obligated to provide. That's \$50,000
5 a week, plus \$52,000 in rent per month as of April.

6 Out of that \$52,000 a month, \$15,000 of it
7 was supposed to be paid by ABKA Holdings to New Capital
8 and then New Capital is supposed to -- as an obligor on
9 the business loan to GE Capital, which was used to buy
10 the IHOP, they were supposed to pay out of that money
11 the note. I think that's a reasonable formulation of
12 what went on.

13 That changed in April. Ms. Bayou -- those
14 statements after that don't show that \$52,000 in
15 revenue because what Ms. Bayou has done since then is
16 to take ABKA's money and apply it. I assume she is
17 paying it to GE Capital because -- I hope she is, but
18 the reason that was done was because it was
19 contemporaneous with the reversal of her position that
20 we owned 50 percent when her lawyer said, no, that was
21 an incorrect letter from the first lawyer that said you
22 own 50 percent of ABKA Holdings. That's not right.
23 Ms. Bayou owns 100 percent, so, now, Ms. Bayou starts
24 paying it directly from ABKA Holdings because she's
25 asserting 100 percent ownership. I think that's what

1 happened.

2 It's not good business. It's not clean, it's
3 not careful, it's commingling, and it's not subject to
4 ready accounting. Let's see what else I can do without
5 burdening you with hearing everything I've already put
6 in my brief.

7 I want to talk about the statutory argument
8 and the pleading that Mr. Fialcowitz has made here. I
9 confess, I'm a little confused. I thought I had
10 comprehensively and liberally pled my client's
11 complaint for a receiver, whether it is a statutory
12 basis or an equity based custodian or receiver as
13 provided by the court rule, which I cited yesterday in
14 my certification I submitted by fax yesterday.

15 I think Your Honor has authority to appoint a
16 receiver, if the Estate is not getting what it's
17 entitled to. Generally speaking, I think -- I'm trying
18 to read the argument in a way that says something other
19 than we have no remedy whatsoever. I would ask Your
20 Honor to read my pleading liberally with the intention
21 that was behind it to obtain the court of equity's
22 intervention in this case to read our complaint as a
23 request for an equitable or custodian-based receiver.
24 If the statute really does not apply, we should be
25 entitled to some relief and the Estate should not

1 simply be subject to having the companies thumb their
2 nose at the Estate saying, the man died, you're out of
3 luck.

4 I don't see that that argument can possibly
5 fly, and I don't see any other way to read these
6 papers. It could be that it is a technical pleading
7 argument and, if that is the case, Judge, I confess to
8 my weakness in poor communication. To read my first
9 count, I think Your Honor must read it in a way that
10 seeks a receiver and sets forth at least an equity base
11 claim because what we are entitled to, we have not been
12 getting.

13 I'm also baffled by the idea that we have
14 unclean hands. I think this argument is based upon
15 conversations at the meeting of my office, which are
16 obviously settlement discussions where there was
17 discussions about what assets might be things that Ms.
18 Bayou had a claim to and I probably said, well, we'll
19 see. We're going to have to sort that out and didn't
20 yield the point that every asset that was in Africa in
21 the decedent's name necessarily belong to Ms. Bayou. I
22 hardly breached any agreement, and we're talking about
23 a long rambling meeting.

24 I don't believe that this application should
25 have been forced upon us, but it has been. I think it

1 is -- the fact that the Estate has been absolutely cut
2 off as far as distributions, the fact that there are
3 four litigations and we're being deprived of even
4 information on the status of those cases, the fact that
5 we don't have an appraisal or an estimate or any kind
6 of accounting for the actual income of the most
7 important asset that the Estate owns, namely 50 percent
8 of this IHOP restaurant, and the fact that for five
9 months, she confesses that as a tactical matter and
10 really in a fit of pique, it looks like, she thought it
11 was an okay thing to say, I acknowledged your 50
12 percent interest in June but based on something you
13 said in July, you refused to acknowledge something in a
14 settlement discussions so, now, I've taken the legal
15 position you have no interest in the IHOP. Do your
16 darnedest and just for good measure, we're going to cut
17 off the payments we've been making, so we're going to
18 put a little extra pressure on your to capitulate.

19 Now, my client has no means of support.
20 She's the widow of the Estate. She has nominal assets.
21 She obtained a collision payment for the Mercedes Benz
22 that was destroyed by her husband in the fatal
23 accident. She's gotten these interim payments, and
24 we've been trying to resolve the dispute with the
25 Estate with the company's or Ms. Bayou's attorneys in a

1 business-like way.

2 Along the way, we've alerted the companies to
3 a conflict on the part of two attorneys, the initial
4 two attorneys, who had previously represented my
5 client, the decedent, in some capacity and whose
6 interests now appear to be adverse to ours and that
7 attorney is still around. That's not the most
8 important thing in the case. The most important thing
9 in the case is that the assets are being applied
10 properly for the debts and for the creditors and for
11 the owners of these companies and in a fair and
12 equitable reason -- a fair and equitable way.

13 I believe we have established the fact that
14 there is a need for immediate intervention by the
15 Court. Ms. Bayou collected all of the rents on
16 September 1, 2011, and has not accounted for them. We
17 do not have a bank statement. We do not have a
18 description of what that money was used to pay for. We
19 do not know what account it was put into, and we are
20 here on October 27th.

21 On November 1st, these companies are entitled
22 to receive another \$52,000 in income and my client is
23 still not getting any form of distribution or interim
24 relief to help her keep body and soul together. Under
25 the circumstances, Judge, I ask you to fashion the

1 appropriate remedy with the least harm necessary to all
2 concerned in accordance with the Court's equitable
3 power, so that at least -- if there's a way that we can
4 avoid breaching the franchise agreement in the Court's
5 equitable power, we would pray that you do that. We
6 are not seeking to destroy. We have -- literally have
7 no option here whatsoever but to proceed this way.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Counsel. Mr.
10 Fialcowitz?

11 MR. FIALCOWITZ: Your Honor, thank you for
12 the opportunity. At the risk of being a broken record,
13 equity follows the law and I could spend an extra 20
14 minutes taking issue with the facts and factual
15 assertions that Mr. Bangiola just presented to the
16 Court, and I believe that the resolution of today's
17 dispute, as well as the resolution of the entire case,
18 can be found within the provisions of the New Jersey
19 Limited Liability Company Act.

20 It's undisputed in this record that none of
21 the four limited liability companies at issue had
22 operating agreements. It's established case law. I
23 believe we cited the DENIKE to the Court in our moving
24 brief that, in such a circumstance, the default
25 provisions of the LLC Act control and the LLC Act, in

1 fact, the Legislature anticipated this exact problem
2 and, when it did so, it not only took into
3 consideration the interests of clients -- my client, it
4 also took into consideration the interest of Mr.
5 Bangiola's client.

6 Now, how did it do that? Well, if you start
7 out with Section 24 of the statute, it talks about what
8 happens in the event of death. It talks about end of
9 membership and a limited liability company, and that's
10 at Tab 1. It's the first statute I put in the binder
11 and it talks about, a member shall be disassociated
12 from a limited liability company upon the occurrence of
13 any of the following events. Now, you can tick down
14 and you go to D-4. It says on the second page, four,
15 in the case of a member who is an individual, (a) the
16 member's death.

17 So then the Legislature enacted the next
18 statute, Section 24.1, to talk about what are the
19 rights of a disassociated member? If someone who dies
20 becomes disassociated, what are the rights of that
21 member? It says, 24.1, upon a member's disassociation,
22 the disassociated member has, subject to Section 39,
23 which is very important and we'll talk about that in a
24 minute, only the rights of an assignee of a member's
25 limited liability interest.

1 Now, this is critical because, if you go to
2 the comments at Section 1 of the statute where they
3 talk about the purpose of having LLCs, they talk about
4 one of the critical purposes of an LLC is to prevent
5 free transferability of ownership interests. It's not
6 a corporation. It's set up for a different reason, and
7 so they restrict the ability to simply pass on the
8 interest -- ownership interest to somebody else that
9 you didn't anticipate being in business with. Our
10 case. My client never anticipated being in business
11 with the Estate of Mr. Bangiola.

12 But to get myself back on track. So 24.1
13 talks about the rights of a disassociated member and
14 those rights, if you skip two tabs ahead at Tab 4,
15 Section 44 of the statute talks exactly what those
16 rights are. The assignee of a member's limited
17 liability company interest shall have no right to
18 participate in the management of the business and
19 affairs for the limited liability company, except for
20 two set circumstances.

21 One, if the other members agree. That is in
22 our case. They've pled in a verified complaint that
23 Adina refused to allow them to participate in the
24 management or if there is a provision in the operating
25 agreement that provides for some sort of successor

1 rates. There's no operating agreement here, so the
2 general rule controls and the Estate has not right to
3 participate in the management of the business and
4 affairs of a limited liability company.

5 It's critical to this case because they now
6 seek in Count 1 of the verified complaint the
7 appointment of a receiver to take over the management
8 of all four limited liability companies, critical. But
9 it goes on and this is another critical provision here
10 in 44. If you look down at Section E of -- Subsection
11 E of Section 44, it says, an assignee shall have no
12 authority to seek or obtain a court order dissolving or
13 liquidating a limited liability company.

14 Yes. If you go to Count 1 of the verified
15 complaint, that's precisely the remedy they're seeking
16 the Court to do, which is why we cross-moved to dismiss
17 because, as a matter of law, pursuant to Section 44 of
18 the LLC Act, they are prohibited from this relief.

19 Now, I heard Mr. Bangiola a while ago say
20 that the Court should exercise its equitable powers to
21 leave us some kind of a remedy here. Well, the statute
22 provides for a remedy for their client. The statute
23 doesn't leave them out in the open. If you go back to
24 Section 39 of the statute, it talks about my client's
25 obligation to compensate them for the fair value of

1 their ownership interests in all four LLCs at the time
2 of the disassociation. That means as of the date of
3 death, which is February 5th, 2011. So the statute
4 strikes a balance that basically says, we're entitled
5 to keep management in control but, at the same time,
6 we're responsible for compensating them for the fair
7 value.

8 So what I would say is, is that, there's
9 really no need for equity to intervene. The Act tells
10 everybody what they're supposed to be doing.

11 THE COURT: Well, why isn't your client doing
12 it then?

13 MR. FIALCOWITZ: Because they just retained
14 me two weeks ago.

15 THE COURT: Well, you're here two weeks, but
16 your client has been involved with Mr. Bangiola for
17 four or five months. Why haven't they --

18 MR. FIALCOWITZ: I don't know, but I am
19 involved now.

20 THE COURT: Well, isn't that key question? I
21 mean, he's here saying, look, Judge, the remedy I need
22 is I need some -- I need the managing member to do
23 something other than tell me I'm not going to get my
24 distribution, other than to tell me that I don't have
25 any rights to this property and now you say, well,

1 Judge, there's a remedy here, but your client doesn't
2 follow it.

3 MR. FIALCOWITZ: Right. But what I would say
4 to that is, is that, I think the parties were working
5 toward finding a buyout, which is, again, a lay
6 person's term for the first thing I just discussed in
7 the statute. She certified in her certification that
8 when they met for settlement negotiations back in July,
9 that she had offered Mr. Bangiola, the Estate, a
10 buyout, which was rejected. He may contest that, but
11 that's contested facts.

12 And the other important detail that's left
13 out of what I just heard factually is that, they -- it
14 was -- and you can look at the correspondence record,
15 too, and it bears this out. In June, one of her prior
16 attorneys writes Mr. Bangiola, lists all the assets
17 she's aware of and makes abundantly clear that her
18 position is, it's 50/50. It's not until the Estate
19 takes the position counter to this agreement, counter
20 the way they've always done business for years, that
21 Mr. Alli is has only title to the Nigerian properties
22 and it's only Mr. Alli that owns Mid-Grove Properties,
23 and it's a fundamental principle of contract law of
24 anticipatory repudiation.

25 They made it clear to Adina that they were

1 going to breach, that they were not going to honor her
2 50 percent ownership interests, and so she was entitled
3 to step back and say, wait a minute, I want some
4 assurance that my ownership interests are going to be
5 protected here, and that is clear New Jersey case law.

6 And, also, I have to say this, I would be
7 extremely concerned if I were in Adina's position
8 because the Estate has leaked confidential information
9 in the form of tax returns, in the form of bank
10 statements, a copy in the verified complaint. They
11 have attached a bank statement and a tax return that's
12 protected from disclosure in federal law without trying
13 to seal the record, any kind of confidentiality
14 agreement, they've offered it to the so-called
15 creditors who left 20 minutes ago. That's outrageous.
16 It's more than unclean hands. It's a breach of the
17 fundamental partnership agreement, whatever you want to
18 call it, that these individuals had together.

19 I want to talk about irreparably harm for a
20 second here. The person who is going to suffer
21 irreparable harm, if the Court decides to appoint a
22 receiver is my client. The LLC statute makes clear the
23 benefit of the bargain, if you will, is that my client
24 is going to proceed with the management and operation
25 of the businesses she formed and spent years working

1 and put all her hard earned money into. Appointment of
2 a receiver will put the IHOP franchise agreement into a
3 material breach.

4 And, Your Honor, I cannot urge this point
5 enough. We're not just talking about people in this
6 room. We're talking about the 60 part-time and full-
7 time employees who work at the IHOP. We submitted a
8 certification from the mayor or Irvington. This is a
9 big deal, not just for the people in this room, for the
10 people in that community. I'm telling you stuff you
11 already know, but the appointment of a receiver is the
12 most drastic, one of the most drastic things you can do
13 and there's so many other steps that we could take.

14 I submit that, certainly, in the course of
15 litigation, we're going to -- if an appropriate
16 confidentiality order is in place, we will disclose
17 financial statements, tax returns once there is a
18 written understanding that these materials are to be
19 kept for the use in this litigation only and for
20 purposes of accounting in this litigation only, will
21 not be shared with anybody else.

22 Again, to address some points that Mr.
23 Bangiola made. I would disagree with a number of the
24 points that he made in terms of the three other LLCs.
25 I don't think there's any evidence in the record with

1 regard to alleged waste of assets with regard to these
2 three LLCs. Yes. The three LLCs own real estate and
3 the price of real estate declined, but appointing a
4 receiver isn't going to do anything to change that.
5 What the appointing of a receiver is going to do is
6 it's going to churn up a lot of cash that's going to be
7 burned because, you know, these professionals cost a
8 lot of money and where we should be focusing our
9 efforts is on valuing these interests and moving
10 forward and separating these people because they
11 clearly can't get along.

12 The standard -- and the Estate didn't set a
13 standard. Even under a custodial receiver, which,
14 again, is the most drastic form of relief that the
15 Court can award and we're barely two weeks into this
16 litigation, is the proofs should be imposing and
17 persuasive. That's according to the LOWENSTEIN
18 SANDLER/RAVIN SARASOHN case that I cited in my brief.

19 Judge, the proofs that are submitted aren't
20 even close to persuasive and compelling. They
21 submitted a portion -- again, improperly, of ABKA's tax
22 returns that show positive cash flow. They submitted
23 one April, 2011, bank statement from New Capital
24 Investors, which shows positive cash flow after you
25 deduct the \$52,000 minus all the expenses to pay off GE

1 Capital. There's nothing in this record. Yes.
2 There's some litigations, but that doesn't warrant the
3 appointment of a receiver, especially since at least
4 two or three of them, they're contested litigations
5 where the LLCs have asserted counterclaims.

6 And another thing that's been lost in all of
7 the shuffle of attorneys on the other side of the
8 podium in talking to you about this litigation is
9 there's no litigations against ABKA. There's no
10 litigations against Kayway (phonetic) Properties. It's
11 only two LLCs. Adina has submitted in her
12 certification that ABKA New Capital Investors is in
13 full compliance with its loan obligations with GE
14 Capital, major creditor. It's in full compliance with
15 its obligations and is very current on its obligations
16 to its primary food supplier.

17 Adina, not only has she developed the
18 franchise, she has won awards for IHOP for outstanding
19 performance from a franchise. So the idea that you're
20 going to appoint a receiver who is going to do a better
21 job of managing this franchise doesn't hold water.

22 It's -- I would urge the Court to apply the
23 law and, in doing so, dismiss Count 1 of the verified
24 complaint because it does not -- again, it puts the
25 IHOP franchise at risk as material breach is defined to

1 include not only a receiver but an allocation for
2 dissolution. Thank you.

3 THE COURT: Thank you. Reply, Mr. Bangiola,
4 briefly?

5 MR. BANGIOLA: Yes. I'm looking at the
6 statute 42:2B-24, which I recall the first time I heard
7 this argument that the Estate had no interest because
8 someone died. That was subsequently reversed by the
9 intervening lawyers, Ms. LaGrotta and Ms. Britt, who
10 quickly tried to dissuade me, told me that's not right.
11 My client is getting bad advice and so forth. They
12 disagreed with that calculation.

13 And one of the things is in -- in the tab --
14 I guess it's Tab 1 on the second page, down there at
15 the bottom, it talks about the case of a member that is
16 an estate or is acting as a member by virtue of being a
17 personal representative of an Estate. I don't think
18 that means that it's not contemplated -- I don't think
19 it's contemplated in the statute that interests in LLC
20 -- part of a 50 percent owner effervesce even
21 temporarily, so that no one can look after the other 50
22 percent and that's really what Mrs. Alli's position is.
23 She's responsible to the beneficiaries of the Estate to
24 look after that 50 percent. How does she do it? I
25 mean, how does she assert the right of the Estate to

1 get compensated for that 50 percent under these
2 circumstances? It's not outside the contemplation of
3 the statute.

4 Maybe we've terminated our interest and we're
5 now entitled or required to be disassociated because
6 we've sought a receiver. I do see that in the statute,
7 that that's the poison pill we have to take. If so,
8 we've been forced to take it. If we can find a way not
9 to have done that, we would certainly have tried to
10 avail ourselves of that remedy, and I just would ask
11 Your Honor, please fashion a just remedy and we humbly
12 submit to the Court's judgment on this case. Thank
13 you.

14 THE COURT: All right. Thank you, Counsel.
15 All right. Are you okay? I realize you kind of
16 stepped in there at the last minute. All right. Thank
17 you. I'm -- this is the return date of the order to
18 show cause in this matter, and I am prepared to rule on
19 the motion and the relief sought in the order to show
20 cause.

21 Now, the movant seeks the -- the movant with
22 respect to the order to show cause seeks a variety of
23 relief with respect to this matter, including the
24 appointment of receiver, a pendente lite relief with
25 respect to the payment of money to retain and

1 compensate Counsel, the payment of interim relief to
2 Ms. Alli and the damages and imposition of a
3 constructive trust.

4 The defendant moves to dismiss Count 1 of the
5 complaint, which seeks the appointment of a receiver
6 for all the companies, ABKA, Blue Capital, Mid-Grove,
7 and Kayway, and also seeks in Count 1 the involuntary
8 dissolution of ABKA, Blue Capital, Mid-Grove, and
9 Kayway.

10 The procedural history here is complicated.
11 There are -- the background, I should say, is
12 complicated. There are four limited liability
13 corporations. The allegation is that they're jointly
14 owned by the -- all jointly owned by the decedent, Mr.
15 Alli, and Ms. Bayou, and the properties, each has a
16 different interest. New Capital owns the building and
17 land located at 12-- Irvington and New Capital also
18 owns property on Stuyvesant Avenue in Irvington.

19 Mid-Grove Properties owns 850 Grove Street in
20 Irvington and 506 Central Avenue in Newark, and Kayway
21 Properties owns 856 Grove Street in Irvington, 101
22 Second Street in South Orange, and 138 Brookside in
23 Irvington. ABKA leases the building at 1212
24 Springfield and operates the IHOP restaurant franchise
25 at that location.

1 That's -- there's no dispute here that
2 there's -- there are -- there are other pieces of
3 litigation that are pending. There's a BANK OF
4 AMERICAN V. MID-GROVE PROPERTIES, which I have assigned
5 to me. It's a foreclosure case. There's RIGATONI
6 REALTY, LLC V. ALLI, another docket assigned to Judge
7 Levy. That case, by the way, I believe, is also
8 consolidated with two Law Division cases. All revolve
9 around the alleged default on the promissory notes
10 relating to three mortgages and relating to 850 Grove
11 Street, and those properties have been the subject of a
12 lot of discussion and ostensibly have been -- that case
13 has been resolved, except for the execution of the
14 settlement.

15 BANK OF AMERICA V. MID-GROVE is pending, and
16 that involves the property at 506 Central Avenue in
17 Newark. There's also two other cases, TRICONIMUS V.
18 NEW CAPITAL INVESTORS V. -- that's an L docket
19 involving a claim for unpaid construction fees --
20 alleged unpaid construction fees arising out of the
21 construction of the restaurant and REMIX CONSTRUCTION
22 (phonetic) is another L docket. That involves, again,
23 a claim for construction work. It involves a claim for
24 payment and a counterclaim for damages.

25 So it's against this procedural background, I

1 and the dissolution of the LLCs under that statute and,
2 clearly, as a matter of law, Mr. -- the plaintiff is
3 not entitled to that relief.

4 Now, I -- that's not to say that -- and I
5 dismiss the Count 1 of the complaint without prejudice
6 and -- because that's not to say that the plaintiff
7 doesn't have a remedy. If it's appropriate, as pointed
8 out by Mr. Fialcowitz, there is a concept under our
9 general equity law with respect to a custodial receiver
10 and, certainly, if the facts were demonstrated, then a
11 Court of Chancery under its general equity powers can
12 appoint a receiver to hold and preserve assets and
13 operate a business in a legal manner and that, it seems
14 to me, would apply even to the operation of the LLC and
15 that would be under INTERNATIONAL ASSOCIATIONS OF
16 BRIDGE V. MC KEE (phonetic) 114 N.J. Equity 55. It's a
17 1933 case.

18 So the -- and it also seems to me that the
19 case law indicates that the Court also has the right
20 and the legal authority to appoint a fiscal agent under
21 the decision in ROACH V. MARGULIES, 42 N.J. Super. 243,
22 Appellate Division 1956. The Appellate Division noted
23 that the Court can and had the authority to appoint the
24 custodial receiver in an effort to avoid injuring the
25 business in its relations with the public and it can --

1 if there's a substantial evidence, the Court would have
2 the right and the authority to appoint a fiscal agent,
3 if necessary.

4 I don't think -- and so what I need to say by
5 commenting upon the other remedies that are available
6 here is that, when I look at this record, I think that
7 Mr. Bangiola has sought a remedy under the corporation
8 statute, but it seems to me that by dismissing that
9 claim without prejudice, I'm not indicating that
10 there's no remedy here, if there was an application or
11 if there was a sufficient factual basis for such an
12 application here.

13 What I have is an application that is really
14 based upon the fact that there's four lawsuits and
15 based upon the fact that Ms. Bayou has had five
16 separate attorneys in a very short period of time and
17 based upon the fact that there -- there are allegations
18 that rent is not being properly applied, but I don't
19 think that I have reached the point where there's
20 substantial evidence in the case -- in this case, that
21 there's a need for a custodial receiver or a fiscal
22 agent. That's not to say that that could not be --
23 that there could not be an application by Mr. Bangiola
24 based upon additional evidence or based upon additional
25 material that he may obtain or receive.

1 I believe what has to happen here is there
2 has to be an exchange of information before we take any
3 further action, before the Court takes any further
4 action with respect to Ms. Bayou's continued management
5 of the LLCs, and I do agree with Mr. Fialcowitz that
6 what we're really dealing with here is the right of a
7 disassociated member to receive fair value for his
8 interest in this case, obviously, the Estate's interest
9 in these LLCs, and that's really what seems to me --
10 maybe that's what the parties were working on but,
11 obviously, they didn't get too far and this resulted --
12 this breakdown resulted in this litigation.

13 So what I'm going to do is this. I'm going
14 to order as part of this hearing today that Mr.
15 Bangiola within five days provide a written demand to
16 Mr. Fialcowitz for the information that he deems
17 necessary in order to evaluate the value of the -- the
18 fair value of the interest of his client's interest in
19 the LLC. I'll give Mr. Fialcowitz 30 days in which to
20 respond to that request and I'm basically understanding
21 that this will be a request for income tax returns,
22 profit and loss statements, and other information
23 that's important to understand the value of these
24 businesses and values of these properties.

25 I will require an order that Mr. Fialcowitz

1 forward a confidentiality agreement to Mr. Bangiola
2 within five days and Mr. Bangiola can review the same.
3 If you can't resolve it between the two of you, then
4 you can contact me and I'll address the issues with
5 respect to confidentiality. But it does seem to me
6 that we're dealing with tax records, bank records, and
7 those records are proprietary and I would order that
8 the parties agree to a confidentiality agreement. If
9 they can't, of course, then as I say, you come back to
10 me and I'll resolve the issue, whatever that might be
11 with respect to any problems or exceptions that there
12 may be had.

13 I'm going to order that the parties return to
14 me in approximately 45 days for a case management
15 conference where we're going to deal with the
16 information exchange. We'll deal with any discovery
17 that's necessary. We'll deal with expert witnesses, if
18 necessary. We'll deal with mediation, if that's
19 possible under the circumstances.

20 Now, I'm denying the application for the
21 interim relief that Mr. Bangiola seeks with respect to
22 the constructive trust and with respect to the payment
23 of funds. \$50,000 was asked for with respect to
24 funding the litigation, but I do believe and I find
25 that Ms. Bayou should immediately continue the payment

1 of \$3,600 -- that means like tomorrow -- that she had
2 made to -- I guess, it really should be made to the
3 Estate, for -- after Mr. Alli passed away.

4 It seems to me that there's a basis to
5 require that and enter that injunction because that's a
6 -- the distribution that had been made, apparently,
7 from the record to Mr. Alli for some period of time and
8 it seems to me that she would continue -- it merely
9 continues the status quo. So, in other words, when I
10 balance the equities here and the hardships to the
11 parties and it seems it favors that kind of injunctive
12 relief because that's the situation that had been in
13 existence while Mr. Alli was alive and had been in
14 existence for some period of time after his death.

15 When I evaluate the reasonable probability of
16 success on the merits, obviously, Ms. Alli is entitled
17 to some distribution. There are substantial assets
18 here. That's the record, and whether we call it
19 distribution or whether we call it salary or whether we
20 call it return on investment, I guess, those are terms
21 that could be -- that are going to be addressed along
22 the way, but it seems clear to me that Ms. Alli has
23 some interest and to require that there be a continued
24 distribution under these circumstances with these
25 substantial assets is reasonable because it's likely

1 that there will be some -- that she would be successful
2 on her claim for a distribution.

3 The -- and, again, it seems to me that there
4 is a legal right to the same as quoted by Mr.
5 Fialcowitz in the statute. Ms. Alli does have a right
6 to the fair value for the Estate's interest in this --
7 in these multiple LLCs, and I cannot find that there
8 would be any harm under the circumstances. But, again,
9 as I indicated, this does maintain the status quo and
10 it seems to me that maintaining the status quo is an
11 important consideration under cases such as this where
12 these payments have been made and is the reason why we
13 should not continue.

14 And cases indicate that where the
15 interlocutor relief seeks to maintain preserve the
16 status quo, then there's a less rigid view of the CROWE
17 factor. See MC KENZIE V. CORZINE, 396 N.J. Super. 405,
18 also, RINALDO V. RLR INVESTMENT at 387 N.J. Super. 387.

19 The -- it does seem to me, as I said, that
20 this is -- the real cause of action here is the valuing
21 Mr. Alli's interest in these limited liability
22 companies as of the date of his death, less the
23 applicable valuation discounts and it seems to me that,
24 in order to do that and for these parties to move
25 ahead, there has to be a full and a fair exchange of

1 information regarding the business and financial
2 condition of these companies. That would include, as I
3 say, State and local income tax returns. It also would
4 include information concerning the cash and the profit
5 and loss statements, if available.

6 All of that, it seems to me that Mr. Bangiola
7 is entitled to -- his client is entitled to and the
8 other one, it does seem to me under the statute that
9 Ms. Bayou is entitled to manage the LLCs as permitted
10 under the statute where there has been a death. It
11 seems to me, because of that death, there is a
12 disassociated member who doesn't have a right as an
13 assignee, as his rights are limited, her rights are
14 limited as an assignee and she cannot manage these
15 LLCs, but she certainly is entitled to information and
16 I guess the other side of that is, she's certainly
17 entitled to take that -- to take the activity of Ms.
18 Bayou into consideration when and if it comes time for
19 the valuation of her interest in this LLC.

20 So I'll enter that order as indicated, and I
21 would order Ms. Bayou to make the payment tomorrow, the
22 \$3,600 made tomorrow to Ms. Alli. I'm not going to go
23 backwards into September at the moment. I just order
24 that it be started today -- tomorrow, rather. Is there
25 anything else, gentlemen?

1 MR. BANGIOLA: Yes, sir. One housekeeping
2 issue on one of those litigations. On Mid-Grove
3 Properties in early August, that's the foreclosure
4 involving Bank of America, that property is rented and
5 in early August, when we were talking about this, it
6 was conceded -- in fact, it was conceded before Your
7 Honor by Mr. Davis that my client was the titled owner
8 of Mid-Grove and, despite the equitable issues that
9 might be wrestled with, that the Estate owned 100
10 percent of Mid-Grove.

11 At that point, I said, if that's the case,
12 I'll take over those -- I'll take over that litigation,
13 but I need the keys and I need to collect the rent and
14 then I can handle a piece of litigation. I wrote to
15 Mr. Davis and sent him a substitution of attorney on
16 that.

17 THE COURT: And he filed it.

18 MR. BANGIOLA: He was supposed to return it
19 with the file and he filed it and it got me in some
20 trouble with Your Honor when you were looking for me a
21 week or ten days ago, and I apologize for that. I
22 didn't know that I was of record in the case. But that
23 was based upon the representation that's now been
24 stepped back, walked back to a 50/50 position. I don't
25 want to be of record in the case without understanding

1 -- I need to get paid.

2 THE COURT: You can't work that out between
3 the two of you?

4 MR. FIALCOWITZ: I'll work that out. We'll
5 get new Counsel, and we'll take that over.

6 THE COURT: I think that's what -- you know,
7 again, I hope, if nothing more -- maybe more than that
8 happened today, but I hope -- you know, we spent a
9 couple of hours here today and I hope you opened up a
10 line of communication, first, between Counsel,
11 obviously, and, hopefully, later between the litigants.

12 MR. BANGIOLA: Thank you.

13 THE COURT: But I think you're going to be
14 able to work it out. I understand that there will be a
15 substitution coming in, Mr. Fialcowitz, --

16 MR. FIALCOWITZ: Yes.

17 THE COURT: -- with respect to representation
18 in the Mid-Grove matter. I think we're going to need
19 an order. Mr. Bangiola, you'll do the order on this
20 one?

21 MR. BANGIOLA: I will. Yes, sir.

22 THE COURT: All right. Thank you very much.

23 MR. BANGIOLA: Thank you.

24 MR. FIALCOWITZ: Thank you, Your Honor.

25 THE COURT: Good luck to everybody. Thank

1 you.

2 (Proceedings Concluded)

3 CERTIFICATION

4

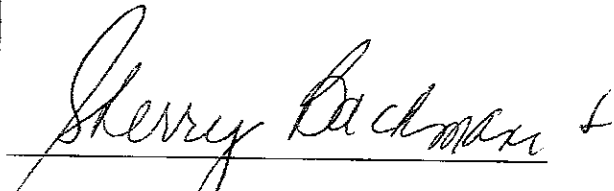
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