

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

MITCHELL WOLFF,

Judgment Creditor,

-against-

JOEL HOFFMAN, STRATFORD BUSINESS CORPORATION,
FIRST NATIONAL CENTER, LLC, NEVELE HOTEL, LLC,
THE CENTER AT HORSEHEADS, LLC,

Judgment Debtors.

DECISION/ORDER

Index No. 09-2279
RJI No. 55-09-01923

HON. MARY M. WORK
Assigned Justice

APPEARANCES:

STARK & STARK, P.C.
By: CRAIG S. HILLIARD, ESQ.
Attorneys for Judgment Creditor

JOEL HOFFMAN
Judgment Debtor Pro Se

WORK, M., J.:

On March 24, 2010, after a three day hearing (hereinafter “the original hearing”) held pursuant to CPLR §5228, this Court appointed Mitchell Wolff Judgment Creditor Receiver of the Nevele Hotel, LLC (the Nevele) and The Center at Horseheads, LLC (Horseheads).

The Court now has before it an application by Mitchell Wolff (Wolff), as Judgment Creditor Receiver, to sell the Nevele. The consent of the Court was required by the terms of the order appointing Wolff. A hearing on the application was held on January 23, 24, and 26, 2012. Notice of the hearing was given to all judgment creditors of the Nevele, Joel Hoffman as a 50 percent owner of the Nevele and managing partner, and Roberta Hoffman, wife of Joel Hoffman,

whom the Court had required be notified of any proceedings concerning the Nevele in light of her interest in the property of Joel Hoffman in the context of the parties' pending divorce action.

APPEARANCES

On the morning the hearing was scheduled to begin, Roberta Hoffman contacted the Court and requested an adjournment because she was suffering from severe migraine headaches. She faxed the Court a letter stating she objected to the relief sought and alleging she had not been properly served with the application. She is not now represented by an attorney in this Court, although she did have an attorney at the time the original receivership hearing was held and she consented to the relief sought. The Court denied her application for an adjournment. Counsel for the Receiver subsequently filed an affidavit of service indicating service upon her in the manner ordered by the Court. Ms. Hoffmann did not appear on any of the days the hearing was held. Joel Hoffman (Hoffman) did appear at the hearing and also sent the Court a written objection to the sale of the Nevele. He is self represented. Mitchell Wolff, Judgment Creditor Receiver, appeared with his attorney, Craig Hilliard. They were present throughout the hearing.

Some of the judgment creditors were present for some parts of the hearing, either in person or by an attorney. Arthur Linker, Esq. of Katten Muchin Rosenman, LLP appeared for iStar, the mortgage holder, and was present throughout the hearing. At the opening of the hearing, he indicated to the Court that iStar was not consenting to the application, that the sale of the property was considered a default event, and that iStar was reserving its right to foreclose on the property. As far as this Court is aware, there has been a default on this mortgage for some time due to the failure to make payments as required by the mortgage instrument.

Jon Simonson, Esq. appeared for judgment creditor, Ellenville Real Estate Holding, LLC, and filed an affidavit in which he stated that he did not object to the pending application “. . . with the understanding that the rights of the judgment creditors will not be impaired as a result of the conveyance of the Nevele Hotel Premises to the Claremont Investment, LLC and that the two additional parcels referenced above will be conveyed to my client, Ellenville Real Estate Holding, LLC.”

Nick Garren, Esq. of the New York State Attorney General's Office appeared on the first day for the Commissioner of Labor. Subsequently, Benjamin Shaw, Esq. appeared for the Department of Labor and filed a document setting forth the monies owed to the Department of Labor. He filed a written response to the application, noting that the offer to pay wages due and owing employees did not cover the entire amounts owed, and noting that any liens not covered at closing would remain a lien on the property. The issue of the actual amount due to the former employees of the Nevele is of concern to the Court. In the pending application, the Receiver indicated that the buyer proposed to pay \$100,000.00 at closing to be forwarded to the Department of Labor for distribution and that, to the best of his knowledge, this amount would cover all the unpaid employees. It does not. The outstanding wages are \$299,692.31. There is an additional amount of interest of \$190,000.00, plus penalties imposed by the Department of Labor, bringing the total due to \$800,000.00 to \$900,000.00. Mitchell Wolff has stated that he was not aware that the actual wages due were more than \$100,000.00 until he received the printout from the Department of Labor on the second day of the hearing. He believed that the amount of the lien in excess of \$100,000.00 were penalties and interest. The Court finds him credible on this point, but is concerned that the proposal does not actually cover all payments due

to the employees. These employees, for the most part, were chamber maids, bus boys and other hotel staff, many of whom were receiving only minimum wage, and did not even get that for the last four to five weeks they worked at the Nevele. The Court will not attempt to force Claremont to increase its offer. Their offer of \$100,0000.00 was made in good faith when they believed it would cover all back wages. Payment of all back wages would certainly help their relations with the surrounding community.

Bryon Gardner, a principal in Bing Enterprises, Inc., faxed the Court a letter in response to the application. He stated that he was in the hospital and could not appear but was concerned that any rights he had under a contract to cut wood on the Nevele property be preserved. Andrea Moran, Esq., of counsel to the firm of Marcel Wiseman, LLC, counsel for judgment creditor, David Sunshine, appeared the first morning, and upon questioning, informed the Court that her client did not have a position on the application at that time. She has not filed a notice of appearance and has not filed a written response. She was appearing to learn more about the proposed sale. The Court was informed that Robert Steinberg, Esq. of Steinberg & Gruber, P.C. contacted the Receiver on behalf of three members of the Stern family who are judgment creditors. He did not appear at the hearing and has not filed a response to the Receiver's application. Two judgment creditors appeared pro se at some point during the proceeding. Each was questioned by the Court and expressed a desire to learn more about the proposed sale. Neither expressed opposition to the sale. They were Bharat Patel, for Mahinrahi, LLC d/b/a Days Inn, and Iner Shuholm, Abbot for the Blue Cliff Monastery of the Unified Buddhist Church.

Three proposed purchasers, in addition to the one proposed by the Receiver, appeared with counsel on the first morning. They had contacted the Court prior to the hearing and been

referred to the Receiver and counsel for the Receiver. They had copies of the order to show cause and had provided the Court and the Receiver with written letters of intent to purchase the property. They were: Wynn Wang who was represented by Richard Stoloff, Esq. of Stoloff & Silver, LLP; Bozeman Trail Group of Bozeman, Montana represented by Robert DiNardo, Esq. of Jacobowitz & Gubitz, LLP and accompanied by Darryl Wynn, Esq. and former Congressman, Ben Gilman; and Julius Nasso of Eleven Resorts and Spa and ER&S Catskill represented by Daniel Costello, Esq. of Scherer & Associates, PLLC, and accompanied by his associate in ER&S Catskill, Julia Nasso.

Also present were the following individuals from the purchaser proposed by the Receiver, Claremont Investments, LLC who was represented by Joseph O'Connor, Esq. of Mainetti, Mainetti & O'Connor, P.C.; Michael Treanor, principal of Navegante Casino Management; Larry Woolf, principal of Navegante Casino Management; and Steven Charno, President of Douglaston Development. Not present was Jeffrey E. Levine, President of Levine Builders, the builder who is also part of Claremont Investments, LLC.

The following government officials from Ulster County appeared on the first morning and at varying times during the three days of the hearing: Elliott Auerbach, Ulster County Comptroller; March Gallagher from the County Executive's Office; Scott Carlsen, Supervisor of the Town of Wawarsing (the Ulster County town in which the Nevele is located); Jeffrey Kaplan, Mayor of the Village of Ellenville (the village in which the Nevele is located); and Mary Sheeley, Manager of the Village of Ellenville.

The Court is aware of the presence of four news organizations at or immediately outside the hearing because they made written applications pursuant to Section 131.1 of the Rules of the

Chief Administrator concerning audio-visual coverage of judicial proceedings. They were the Times Herald Record, whose application to have a still photographer in the courtroom was granted; the Shawangunk Journal, whose application to have a still photographer present in the courtroom was granted; the Kingston Daily Freeman, whose application to cover the proceeding with a digital audio recorder was granted; and the television station YNN, whose application to cover the proceeding with a video camera was denied. The video coverage application was received by the Court after it had taken the bench on the first morning of the hearing. Section 131.1, supra, provides that applications made pursuant to it are to be made seven days in advance of the appearance for which coverage is sought. None of the applications were made within this time frame. However, unlike the other requests, the YNN request was received by the Court after the hearing opened and would have required the placing of video camera or cameras in a very crowded courtroom. The Court had added fifteen chairs to the public area of the Surrogate's courtroom and utilized the jury box seats in order to accommodate those who wished to attend the hearing. There simply was no room for a television video presence. The Court had attempted to obtain the use of the larger ceremonial courtroom in the Ulster County Courthouse or one of the two jury courtrooms in the annex to the County Courthouse for this hearing. All were being utilized for either a jury trial or selection of a jury in a criminal or civil matter. Shortage of space has become a serious problem for the Ulster County Courts.

HEARING PROCEDURE

The Court was interested in obtaining as much information as possible about the proposal before it, about the competing proposals, the Receiver's attempts to sell the Nevele, and the position of the judgment creditors. The Court wished to conduct a thorough exploration of the

proposed sale without creating an excessive delay in resolution of the Nevele's future. The Court indicated it would proceed in the following manner. The Receiver would be permitted to present his proposal to the Court with witnesses who would be subject to cross examination by Joel Hoffman, who, as part owner of the Nevele, was considered a party. Counsel for those who bid on the property, including counsel for the Claremont Group, were not considered parties and would not be permitted to cross examine but, with the exception of counsel for the Claremont Group (whose proposal was presented by the Receiver), would be permitted to call witnesses in support of their proposal who could be cross examined by counsel for the Receiver and Joel Hoffman. The Court received as its own exhibit a copy of an October 2010 report of the New York State Inspector General concerning the selection of Aqueduct Entertainment Group to operate a Video Lottery Terminal Facility at Aqueduct Racetrack. This document is available to the general public on the Inspector General's web site. The Court also received a written presentation from the Claremont Group and a written proposal from ER&S Catskill Realty. Joseph Nasso, principal of ER&S Catskill Realty, made a power point presentation.

BACKGROUND

The following information was obtained during prior hearings held concerning this receivership.

Mitchell Wolff and Joel Hoffman met and worked together in a New York City real estate firm. Both hold MBA degrees. Eventually, they left the firm and began acquiring properties, creating the Stratford Business Corporation (Stratford), a property management company which managed properties owned by Hoffman and Wolff. During their approximately 20 years in

business together, Wolff primarily concentrated on the marketing and sales end of the business, and Hoffman on finance and keeping of the books and records.

In 1988, they acquired Horseheads, a large warehouse facility located in Horseheads, Chemung County, New York. In 2000, they acquired the Nevele located in Ellenville, Ulster County, New York. The Nevele property consisted of two hotels, the Nevele and the Fallsview, sited on contiguous pieces of property sharing a common driveway. They had been operated for many years as separate hotels owned by different members of the same family. The owner immediately prior to Hoffman and Wolff had bought both hotels from the family members and sold them as one resort facility. In late 2005, Hoffman and Wolff sold the hotel that had been the Fallsview to a new owner, who renamed it Honor's Haven. Stratford continued to manage the Nevele and Horseheads, although, by this time, Wolff was no longer active in the business.

In July 2004, Wolff suffered serious health problems. He came back to work in September or October of that year and continued to work. In October 2005, Wolff, Hoffman and "The Owners" (defined as Horseheads, the Nevele, FNC, and Stratford) entered into a redemption agreement and an indemnity agreement memorializing the sale of all but one (1%) percent of Wolff's interest in the profits and distributions of the businesses to Hoffman. Wolff signed the agreement individually. Hoffman signed individually and on behalf of each of the Owners. Hoffman signed a promissory note to Wolff individually as a maker, and on behalf of the Owners as maker, in the amount of \$2,550,000.00. Wolff and Hoffman each retained a 50 percent interest in the Owners, but Hoffman (according to the promissory note) was given the "sole authority and legal power to run the Business, the properties and the Owners in such manner as he shall see fit" The Court notes that Hoffman claimed during this hearing that he

was a 98 or 99 percent owner of the Nevele, but this is contrary to this Court's finding made after the hearing on the original receivership application (the original hearing).

Subsequently, Hoffman failed to comply with the agreement and Wolff filed a complaint in New Jersey Superior Court on July 31, 2008. A settlement agreement was eventually reached and approved by the presiding judge. It provided, inter alia, that if Hoffman failed to make a required payment on March 1, 2009, Wolff could file a judgment and seek to execute on it. On April 7, 2009, a consent judgment was entered in favor of Mitchell Wolff against defendants, Joel Hoffman, Stratford Business Corporation, First National Center, LLC, Nevele Hotel, LLC and The Center at Horseheads, LLC, jointly and severally in the sum of \$2,027,821.44. That judgment was filed in the Ulster County Clerk's Office and the Chemung County Clerk's Office.

HORSEHEADS

In its decision of March 24, 2010, the Court wrote extensively about the condition of the Horseheads' warehouse facility. That information is not necessary to this decision. Of significance with respect to Horseheads is the fact that Mitchell Wolff was the only judgment creditor and Horseheads was a going concern at the time Wolff became Receiver. Roberta Hoffman claimed to be a judgment creditor of Horseheads, but the Court subsequently determined that she was not. At the time of the original hearing, there was a mortgage of approximately \$15 million on Horseheads and \$11 million on the Nevele, both held by iStar Financial (iStar). The properties were each additional collateral for the other property. Horseheads had serious problems of its own, including a rail spur badly in need of repair resulting in frequent derailings of cars transporting products to be stored at the warehouse, and old run down warehouse buildings. Horseheads, however, was generating some income and,

with the consent of the Court and iStar, Horseheads contributed some money to pay for security and insurance on the Nevele, which had been closed since 2009. Mitchell Wolff hired employees who had been laid off to help with the security and the limited amount of refurbishing that was possible given the financial constraints of managing a building complex that was generating no income.

By order to show cause filed on November 4, 2011, Mitchell Wolff, as Receiver, sought permission to sign documents removing all cross-default and cross-collateralization provisions between the Nevele and Horseheads in the iStar mortgage and transfer all the real and personal property of Horseheads to Horseheads Real Property LLC.

A hearing was held on the application on November 16, 2011 and November 21, 2011, at which Joel Hoffman and Roberta Hoffman appeared and opposed the application. The Court granted the application in a decision from the bench, which directed Mitchell Wolff to execute and record all documents necessary or required to release the judgment against Joel Hoffman and Roberta Hoffman's home in Old Westbury, New York. The sale of Horseheads resulted in virtually all of Mitchell Wolff's judgment being satisfied. The Court was concerned about removing Wolff as Receiver of the Nevele. Given that Wolff was a judgment creditor receiver, and not an equity receiver, the Court could not have simply appointed a successor receiver. The management of the Nevele would revert to Joel Hoffman. Wolff expressed his willingness to stay on for a short time because he believed a sale was imminent. The Court, therefore, directed him to execute and record all documents necessary to reduce his judgment lien against the Nevele to \$5,000.00, and directed that he remain judgment creditor receiver of the Nevele and be bound by the Court's order of March 24, 2010. This solution allowed for a knowledgeable

person to continue to negotiate for the sale of the Nevele but did not provide any funds for the continued security and insurance on the Nevele. It is the Court's understanding that iStar has paid for the security and insurance since the sale. It should be noted that a judgment creditor receiver, unlike a traditional receiver, is not permitted to receive a fee or commission for his activities as a receiver (CPLR 5228[a]). His sole remuneration is the satisfaction of his judgment.

PROPOSED SALE OF THE NEVELE HOTEL

On January 12, 2012, Mitchell Wolff filed an order to show cause seeking the following relief:

1. Authorizing and directing Mitchell Wolff, in his capacity as the judgment creditor receiver of Nevele Hotel LLC, to execute and deliver to Claremont Investments LLC or its designee ("Claremont") a deed of the real property owned by Nevele Hotel LLC, in a form satisfactory to the purchaser, which deed shall name Claremont as the transferee; and
2. Authorizing and directing Mitchell Wolff, in his capacity as the judgment creditor receiver of Nevele Hotel LLC, to execute and deliver to Claremont an assignment of all leases of any of the real property owned by Nevele Hotel LLC and all rents and revenues due or coming due therefrom, which assignment shall name Claremont as the assignee; and
3. Authorizing and directing Mitchell Wolff, in his capacity as the judgment creditor receiver of Nevele Hotel LLC, to execute and deliver to Claremont a bill of sale of all personal property of Nevele Hotel LLC, which bill of sale shall name Claremont as the transferee; and
4. Authorizing and directing Mitchell Wolff, in his capacity as the judgment creditor receiver of Nevele Hotel LLC, to execute and deliver to Claremont all other documents and instruments necessary or required to accomplish the recording and/or filing of the deeds of transfer and assignments directed by the Court's

Order; or otherwise necessary or required to complete the transfers of real and personal property approved by the Court's Order; and

5. Authorizing and directing Mitchell Wolff to execute and record all documents necessary or desirable to release his judgment lien against Nevele Hotel LLC; and
6. Awarding such other and further relief as this Court may deem equitable and just.

In the week preceding the hearing, the Court received telephone calls from attorneys on behalf of three entities who indicated they wished to bid on the Nevele. They were told the date of the hearing and directed to contact the Receiver and/or his attorney for a copy of the order to show cause and supporting documents. Anyone, including members of the press, who called and asked about the Nevele court proceeding were told when and where it would be held.

In evaluating the testimony elicited at the hearing, the Court has considered information provided to it in prior hearings and in reports from the receiver.

The Nevele is a resort hotel with 433 guest rooms, located on 487 acres with an 18-hole golf course. It is located near the village of Ellenville in the Catskills, in what can only be described as a stunningly beautiful location. The Nevele, and what was previously known as the Fallsview Hotel and is now Honor's Haven, was purchased by Wolff and Hoffman for \$18 million in 2000. They spent approximately \$5 million renovating the Fallsview, and then in November 2006, a year after the redemption agreement with Wolff had been signed, sold it for \$9 million.

The Court was unable to obtain a complete picture of the Nevele's finances at the original hearing. It was clear that the hotel was in extreme financial difficulty. There was an abundance of evidence that after Wolff ceased to be actively involved in the management of the

Nevele, Hoffman managed the hotel in a way that alienated just about everyone who came into contact with it – from guests to employees, to vendors, to banks, to utility providers, to local governments, to Hoffman’s former attorney, to the Department of Labor, and the many plaintiffs who had suits against the Nevele pending in Ulster County Supreme Court at the time of the receivership application. Counsel for Hoffman stated at the original hearing that he believed there were approximately 30 lawsuits in which the Nevele was involved. In addition, as of August 2009, when a title report was prepared, there were numerous judgments and mechanics liens against the Nevele. There are judgments in favor of individuals and groups, such as the NY Police Ecumenical Golf Outing, which would suggest some disgruntled guests, judgments and tax warrants from various government agencies, judgments in favor of suppliers such as a linen company, and a judgment in favor of the electric company. Hoffman testified that there was a lawsuit against the Nevele in New York County, in which an organization was suing the Nevele for cancellation of their event when the Nevele had to close because of burst pipes, caused by no heat, caused by no oil, caused by nonpayment of the oil bill. The number of individuals, businesses, and government entities not paid by the Nevele in the five years before the receivership was staggering.

Roger Fredenburgh testified at the original hearing that he went to work at the Nevele in 2002 assisting in the golf shop. In 2008, Hoffman asked him to become director of maintenance. He testified that he quit his job in June of 2009 after not being paid for five weeks. He also testified that over time he advanced some \$7,500.00 for supplies and tools necessary to the maintenance of the Nevele and was not repaid, despite submitting bills. He testified that in March 2009, he loaned Hoffman \$4,000.00 so he could continue to operate through a weekend.

He was not repaid. He testified that during the period he was director of maintenance, the grounds and buildings deteriorated because Hoffman said there was no money to pay for things such as fertilizer for the golf course and needed plumbing equipment. The boilers frequently broke down and pipes frequently broke. In January 2009, he testified that the boilers were not running because there was no oil. Pipes froze and there was a large amount of water damage in the Golden Gate building. The Nevele leased golf carts, and Mr. Fredenburgh witnessed Hoffman selling them regardless of the fact that they did not belong to the Nevele. Despite the damage to the Nevele, the resort continued to receive guests until the end of June 2009. According to Hoffman, one group was told they would have to pay in advance so he had money to obtain food and pay utilities.

Robert DiPalma testified that he came to work at the Nevele in August of 2007 as supervisor of the golf club. He said that when he arrived, the golf course was playable but was weed infested and needed fertilizer. Its irrigation system was shot and the pumping system barely worked. Sand was needed. He was given enough money to buy fertilizer to last out the season but never received any more funds. In the summer of 2008, he had only four men working on the golf course maintenance – in his experience in other clubs, there were 10 to 12 people to do the same amount of work. They were also expected to maintain 30 or 40 acres of the resort property. He did not have sufficient mowers to work the grounds and the golf course. In the summer of 2008, he was given only \$1,200.00 to maintain the course, which he used to apply a fungicide. He testified that despite lack of sand in the pits and existence of moss on the greens, a lot of people played golf in the summer of 2008. He said there were many groups on outings that used the course. On cross examination, he opined that the golf course had made a

profit that summer. Wolff testified to a time during his involvement when there was a Golf Academy at the Nevele and U. S. Open Qualifier was held there.

Mr. DiPalma testified at the original hearing that up until January 2008, employee pay was being handled by ADP, a check processing service. At that point, the service was discontinued and the Nevele issued the pay checks accompanied by a statement of what deductions were made. He said at some point after this, employees started getting cash in exchange for their non-endorsed checks directly from the main office. Mr. DiPalma testified that after this system went into place, he was summoned to Family Court for non-payment of child support, despite the fact that the internally generated list of deductions reflected that child support had been deducted – as did his check amount. He ended up paying \$1,300.00 in additional child support to settle the Family Court case.

When the Nevele closed in June 2009 (it literally could not afford to keep the lights on), it owed all of its employees at least four weeks' pay. Attached to orders from the Department of Labor directing payment are the names and positions of people not paid or underpaid. There are 75 names (some appear more than once – they were not paid some amounts, underpaid others, and had their tips withheld in other cases). Most of the people were porters, chamber maids and servers earning minimum wage. On March 23, 2009, the Nevele Hotel was convicted in Ulster County Court of Failure to Secure Worker's Compensation and fined.

In the spring of 2008, JF Capital Investors, LLC was interested in buying the Nevele and spent some time and money exploring the feasibility of buying it. An exclusivity letter was signed in May 2008. According to an affidavit submitted to the Court by Hoffman in October 2009, there was a contract of sale with JF Capital Investors, LLC, which fell through because of

the state of the economy. By affidavit submitted to the Court, the principal of JF Capital Investors denied that there had ever been a contract and indicated he was still interested in buying the property. Hoffman then admitted in a subsequent affidavit that there was no contract. During the original hearing and throughout the receivership, Hoffman has assured the Court that he had found a buyer for the Nevele. There have been no contracts from any of these people.

On June 26, 2009, Hoffman wrote Wolff that there was an unpaid electric bill for \$60,000.00 for the Nevele, which he could not afford to pay and was going to have to close the hotel, which he did.

CONDITION OF THE NEVELE AFTER MITCHELL WOLFF APPOINTED JUDGMENT CREDITOR RECEIVER

Mitchell Wolff was appointed Judgment Creditor Receiver on March 24, 2010. There are several methods available to enforce a judgment. Utilizing the judgment creditor receiver remedy instead of executing on a judgment and forcing a sheriff's sale may be appropriate in situations such as this, when a sheriff's sale is unlikely to bring a reasonable bid and a receiver may be able to do better by seeking a private sale. The cross collateralization on the mortgage of the Nevele and the Horseheads made the situation particularly complicated. Since the appointment of Mitchell Wolff as judgment creditor receiver, the Court has received twenty two monthly receiver reports from Wolff detailing his efforts on behalf of the Nevele. The Court has considered information contained in those reports in making this decision because they deal with the condition of the hotel and his attempts to sell it.

In his first report dated April 14, 2010, Wolff informed the Court that he had been informed by Mary Sheeley, Ellenville Manager, that the employees of the Nevele, who not been

paid for their last five or six weeks of work in the Nevele during the summer of 2009, also had never been provided with W-2 forms for 2009 by Joel Hoffman and, therefore, had been unable to file tax returns and, in some cases, claims for unemployment. Wolff described at this hearing with some emotion meeting with these employees in April 2010 and providing them with their W-2 forms. He testified that the Ellenville police had offered to provide security for him at the meeting because of the level of anger felt by the employees, but he turned it down. He testified that the anger was not directed at him at the meeting. In his second report to the Court, Wolff reported that he had made his telephone number available to all former employees and heard from them regularly inquiring about progress on the sale of the Nevele. His third report stated that he was involved in substantial talks and negotiation with a potential purchaser for the Nevele, who intended to reopen the hotel as a resort hotel. In his fourth receiver report dated July 19, 2010, Wolff reported progress on obtaining a letter of intent for the purchase of the Nevele. He also noted that he had stayed in touch with former employees of the Nevele, some of whom were having difficulty obtaining unemployment, and that he had offered to talk to the Department of Labor if it would be helpful. He also indicated he was in touch with local Ellenville officials, as well as people at the Ulster County Development Agency. In his fifth receiver report dated August 15, 2010, Wolff reported progress on the Nevele sale and the expectation that he would be seeking court approval soon. He also advised that he continued to speak with prospective purchasers and arranged for them to tour the hotel, although nothing had come of the inquiries. He reported that the hotel had been vandalized on August 9, 2010 by approximately ten men in their early twenties who had entered the hotel with golf clubs, broken windows and chandeliers, as well as written graffiti on the wall. At this hearing, Wolf testified to

taking a prospective purchaser to visit the hotel before the vandalism had been repaired and the prospect was so offended by the condition of the hotel that he gave up any interest in purchasing it. In his sixth receiver report, Wolff reported that a prospective buyer had requested that the electric and water service be restored to the Nevele in order that any damage could be observed. Wolff was concerned about this issue as well, since it appeared that Hoffman had shut down the hotel without taking any precautions to winterize it, despite his statement to the contrary. He had never provided Wolff with the name of the person or firm that "winterized" the building. The Village of Ellenville, which provided water, and Central Hudson were requiring substantial payments to turn the services back on since they were owed so much money by the Nevele at the time Joel Hoffman shuttered the hotel. The Receiver also reported that the cost of repairing the damage cause by the vandalism had been estimated by the insurance adjusters at \$300,000.00. In his seventh receiver report, Wolff reported that Hoffman had admitted that he had done nothing to winterize the electric service and could not remember who had winterized the plumbing. Wolff indicated that it would cost approximately \$40,000.00 to winterize the buildings and he had sought financial assistance from iStar. He indicated that any damage caused by leaks when the water was turned on would not be covered by insurance because Hoffman had not winterized the premises. He had some people working on fixing visible leaks in the pipes and sprinkler system. He had a buyer who was still interested in the property. In his eight report, Wolff reported that the buyer who had been interested in buying the Nevele was no longer interested, that Joel Hoffman had given him the names of two entities interested in buying the Nevele, one of whom had withdrawn his interest after a site inspection. He awaited further word from the second interested party. He had received some funds on the insurance claim and had renewed the

property insurance. He reported that a large leak under one of the buildings had been repaired. He indicated that he had decided to test the pipes using air instead of water given the likelihood that they would leak. He indicated that the pipes would be winterized as they proceeded with the testing. He indicated that the loss claim on the vandalism had been \$381,850.99, that he had received some of the money and was using it to clean up the junk infested rooms and grounds. He reported they had filled three thirty-yard dumpsters and expected to use one or two more. This cleanup was accomplished without the aid of Central Hudson since they had turned off the power for nonpayment. A gasoline powered generator, borrowed from Horseheads, was used. He also reported entering into negotiations with Ulster County Comptroller, Elliott Auerbach, and Ellenville Mayor, Jeffrey Kaplan, to reduce the Nevele's taxes. He also reported hearing from one of the brokers recommended by Hoffman, who estimated the Nevele to be worth from \$4 million to \$8 million. Hoffman had taken the position that it should sell for \$18 million and no offers at that price had been made. Hoffmann had been ordered by this Court not to interfere with the activities of the Receiver, but it appears that he never gave up seeking out buyers and was never successful at finding one. There is evidence that he scared some away by quoting a sales price that was unrealistically high. It was in this report that Wolff first mentioned the possibility of retaining Jones Lang LaSalle, a publically traded real estate brokerage firm to sell the hotel. In his tenth report, Wolff reported that the air testing of the pipes had been concluded, the plumbing winterized, and the pipes repaired. The cleanup had been concluded. He had several brokers look at the property and they had told him it was ready to be put on the market. In his eleventh report, Wolff reported that a tax foreclosure proceeding commenced by Sullivan County (apparently the Nevele owned two acres in Sullivan County) had been resolved with

payment of the tax of a little over \$2,000.00 due. He reported the total amount of the vandalism insurance payment being paid to iStar as required by their loan instrument. He indicated that he was deciding among three possible brokers (all mentioned in prior reports) to attempt to market the Nevele. In his twelfth report, Wolff indicated that leaking in the buildings and flooding on the property had resulted in a delay in listing the property while it was cleaned up. In his thirteenth report dated April 14, 2011, the Receiver noted that he had signed an exclusive sales agreement with Jones Lang LaSalle. In his fourteenth report, the Receiver reported obtaining a reduction of the Town of Wawarsing tax assessment of the Nevele from \$15 million to \$5 million. In his fifteenth report, Wolff reported substantial amount of cleanup of the property, including mowing and fence painting. A small historic building located near the road on the Nevele property had been painted. He indicated that the broker he had hired had actively promoted the Nevele at the NYU International Hospitality Industry Investment Conference. The August 13, 2011 report (number 17) recites that the Sprint/Nextel leases (on antennae owned by the Nevele) have finished paying off a lien to Thyssen Krupp and the lease money was now payable directly to iStar. In addition, he indicated he had negotiated a reduction of approximately \$323,103.00 in outstanding sales tax. In his eighteenth report (September 14, 2011), the Receiver reported flooding on the Nevele property, presumably as a result of Hurricane Irene. He was exploring FEMA assistance. In his nineteenth report, the Receiver noted the toll the rainy weather was taking on the Nevele property, particularly the golf course. He stated that all of the prospects he had spoken with acknowledged the possibility that non-tribal casino gambling might be approved in Ulster and Sullivan Counties, but that discussion of casinos has been occurring for over twenty five years. All prospective buyers had indicated that

there would be substantial cost in renovating the Nevele. At that point, Wolff was of the opinion that the prospect of casino gambling in New York would not do much, if anything, to enhance the price of the Nevele.

The receiver reports described above also contained information about Horseheads, which the Court has omitted. Until November 2011, Wolff was taking responsibility for the leaky roofs and train derailings that were occurring on that property.

THE PROPOSAL BEFORE THE COURT

On January 10, 2012, Claremont Investors LLC, by Michael R. Treanor, managing member, submitted a written offer to purchase the Nevele property. The offer is set forth below.

To summarize the salient terms of the proposed transaction:

- (A) Claremont, or its designee, will acquire the Nevele Hotel property, subject to the first mortgage, for a purchase price up to \$6.7 million payable as follows:
 - (i) All delinquent state and local property taxes which Claremont believes to be \$1,525,237 as of January 31, 2012;
 - (ii) All costs of the receivership as directed by the Court;
 - (iii) \$100,000 to the NYSDOL for the benefit of all Hotel employees who are owed back compensation at the time of the closing of the hotel. The NYSDOL has all of the back documentation, would be asked to distribute these monies to the employees and to the best of my knowledge this amount will cover all of them;
 - (iv) During the first 5 years of ownership, up to \$5 million in cash to judgment creditors of record, within 60 days after the property is open and operating for casino gaming.

- (B) Claremont will execute or cause to be executed a deed conveying to Ellenville Real Estate Holding LLC title to that portion of the Nevele Hotel property which is the subject of the separate, pending litigation in this Court.

As far as this Court is aware, Claremont Investors LLC is made up of four members:

Michael Treanor, Larry Woolf, Jeffrey E. Levine and Steven Charno. Larry Woolf and Jeffrey Levine were part of a consortium called Aqueduct Entertainment Group (AEG) that was awarded a contract to operate a video lottery terminal at the Aqueduct racetrack in January 2010. On March 9, 2010, AEG was “de-selected.” An investigation regarding the selection of AEG was undertaken by the State Inspector General and a three hundred and eight page report issued in October 2010. The Court learned of the investigation from press coverage a few days before the hearing began, read the report, and made it part of the court record in this matter. The report is easily accessible on line.

Larry Woolf is described in a biography attached to the moving papers as the founder of Navegante Group, Inc. Navegante is described in the biography as assembling “an elite corps of executives and professionals who explore, identify, evaluate, and optimize opportunities for a variety of clients worldwide.” Their expertise is clearly in the area of gaming, as established by Mr. Woolf’s testimony, the biography, and the information provided in the Inspector General’s report. Paul Williams, Executive Director of the Dormitory Authority, was asked to analyze the various proposals to run the video lottery terminal at Aqueduct Racetrack. He is quoted in the Inspector General’s report. While expressing concerns about the financial stability of AEG with which Mr. Woolf was associated and its cumbersome management structure, he went on to say: “But Navegante clearly has a veritable track record for establishing independently run gaming

operations” (page 192 of report). Larry Woolf testified at this hearing to a lifetime career in the gaming industry in New Jersey and Las Vegas. He stated he has been investigated for a casino gambling license in Nevada and New Jersey and has never had a license revoked. On questioning by the Court, he testified that he had never been convicted of a crime. He testified to extensive experience building and managing casinos in Las Vegas. He testified to establishing a casino in Ontario, Canada and managing it for approximately three years. He testified to meeting Michael Treanor after Mr. Treanor bought some distressed properties in Las Vegas and wanted to use them to establish a casino. He deferred to Mr. Treanor on issues of financing of the Nevele project, except to say that he had not ruled out the possibility of selling the Nevele casino he hopes to build to a bigger name in gambling. He testified that the Claremont Group had been formed by Treanor to do the Nevele transaction. Principals, Mr. Levine and Mr. Charno, both builders had looked at the Nevele building and would be involved in the physical building of the proposed casino. He testified that if gambling did not come to Ellenville, he saw little hope. If it did come, the iStar mortgage would be very small in comparison with the money the casino would generate. When questioned by the Court about the Inspector General’s report, he stated that the group he was affiliated with won the bid for the video lottery terminals and was then de-selected by New York State. Every one in the consortium had to be approved for a gaming license and there were a few members with a one percent to one-half percent interest who were not licensable. He stated he had never been charged or even contacted by anyone from law enforcement after the de-selection and the report of the Inspector General.

Michael Treanor testified that he is a 1988 graduate of Holy Cross and a 1992 graduate of Fordham Law School. He worked for the law firm of Cadwalader, Wickersham, and Taft after

law school in tax law. Subsequently, he worked for Lehman Brothers in their real estate banking group. He became a partner in Freemont Realty Capital, a real estate merchant banking firm. After leaving the firm he formed and managed investment companies developing and redeveloping gaming properties. He was issued a unrestricted gaming license. He bought some distressed properties in Las Vegas, where he met Larry Woolf. He testified to hearing about Mitchell Wolff and the Nevele from a friend. He contacted Mitchell Wolff in July 2011. He said he looked at the Nevele and initially was unimpressed. He had the hotel inspected by Levine and his associates and was told it would take \$50 million to renovate and reopen for non-gaming. The buildings had problems with asbestos, mold, sewage, and fire control. After looking at past revenues of the hotel, he did not believe that a proposal to reopen the hotel as a non-gaming resort was feasible. He testified that he was driving to Albany on December 4, 2011, when he heard on the radio that the Governor was fast tracking non-tribal gambling. The Governor singled out the Catskills, specifically Ulster and Sullivan Counties as candidates for gaming casinos. He testified that at this point no one took the Nevele seriously as a possible casino site because it had been in receivership for so long. Monticello Raceway and the Concord in Sullivan County were possible rivals and there were already lobbyists in Albany working on their behalf. Mr. Treanor indicated that, if successful in purchasing the Nevele, he would secure or demolish all the buildings and repair two of the buildings that he intended to renovate eventually. He anticipated cleaning out a trench and fixing a dam to preserve the golf course. It was repeatedly stated by Mr. Treanor and Mr. Woolf that the plan was not to build "slots in a box" but rather a family friendly resort area with gambling available. The Nevele has a skating rink with some architectural character which he anticipates repairing and retaining. He is in the process of

buying a house in foreclosure across the street from the Nevele. He anticipates paying the property taxes, insurance and security on the Nevele while working on gaining approval for a casino. He would hire lobbyists to lobby for the selection of the Nevele for a casino.

Upon recall on the last day of the hearing, Mr. Treanor testified that he had been licensed to run a gambling establishment twice in Nevada, that he had budgeted \$700,000.00 to secure and repair the Nevele property, and expected to spend 50 percent of his time on the project, including lobbying in Albany. He had hired Fred Polsinelli as a lobbyist. Mr. Polsinelli was in the courtroom for at least part of the proceeding.

A New York State constitutional amendment is required to permit non-tribal casino gambling in this state. For such an amendment to become law, it must be passed by the vote of two different legislatures and then approved by the voters of the state by a referendum. If it is approved by the legislature now sitting, it could be presented in 2013 to the new legislature elected in November 2012, and if approved, presented to the voters in a referendum in November 2013. This would be the earliest possible date for approval of casino gambling in New York. Mr. Treanor anticipated the casino law would specify areas in which casinos could be built and would probably require approval from the voters of that area. There would be environmental impact studies prior to approval of the building. The individuals managing the Nevele would have to be licensed. In short, the process is neither fast nor certain. However, if the Nevele did become a gambling casino, it would likely employ a large number of people and generate a great deal of revenue. If it was not approved as a casino, it can be anticipated that Claremont would divest themselves of the property and it would be sold in either a tax foreclosure or bank

foreclosure. Larry Woolf was of the opinion that the only likely purchases in that scenario would be a non-profit organization such as a school or religious organization.

Mitchell Wolff testified to some of the history of his receivership, much of which has been set forth in this Court's summary of his monthly reports. He testified to his attempts to sell the property without a broker, his activities in fixing the property so it could be put on the market, and his hiring of Jones Lang LaSalle as real estate brokers. He testified to agreeing with the broker to make a call for offers in the Fall 2011 and the response to that call. His receiver report of November 1, 2011 reported each of the five offers received. One offer was for the fee for a price of \$2.5 million with clear title required. In light of the mortgage debt, tax warrants and liens, clear title could not be delivered at this price. The other four offers were to purchase the note from iStar – one for \$2 million, one for \$4.25 million, and two offers of \$6 million each. If the note is purchased, the buyer would be able to foreclose on the property and likely eliminate the creditors. Both the broker and Mitchell Wolff believed that the \$6 million offer from Claremont was the best. The other entity offering \$6 million visited the property only twice, was not specific in its offer, and wanted to acquire the fee as well as the note. People from the Claremont Group had visited on a weekly basis throughout the summer of 2011. They had communicated with local government officials about their plans for the property. They had gone to the Town Planning Department and reviewed all available plans for the original construction of the Nevele Hotel. There are no plans for the oldest parts of the structure because they were built before there was a building code in Ellenville or Wawarsing. They had come up with a plan for what buildings could be safely restored and which were beyond repair and needed to be demolished. They studied the financial records of the hotel during the period it was open and

receiving guests. Mitchell Wolff estimated that they had spent approximately 300 hours evaluating the viability of their plans for the hotel. Ultimately, after negotiations with iStar for the purchase of the note did not result in an agreement, they offered to buy the hotel and assume the mortgage. Their offer was to pay at closing all the real estate taxes and pay \$100,000.00 to the Department of Labor in unpaid employee wages at the closing. They also offered to pay the judgment creditors off within sixty days of opening a casino on the property, if such opening occurred within five years of the closing on the property. The Court questioned counsel for the Receiver about the fact that the liens would remain on the property after the sale for whatever length of time the law provides and would still be enforceable under the statute. However, the simple fact is that the mortgage holder is apparently in a position to foreclose at any time since the mortgage has not been paid for several years, and such a foreclosure would likely wipe out the claims of the judgment creditors. The Court has taken the position that its permission is required for the sale of the note, but after the Nevele is sold and the receivership ended, the holder of the note, be it iStar or an assignee would be in a position to foreclose. Claremont has proposed signing and filing a "Declaration of Covenants and Restrictions" to protect the creditors. In a letter signed on February 2, 2012, Jon Simonson, Esq., attorney for Ellenville Real Estate Holding LLC, has submitted a proposed amendment to the declaration. That amendment is set out below. The Court approves that amendment and directs that it be added to the Declaration of Covenants and Restrictions received as Plaintiff's 10 in evidence.

- A. A paragraph Fifth should be added to the Declaration stating:
"Notwithstanding anything herein to the contrary, in the event the mortgage liens as more fully described upon the mortgage schedule annexed hereto as Exhibit C and encumbering the property commonly known as Nevele Grand Resort and Country

Club are foreclosed and Claremont shall (indirectly or indirectly) obtain any further title or interest in the premises as a result of said foreclosure(s), the liens of the judgment creditors shall not be deemed extinguished or impaired with regard to said premises, and the obligation of Claremont to pay up to Five Million (\$5,000,000.00) Dollars to satisfy the judgment liens shall be continued. The obligation of Claremont to the judgment creditors under this Declaration shall not exceed Five Million (\$5,000,000.00) Dollars. As used herein, the term "Claremont" shall be deemed to include its principals Michael R. Treanor, Larry J. Woolf, Jeffrey E. Levine and any corporations, limited liability company, partnership or other business entity which any of said individuals or Claremont shall have an ownership or controlling interest, and shall further include any person, corporation, limited liability company, partnership or other business entity acquiring its interest from, through or under Claremont or its principals."

- B. A paragraph Sixth should be added to the Declaration stating: "Nothing in this Declaration of Covenants and Restrictions shall be deemed to impair or restrict any right or remedy otherwise available to the judgment creditors in law or equity."

Wolff also testified to his knowledge about the three offers that had been brought to the Court's attention just prior to this hearing. Counsel for one of the bidders did not return on the second day of the hearing and did not avail itself of the Court's offer to let him present his client's offer. Counsel for a second bidder was present for two days of hearing and then faxed a letter stating his client was withdrawing his bid. The Court will, therefore, not recite Wolff's testimony with respect to those bidders. With respect to the remaining bidder, ER&S Catskill, he testified that he had first been contacted by Mr. Nasso about buying the hotel in 2009 for \$12 million and a contract was drawn up, which was not signed. He heard periodically from attorneys for Mr. Nasso, but no firm offer was received. He testified that Mr. Nasso had listed the Nevele Hotel on his website as one of his projects for three years.

Mark vonDwingelo, broker with Jones Lang LaSalle, testified that he worked in the agency's hospitality group. He testified to first meeting Mitchell Wolff in January 2011 at the Nevele, which he described as somewhat cleaned up but in disrepair. He testified to signing an exclusive listing in late May or early June. He testified to conducting an e-mail campaign directed at about 2,000 investment candidates. He had fifty responses the first week and followed up with all those who signed a confidentiality agreement on line. They then were given access to a fourteen page offering memorandum. After receiving no offers, he expanded his e-mail list to overseas and Canada. He went to a conference of realtors and featured the Nevele. He received no offers. Finally, he put out a call for offers to all those who had shown some interest. He received five offers, three by e-mail which he considered unprofessional, and two written offers. One written offer was from Michael Treanor. Mr. vonDwingelo testified that he was impressed with his background and the questions he asked. Ultimately, Wolff accepted their offer. Mr. vonDwingelo testified to the very recent contact he had had with two of the bidders who had displayed interest just prior to the hearing. Subsequently, one did not follow up with his bid and the other withdrew his bid. Joseph Nasso of ER&S Catskill did not withdraw his bid and, subsequently, made a presentation. According to Mr. vonDwingelo, he had heard from an attorney that morning that ER&S Catskill had received a financing commitment for the full amount of the offer purchase price. He testified that he had not received a copy of a written commitment.

COMPETING PROPOSAL

Joseph Nasso of ER&S Catskill testified in support of his proposal to buy the Nevele. He presented a forty minute power point presentation, largely consisting of photographs of

various resort interiors, pictures of chapels and farms, spa interiors, restaurant interiors, and a collage of dogs, including his own, to illustrate his plans to have dog boarding facilities at the Nevele Resort. With the exception of a few photographs of the Nevele, and the photograph of his dog, all the photographs were stock photographs available on line. He presented a picture of what most people would hope the Nevele could become – a luxury resort with every type of facility imaginable, including a water feature to be created between two of the buildings. He gave the Court a binder that contained brief biographies of individuals who he said he had talked to about rebuilding the Nevele. Their credentials are impressive, but none of them are his employees or under contract to him. There is one other principal in his company, Julia Nasso. He testified that he had a commitment for \$100 million, but the document purporting to evidence this was unsigned and did not contain a dollar amount. When asked who the investors were who were willing to put up that kind of money for the Nevele, he said he did not know who they were. They had not seen the Nevele, nor had the finance company that is supposedly putting together the financial package. When asked if he had ever handled a project of this magnitude, he said no. He has been a subcontractor on a number of jobs and is particularly knowledgeable about concrete. Although the Court enjoyed contemplating the idea of a reopened five star resort called Eleven Resort and Spa in the Catskills, the Court saw no evidence that Mr. Nasso had either the financial wherewithal or the expertise to carry out his plans for the Nevele. He has been talking about buying the Nevele for four years and it does not appear that he will be able to realize his dream. The Court appreciates the effort he has put in over the years to finding way to save the Nevele.

DECISION

Mitchell Wolff was appointed Judgment Creditor Receiver of the Nevele Hotel in March 2010 pursuant to Section 5228 of the Civil Practice Law and Rules. He had a judgment against the Nevele and a second property, Horseheads, in the amount of close to \$3 million and became judgment creditor receiver of both properties. In December 2011, he satisfied almost all of the judgment when Horseheads was sold. A judgment in his favor in the amount of \$5,000.00 was continued against the Nevele to allow him to continue as a judgment creditor receiver and present the proposed sale now before the Court. As detailed above, Mitchell Wolff has been attempting to sell the Nevele since his appointment. From the inception of his receivership, the plan was for him to sell the Nevele Hotel subject to court approval. There is a mortgage on the Nevele now in the amount of \$16,087,048.50 pursuant to a letter to the Court from Arthur Linker, counsel to iStar. Up until the sale of Horseheads, the Nevele was also collateral for a large mortgage on the Horseheads. With the sale of Horseheads, the cross collateralization agreement ended and the Nevele is burdened with only one mortgage. However, the Nevele has been appraised recently at between \$4 million and \$8 million. It has recently been reassessed for property tax purposes from \$15 million down to \$5 million. It is, and has been, in the common parlance, "underwater." It is in this context that the Court has evaluated the proposed sale.

In determining whether or not to approve the sale, the Court has considered the adequacy of the sales effort by the Receiver. The Court finds that it has been more than adequate given the poor condition of the property and the absence of any income with which to keep it up, let alone improve it. Wolff made an effort to sell the property without a broker and, when that was unsuccessful, employed a highly reputable broker.

There is a provision (CPLR §5228[b]) for extending the receivership to the judgment of another creditor, but this must be made on motion by the creditor. At the time of the original receivership application, the Court required service on all judgment creditors. None sought to have the receivership extended to them. Nonetheless, the Court directed service of the current application on all judgment creditors of the Nevele and has taken their position into account. If they were aware of a better plan for selling the Nevele, the Court wanted to know about it. The proposed sale of the Nevele has drawn quite a bit of local media coverage. The Court is persuaded that anyone interested in buying the Nevele has had the opportunity to express that interest. It has come down to Claremont or ER&S Catskills, LLC. The Court is persuaded, after listening to his presentation, that Mr. Nasso does not have the financial wherewithal to buy the Nevele, nor the necessary experience to build the resort he dreams of.

Mitchell Wolff cannot be expected to remain as judgment creditor much longer. If the sale to the Claremont Group is not approved, he will likely file a satisfaction of his \$5,000.00 judgment against the Nevele and ask to be relieved as Receiver. The management of the Nevele would revert to Joel Hoffman, who is a 50 percent owner and has the right to manage the property pursuant to an agreement with Mitchell Wolff referenced above. The Court has already written a lengthy decision granting the receivership in which the failures of Joel Hoffman to meet his responsibilities to the employees, creditors, and people of Ulster County were chronicled. It has set forth some of those failings in this decision. A mortgage foreclosure action and/or a tax foreclosure action likely would be commenced upon the end of the receivership.

The finding that there is little likelihood of selling the Nevele to anyone other than Claremont, and the acknowledgment that the prospects for the future of the Nevele are grim

without a sale, does not end this Court's inquiry. If the Claremont Group is unable to purchase the property, there is no point in delaying the inevitable.

The Court is persuaded that the Claremont Group does have the necessary financial ability to purchase the property and the expertise in financing, building and managing a resort. It appears that it has the financial incentive to maintain the property while the decision is being made about the future of casino gambling in New York. Claremont will need the support of the local officials in Wawarsing and Ulster County. It is unlikely that the Nevele would be selected for casino gambling if it were not at least secured, insured, and up to date with its real estate taxes. On the first day of the hearing, the Supervisor of the Town of Wawarsing and the Mayor of Ellenville both expressed their support for any proposal that would keep the property on the tax rolls. They expressed an understanding that gambling might be necessary for a resort in their area to be successful. A member of the County Executive's staff did attend the hearing, but did not express an opinion on the Claremont proposal.

In the period leading up to the hearing on this application, the Court understood from both the supporting papers of the Receiver and the media coverage that government officials from Ulster County would speak in favor of the sale. They did not appear and speak in favor of the plan, and during the week of the hearing, the County Executive of Ulster County was quoted in the newspapers as harboring concerns about the proposed buyers, apparently based upon information provided in a newspaper article. The Court has not received input from the County Executive's office – either pro or con.

Just prior to the hearing, a story was carried in the Times Herald Record about a new York State Inspector General's investigation of the process by which a consortium called AEG

was selected and then de-selected to build and run a Video Terminal Facility (VLT) at Aqueduct Racetrack in 2009 and 2010. Larry Woolf as CEO of Navegante and Levine as CEO of Levine Builders were part of that consortium. They are also principals in the group proposing to purchase the Nevele. The Court has read the 308 page report of the Inspector General referenced in the newspaper story. It is not within the scope of this decision to summarize the report. The findings of the report were forwarded to the United States Attorney for the Southern District of New York, the New York County District Attorney, and the New York State Commission on Public Integrity. The court attorney contacted the author of the report at the Inspector General's Office, Philip Foglia, and was told that no charges had been made against anyone as a result of the findings in the report. It appeared from the Court's reading of the report that all participants in the bidding process were investigated by the Lottery and no one from either Navegante or Levine Buildings was found to be disqualified from being licensed to run the VLT by reason of a felony conviction or a revocation of a gaming license in any jurisdiction – the two absolute disqualifiers. However, at least two individual members of the AEG consortium were found to be unlicensable by virtue of a criminal conviction and/or revocation of a gaming license. When AEG did not eliminate these individuals from all interested in AEG and, therefore, the contract, the contract award was rescinded. Much of the report centers on the unfettered lobbying and political donations that accompanied the selection process. The Inspector General reported that at the height of the competition, just about every lobbyist in Albany was employed by one of the bidders. While finding fault with the behavior of the leaders of all three branches of government (Senator John Sampson, Governor Patterson, and Assembly Speaker Sheldon Silver) and their staff, as well as AEG, the report focused on the recently passed law (while Senator Bruno was

still President pro tem of the Senate and Elliot Spitzer was Governor) that permitted this particular contract (described at one point in the report as the most lucrative contract ever awarded by New York State) to be awarded by agreement of the heads of the three branches of government without following the regulations that normally apply to bidding on state contracts. These regulations have specific provisions limiting and, for certain periods of time, prohibiting lobbying and political donations. This law did not. It opened the door for a very politicized process. In addition to speaking with the Inspector General's office, the Court searched their report for any reference to criminal convictions or referral for criminal investigation of either Woolf or Levine and did not find any. Absent evidence of criminal convictions of Woolf or Levine, the Court will not deny approval of this purchase by them as a result of the revelations in the Inspector General's report.

It is not appropriate for this Court to take a position on whether casino gambling should be passed by the legislature or approved by the people of the State of New York. It takes no position on whether casino gambling should be approved for the Catskills or specifically for the Nevele. These decisions will be made by the Governor, the Legislature and the people of New York State. The relevance of gambling to this decision is the part it plays in the business plans of the buyers. They are willing to pay \$100,000.00 to the past employees of the Nevele, pay the back real estate taxes, assume the mortgage, accept title subject to a myriad of liens, secure and maintain the property, and pay future real estate taxes and insurance in order to pursue this plan. If the buyer's plan for a gambling casino fails, they will likely divest themselves of the property. Most of the Nevele is in a tear down condition now. There is no other viable offer for the property. In the Court's judgment, accepting this proposal now is in the best interests of

everyone connected to the Nevele and the community surrounding it. The Court cannot speculate what the future will hold – a casino, a foreclosure by i-Star, or the failure to pass gambling and the ultimate transfer of the property to someone with another use in mind. It is persuaded that if the property is returned to the control of Joel Hoffman while a foreclosure is pursued, the Nevele will deteriorate further and the community of Ellenville suffer.

The Court is approving the sale of the Nevele to the Claremont group under the terms set forth in the application as amended in this decision. Counsel for the receiver shall submit an order in accordance with this decision, on notice to Joel Hoffman. Counsel for the Receiver shall mail a copy of this decision to all creditors and/or their counsel who appeared at the hearing. They shall send a copy to Julius Nasso.

This constitutes the decision and order of the Court. The original decision and order are returned to the attorney for the judgment creditor, for filing in the Ulster County Clerk's Office. All original motion papers and a copy of this decision and order are delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this decision and order, and delivery of a copy of the decision and order, shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule regarding filing, entry and notice of entry.

DATED: February 3, 2012
Kingston, New York

ENTER:


MARY M. WORK
Acting Supreme Court Justice

Papers Considered:

1. Order to show cause dated January 12, 2012, together with the affidavit of Mitchell Wolff sworn to January 11, 2012, and all exhibits annexed thereto.
2. Letter of Joel Hoffman dated January 16, 2012.
3. Letter of Bryon N. Gardner, President of Bind Jr. Enterprises, Inc. dated January 22, 2012.
4. Letter of Roberta Hoffman dated January 23, 2012.
5. Affidavit of Jon A. Simonson, Esq. dated January 23, 2012.
6. Letter of Benjamin A. Shaw, Esq. of the New York State Department of Labor dated January 25, 2012, together with all exhibits annexed thereto.
7. Letter of Arthur S. Linker, Esq. of Katten Muchin Rosenman, LLP dated January 26, 2012.
8. Plaintiff's Exhibit 3, purchase offer of ER&S Catskills, LLC dated January 20, 2012.
9. Plaintiff's Exhibit 4, Power point presentation of Claremont Investments, LLC
10. Plaintiff's Exhibit 7, Letter of Intent from Optimus Business Solutions, Inc. dated January 19, 2012.
11. Plaintiff's Exhibit 8, letter from Optimus Business Solutions, Inc. dated January 19, 2012.
12. Plaintiff's Exhibit 9, Profile of Julius Nasso.
13. Plaintiff's Exhibit 10, Declaration of Covenants and Restrictions.
14. Plaintiff's Exhibit 11, Letter from Claremont Investments, LLC dated January 26, 2012.
15. Court Exhibit 1, Current projects of 11 Resort & Spa
16. Power point presentation of 11 Resort & Spa Flagship Development.
17. Report of the State of New York Office of the Inspector General Investigation Regarding the Selection of Aqueduct Entertainment Group to Operate a Video Lottery Terminal Facility at Aqueduct Racetrack, by Joseph Fisch dated October 2010.
18. Receiver reports mentioned in this Decision/Order.