

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CV-81205-RAR**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**RECEIVER RYAN K. STUMPHAUZER'S RESPONSE TO
NON-PARTY BROADWAY ADVANCE, LLC'S MOTION FOR A
CLARIFICATION OF ORDER AND REQUEST FOR A HEARING**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through undersigned counsel, hereby files this response to Non-Party Broadway Advance, LLC’s (“Broadway Advance”) Motion for a Clarification of Order and Request for a Hearing (the “Motion”) (ECF No. 251), and states:

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”); Full Spectrum Processing, Inc. (“Full Spectrum”); ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan; ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; United Fidelis Group Corp.; Fidelis Financial Planning LLC; Retirement Evolution Group, LLC; RE Income Fund LLC; RE Income Fund 2 LLC; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel; ABFP Income Fund 3 Parallel; ABFP Income Fund 4 Parallel; and ABFP Income Fund 6 Parallel; ABFP Multi-Strategy Investment Fund LP; ABFP Multi-Strategy Fund 2 LP; and MK Corporate Debt Investment Company LLC.

FACTUAL BACKGROUND

1. Broadway Advance purports to be a merchant cash advance (“MCA”) company that operates a similar business to that of Par Funding. (Motion, at ¶ 3).

2. Actum Processing (“Actum”) is a third-party payment processor that facilitates and executes ACH payments for various companies. As the Receiver has previously reported to the Court, Actum processed ACH payments on behalf of Par Funding and has agreed to continue to work with the Receiver to process ACH and debit transactions moving forward. (ECF No. 240-1).

3. Broadway has indicated that Actum also processes ACH payments on its behalf and is currently holding between \$80,000 and \$100,000 in funds belonging to Broadway Advance. (Motion, at ¶ 2).

4. Actum has frozen these funds because Defendant Joseph Cole Barletta is listed within Actum’s files as the primary contact on behalf of Broadway Advance (Motion, Exh. C), and because this Court’s Order Granting Preliminary Injunction by Consent as to Defendant Joseph Cole Barleta (“Preliminary Injunction Order”) directed all financial institutions to freeze all funds “owned by, controlled by, or in the possession of” Cole. (ECF No. 202, at pp. 4-5).

5. Broadway Advance has indicated that Mr. Cole previously provided accounting services to Broadway Advance as an outside accountant from July 2014 to January 2016, but no longer provides such services and no longer has any control over the funds of Broadway that Actum is holding. (Motion, at ¶¶ 4-8). Specifically, Broadway Advance indicated that it “hired an in-house Chief Financial Officer” in November of 2015, and “ceased using Cole’s services” in January 2016. (*Id.*, at ¶ 5).

6. Based on these representations, Broadway Advance is requesting the Court to conduct an evidentiary hearing to clarify whether Mr. Cole controls these funds that Actum is

holding on behalf of Broadway Advance and, if not, to authorize the release of those funds to Broadway Advance.

ARGUMENT

7. Broadway Advance is not one of the Receivership Entities and, therefore, the Receiver does not have control or authority over the business operations of Broadway Advance.

8. Nevertheless, the Receiver is aware that, historically, Broadway Advance and Par Funding had various business dealings involving merchant cash advance agreements. For example, the companies entered into “syndicated” deals, whereby one of the companies would advance funds to a merchant under an MCA agreement. The other company would then “invest” in that MCA agreement by providing a percentage of the funded amount to the company that advanced the funds to the merchant, with the right to receive an equivalent percentage of funds from the repayment from the merchant.

9. On other occasions, Broadway presented certain MCA opportunities to Par Funding and would receive a commission on those deals where Par Funding entered into an MCA agreement with a merchant.

10. Par Funding also entered into certain assignment agreements with Broadway Advance, under which Par Funding would purchase and acquire Broadway Advance’s rights, duties, and obligations in a particular MCA agreement, such that Par Funding would step into the shoes and be entitled to collect on amounts due from the merchant under that agreement.

11. Despite Broadway Advance’s suggestion that Mr. Cole has no control over Broadway Advance’s business since January 2016, the Receiver has identified certain documents within the files of the Receivership Entities suggesting otherwise.

12. For example, in an Agreement dated November 14, 2019, which resolved a lawsuit a merchant filed against Par Funding, Broadway Advance, and Fast Advance Funding, LLC, Mr. Cole signed the Agreement on behalf of Broadway Advance as its “CFO.” *See* Agreement dated as of November 14, 2019, a copy of which is attached as **Exhibit 1**.

13. In a Full Spectrum Processing IT Service Log, in an entry from March 12, 2020, it was noted that that the “Broadway Advance site is down,” and a Full Spectrum employee “[s]pent a good deal trying to troubleshoot the Broadway Finance Website.” *See* Excerpt of FSP IT Service Log dated March 13, 2020, a copy of which is attached as **Exhibit 2**.

14. As indicated in the Supplemental Declaration of Melissa Davis dated August 4, 2020, Par Funding’s bank records reflect that Par Funding transferred \$1,097,725 to Broadway Advance between July 2015 and June 2020. (ECF No. 177-50 at ¶ 5).

15. In light of this evidence, the Receiver agrees with Broadway Advance that questions of fact exist relating to “whether Cole controls the funds of Broadway held by Actum.” (Motion, at ¶ 9). The Receiver is hesitant, however, to agree that the Court should dedicate its time and resources to conducting an evidentiary hearing to resolve this issue. Rather, the Receiver believes that this issue can be appropriately resolved based on written submissions, provided Broadway Advance submits a declaration and the requisite evidence establishing whether Mr. Cole has control over the funds Actum is holding on behalf of Broadway Advance, and whether the funds in this account are otherwise “Recoverable Assets” as defined in the Court’s Amended Order Appointing Receiver. (*See* ECF No. 141, at p. 1).

CONCLUSION

WHEREFORE, the Receiver: (1) agrees with Broadway Advance that issues of fact exist that must be resolved before any ruling can be made on whether the funds Actum is holding on

behalf of Broadway Advance should be frozen pursuant to Section II of the Preliminary Injunction Order; (2) opposes Broadway Advance's request for the Court to conduct an evidentiary hearing to resolve this issue; and (3) suggests that Broadway Advance should be required to submit a declaration and additional evidence establishing whether the funds Actum is holding on behalf of Broadway Advance should be frozen pursuant to Section II of the Preliminary Injunction Order before any ruling can be made with respect to this issue.

Dated: September 16, 2020

Respectfully Submitted,

**STUMPHAUZER FOSLID SLOMAN
ROSS & KOLAYA, PLLC**
Two South Biscayne Blvd., Suite 1600
Miami, FL 33131
Telephone: (305) 614-1400
Facsimile: (305) 614-1425

By: /s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA
Florida Bar No. 056140
tkolaya@sfsllaw.com

Co-Counsel for Receiver

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Telephone: (215) 320-6200
Facsimile: (215) 981-0082

By: /s/ Gaetan J. Alfano
GAETAN J. ALFANO
Pennsylvania Bar No. 32971
(Admitted Pro Hac Vice)
GJA@Pietragallo.com
DOUGLAS K. ROSENBLUM
Pennsylvania Bar No. 90989
(Admitted Pro Hac Vice)
DKR@Pietragallo.com

Co-Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2020, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

Exhibit “1”

AGREEMENT

This Agreement (this "Agreement") is entered into as of November 14, 2019, by and among Thomas Alan Suess d/b/a C.R. Stelling Insurance Agency, and/or the estate of Thomas Alan Suess, deceased (hereafter "Mr. Suess") and Complete Business Solutions Group, Inc. (referred to herein as "CBSG") and Broadway Advance, LLC (referred to herein as "Broadway"). CBSG and Broadway are referred to herein collectively as "Purchasers." Mr. Suess and Purchasers collectively are the "Parties."

WHEREAS Purchasers and Mr. Suess entered into two Factoring Agreements between them whereby CBSG and Broadway purchased future accounts receivables from Mr. Suess generated by the Insurance Agency. The first Factoring Agreement between CBSG and Mr. Suess was dated in December 2016. The second Factoring Agreement between Broadway and Mr. Suess was dated in April 2017.

WHEREAS, the Purchasers claim that Mr. Suess was in default under the Factoring Agreements.

WHEREAS, on July 13, 2017 CBSG confessed judgment against Mr. Suess in Philadelphia Court of Common Pleas, Case No. 170701125, in the amount of \$247,509.33 (\$86,726.64 on the CBSG Factoring Agreement and \$160,783.69 on the Broadway Factoring Agreement). CBSG filed for the confessed judgment in its own right and as the successor in interest to Broadway.

WHEREAS, Mr. Suess removed the Philadelphia case to the United States District Court for the Eastern District of Pennsylvania, Case No. 17-cv-4069. Mr. Suess filed a Motion to Open or Strike the Confessed Judgment in Case No. 17-cv-4067, which was initially denied. Mr. Suess filed a Motion for Reconsideration, which was granted with regard to the Broadway Factoring Agreement. The court denied Mr. Suess' Motion for Reconsideration with regard to the CBSG Agreement. Mr. Suess filed an appeal to the United States Court of Appeals for the Third Circuit, Case No. 19-2741. Case No. 17-cv-4069, as it relates to the Broadway Factoring Agreement, was still going forward.

WHEREAS, Mr. Suess has also filed a separate action against CBSG, Broadway and an affiliated company, Fast Advance Funding, LLC. This matter was *Suess v CBSG et al.*, before the United States District Court for the Eastern District of Pennsylvania, Case No. 17-cv-4622.¹ Fast Advance Funding, LLC, along with CBSG and Broadway, shall be referred to herein collectively as the "Purchasers," and included in the definition of the "Parties." The United States District Court for the Eastern District of Pennsylvania, in Case No. 17-cv-4622 dismissed Mr. Suess' claims on September 17, 2018. Mr. Suess filed a Motion For Reconsideration, which was denied on September 16, 2019. Thereafter, Mr. Suess filed an appeal with the United States Court of Appeals for the Third Circuit, Case No. 19-3243.

¹ That matter had been initiated by Mr. Suess in the United States District Court for the Southern District of New York, Case No. 17-cv-5707, on July 31, 2017 and then transferred to the United States District Court for the Eastern District of Pennsylvania, Case No. 17-cv-4622, on October 16, 2017.

WHEREAS, Broadway filed a Judgment By Confession against Mr. Sues in the Supreme Court of the State of New York, County of Richmond, in the amount of \$167,601.39 on September 14, 2018, Index No. 152406/2018 (referred to herein as the "New York Confessed Judgment").

WHEREAS a mediation was held before Penny Conly Ellison, Circuit Mediator for the United States Court of Appeals for the Third Circuit, on October 31, 2019 in Case No. 19-2741. At the mediation, the Parties agreed to mutually settle all issues among them arising from any circumstance without the exchange of any compensation, each side to bear its own costs.

NOW, THEREFORE, in exchange for the full release of all claims, which the Parties agree is sufficient compensation for the releases set forth herein, the Parties agree as follows:

1. In full resolution and settlement of Mr. Sues' liability to Purchasers arising from any source whatsoever, Purchasers, their successors and assigns, hereby release and discharge Mr. Sues, and his successor, heirs and assigns, from any and all claims, causes of action, judgment, demands, complaints, or liabilities whatsoever that the Purchasers ever had or may now have as against Mr. Sues arising from any circumstance, whether known or unknown.

2. In full resolution and settlement of Purchasers' liability to Mr. Sues arising from any source whatsoever, Mr. Sues, his successors and assigns, hereby releases and discharges Purchasers, and each one of them, and their successors, heirs and assigns, from any and all claims, causes of action, judgment, demands, complaints, or liabilities whatsoever that Mr. Sues ever had or may now have as against the Purchasers, and each one of them, arising from any circumstance, whether known or unknown.

3. CBSG shall dismiss with prejudice Case No. 17-cv-4069 before the United States District Court for the Eastern District of Pennsylvania.

4. Mr. Sues shall dismiss with prejudice (if not already accomplished) Case No. Case No. 19-2741 and Case No. 19-3243 before the United States Court of Appeals for the Third Circuit.

5. Broadway shall discontinue with prejudice the New York Confessed Judgment.

6. This Agreement represents the entire agreement among the Parties and supersedes any and all other agreements or representations, whether oral or in writing, between the Parties. This Agreement may not be amended except by an instrument in writing, signed by each of the Parties.

7. If any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect.

8. The Parties may sign this Agreement in counterparts, each of which shall be

deemed an original but all of which together shall constitute one and the same instrument, and the Parties agree to accept PDF or electronic signatures in lieu of original signatures.

9. Governing Law and Jurisdiction. THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT THE APPLICATION OF ITS CONFLICT OF LAWS RULES.

IN WITNESS WHEREOF, the Parties have executed this Agreement, each signatory below affirmatively representing that he or she has the authority to execute this Agreement on behalf of the respective Party.

THOMAS ALAN SUESS d/b/a
C.R. STELLING INSURANCE AGENCY
and/or ESTATE OF THOMAS ALAN SUESS,
DECEASED

X Pamela L. Suess
Name: Pamela L. Suess
Title: Pamela L. Suess / spouse

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

X [Signature]
Name: JOE COVE
Title: CFO

BROADWAY ADVANCE, LLC

X [Signature]
Name: JOE COVE
Title: CFO

FAST ADVANCE FUNDING, LLC

X [Signature]
Name: JOE COVE
Title: CFO

Exhibit “2”

FSP IT Service Log

Date	OU	Location	Summary	Category	Assigned	Priority	Status	Notes	Time
03/12/20	FSP	3rd	Broadway Advance Site is down	Website - Update	Avery-Dante Hinds	medium	closed	Spent a good deal trying to troubleshoot the Broadway Finance Website. Spoke with Hostgator support and they recommend creating a new site from scratch. Who ever built this site did build it for the long haul.,	180