UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-CIV-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

L.M.E. 2017 FAMILY TRUST,

Relief Defendant.

_____/

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO "INVESTOR PLAINTIFFS' MOTION" [D.E. 252]

On September 11, 2020, a group of individuals filed a motion seeking relief in this case on grounds they are "Plaintiff Investors." They are not. This is a civil enforcement action filed by the United States Securities and Exchange Commission. There ae no private plaintiffs in this case. The movants have no standing to file in this case, let alone seek relief form this Court. Nor do they have standing to seek to amend this Court's Order appointing the Receiver to toll the statute of limitations for all claims against the Receivership Entities – which is really what the movants are seeking. The Court must strike this motion, because the movants lack standing. Had they conferred with undersigned prior to filing, we could have explained this to them and avoided unnecessary litigation.

If the Court nonetheless considers the Motion on its merits, despite the movants seeking to intervene and being granted the right to do so – which the Commission will oppose if the movants file that motion, and they have not – the Court must deny it for at least four reasons.

First, while the motion is docketed as a "motion to intervene," the motion does not seek to intervene and does not address any of the factors required for intervening in this case. Instead, the individuals ask this Court to grant them relief solely on the basis that they are investors and therefore plaintiffs in this action. They are not. The individuals who filed the Motion are not parties to this case, have no standing to file in this case, and have not filed to intervene in this case. Accordingly, the Court should strike the filing.

As this Court is aware, there are thousands of lawsuits pending that involve the Receivership Entities. There are more than 1,000 investors who contributed to the Receivership Entities. These individuals and the entities engaged in the more than 1,000 lawsuits are not parties to this case and cannot file in this case to seek relief without first seeking to intervene and being granted that right. The Commission would oppose any such motions to intervene. If the Court permits movants to file in this case and to seek relief from this Court – despite the fact that the movants are not parties – this case will be flooded with improper and unnecessary litigation that is not properly before this Court. The movants have no standing to be heard and without intervening in this case – which they not sought – they cannot be heard in this case and no relief can be granted in their favor.

Second, the movants failed to confer with the Commission before filing. Had the individuals, or their counsel, conferred with undersigned prior to filing, the need for litigation and for the Commission to respond would have been obviated. However, they chose not to confer, despite the requirement in Local Rule 7.1. This serves as a second basis for striking or denying the filing.

Third, the movants frame their motion as a motion for clarification, but it is really a motion seeking to lift the stay or to amend the Order – and they failed to argue, let alone demonstrate the requirements to obtain either form of relief. Nor could they. Even though they did not attempt to brief the relief they are actually seeking in their motion, and even though they lack standing to file any motion in this case, the Commission will briefly address the relief they are actually seeking through their improper filing. Even if they had argued to amend the Order and provided a valid

basis for it – and they did not – they would not have been able to meet their burden for including an amendment that lifts the stay for their claims against the Receivership and the law firm and attorney.

Before lifting a stay, courts should consider: "(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim." *Stanford Int'l Bank Ltd.*, 424 F. App'x at 341 (quoting *SEC v. Wencke*, 742 F.2d 1230, 1231 (9th Cir. 1984)). *See also SEC v. Adams*, 2019 WL 1179407, at *2 (S.D. Miss. Mar. 13, 2019) (denying third party's request to lift stay).

"The first factor essentially balances the interests in preserving the receivership estate with the interests of the movants." *Id. See also TLS Mgmt. & Mkt. Serv., LLC v. Mardis Fin. Serv., Inc.*, No. 3:14-CV-881-CWR-LRA, 2018 WL 3673090, at *2 (S.D. Miss. Jan. 29, 2018). "On the other hand, as the Court has ruled in other motions in this matter, letting one claim proceed at this stage risks opening the doors for many such motions. This forces the Receivership Estate to incur increased litigation costs, all to the detriment of the value of the Receivership Estate's claims." *Adams*, 2019 WL 1179407, at *3. "Very early in a receivership even the most meritorious claims might fail to justify lifting a stay given the possible disruption of the receiver's duties." *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-CV-298-N, 2010 WL 11454481, at *3 (N.D. Tex. Mar. 8, 2010).

Second, the Receiver was appointed less than two months ago. In the *Stanford* and *Adams* cases, the Courts determined that this fact supported not lifting the stay for ancillary claims against the Receivership Entities and third parties against whom the Receiver might choose to file a claim. *Adams*, 2019 WL 1179407, at *3 (S.D. Miss. Mar. 13, 2019) (denying third party's request to lift stay where Receiver was appointed only 12 months earlier); *Stanford Int'l Bank Ltd.*, 424 F. App'x at 341–42.

Finally, on the third factor, the Court cannot adequately evaluate the merits of the investors' underlying claims against the Receivership Entities, Eckert Seimans, and the attorney. The motion is bereft of any detail about the claims and therefore the Court cannot assess them.

All three factors weigh against lifting the stay to permit the claims. Even if the investors had briefed and argued this – and they did not – they would have failed. As the *Adams* court explained in denying similar relief, "Like other victims, the Lehan parties desire to adjudicate this matter. This Court does not wish to prevent those who have been wronged from seeking justice, especially against parties with whom they placed their trust. Considering all three factors, the Court finds that at this stage, only months after the appointment of the Receiver, equity mandates not lifting the stay." *Adams*, 2019 WL 1179407, at *4.

Fourth, even if the movants were properly before this Court – and they are not – the Court should not lift the stay.

> In this case, just as in a bankruptcy matter, a stay of ancillary litigation is necessary to permit an orderly and efficient liquidation and distribution of the estate for the benefit of all creditors and investors. If litigation is allowed to proceed piecemeal, investors, creditors and other third-party litigants may be foreclosed from receiving their fair share of the [Receivership Entities'] assets. This would result because judgments resulting from ancillary claims brought against the funds or potentially liable parties could exhaust whatever resources exist before the Receiver has even had a chance to identify the asset pool. It would be fundamentally unfair if only aggressive claimants, who hire counsel and bring actions in the earliest days of the receivership, have an opportunity to recover a share of the potential assets. It was to avoid such a result that the Court entered the stay in the first place.

S.E.C. v. Wealth Mgmt, LLC, WL 3269665, at *1 (E.D. WI, Oct. 8, 2009) (denying motion to lift stay to pursue claim against Receivership entities).

The movants have offered no reason why they should be treated differently than other creditors and investors with respect to their claims.

As to the movants' assertion that the Receiver does not have claims against the law firm and attorney they wish to file claims against, this is simply not true – and they failed to prove or present any justification for their assertion. As explained in another case denying the same relief

sought here, "As the **Receiver** and the SEC point out, however, the **Receiver** does have standing to pursue a variety of actions against [third parties]. Courts have held that the **Receiver** may assert tort claims against third parties based on allegations that the third parties' torts contributed to the liabilities of the **Receivership** Estate." *SEC v. Adams*, 2019 WL 1179407, at *2 (S.D. Miss. Mar. 13, 2019). *Official Stanford Inv'rs Comm. v. Greenberg Traurig, LLP*, No. 3:12-CV-4641-N, 2014 WL 12572881, at *4 (N.D. Tex. Dec. 17, 2014); *see also Marion v. TDI Inc.*, 591 F.3d 137, 148 (3d Cir. 2010) ("[a] **receiver** no doubt has standing to bring a suit on behalf of the [**receivership** entity] against third parties who allegedly helped that [**receivership** entity's] management harm the [**receivership** entity]."); *SEC v. Stanford Int'l Bank Ltd.*, No. 3:09-CV-298-N, 2017 WL 9989250, at *4 (N.D. Tex. Aug. 23, 2017); *Janvey v. Adams & Reese, LLP*, No. 3:12-CV-495-N, 2013 WL 12320921, at *8 (N.D. Tex. Sept. 11, 2013); *SEC v. Cook*, No. 3:00-CV-272-R, 2001 WL 256172, at *2 (N.D. Tex. Mar. 8, 2001).

Here, the investors claim they wish to bring a claim against Eckert Seimans and an attorney there. This the same attorney and law firm identified in the Commission's complaint as the "attorney." The Receiver has not yet determined what, if any, claims it will pursue against this attorney and law firm. If the Receiver has claims against the law firm and attorney, then the investors' claim would deplete the Receivership Estate. *See Adams*, 2019 WL 1179407 (denying lift of stay on these grounds).

The stay order is temporary. It is to prevent the dissipation of further Receivership assets and to maintain the status quo. While the stay is in effect, all ancillary matters are stayed, as set forth in the Order. If the Receiver determines a claim against Eckert and the attorney there are required, then those parties hold potential Receivership assets and any claim against them is therefore stayed. This reasoning has been applied in every case where a third party has asked to lift a Receivership Order stay to bring claims against third parties. Which is why the movants' motion is bereft of any relevant case law in support of their positon

Accordingly, the Court should strike the motion. The movants are not parties, have not sought to intervene, and cannot file a reply in this case to which they are not a party. Should they

choose to follow proper procedure and seek to intervene, they should first confer as the Local Rules require. If they file a motion to intervene, the Commission will oppose it. If they are permitted to intervene to seek a lift of the litigation stay, the Commission will fully brief and oppose that motion as well.

September 16, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned has served all parties and the movants via cm-ecf filing on this same date.
s/Amie Riggle Berlin