

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
20-cv-81205-RAR**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' JOINT MOTION TO ADJOURN THE STATUS CONFERENCE
SCHEDULED FOR DECEMBER 15, 2020 DUE TO THE FILING OF
THE RECEIVER'S STATUS REPORT ON THE EVENING OF DECEMBER 13, 2020
AND FOR RELATED RELIEF**

INTRODUCTION

Defendants Lisa McElhone, Joseph Cole Barleta, Joseph W. LaForte, Perry Abbonizio, and Michael Furman, and Relief Defendant The LME 2017 Family Trust (collectively, "Defendants"), request that the Court adjourn the status conference currently scheduled for December 15, 2020. Late in the evening on December 13, 2020, the Receiver filed a Status Report accompanied by a 20-page Declaration by DSI CEO Bradley D. Sharp (the "Declaration"). The Declaration is materially flawed. Because fundamental fairness and due process suggest that the Defendants be permitted to respond to the Declaration prior to its consideration by the Court and the discussion of its contents in open court, Defendants respectfully request that the status conference be adjourned one week to Tuesday December 22, 2020, in order to provide the

Defendants a meaningful opportunity to analyze the Declaration and file a response prior to the discussion of these issues in court.

In a related request, the Defense respectfully requests that, going forward, the Receiver be directed to file its public reports one week (7 days) prior to status conferences.

FACTS

Back on August 3, 2020, this Court directed the Receiver to provide an interim report including an accounting of the assets that have been seized to date. (ECF 74) That report was due the following day prior to the status conference scheduled in the afternoon. (Id.) An interim report was filed on August 4, 2020, a few hours before a status conference at which it was discussed. (*See* ECF 79) An interim status report was filed on August 31, 2020. (ECF 215) That report was discussed at the next status conference eight days later, on September 8, 2020. (ECF 244, 245) The next status report was filed on October 6. (ECF 305) It was discussed at a status conference held the next day, October 7, 2020. (ECF 306) Defendants responded to it on October 30, 2020. (ECF 355)

On October 30, 2020, the Receiver filed their first quarterly status report. (ECF 358) This report is required to be filed within 30 days after the end of each calendar quarter pursuant to paragraph 53 of the Amended Receivership Order and must contain certain information. (ECF 141) The quarterly status report was discussed at the next status conference on November 10, 2020. (ECF 381-382)

The status conference originally scheduled for December 1, 2020 was rescheduled to tomorrow, December 15, 2020. Despite the two-week adjournment, late in the evening on Sunday, December 13, 2020, the Receiver filed a Status Report accompanied by a 20-page Declaration by DSI CEO Bradley D. Sharp (the "Declaration"). The Declaration is materially, indeed, grossly,

flawed, and the Defendants should have an opportunity to address the Declaration and rebut its conclusions prior to the Court's consideration of the Declaration and the discussion of these matters during a conference.

Par Funding/CBSG (hereinafter "CBSG"), has been audited three times. It was audited by Friedman LLP for 2017; it was audited by Clifton Larson Allen for 2018-2019, and was audited by CBSG's long-time accountant, Rod Ermel Associates LLP. In fact, Rod Ermel Associates LLP interfaced daily with CBSG's live QuickBooks and reconciled the cash flows. Every day. CBSG employed 12 or more professional accountants, including CPA James Klenk, who has already submitted an affidavit in this case that made no mention of Sharp's claims. CBSG portfolio analysis was conducted under scrutiny of CPA firms and is accurate. None of those professional auditors and accountants determined the financial claims made in the Declaration.

Tax returns were prepared and filed for CBSG since its inception and millions of dollars in taxes were paid – on profits. In 2018, for instance, CBSG paid millions in taxes on operating revenues of \$146 million. Why would a company pay millions of dollars in taxes if it was suffering losses? Sophisticated investors and their counsel and attorneys poured over CBSG's books and records prior to investing. None of those professionals determined the financial claims made in the Declaration.

There is a reason for this – the Declaration is materially flawed. The Declaration demonstrates a lack of understanding of the MCA business, how exposure works with merchants and that subsequent funding is provided only when exposure metrics are met.

According to the SEC's expert, Melissa Davis, who has now filed multiple declarations, CBSG had inflows of \$1.257 billion with a net positive cash flow of \$711 million. Over its lifetime, CBSG wired \$1,231,298,329 to merchants and generated its profits from mostly merchant

payments of between \$1.5 million to \$2.5 million per day in the last several months during Covid-19.

In what can only be described as an alarming flaw, the Declaration appears to exclude the calculation of profits derived from the disbursements. The Declaration states that \$1.097 billion was dispersed but inexplicably omits the returns on that disbursement in a manner that suggests that CBSG advanced money for free. This is nonsensical. Not surprisingly, the Declaration reports a negative cash flow because DSI fails to consider that CBSG charged a factor rate for the money provided to merchants. CBSG is a factoring business.

Similarly, and from just the initial review of the Declaration, it appears that the cash loss figure does not reflect the revenues of the business. Much of the revenue of CBSG is book revenue and recognized as receivables owed to the business – as numerous accountants understood. For some unknown reason, the Declaration erroneously states that the only way to recognize profitability is cash on hand, while ignoring that excess liquidity is detrimental to net margins. Because CBSG must pay interest on the money in its possession, it defies logic that the Declaration would recognize cash in the bank as a benefit, when that same money will generate and has generated profits for the company based on the factoring rate.

Finally, the Declaration's analysis of the merchant debt is just wrong. The merchant reload of new funding is essential to continued growth. In the case of B&T Supply, for just one example, they never missed a payment until the Receiver took over. Of course, merchants who were reliably paying for years started to get counsel or otherwise resist paying once the Receiver was in place. This is especially so when they learned that the Receiver was liquidating debt and abandoning collateral. Current merchant collections bear no relationship to merchant collection before July

2020. But for the Receiver's insertion, merchants would have continued paying, just as they always had. The proof is in the track record of payments.

DOCUMENTS

Since July 28, 2020, the Defendants, despite repeated requests--and an agreement on which the Receiver reneged—have yet to receive one piece of paper from the Receiver. All the while, the Receiver has been using in public filings the very documents he initially sequestered upon his appointment and then withheld despite numerous discovery requests. In another delay tactic, last week the Receiver demanded an unnecessarily cumbersome Protective Order as a condition to providing documents. Yet for months, they have publicly released as exhibits the names and addresses of investors; investors' banking information; spreadsheets taken from the CBSG QuickBooks; detailed analysis of CBSG financial data; banking records and more. Indeed, the Declaration at issue herein would violate the very Protective Order they demanded.

The defense finds itself, once again, subject to an inaccurate financial presentation without access to the very documents the Receiver reviewed to assemble its allegations. The 11th Circuit has recognized that the right to due process “encompasses the individual's right to be aware of and refute the evidence against the merits of his case.” *Application of Eisenberg*, 654 F.2d 1107, 1112 (5th Cir. Unit B Sept. 1981) And just so there is no mistake – the Defendants having been asking, in writing, for access to the QuickBooks and other CBSG financial data since August 2020.

2021 STATUS CONFERENCES

Going forward, the Defendants respectfully request an order directing the Receiver to file the status report at least 7 days before the next scheduled status conference, beginning in January 2021. Defendants have a due process right to present a response to the matters contained in the interim report prior to the discussion of the issues in court at a conference. Accordingly,

Defendants request an opportunity to review the assertions in the status report and, if needed, respond in writing to correct information before the status conference at which the Receiver's report is discussed.

WHEREFORE, Defendants Lisa McElhone, Joseph Cole Barleta, Joseph W. LaForte, Perry Abbonizio, and Michael Furman, and Relief Defendant The LME 2017 Family Trust respectfully request that the Court adjourn the status conference currently scheduled for December 15, 2020 to December 22, 2020, and direct the Receiver to file each status report at least 7 days before the next scheduled conference.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has attempted to confer with the Receiver and the SEC in a good faith effort to resolve this issue. Counsel for the SEC has no objection to this request and also agrees to move the conference to December 23, 2020, if that date is preferable. The Receiver opposes this request.

Respectfully submitted,

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