

**UNITED STATES DISTRICT
COURT 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.

**REPLY IN SUPPORT OF MOTION TO PREVENT RECEIVER FROM SELLING
VEHICLES AND WATERCRAFT**

The Receiver's response in opposition to the Motion (DE 647) betrays his true intentions, to liquidate as much of the Defendants' property as possible despite the fact that the Court has stated this is not a liquidation. The Receiver has already decided that Par should be shut down, so rather than running the business to maximize the Receivership Estate, he is liquidating it. As stated in the Motion, this Court should hold the Receiver to his word and not let him liquidate personal assets before a judgment that are well protected and do not diminish the Receivership Estate in any way.

The Receiver Should Not Be allowed To Liquidate the Personal Vehicles and Watercraft

The Receiver continues to peddle his own narrative that Par Funding was a Ponzi scheme, completely ignoring the fact that Par had never lost investor funds and made payments to every investor like clockwork from its founding in 2012 until the SEC's filings, the sole exception being a two-month period in April and May of 2020 when notes had to be renegotiated due to Covid-19. Rather, the Receiver continues to peddle his own false narrative that even Par's actual opponent, the SEC, is not willing to allege. The Receiver's motivations are clear, do as much damage to Par and the Defendants by liquidating assets rather than operating the business, so there will be nothing left, and Par's demise will be a self-fulfilling prophecy. As stated below, the Receiver's arguments

in his Response should be rejected and this Court should prohibit the Receiver's proposed liquidation of individual assets before a judgment is entered.¹

a) Liquidating Defendants' Personal Assets Is Not Acting Within the Ordinary Course of Business

The Receiver's argument that the Receivership Order authorizes him to sell Laforte's and McElhone's vehicles and watercraft is incorrect. As set forth in the Motion, the Court has stated this is not a liquidation case, yet the Receiver obviously thinks otherwise. To support his contention the Receiver argues that the phrase "in the ordinary course of business" in paragraph 37 of the Receivership Order should be interpreted to mean he can sell whatever property he wants, whenever he wants, except real estate. The Receiver's interpretation of "in the ordinary course of business" makes no sense because it would render those words superfluous in this context. If the Receiver is correct and he can sell any receivership property, except real estate, whenever he wants, then the words "in the ordinary course of business" would be meaningless and paragraph 37 of the Receivership Order should actually be interpreted as follows:

The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of ***any Receivership Property, other than real estate***, ~~in the ordinary course of business~~, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

If the Receiver is correct, why are those words in the paragraph? The Receiver takes a shot at the Defendants for offering in the Motion the dictionary definition of the phrase to establish its meaning, yet he is arguing, perhaps unwittingly, those words are meaningless. The words "in the ordinary course of business" do have meaning in this context and they are clearly a limitation upon the Receiver's ability to sell Receivership Property, just as the Defendants argued in the Motion.

¹ The Receiver continues to peddle a false narrative of comingled funds that were and are at risk for dissipation in both this response and his Reply in Further Support of his Motion to Expand the Receivership Estate to Include a Porsche Turbo 911 and Two Patek Philippe Watches (DE 648). The Receiver argues that this Court has already determined that there were co-mingled funds in the receivership expansion orders (DE# 648 at 3-4). However, these expansion orders were entered prior to the Defendants being provided the necessary discovery to properly oppose the motions and the Court based its decisions on representations from the SEC and the Receiver that Defendants—now in possession of discovery—can prove are false. Therefore, certain defendants will shortly be moving for reconsideration of these expansion orders.

The Receiver's argument that the phrase should be interpreted to mean "the activities that the Receiver might decide to engage in "to fulfill the mission of the receivership" and his citation to the bankruptcy case, *In re Grace Manor Health Care Facility, Inc.*, 09-11456, 2012 WL 1021036 (Bankr. W.D.N.Y. Mar. 9, 2012), are unconvincing. First, this Receivership is not a liquidation receivership. Contrary to the Receiver's argument, "maximizing the value of the Receivership Estate... by selling Receivership Property" would be liquidation. The Receiver's argument that he needs to do so because the vehicles and watercraft will necessarily depreciate is necessarily incorrect at present for the reasons explained below.

Second, the case he cites, *In re Grace Manor*, has nothing to do with the facts or issue at hand, because it did not involve liquidation of assets by a receiver and whether doing so is or is not "in the ordinary course of business." *In re Grace Manor* involved a bankrupt nursing home, Grace Manor, which was previously in receivership. During the receivership, the receiver of Grace Manor made payments to another entity, Buffalo Pharmacies, for medications and medical supplies. *Id.* After the Chapter 7 bankruptcy was filed, the Grace Manor bankruptcy trustee brought an action pursuant to 11 U.S.C. § 547(c)(2) to claw back the prior payments made by Buffalo Pharmacy during the receivership. Buffalo Pharmacy asserted the enumerated defense that the payments could not be clawed back because they were made by the receiver of Grace Manor "in the ordinary course of business." The trustee opposed and argued the payments were not in the ordinary course of Grace Manor's business because Grace Manor had never done business with Buffalo Pharmacy before the receivership. The bankruptcy court agreed with Buffalo Trace and in doing so drew a distinction between the pre-receivership "ordinary course of business" of Grace Manor when it was being controlled by the managers who had a "duty to maximize profit for shareholders" and during the receivership when the "mission of the receivership" became fulfilling the receiver's legal duty to protect the "welfare of the nursing home patients." *In re Grace Manor* has nothing to do with a receiver liquidating property and does not bolster the Receiver's argument in any way.

b) The Receiver Promised to Maintain the Status Quo and Store and Preserve the Vehicles and Watercraft Until a Final Resolution of This Case

The Receiver argues that LaForte has a strained reading of his intention of "preserve" with respect to one of his motions to expand the receivership. He claims that by "preserve" he meant nothing more than "avoiding a situation where LaForte or the other Defendants might dissipate

and sell off assets that rightfully belong within the Receivership Estate.” (647 at 6). Any concern stated by the receiver about the Defendants allegedly not disclosing certain assets is irrelevant to this case here because these are known assets that are already in the Receivership Estate and the Defendants could not sell any of these vehicles or watercraft because the government is in possession of the original titles and there has been a freeze order in place since July 2020. Furthermore, the Receiver’s unfounded concern does not suddenly convert “preserving” these assets into liquidating them. If the Receiver intended to liquidate assets after expanding the Receivership over them, he should so state in his expansion motion so the Court can have a full picture of the Receiver’s intentions. This Court should not countenance ambiguously described intentions in a motion to expand, just so the Receiver can turn around and liquidate assets once under his control.

Notwithstanding the Receiver’s argument that because he believes he was ambiguous in one of his motions to expand, the Receiver completely ignores his unambiguous promise to “maintain the ‘status quo’ until resolution of this matter” in his Motion to Expand the Receivership over the watercraft (DE 508). In this motion, the Receiver made the following commitment to induce the Court to grant the motion:

11. The Receiver also has verified that the Manitou boat and the Waverunners are located at The Boat Shop in Tafton, Pennsylvania. ***The Receiver has also confirmed that he can maintain the “status quo” until resolution of this matter, as the Receiver can continue to safely store and maintain the Manitou boat and Waverunners at The Boat Shop at minimal cost.***

(Emphasis added). Whatever the Receiver may say about how his promise to “preserve assets” really means he can now sell them, there is no room for ambiguity in the interpretation of maintaining status quo until resolution of this matter. Notably, in his response the Receiver completely ignores his commitment in his motion to expand. He should be held to his word.

c) The Vehicles and Watercraft Will Not Depreciate by Trial and in the Current Climate, They Will Likely Appreciate.

The Receiver now disclaims that he wants to liquidate based on storage costs and changes his tune to the fact that the vehicles and watercraft are depreciating assets. As stated in the motion, the Receiver’s statement that the vehicles and watercraft are depreciating assets is technically true, but inaccurate in this context. Due to the expansion of the Receivership, they are not being used at all, and no miles are being added to the vehicles and no hours are being added to the watercraft

engines. Given that the trial in this matter is less than six months away, any depreciation that occur in six months without any usage would be *de minimis* at most. Furthermore, unlike normal times, used vehicles are not depreciating like they normally do.

While this may be conventional wisdom, COVID-19 has changed the used car market drastically. “The ‘new normal’ is turning out to be anything but for used car prices. What was once a classic depreciating asset, losing value as a vehicle racked up years and logged more miles, has increased in value.” <https://spectrumnews1.com/ca/la-west/transportation/2021/05/14/some-used-cars-are-worth-more-now-than-a-year-ago>. “A shortage of semiconductor chips, which are essential components of new cars and trucks and most of which are imported, has reduced the production of new vehicles and pushed used-car prices to record levels.” <https://www.cbsnews.com/news/car-sales-drop-record-high-prices-chip-shortage/>. “In the past year, used vehicle prices on average have climbed 30%, according to Black Book, which tracks car and truck data.” *Id.* “Oxford Economics expects the drag on car sales to last through the year.” *Id.* “iSeeCars executive analyst Karl Brauer said in a company article about the analysis. ‘Dealers may think used car buyers are willing to pay more for the instant gratification of a lightly-used vehicle they can drive right off the lot rather than waiting for a new one. Brauer called the used car price increases ‘unparalleled,’ adding that *he expects costs to remain elevated for the foreseeable future.*” <https://www.aarp.org/auto/car-buying/info-2021/pandemic-influencing-new-and-used-car-debate.html>. Additionally, during the pandemic boat sales have skyrocketed and manufacturers cannot keep up with demand and dealers are scrambling for inventory. *See* CNBC article titled, “Boat Sales took off during the pandemic and now dealers can’t keep up with demand,” <https://www.cnbc.com/2021/03/19/boat-sales-took-off-during-pandemic-dealers-cant-keep-up-with-demand.html>. Thus, this Court should reject the Receiver’s unsupported allegation that he needs to liquidate the vehicles because they are depreciating assets. Not only is this a disingenuous assertion given that trial is upcoming, but it is doubly false given that presently used cars are not depreciating like they have in the past and the demand for boats exceeds supply.

Conclusion

Allowing the Receiver to liquidate the personal watercraft and vehicles would be the opposite of maintaining the *status quo*, the stated purpose for his motion to expand the Receivership Estate over these assets. As stated above, the watercraft were well-maintained and stored before the expansion order at *de minimis* cost, and there was no cost to store the vehicles.

This Court should not presume that the SEC will prevail in this action and allow the Receiver to liquidate assets before a judgment is entered. Thus, for the reasons stated above and in the original Motion this Court should enter an order prohibiting the Receiver from selling the watercraft and vehicles.

Dated: July 16, 2021

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 2021, I electronically filed the forgoing 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 transmissions of Notices of Electronic Filing generated by CM/ECF.

By: /s/ David L. Ferguson
DAVID L. FERGUSON