

**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.

**RECEIVER, RYAN K. STUMPHAUZER'S RESPONSE TO DEFENDANT
DEAN VAGNOZZI'S MOTION FOR CLARIFICATION AND OPPOSITION
TO MOTION FOR LIMITED RELIEF FROM THE STAY OF LITIGATION**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver of the Receivership Entities¹ (the "Receiver"), by and through undersigned counsel, hereby files this Response to Defendant Dean

¹ The "Receivership Entities" are Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding"); Full Spectrum Processing, Inc.; 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; MK Corporate Debt Investment Company LLC; Capital Source 2000, Inc.; Fast Advance Funding LLC; Beta Abigail, LLC; New Field Ventures, LLC; Heritage Business Consulting, Inc.; Eagle Six Consulting, Inc.; 20 N. 3rd St. Ltd.; 118 Olive PA LLC; 135-137 N. 3rd St. LLC; 205 B Arch St Management LLC; 242 S. 21st St. LLC; 300 Market St. LLC; 627-629 E. Girard LLC; 715 Sansom St. LLC; 803 S. 4th St. LLC; 861 N. 3rd St. LLC; 915-917 S. 11th LLC; 1250 N. 25th St. LLC; 1427 Melon St. LLC; 1530 Christian St. LLC; 1635 East Passyunk LLC; 1932 Spruce St. LLC; 4633 Walnut St. LLC; 1223 N. 25th St. LLC; 500 Fairmount Avenue, LLC; Liberty Eighth Avenue LLC; Blue Valley Holdings, LLC; LWP North LLC; The LME 2017 Family Trust; Recruiting and Marketing Resources, Inc.; Contract Financing Solutions, Inc.; Stone Harbor Processing LLC; and LM Property Management LLC, and the receivership also includes the

Vagnozzi's Motion for Clarification and Opposition to Motion for Limited Relief from the Stay of Litigation [ECF No. 742] (the "Motion").

I. PROCEDURAL HISTORY

On April 23, 2021, Dean Vagnozzi filed the *Vagnozzi v. Pauciulo, et al.* matter in the Philadelphia Court of Common Pleas. On June 8, 2021, Defendants in that matter, John Pauciulo and Eckert Seamans Cherin & Mellot, LLC ("Eckert Seamans"), filed a Motion to Stay Proceedings based on this Court's Litigation Injunction Order. On June 11, 2021, the Receiver petitioned to intervene in the matter in order to file a Motion for Stay Pending Resolution of the Par Funding Litigation. The Petition to Intervene was granted on June 24, 2021.

Vagnozzi filed a Motion for Reconsideration of the Court's June 24th Order on July 1, 2021, and the Receiver opposed such Motion on July 2, 2021. On July 6, 2021, the Court of Common Pleas granted Pauciulo and Eckert Seamans' Motion to Stay and stayed the matter pending resolution of the SEC Action. The following week, on July 12, 2021, the Court issued an order directing all counsel to appear for a hearing on Vagnozzi's Motion for Reconsideration.

The hearing on the Motion for Reconsideration was held telephonically on June 23, 2021, before the Honorable Judge Leon W. Tucker. After hearing arguments from both Vagnozzi and the Receiver as to the meaning and scope of this Court's Litigation Injunction Order, Judge Tucker suggested that Vagnozzi seek clarification from this Court as to the definition of "Ancillary Proceeding" in the Litigation Injunction Order. The parties then agreed to a temporary 60-day stay of the Court of Common Pleas' litigation, pending Vagnozzi's instant Motion to this Court.

properties located at 568 Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; 107 Quayside Dr., Jupiter FL 33477; and 2413 Roma Drive, Philadelphia, PA 19145.

II. ARGUMENT

A. The Vagnozzi v. Pauciulo, et al. Matter is an Ancillary Proceeding Subject to This Court's Litigation Injunction Order

This Court entered a Litigation Injunction Order on July 31, 2020, enjoining the parties to any and all “Ancillary Proceedings” from “commencing or continuing any such legal proceeding. . . .” Litigation Injunction Order, at p. 4. The Court defined Ancillary Proceeding as:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities’ property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity’s past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

Id. This broad and inclusive definition was intended to preserve the status quo and temporarily halt “all civil legal proceedings of any nature,” involving, *inter alia*, any of a Receivership’s past or present officers, directors, or agents acting in such capacity of any nature.

As an initial matter, Dean Vagnozzi does not dispute that he is a “past or present officer[], director[], manager[], [or] agent[]” of a Receivership Entity. Vagnozzi was the principal of Receivership Entities ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan and ABFP Management Company, LLC, as well as numerous ABFP Agent Funds, which are also Receivership Entities. Thus, he falls squarely under subsection (d) of the Ancillary Proceeding definition. Rather, Vagnozzi seeks to circumvent the Litigation Injunction Order by parsing the remaining language of subsection (d) to mean something it does not say and now asks this Court to endorse this erroneous interpretation.

As set forth in his Motion for Clarification, Vagnozzi asks this Court to interpret subsection (d) of the Ancillary Proceeding definition to enjoin only civil legal proceedings where a past or present officer, director, or agent is the defendant in the action. Vagnozzi argues, as he did to the Philadelphia Court of Common Pleas, that because he has not been sued for or in connection with anything, his suit is not an Ancillary Proceeding and, thus, not subject to the Litigation Injunction Order. However, subsection (d) does not say “sued for or in connection with.” Rather, “in connection with” is set off in the language of the Order as a disjunctive. It does not modify “sued,” but instead presents other situations where the Litigation Injunction applies. The Litigation Injunction applies to “all civil proceedings of any nature” involving an officer, director, or agent of a Receivership Entity “in connection with” any action taken by them while acting in such capacity. By its express terms, the injunction also applies irrespective of whether the agent is acting in his or her capacity “as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise.”

This is the only logical reading of the “in connection with” language. Vagnozzi’s preferred reading of “sued for or sued in connection with” is redundant and would render “in connection with” superfluous. Furthermore, Vagnozzi’s reading of subsection (d) to apply only to actions where an officer, director, or agent of a Receivership Entity is sued would lead to the illogical situation where an agent could bring a lawsuit, but be immune from counterclaims in that same lawsuit based upon the stay. Thus, contrary to Vagnozzi’s arguments, the *Vagnozzi v. Pauciulo, et al.* matter is an Ancillary Proceeding under the plain language of the Litigation Injunction Order and, therefore, this Court should reject Vagnozzi’s contorted reading of this Court’s clear Order.

B. The *Vagnozzi v. Pauciulo, et al.* Matter Implicates Receivership Entities and Property and This Court Should Thus Decline to Lift the Litigation Stay

In his request for alternative relief, Vagnozzi argues that even if *Vagnozzi v. Pauciulo, et al.* is an Ancillary Proceeding, this Court should nevertheless lift the stay to allow him to pursue his claims against John Pauciulo and Eckert Seamans. Vagnozzi contends, as he did to the Philadelphia Court of Common Pleas, that the suit should not be stayed because he brought it in his personal capacity and seeks only to recover personal damages. This contention is belied by the first page of his Complaint, in which he states that the suit arises out of the Defendants' representation of Vagnozzi "in connection with the creation of various investment funds formed for the express purpose of investing in alternative income-producing opportunities." Compl. (Ex. A) at p. 1. These "investment funds" are Vagnozzi's ABFP Income Funds and Parallel Funds, which are Receivership Entities (*see* FN 1 *supra*). Indeed, the Complaint is replete with facts and arguments concerning Pauciulo and Eckert Seamans' representation of Receivership Entities:

- "Pauciulo specifically advised Vagnozzi: There was no need whatsoever to disclose that the proceeds of [ABFP Income] Fund 2 would be invested with PAR funding. . . ." Compl. (Ex. A) at ¶ 74(a);
- "Defendants represented Vagnozzi in the creation of [ABFP Funds 1-3, 4, 6], each with a separate PPM and Subscription Agreement, each with a distinct and different group of investors, and as to each Defendants charged distinct legal fees and rendered 'registration' and 'disclosure' advice." *Id.* at ¶ 75;
- Due to Pauciulo and Eckert Seamans' alleged failure to perform competent due diligence, "Vagnozzi and his various funds became the subject of regulatory investigations." *Id.* at ¶ 97;
- "In connection with negotiating with and having investors accept the 'Exchange Offers,' Defendants represented Vagnozzi in the creation of ABFP Parallel Funds 1, 2, 3, 4 and 6, each with a separate PPM, and prepared 'Supplements' to the original PPMs," which the SEC alleged such Supplements "were completely

inadequate and not in compliance with state and federal law, and that the Parallel Funds were not properly registered.” *Id.* at ¶¶ 105-106.

Thus, Vagnozzi’s own averments demonstrate that Receivership Entities are inextricably connected to the suit, regardless of Vagnozzi’s decision to name himself as the sole plaintiff. Vagnozzi intends to argue that the legal advice given to the ABFP Funds was negligent or reckless. This is a position on behalf of a Receivership Entity, which only the Court-appointed Receiver is permitted to take. Moreover, the evidence that will undoubtedly be sought and produced in the *Vagnozzi v. Pauciulo, et al.* case will necessarily include Receivership documents and information, a distraction from the Receiver’s main functions of preserving and protecting investor dollars.

Further, Vagnozzi’s persistent contentions that he brought the suit “strictly for personal damages” is disingenuous. Vagnozzi does not claim that any of his damages arose from Pauciulo and Eckert Seamans’ representation of him on personal matters. Rather, all of Vagnozzi’s claimed damages, from the frozen accounts (*Id.* at ¶ 127), to the fines and penalties to the SEC (¶ 132), to the personal distress and shame caused by adverse press coverage (¶ 134), are consequences of Pauciulo and Eckert Seamans’ alleged legal malpractice in their representation of Vagnozzi in connection with the creation of Receivership Entities. Additionally, when Vagnozzi seeks in his Complaint to recover “monies paid to Defendants as legal fees for services that were illegal, inept, [and] far below minimally acceptable standards . . .” (¶ 136), he is not referring to his own personal funds. Eckert Seamans’ invoices were paid not by Vagnozzi from his personal accounts, but by the Receivership Entities ABFP Income Fund, LLC, ABFP Multi-Strategy Investment Fund 2 LP, ABFP Multi-Strategy Investment Fund LP, ABetterFinancialPlan.com, LLC, and ABFP Management Co., LLC. Thus, the legal fees that Vagnozzi seeks to recover in his suit are comprised of commingled investor funds, which the Court has ordered the Receiver to oversee and

preserve.² This Court vested the Receiver with the authority to determine if and when to pursue claims on behalf of Receivership Entities against Pauciulo and Eckert Seamans. Allowing this suit to move forward would potentially create an improper priority in the recovery of funds to the detriment of other investors.³

This Court should not allow Vagnozzi to make his alleged “personal damages” the tail that wags the dog to avoid a litigation stay. The stay is temporary and trial in the SEC Action is mere months away. Furthermore, the SEC has alleged that Vagnozzi engaged in wrongdoing. Thus, if Vagnozzi is found liable in the SEC Action, any damages he has allegedly sustained will be attributable to his own misconduct.

III. CONCLUSION

Vagnozzi’s request for clarification is based on an erroneous reading of the Litigation Injunction Order and this Court should decline to endorse it. *Vagnozzi v. Pauciulo, et al.* is an Ancillary Proceeding and, thus, subject to the Litigation Injunction Order. This Court should also

² The Amended Receivership order vests the Receiver with the authority to “take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property,” including the explicit authority to “pursue . . . all suits, actions, claims and demands . . . which may be brought by . . . the Receivership Estates.” Amended Receivership Order [ECF No. 141] at p. 4.

³ Other courts that have considered similar claims against Pauciulo and Eckert Seamans have already stayed these actions pursuant to the Litigation Injunction Order. *See Caputo et al. v. Vagnozzi et al.*, No. 1:20-cv-01042 (D. Del. 2020) (granting Receiver’s request for stay in case alleging that Dean Vagnozzi and Defendants in this matter conspired to advertise, market, and sell ABFP MCA investments); *Melchior v. Vagnozzi, et al.*, No. 20-5562 (E.D. Pa. 2020) (staying case brought against Dean Vagnozzi and Defendants in this matter until the Par Funding litigation is resolved); *Montgomery et al. v. Eckert Seamans Cherin & Mellott, LLC et al.*, No. 1:20-cv-23750 (S.D. Fl. 2020) (granting Receiver’s motion to stay and administratively closing case); *Parker, et al. v. Pauciulo et al.*, No. 20-00892 (Phila. Ct. Com. Pl. 2020) (granting motion to stay filed by Defendants in this matter and staying matter pending termination of the litigation stay in the SEC Action). Contrary to Vagnozzi’s contention in Paragraph 21 of his Motion, these cases were not stayed “because” they involved an officer or director of a Receivership Entity “sued for” something. In fact, no such person or entity was named as a defendant in the *Parker* matter.

deny Vagnozzi's Motion to Lift the Litigation Stay and preserve the status quo, as such suit implicates Receivership Property and infringes on the authority granted to the Receiver by this Court.

Dated: September 15, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2021, 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
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