

**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 IN
OPPOSITION TO MOVANTS’ MOTION TO LIFT LITIGATION STAY**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through his undersigned counsel, and pursuant to the Court’s Paperless Order dated

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; LM Property Management LLC; and ALB Management, LLC; and the receivership also includes the properties located at 568 Ferndale Lane, Haverford PA 19041; 105 Rebecca Court, Paupack, PA 18451; 107 Quayside Dr., Jupiter FL 33477; 2413 Roma Drive, Philadelphia, PA 19145; 159 26th Street, Avalon, NJ 08202; and 164 84th Street, Stone Harbor, NJ 08247.

February 15, 2022 [ECF No. 1154], hereby files this Response in Opposition (“Response”) to the Motion to Lift Litigation Stay [ECF No. 1152] (“Motion”) filed by non-parties Mark Nardelli, Francis Cassidy, David Gollner, and Christopher McMorrow (“Movants”). The Receiver’s review of the facts surrounding the litigation for which Movants seek to lift the Litigation Stay—a legal malpractice complaint against John W. Pauciulo, Esq. (“Pauciulo”) and Eckert Seamans Cherin & Mellott (“Eckert”), captioned *Parker, et al. v. Pauciulo, et al.*, December Term 2020 No. 00892, in the Court of Common Pleas, Philadelphia County, PA (the “Parker Action”)—reveals substantial issues that may impact Receivership Assets and the Receiver’s anticipated recovery of additional funds into the Receivership Estate in the form of commingled investor dollars. The Receiver planned to intervene in the Parker Action to file a motion to stay the proceeding in May 2021, but held off when the Parker Court granted Eckert and Pauciulo’s own motion to stay that litigation. The Receiver opposes the Motion for the reasons set forth below.

FACTUAL BACKGROUND

Movants are individuals who, per the Complaint filed in the Parker Action, formed single purpose entities (“Agent Funds”) “specifically to invest in PAR Funding.” Parker Compl. ¶¶ 122, 210, 276, 298.² Movants also describe themselves as “managing members” of their respective Agent Funds. *See id.* at ¶¶ 4, 13-15, 21, 23. In their Complaint, Movants claimed that Eckert and Pauciulo failed to provide legal services that were consistent with legal industry standards in connection with their role, *inter alia*, in advising the individual plaintiffs in creating the plaintiff Agent Funds. On May 26, 2021, in response to a motion for stay filed by Eckert and Pauciulo, the Honorable Leon W. Tucker stayed the Parker Action, finding that allowing the case to continue would necessitate

² Movant Mark Nardelli formed the Agent Fund GR8 Income Fund, LLC. Movant Francis Cassidy formed the Agent Fund Victory Income Fund, LLC. Movant David Gollner formed the Agent Funds LWM Income Fund 2, LLC, LWM Equity Fund, LP, and LWM Income Fund Parallel, LLC. Movant Christopher McMorrow formed the Agent Fund M.K. One Income Fund, LLC.

discovery of entities that this Court's Litigation Injunction precludes. At the time Judge Tucker stayed the Parker Action, the Receiver had already drafted, and was prepared to file, a petition to intervene in the action and a motion to stay that litigation. The Receiver ultimately did not file these documents because Judge Tucker entered an order granting Eckert and Pauciulo's own motion to stay the litigation, making the Receiver's anticipated filings superfluous.

According to the SEC's Complaint in this case, Agent Funds, like those formed and managed by Movants, were "created for the purpose of issuing their own promissory notes, selling the notes to the investing public through unregistered securities offerings, and funneling investor funds to Par Funding." SEC's Amended Complaint [ECF No. 119], ¶ 4. 25. With the creation of these Agent Funds, Par Funding was able to alter the structure of its merchant cash advance scheme by using the Agent Funds to offer and sell promissory notes to investors, rather than doing so directly from Par Funding. The Agent Funds would then funnel the investor money to Par Funding and, in return, receive promissory notes issued from Par Funding. *See id.* at ¶ 65. Movant's own averments in their Complaint demonstrate their Agent Funds' role in taking in investor funds on behalf of Par Funding:

- a. Par Funding's business model included "use of Agent Funds as sources of capital to fund the loans PAR issued to small businesses, and the purchase of such unregistered securities." Parker Compl. at Introduction.
- b. Agent Funds were formed for the purpose of taking in investment dollars from a group of investors and then placing an investment in Par Funding in exchange for promissory notes. *See id.* at ¶ 52
- c. Every investment by the Agent Funds was "the same." The Agent Funds would invest by purchasing promissory notes from Par Funding, "which notes provided for regular payment of interest and the return of the invested capital at the end of a fixed period of time. *Id.* at ¶ 61
- d. The Agent Funds were created to hold the Par Funding securities, either for individual investors or investor groups. *Id.* at ¶ 64.
- e. The individual Plaintiffs engaged Defendants to "organize an Agent Fund and produce a private placement memorandum, which would allow the Agent Fund to raise money to invest in PAR." *Id.* at ¶ 66

- f. Plaintiffs created the Agent Funds and placed investments in Par Funding through those Agent Funds. *Id.* at ¶ 72

LEGAL ARGUMENT

Good cause exists to deny Movant's request for the Court to lift the Litigation Injunction. "The Court should lift the stay if there is good reason to do so, but part of the purpose of the stay against litigation is to preserve the assets for the benefit of creditors and investors while the Receiver investigates claims; requiring the Receiver to monitor and engage in litigation early on in the receivership would deplete the assets of [the Receivership Entities]." *SEC v. Onix Capital, LLC*, Case No. 16-cv-24678, 2017 WL 6728814 (S.D. Fla. July 24, 2017) (adopted by Cooke, J., 2017 WL 6728773, and denying motion to lift stay and file bankruptcy petitions). "[T]he purpose of imposing a stay of litigation is clear. A receiver must be given a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant." *U.S. v. Acorn Tech. Fund, L.P.*, 429 F.3d 428, 443 (3d Cir. 2005).

In evaluating the Motion, this Court has a valid interest in evaluating both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets. *See SEC v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985). When determining whether to lift a litigation stay in receivership matters, a court 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. *S.E.C. v. Wencke*, 742 F.2d 1230, 1231 (9th Cir. 1984). In addition to the elements above, "[a] district court should give appropriately substantial weight to the receiver's need to proceed unhindered by litigation, and the very real danger of litigation expenses diminishing the receivership estate." *Acorn Tech. Fund*, 429 F.3d at 443. Here, the circumstances weigh in favor of denying Movant's Motion.

Preserving the Status Quo. First, the Litigation Injunction preserves the status quo in this

instance. It allows the Receiver the opportunity to develop and pursue potential claims involving the Receivership Estate. Movant's arguments to the contrary are unavailing. First, they argue that "the Parker Action provides no benefit to the receivership estate" and highlight the fact that the Receiver has not moved to intervene in the Action. As set forth above, the Receiver planned to intervene in the Parker Action in May 2021 to request a stay of that litigation and preserve the status quo of the Receivership Estate, but Judge Tucker stayed the litigation rendering additional action by the Receiver unnecessary.

The Receiver's reasoning for planning to intervene in and moving to stay the Parker Action remains and forms the basis for why this Court should deny the instant Motion to Lift. The Receiver was appointed by this Court to marshal and preserve the assets of the Receivership, including investor dollars. The allegations by the SEC, as well as those in Movants' own Complaint, make it clear that the money that went to the Agent Funds was comprised, in whole or in part, of commingled investor dollars, and the Movants seek to recover that money as damages in the Parker Action. *See Parker Compl.* at ¶¶ 126, 138, 214, 226, 280, 292, 302, 314 (describing the damages the Movants seek as "the amount of money [each of Movants' Agent Funds] invested in PAR."); SEC's Amended Complaint, at ¶ 65 ("The Agent Funds . . . funnel investor money to Par Funding, which then issues Par Funding Notes to its Agent Funds.").

If Movants are permitted to proceed with the Parker Action, it will not only infringe upon and impede the authority of the Receiver, but it may also create an imbalance among investors with respect to recovery of their assets. Indeed, in meet-and-confer discussions with the Movants' counsel regarding this Motion, the Movants would not agree that any recovery the Movants might achieve from the Parker Action be administered through the Receiver's forthcoming claims and distribution

Process.³ As a result, allowing the Parker Action to proceed would very likely frustrate the Receiver's duties to preserve the Receivership Estate and would potentially place these particular Agent Funds (or, of even more concern, the managers of these Agent Funds), unwarrantedly, in a position of priority over the many other investors in Par Funding.

The Timing of the Request to Lift the Litigation Injunction. Second, when evaluating the timing of a request to lift the Litigation Injunction, there is no "clear cut-off date after which a stay should be presumptively lifted," and the inquiry is "inherently case-specific." *Acorn Tech. Fund*, 429 F.3d at 450. For example, in *Acorn Tech. Fund*, a litigant asked to lift the stay when the receivership had been in place for only 10 months, and the Court rejected that request. *Id.* The litigant renewed its request at a time when the stay had "been in effect for 30-36 months," and the Court once again denied the request, explaining that even though the . . . proposed claims may have merit, the other factors do not weigh in favor of allowing them to assert these claims at the present time." *Id.* Other courts have similarly rejected requests to lift a stay of claims involving parties in a receivership several years after the initial entry of the stay. *See Universal Fin.*, 760 F.2d at 1039 (denying motion to lift stay that was in place for nearly four years, given that "material facts continue to come to light through discovery and testimony"); *S.E.C. v. Wencke*, 622 F.2d 1363, 1374 (9th Cir. 1980) (denying motion to lift stay two years after entry of litigation injunction); *Schwartzman v. Rogue Intern. Talent Group, Inc.*, CIV.A. 12-5255, 2013 WL 460218, at *3 (E.D. Pa. Feb. 7, 2013) (denying motion to lift stay more than two years after establishment of receivership, given that "receivership is at an early stage and the Receiver is still collecting relevant information").

By contrast, district courts should lift the litigation stay at a point in time when "no new material facts" are being discovered, and the receiver is ready to distribute assets. *S.E.C. v. Wencke*,

³ The Movants only would agree that the Receiver "would have a seat at the table," without any commitment as to how any possible recovery would be distributed to the investors, if at all.

742 F.2d 1230, 1232 (9th Cir. 1984) (reversing denial of motion to lift stay where “receivership has been in existence for over seven years and no new material facts have been discovered for at least six years”). While the Receivership here has been in place for approximately a year and half, and the liability phase of the SEC’s action against the Defendants has concluded, the Receiver is still in the process of marshalling and preserving Receivership Assets through tracing and recovery of investor funds. This is a time-consuming process through which the Receiver must review hundreds of issues relating to the Receivership Estate, while simultaneously attempting to untangle the web of operations conducted by the Receivership Entities.

Lifting the Litigation Injunction and allowing Movants to seek to recover commingled investor dollars as damages would frustrate the Receiver’s duties. Additionally, as set forth above, the Receiver’s decision not to intervene in the Parker Action to move for a stay should not be construed as an indication that the Receiver believes that the action does not implicate Receivership Assets. Rather, the Receiver decided not to intervene because his planned motion for stay was mooted by Judge Tucker’s May 26, 2021 stay order.

The Merits of the Proposed Claims. Third, while Movants’ malpractice claims against Eckert and Pauciulo may have merit, their proposed relief, recovery of the commingled investor funds the Agent Funds invested in Par Funding, necessarily infringes on the Receiver’s duties to preserve the Receivership Estate. This Court granted the Receiver the authority to pursue litigation on behalf of the Receivership, and Movants’ pursuit of their claims in the Parker Litigation on behalf of a select group of Agent Funds could impede and frustrate that authority. The Receiver is contemplating various actions he might potentially take with respect to claims against Eckert and Pauciulo. These options include, among other things: (i) filing a lawsuit on behalf of certain of the current Receivership Entities against Pauciulo and Eckert; (ii) moving to expand the receivership over certain “Agent Funds,” including some of the Agent Funds that are Plaintiffs in the Parker

Action, and pursuing claims on behalf of the Agent Funds against Pauciulo and Eckert; and (iii) exploring any other potential actions that might result in the recovery of additional funds to the Receivership Estate and, ultimately, for distribution to the investors in Par Funding. The Receiver is in the final stages of his investigation and decision-making process and, therefore, anticipates deciding what action to take within the next 90 days.

Finally, Movants' claims in the Parker Action would not be prejudiced by this Court allowing the stay to remain in place. Movants have preserved their claims with the filing of the Complaint and the stay is not of indefinite duration. As a result, there will be no prejudice to Movants as a result of a continuation of the current stay of litigation. Given that the Receiver is finalizing the process of collecting relevant information and determining how best to proceed with respect to these claims, with the ultimate goal of maximizing recovery to all investors, the Receiver respectfully requests that the Court deny the Motion and, further, direct the Receiver to file a status report within the next 90 days with an update on his proposed action.

CONCLUSION

For the reasons set forth herein, the Receiver respectfully requests that the Court deny Movants' Motion to Lift Litigation Stay, direct the Receiver to file a status report within the next 90 days with an update on his proposed action regarding Eckert and Pauciulo, and grant such other relief as the Court deems just and proper. Additionally, Receiver's counsel has discussed this Response with counsel for the SEC, who has confirmed that the SEC joins the Receiver in this Response.

Dated: March 1, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2022, 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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