

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 REPLY TO RESPONSES
TO EXPEDITED MOTION TO EXPAND RECEIVERSHIP TO
INCLUDE 19 COUNTRY DRIVE, MORRISTOWN, NJ 07960**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver ("Receiver") of the Receivership Entities,¹ by and through his undersigned counsel, files this Reply to the Response of 19 Country

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

Drive, LLC and Michelle Scaramellino (ECF No. 1290) and the Response of Daniel Scaramellino (ECF No. 1291) (collectively, the “Responses”) to the Receiver’s Expedited Motion to Expand the Receivership to Include 19 Country Drive, Morristown, NJ 07960 (ECF No. 1180) (the “Motion to Expand”), and states:

INTRODUCTION

Between May 2019 and March 2020, Daniel Scaramellino (“Scaramellino”) borrowed \$7.5 million from Eagle Six Consultants, Inc. (“Eagle Six”). He transferred certain of those funds between various bank accounts that he then used to purchase the property at 19 Country Drive, Morristown, New Jersey (the “Property”). It is undisputed that, but for the inflow of funds he received from Eagle Six, Scaramellino did not have sufficient funds in these bank accounts at that time to purchase the Property. The Court has already determined that the funds Eagle Six received from Par Funding constitute commingled investor funds. As a result, even though Scaramellino may have had *some funds* in his various bank accounts at the time he purchased the Property, the majority of funds he used to purchase the Property were commingled investor funds that he received from Eagle Six.

Scaramellino has not paid back any principal on this loan and currently owes more than \$8.7 million to Eagle Six. Rather than expend receivership assets in litigation, the Receiver attempted to engage in settlement discussions with Scaramellino to recover these funds. Specifically, on March 8, 2022, the Receiver’s counsel had an in-person meeting with Scaramellino and his attorney. Following that meeting, the Receiver learned through his own

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.

investigation that Scaramellino had recently entered into a contract to sell the Property and, in fact, was scheduled to close on that sale on April 1, 2022. In other words, the Receiver learned that the commingled investor funds Eagle Six advanced to Scaramellino—which the Receiver was able to trace directly to Scaramellino’s purchase of the Property—were at risk of immediate dissipation.

If the sale of the Property had gone forward without the protections this Court previously put in place,² Scaramellino would have been able to dissipate the Sale Proceeds and prevent the Receiver from recovering these commingled investor funds from Scaramellino. Those were the exigent circumstances the Receiver was facing when he filed the Motion to Expand. In their Responses, Scaramellino, 19 Country Drive, LLC and Michelle Scaramellino (the “Responding Parties”) do not dispute any of these facts. They do not deny that they were attempting to sell the Property in a transaction that Scaramellino did not disclose to the Receiver. Rather, they have advanced several procedural and technical arguments, each of which should be rejected for the reasons explained more fully below.

A. The Property Constitutes a “Recoverable Asset” under the Amended Order.

The Responding Parties argue that the Property is not a “Recoverable Asset” under the terms of the Amended Order. In making this argument, the Responding Parties suggest that the “plain language” of the Amended Order Appointing Receiver (ECF No. 141) (the “Amended Order”) makes clear that the Property is not a Recoverable Asset. The Responding Parties’

² In its Order Granting Joint Motion to Modify Order on Receiver’s Expedited Motion to Expand the Receivership to Include 19 Country Drive, Morristown, NJ 07960 and for Extension of Time for Response to Motion to Expand (ECF No. 1209) (the “Modification Order”), the Court approved a temporary agreement of the parties that allowed the sale of the Property to proceed, on the condition that the proceeds from the sale of the Property (the “Sale Proceeds”) would be held in escrow by the Receiver pending the resolution of the Motion, and the Sale Proceeds would be substituted in place of the Property as the *res* of the Motion.

interpretation of the Amended Order is incorrect and, more fundamentally, they fail to appreciate that the Property would be a Recoverable Asset under either side's interpretation of these terms.

The Amended Order defines the terms "Receivership Assets" and "Recoverable Assets," and directs the Receiver to marshal and preserve those assets for the benefit of the Receivership Estate. Specifically, those two terms are defined as follows:

. . . all assets of the Defendants ("Receivership Assets") and those assets of the Relief Defendant that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; and/or (c) may otherwise be includable as assets of the estates of the Defendants (collectively, "Recoverable Assets").

(Amended Order at ¶ 1.)

The Responding Parties argue that subparagraphs (a), (b), and (c) only modify and apply to the phrase "those assets of the Relief Defendant," and not the "assets of the Defendants ('Receivership Assets')." The Receiver disagrees with this narrow interpretation of the language of the Amended Order. If the Court intended to limit those subparagraphs to the term "those assets of the Relief Defendant," that sentence could have easily been clarified with the inclusion of the following bolded and underlined additional text:

. . . **(i)** all assets of the Defendants ("Receivership Assets") and; **(ii)** those assets of the Relief Defendant that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; and/or (c) may otherwise be includable as assets of the estates of the Defendants (collectively, "Recoverable Assets").

That additional text was not included in the Amended Order and, therefore, the provision should be interpreted as though subparagraphs (a), (b), and (c) were intended to modify and apply to the assets of both the Defendants and the Relief Defendant.

Even if the Responding Parties are correct, however, this is a distinction without a difference. As the Court is aware, the LME 2017 Family Trust (the "Trust") was named as the Relief Defendant in the SEC's Complaint. The Trust is the sole shareholder of Eagle Six. (*See*

Action by Written Consent of Sole Shareholder of Eagle Six Consultants Inc. dated April 1, 2019, attached as Exhibit 1.)

As a result, because the Trust (*i.e.*, the Relief Defendant) owns all of the assets of Eagle Six, the funds that Scaramellino owes to Eagle Six are, in fact, assets of the Relief Defendant. And, as the Court previously determined, the funds Eagle Six received from CBSG constitute commingled investor funds and, therefore, the amounts Scaramellino received from and is obligated to pay back to Eagle Six are “attributable to funds derived from investors or clients of the Defendants” and, thus “Recoverable Assets.” (ECF 1182 at ¶ 1 (“The Court finds that the Property was purchased with, and represents proceeds of, commingled investor funds and, thus, constitutes Recoverable Assets under the terms of the Receivership Order.”) The Responding Parties’ arguments to the contrary should be rejected.

B. The Receiver has Jurisdiction over the Property and, by Extension, the Sale Proceeds.

The Responding Parties argue that the Receiver cannot exercise jurisdiction over the Property, which is located in New Jersey.³ In making this argument, the Responding Parties present a somewhat circular argument, suggesting that the Property is not a “Recoverable Asset.” As explained above, however, and as this Court has already concluded, the funds Scaramellino received from Eagle Six, and by extension the Property, are unquestionably Recoverable Assets.

Moreover, 28 U.S.C. § 754 provides receivers and receivership courts with nationwide jurisdiction over “property, real, personal or mixed, situated in different districts” that is included within the receivership estate. To confirm this jurisdiction and establish the right to control over property located in different federal districts, the Receiver must simply “fil[e] copies of the

³ By agreement, the Sale Proceeds have been substituted in place of the Property, and the Sale Proceeds are deemed to be located in New Jersey.

complaint and the order appointing the receiver in each district in which property is located.” *S.E.C. v. Nadel*, 8:09-CV-87-T-26TBM, 2013 WL 2291871, at *1 (M.D. Fla. May 24, 2013).

The Receiver has done precisely that. On August 7, 2020, the Receiver filed a Notice of Order Appointing Receiver Pursuant to 28 U.S.C. § 754 in the United States District Court for the District of New Jersey, as Case No. 3:20-mc-00049-PGS (the “New Jersey Action”). (See Exh. 2.) On March 10, 2022, after the Receiver filed this Motion, the Receiver filed a Notice of Motion to Expand the Receivership over the Property in the New Jersey Action. (See Exh. 3.) On March 11, 2022, after the Court entered its initial Order on the Motion, the Receiver filed a Notice of Order on Receiver’s Motion to Expand the Receivership in the New Jersey Action. (See Exh. 4.) As a result, jurisdiction has been established over the Property and the Sale Proceeds, given that the “Receiver has complied with § 754” by filing these various notices “in the proper district[.]” *Nadel*, 2013 WL 2291871, at *2.

C. The Responding Parties’ Fail to Distinguish *Nadel*, and the Cases they Cite in their Responses are Inapposite.

In support of the Court’s authority to grant the Motion, the Receiver cites to the case of *S.E.C. v. Nadel*, 8:09-CV-87-T-26TBM, 2013 WL 2291871 (M.D. Fla. May 24, 2013). In *Nadel*, a receiver moved to expand a receivership over a non-party that received a loan from a receivership entity of “\$1.1 million of scheme proceeds as evidenced by a promissory note.” *Id.* at *1. Much like the situation here with Scaramellino, the funds that the non-party received “predominantly consisted of scheme proceeds from defrauded investors.” *Id.* After the non-party defaulted on the note, the court granted the receiver’s motion to expand the receivership estate over the non-party.

The Responding Parties dedicate one sentence to attempting to distinguish this case. They state: “The court there noted that the entity sought to be added to the receivership was funded predominantly with scheme proceeds and much of the early funds invested came from parties

connected with the scheme, including relief defendants.” (ECF 1290 at 12.). But that argument supports expansion of the Receivership Estate over the Property, and not the Responding Parties’ position. Like in *Nadel*, the majority of the funds that Scaramellino used to purchase the Property came from the Eagle Six loan, which this Court has already determined were commingled investor funds. In other words, Scaramellino purchased the Property with “scheme proceeds.” And, as the court in *Nadel* explained, it makes no difference that Scaramellino has not been “charged with any wrongdoing” in connection with the underlying CBSG fraud scheme, “but only the use of the scheme proceeds in the” purchase of the Property. *Nadel*, 2013 WL 2291871, at *2.

The Responding Parties rely heavily on the case of *Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009) to argue that including the Property within the Receivership Estate would be improper. In *Janvey*, a receiver sought to claw back funds that innocent investors received from receivership entities that were engaged in an alleged multi-million-dollar Ponzi scheme. *Id.* at 833. On appeal, the Fifth Circuit reversed the trial court’s order freezing these innocent investors’ funds. *Id.* at 835. Despite the Responding Parties’ suggestion, this is a far cry from the situation here. The Receiver is not attempting to claw back funds from innocent investors. Rather, Scaramellino received funds under a promissory note from Eagle Six, used those funds to purchase the Property, defaulted on his obligation to repay the funds, and later attempted to dissipate the Sale Proceeds he obtained through the use of those funds to avoid collection from the Receiver. He is anything but an innocent investor.

Scaramellino also attempts to analogize his situation to the case of *S.E.C. v. Kirkland*, 6:06-CV-183-ORL-28KRS, 2006 WL 3388463 (M.D. Fla. Nov. 21, 2006). In that case, the court denied a receiver’s request to expand a receivership over a non-party’s interest in certain real property located in Georgia. The court denied the motion, *without prejudice*, explaining that the receiver

“failed to meet her preliminary burden of establishing that this Court can exercise *in rem* jurisdiction over [the non-party’s] ownership interest” in the Georgia home. *Id.* at *3. The court noted that the Receiver did not present any “evidence in the record that the complaint and order of appointment were filed with the United States District Court for the Northern District of Georgia or the date of such filing.” *Id.* The court further instructed that the Receiver would be permitted to renew the motion if she produced evidence “sufficient to establish that this Court can exercise personal jurisdiction over [the non-party] or *in rem* jurisdiction over [the non-party’s] ownership interest in” the Georgia property. *Id.*

Here, by contrast, the Receiver has established that he complied with 28 U.S.C. § 754 by filing the Complaint and relevant orders in the United States District Court for the District of New Jersey, where the Property is located. In other words, the Receiver has done precisely what the court in *Kirkland* suggested was necessary for expanding the receivership estate over a non-party’s out-of-state property. Thus, *Kirkland* does not support the Responding Parties’ position.

D. Expansion of the Receivership Estate Over the Sale Proceeds Does Not Implicate Due Process Considerations.

The Responding Parties suggest that allowing the Receiver to include the Property (or, following the parties’ agreement to allow the sale of the Property to go forward, the Sale Proceeds) within the Receivership Estate would violate their due process rights. But the mere inclusion of property within a receivership estate does not constitute a seizure of property that is subject to due process considerations. *See First Fed. Sav. Bank & Tr. v. Ryan*, 927 F.2d 1345, 1358 (6th Cir. 1991). Rather, the Receiver “is but a mere custodian of property and title remains in the owner.” *United States v. Beaver*, 252 F.2d 486, 488 (3d Cir. 1958).

For example, the Amended Order granted the Receiver “possession, custody and control” over all property belonging to the Receivership Entities. (Amended Order, ¶ 7(A).) It did not, on

the other hand, divest the owners of title to this property. (*Id.*) The same would be true with the expansion of the Receivership Estate over the Sale Proceeds. In the event the Court grants the Motion to Expand, the Responding Parties will have an appropriate opportunity to protect their ownership interest in the Sale Proceeds before those rights are finally adjudicated. As a result, expansion of the Receivership Estate over the Sale Proceeds would not be the “equivalent to seizure of . . . property by the government” and, therefore, the Responding Parties’ due process arguments should be rejected. *First Fed. Sav. Bank & Tr. v. Ryan*, 927 F.2d at 1358.

Given the clear risk of dissipation in the event the Sale Proceeds were to be released to the Responding Parties, the Court should allow the Sale Proceeds to remain in the Receiver’s control for safekeeping. Since the time the Court approved the parties’ interim agreement regarding the sale of the Property in the Modification Order, the Receiver has been holding the Sale Proceeds in escrow. Should the Court grant the Motion to Expand, the Receiver would agree to continue to account for the Sale Proceeds separately from the other funds in the Receivership Estate, and not disburse those Sale Proceeds, pending a resolution of his claims against Scaramellino. This arrangement would protect the investors’ interests in these Sale Proceeds, given that these funds rightfully belong in the Receivership Estate for eventual distribution to investors. It would also protect the Responding Parties’ ability to obtain an adjudication on any defenses they may have to repayment of the Sale Proceeds before the funds are ultimately disbursed from the Receivership Estate. Accordingly, the Motion to Expand should be granted.

CONCLUSION

WHEREFORE, Ryan K. Stumphauzer, as Court-Appointed Receiver, respectfully requests this Honorable Court to grant the Motion to Expand, expand the Receivership Estate over the Sale Proceeds, and grant such further relief as the Court deems just and proper.

Dated: July 14, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 14, 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
TIMOTHY A. KOLAYA