UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No: 9:20-CV-81205

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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

Defendants

REPLY TO SECURITIES & EXCHANGE COMMISSION ("SEC") / RECEIVER OPPOSITION TO JOSEPH COLE BARELTA'S MOTION TO LIFT THE PARTIAL INJUNCTION

COMES NOW, JOSEPH COLE BARLETA ("Cole"), by and through his undersigned counsel, writes in Reply to both the Receiver's Opposition, and the Opposition of the Securities and Exchange Commission. Cole states the following in support:

As a threshold matter, it is palpable the fake outrage from both the SEC and the Receiver in their most recent filing. It should not be lost to the Court that both the Receiver and the SEC agreed with Cole and Bromley, not only giving back Capital Source 2000, Inc., but also giving over two million dollars in liquid cash to be able to operate the business. In fact, the Order that the Court signed said, in no uncertain terms:

> "The removal of Capital Source 2000 from the Receivership shall constitute a vacation of the appointment of the Receiver over the assets and affairs of any General Partner thereof for purposes of Section 17-402 of the Delaware Revised Uniform Limited Partnership Act. . ."

Now, the SEC is unhappy that they have not gotten payment and other documents from Cole, and the Receiver is unhappy that the Court is moving too slow in sanctioning Cole or otherwise holding him in contempt of Court. In turn, the Receiver and the SEC have resorted to filing documents with the Court advocating for a completely separate entity, not part of this lawsuit or the Receivership, to have its bank account frozen, forcing it to be unable to pay investors simply in a way to create hardship unto Cole.

The Receiver's position in any other context could be taken in jest, if it did not implicate payment of investors that are awaiting payment from Capital Source 2000, Inc. The first argument that the Receiver made is that Cole violated multiple orders of this Court, and thus should not be entitled to have access to those funds. There are only three problems with that argument:

1) Capital Source 2000, Inc. is a company not solely owned by Cole. Punishing Cole by freezing Capital Source's assets does nothing but punish Capital Source noteholders, and cripple a business that has not be charged with any wrongdoings.

2) The Receiver returned Capital Source 2000, Inc. and the money for Capital Source 2000, Inc., even transferring the funds voluntarily, despite not being provided documents or any other information. Essentially, the way Mr. Barleta has been acting to protect his financial information from a fishing expedition has never concerned the Receiver or the SEC. However, now both of them argue that it should be a basis for blocking funds that do not belong to Cole, but a totally separate entity not even wholly controlled by Cole.

3) Next, the Receiver points to the recent indictment as proof that there has been a violation of this Court's Order. An indictment without a conviction means nothing.

All an indictment is, in fact, is a series of allegations that must be proven to procure a conviction.

Ultimately, everyone agreed to return Capital Source 2000, Inc. so that it can resume operations, and not so it could be subsequently shut down. Capital Source 2000, Inc. is attempting to run its business, which includes the necessity of a compliance department, accounting department, and judgment collections, etc. Regardless, the function of Capital Source 2000, Inc. is to raise funds from collecting on debt to pay back noteholders, and not the individual enrichment of Cole.

Important also to note is that both the SEC and Receiver claim that the asset freeze should remain in place because Cole has not paid his nearly 12 million dollar judgment. It should be clear that the Court is not the collections arm of the SEC or the Receiver. The Court issued a judgment, and the SEC (not the Receiver), is tasked with collecting on the judgment. Just because Cole has not paid is no reason for the Court to freeze an asset of an entity that is not subject to the judgment.

Moreover, the SEC's position that, "A further depletion of assets to pay other investors and pay Mr. Barleta's lawyers would not be in the best interests of the investors in this case" should fall on deaf ears. This is not about Mr. Barleta – this is about funds belonging to Capital Source 2000, Inc., and entity that must pay back its noteholders, an entity that must pay its lawyers, and an entity that must continue to do legal and legitimate business without interference.

Ultimately, Mr. Barleta has not admitted, as the SEC implies, to the dissipation of funds. Mr. Barleta has admitted that he is using Capital Source 2000, Inc.'s funds to continue to run the business and pay noteholders – something that the Court, the SEC, and the Receiver knew about and allowed. These funds that have now been frozen were the

same funds that the Receiver returned to Capital Source's possession, with the consent of the SEC.

Moreover, Capital Source 2000, Inc. is not issuing new "notes" or procuring new investors. Capital Source 2000, Inc. is doing nothing more than paying out old notes. The alternative to this is to simply not pay back the noteholders, which would put Capital Source 2000, Inc. in financial and legal jeopardy.

MEMORANDUM OF LAW

A. Freezing the Assets of a Non-Party is Fundamentally Improper

The Eleventh Circuit decision in *FTC v. Lalonde*, 545 F. App'x 825, 832 (11th Cir. 2013) should be dispositive. In that case, the Eleventh Circuit Court of Appeals held, "the general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment."

The only way that this Court can freeze the assets of Capital Source 2000, Inc. is if the non-party is in active concert or participation with the parties. See *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996); Fed.R.Civ.P. 65(d)(2). In this case, the neither the Receiver nor the SEC could demonstrate the active participation of Capital Source 2000, Inc. with Cole individually pertaining to the allegations levied by the SEC.

Finally, Chief Judge Altonaga has found that although district courts have the power to grant equitable relief, including an asset freeze, the difficulty of collecting on a judgment post judgment is not a sufficient basis for the Court to issue (or prolong) injunctions in post judgment proceedings, either under federal or state law. *Giant Screen Sports Llc v. Entertainment*, No. 07-22682-CIV-ALTONAGA/Garber, 2009 U.S. Dist. LEXIS 151628, at *3 (S.D. Fla. Jan. 16, 2009)(citing too *Rosen v. Cascade Int'l, Inc.*, 21

F.3d 1520, 1530 (11th Cir. 1994) ("[P]reliminary injunctive relief freezing a defendant's assets in order to establish a fund with [*4] which to satisfy a potential judgment for money damages is simply not an appropriate exercise of a federal district court's authority."); *Papadopoulos v. Sidi*, 547 F. Supp. 2d 1262, 1266 (S.D. Fla. 2008) ("Rule 69 thus sets out a path upon which judgment creditors must proceed to execute on judgments, and . . . Plaintiff has provided no authority that this Court has the inherent power to issue injunctions to aid a judgment creditor in collection, independent of the 'practice and procedure of the state in which the district court is held.") (quoting Fed. R. Civ. P. 69(a)).

Ultimately, the positions of the Receiver and the SEC are improper and lead to an unfair result for a completely separate and independent business.

WHEREFORE, Cole asks that Capital Source 2000, Inc. be allowed to conduct business, and that the preliminary injunction should be modified to allow for that to occur.

Date: June 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 2, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Andre G. Raikhelson
Andre G. Raikhelson Esq.