

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Securities & Exchange Commission,

Case No.: 9:20-cv-81205-RAR

Plaintiff,

v.

Complete Business
Solutions Group, Inc.
d/b/a/ PAR Funding, *et*
al.

Defendants.

**RESPONSE TO RECEIVER’S EXPEDITED MOTION
TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER**

Non-parties Mark Nardelli, Francis Cassidy, David Gollner and Christopher McMorrow (the “Parker Plaintiffs”) respectfully submit this Response to the Expedited Motion to Quash Subpoena and for a Protective Order, filed by the Receiver on June 26, 2023 (the “Motion”) [Dkt. #1620], and in support thereof, state as follows:

Introduction

As discussed in more detail herein, the Parker Plaintiffs’ counsel was essentially forced to issue the subpoena subject of the Motion (the “Subpoena”), as a result of the consistent refusal of the Receiver to provide the Parker Plaintiffs and their counsel with the most basic information containing the Receiver’s inappropriate efforts to settle the Parker Plaintiffs’ claims. The Parker Plaintiffs have been kept completely in the dark about discussions that materially affect their rights. Notwithstanding, as a show of good faith, and in the hope that the Receiver -- either voluntarily or at the Court’s direction -- will immediately provide the Parker Plaintiffs with all relevant information, the Parker Plaintiffs’ counsel will withdraw the subpoena. Indeed, this

morning, the Parker Plaintiffs' counsel offered to withdraw the subpoena if the relevant information was provided. The Receiver's counsel did not respond.

Argument

On June 8, 2023, the Parker Plaintiffs' counsel was notified that the Receiver had entered into a settlement agreement with the Eckert Seamans law firm ("Eckert") and its insurers. That settlement agreement is subject to approval by this Court and, absent the extreme remedy of a bar order, requires the acquiescence of the Parker Plaintiffs. For reasons not presently apparent to the Parker Plaintiffs' counsel, not only did the Receiver and his counsel fail to include Parker Plaintiffs' counsel in the discussions or mediation session leading to this secret settlement agreement, they failed to even inform Parker Plaintiffs' counsel about the discussions or the mediation.

Worse still, despite repeated requests, the Receiver has not disclosed the terms, agreements or conditions concerning this settlement, and has refused all efforts to discuss them. It is believed that the settlement involves a significant amount, if not all, of the available insurance, and thus, will adversely affect the Parker Plaintiffs' rights.¹ Thus, the Parker Plaintiffs' counsel was forced to respond to a motion to reimpose a litigation stay that this Court previously lifted, and which would impede his ability to prosecute his clients' claims, without any information whatsoever. To that end, the Parker Plaintiffs' counsel's sole purpose in issuing the subpoena was to obtain all material information needed to intelligently inform and advise his clients with respect to their pending -- and still active -- litigation.

¹ And up until an extremely belated filing by the Receiver yesterday, the Parker Plaintiffs' counsel was under the impression that the Receiver misled the Court by claiming that counsel's clients had agreed to the settlement (even though the Receiver's counsel was informed about the inaccuracy a week ago).

As the Court may recall, on two prior occasions during the period of the prior litigation stay, the Parker Plaintiffs' counsel requested that the Court lift the stay on the ground that the recovery of the Parker Plaintiffs' in their malpractice action was not a part of the Receiver's estate, nor subject to any claim by the Receiver. The Receiver repeatedly took a contrary position, which has not yet been fully addressed or legally resolved.

On or about June 15, 2023, the Receiver filed a motion seeking to reimpose a stay based on a putative agreement he had reached with Eckert and its insurers. The Parker Plaintiffs oppose that stay for the same reasons previously argued and for the reasons stated in their Response. [Dkt. #1619.]

Now that the Receiver has secretly attempted to settle the Parker Plaintiffs' claims, the Parker Plaintiffs need to obtain the relevant facts, which will be critical to making intelligent decisions about the settlement and whether it exceeds the Receiver's legal rights. To that end, given the Receiver's prior refusal to provide the Parker Plaintiffs with the relevant information, the stay that the Receiver seeks to reimpose would make the ability to learn that necessary information impossible.²

The Parker Plaintiffs take no position here regarding the agreement described by the Receiver, and particularly so because of the dearth of information available to them. The Subpoena was issued to attempt to obtain that information -- critical information to which the Parker Plaintiffs are entitled -- in their litigation. The Parker Plaintiffs are not harassing or wasting the Receiver's time in asking him for such information. But the Receiver has refused on many occasions, both in writing and in personal conversations with the Parker

² As just one example, the Parker Plaintiffs do not believe they possess the entirety of the legal malpractice insurance coverage held by Eckert, and they do not know what motivated Eckert and its insurers to settle.

Plaintiffs' counsel, to provide the relevant information or state the legal basis for his belief that any recovery in the Parker Plaintiffs' malpractice case -- against an entity that is not a part of the Receivership estate -- would belong to the Receiver.

In his motion, the Receiver asserts that the Subpoena is unjustified under Pennsylvania law. However, discovery in Pennsylvania is, as it is under the Federal Rules of Civil Procedure, broad. The right to discovery is not relevance or admissibility, but materiality. To that end, the Parker Plaintiffs were not intending to challenge the broad sweep of the Receiver's authority or his putative immunity. They were simply seeking material information concerning their rights in a pending litigation.

At the end of the day, the Parker Plaintiffs are going to be asked to agree to the settlement that the Receiver apparently has obtained. It is only fair that they be able to consider all available information before making any decision. One way or the other, the Receiver has to be forthcoming and transparent. Now that the Parker Plaintiffs have agreed to withdraw the Subpoena, they hope the Court compels the Receiver to provide the information he has been withholding.

Conclusion

For the foregoing reasons, the Parker Plaintiffs respectfully request that the Court enter an Order denying the Motion as moot, and granting such further relief as the Court deems just and proper.

Dated: June 27, 2023

Respectfully submitted,
HAINES & ASSOCIATES

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-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on June 27, 2023, via the Court's ECF Filing System, on all counsel of record.

/s/ Jonathan E. Minsker

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**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.

**[PROPOSED] ORDER DENYING AS MOOT RECEIVER'S
EXPEDITED MOTION TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER**

THIS CAUSE comes before the Court upon the Motion of Ryan K. Stumphauzer, Court-Appointed Receiver, to Quash Subpoena and for a Protective Order [ECF No. 1620] (the "Motion"). The Court, having reviewed the Motion, the responses thereto, and being fully apprised in the record in this matter, hereby

ORDERS AND ADJUDGS that:

1. the Receiver's Motion is denied as moot; and
2. the Receiver shall immediately provide the Parker Plaintiffs' counsel with all material information concerning the pending settlement described in the Motion.

DONE AND ORDERED in Miami, Florida, this ____ day of June, 2023.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record