

**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.

_____ /

**DEFENDANT DEAN VAGNOZZI'S MOTION
TO COMPEL RECEIVER TO DISCLOSE "SETTLEMENT IN PRINCIPLE"**

Defendant, Dean Vagnozzi ("Vagnozzi") moves to compel the Receiver to Disclose the terms of the "Settlement in Principle" he reached with Eckert Seamans and John W. Pauciulo to Vagnozzi, subject to a confidentiality order, to ensure due process. In support, movant states:

1. On June 29, 2023, the Court granted the Receiver's Motion to Reimpose Litigation Stay as to all claims asserted against the law firm Eckert Seamans Cherin & Mellott, LLC ("Eckert Seamans") and its former law partner, John W. Pauciulo ("Pauciulo"), over Vagnozzi's opposition. (ECF # 1628.)

2. The basis for reimposing the Litigation Stay was the Receiver's representation that he and class action counsel for investors in Par Funding have reached a "settlement in principle" with Eckert Seamans and Pauciulo.

3. The Receiver's Motion to Reimpose Litigation Stay (ECF # 1598) provided no details – no settlement amount and no other terms or conditions – about the "settlement in principle."

4. To date, the Receiver and Counsel for Eckert Seamans have failed and refused to disclose all the terms for the “settlement in principle,” despite requests on multiple occasions, claiming that such information is “confidential and/or privileged.”

5. Although the Receiver continues to ignore requests to disclose the terms of his “settlement in principle,” such settlement has been used to stay Vagnozzi’s personal causes of action, which Vagnozzi had been diligently pursuing.

6. Effectively, the Receiver has managed to significantly deprive Vagnozzi of his rights to his choses of action without any meaningful disclosure of the alleged factual basis for that relief.

7. By concealing its terms, the Receiver has also deprived Vagnozzi of the ability to meaningfully respond to the “settlement in principle,” which presumably impacts or eliminates Vagnozzi’s personal causes of action.

8. Although a district court in a receivership has discretion when making decisions concerning receivership property, a receivership court must provide parties with “due process,” which, at a minimum, “requires notice and an opportunity to be heard.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

9. In *Elliott*, the Eleventh Circuit invalidated a district court’s decision as to setoff claims asserted by a debtor of the estate where the procedure implemented did not permit the debtor “discovery or an opportunity to present evidence on his claims and defenses,” violating due process. *Id.* The *Elliott* court found that this procedure:

. . . prejudiced [the debtor’s] ability to defend his property in two ways. First, [the debtor] was unable to present evidence of the circumstances surrounding the loans. These circumstances are relevant when the court decides whether to permit setoff of the loan. Second, [the debtor] was unable to discover and present facts that might have amounted to a challenge to the validity of the loan itself.

Id. at 1572 (citing *S.E.C. v. Wencke*, 783 F.2d 829, 838 (9th Cir. 1986)).

10. Here, the Court should order the Receiver to disclose the purported “settlement in principle” by providing the terms of the settlement in principle and the documents memorializing it, subject to a confidentiality order (see the proposed order submitted with this motion) or, at a minimum, by producing a written term sheet. The disclosure should include any terms that would affect Vagnozzi’s personal causes of action.

11. Vagnozzi agrees to maintain the confidentiality of all document(s) or information disclosed by the Receiver, thus satisfying any concerns regarding their disclosure.

12. The Receiver’s refusal to produce the documents or information that memorialize the “settlement in principle” gives rise to serious due process concerns, which the Court may avoid by directing the Receiver to perform a simple, ministerial act: disclose the terms of the “settlement in principle,” which the Receiver has used to justify staying Vagnozzi’s claims.

WHEREFORE, based on the foregoing, Defendant Dean Vagnozzi respectfully requests that this Honorable Court enter an Order substantially in the form submitted herewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically filed on July 5, 2023 with the CM/ECF filing portal, which will send a notice of electronic filing to all counsel of record.

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Defendants.

**[PROPOSED] ORDER GRANTING VAGNOZZI'S MOTION TO COMPEL RECEIVER
TO DISCLOSE "SETTLEMENT IN PRINCIPLE"**

THIS CAUSE comes before the Court upon Defendant Dean Vagnozzi's Motion to Compel Receiver to Disclose "Settlement in Principle." The Court has reviewed the Motion, the responses thereto by interested parties, and the record in this matter.

ORDERED AND ADJUDGED that:

1. Vagnozzi's Motion is hereby granted.
2. Within three (3) days, the Receiver shall produce the document or information setting forth the "settlement in principle" with Eckert Seamans and John W. Pauciulo to Vagnozzi's Counsel.
3. Vagnozzi and his Counsel shall keep the document(s) and/or information produced pursuant to paragraph 2 of this Order confidential and shall not disclose same to any party absent further Order of the Court.

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

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record