

**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.

**RECEIVER’S REPLY TO BANKRUPTCY TRUSTEE MICHAEL
WHEATLEY’S CLARIFICATION OF HIS POSITION IN RESPONSE
TO THE RECEIVER’S MOTION FOR DETERMINATION OF CLAIMS**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (“Receiver”) of the Receivership Entities,¹ by and through his undersigned counsel, files this Reply to The Bankruptcy Trustee Michael Wheatley’s (the “Trustee”) Clarification of His Position in Response to the Receiver’s Motion for Determination of Claims [ECF No. 1896] (the “Clarification”).

¹ The “Receivership Entities” are Complete Business Solutions Group, Inc. d/b/a Par Funding (“CBSG”); 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; 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;

INTRODUCTION

The Trustee's Clarification borders on frivolous and is a waste of judicial resources. The Receiver properly denied the Trustee's claims for multiple reasons. The Court should affirm the denial.

FACTUAL BACKGROUND

The Trustee's claims stem from a mortgage granted to Fast Advance Funding ("FAF") on real property located at 1807 Button Court, LaGrange, Kentucky (the "Property"). The Trustee asserts that the mortgage grant is a fraudulent conveyance, avoidable under Kentucky law and applicable bankruptcy law. On July 23, 2020, one day before the SEC filed its Complaint in this case, the Trustee filed an adversary action against, among other parties, "Fast Advance Funding a/k/a Complete Business Solutions, Inc." See *Michael B. Wheatley v. Stock Yard Bank & Trust Company et al.*, Case No. 20-03016 (Bankr. W. D. Ky.) (the "Adversary Action"). The Adversary Action seeks to avoid the mortgage granted to FAF. The Trustee has not effectuated service of the Adversary Action on FAF or CBSG. On November 16, 2020, the Trustee moved to stay the Adversary Action based upon this Court's Litigation Injunction. [Adversary Action, ECF No. 46]. On January 13, 2021, the Bankruptcy Court stayed the Adversary Action. [Adversary Action, ECF No. 62].

I. The Trustee failed to identify damages on his original claims.

The Trustee's original claims, filed on March 20, 2023, each failed to identify a claim amount. Instead, each provided the amount "was to be determined." [ECF No. 1895 ¶ 2]. On

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 property located at 107 Quayside Dr., Jupiter FL 33477.

November 21, 2023, the Receiver issued his claims determinations, denying the Trustee's claims based, in part, upon the Trustee's failure to assert a claim amount. On December 20, 2023, a month after the Receiver's determination and nearly nine months after the Trustee originally filed the claims, the Trustee submitted a "supplement," asserting a \$1,307,758.00 claim amount. [ECF No. 1895 ¶ 6].

The Receiver's claim determination is proper given the Trustee's failure to identify a claim amount. The Court's Claims Administration Order [ECF No. 1471] required the Trustee to submit claims substantially conforming with the approved Proof of Claim form. This requirement includes an identifiable dollar amount claimed against a Receivership Entity. [ECF No. 1471 ¶ 8] ("Each Proof of Claim Form must satisfy certain minimum standards in order to establish a Claim and be eligible to receive a distribution pursuant to a Court-approved distribution plan."). The Trustee failed to submit sufficient information relating to its claim amount. This failure alone warrants denial. [ECF No. 1471 ¶ 11].

The Trustee's "supplement" is a backdoor attempt to submit late claims in response to the Receiver's original claims determination. As late claims, the Trustee's claims are subject to denial. [ECF No. 1471 ¶ 11] (barring untimely claims).

II. The Receiver properly denied the claims based upon the Trustee's abandonment and upon a lack of standing.

The Receiver also denied the Trustee's claims based upon the Trustee's abandonment of the Property underlying his claims. On July 23, 2023, the United States Bankruptcy Court for the Western District of Kentucky (the "Bankruptcy Court") approved the Trustee's abandonment of the Property. (Order Approving Abandonment of Property, attached hereto as Exhibit 1). As an abandoned asset, the Trustee no longer has an interest in the Property. *See Mason v. Commissioner of Internal Revenue*, 646 F.2d 1309, 1310 (9th Cir. 1980) ("When the court grants a trustee's

petition to abandon property in a bankrupt's estate, any title that was vested in the trustee is extinguished, and the title reverts to the bankrupt, nunc pro tunc.”). Not only does the Trustee lack an interest in the abandoned asset, but the abandonment divests both the Bankruptcy Court and the Trustee of jurisdiction over the Property. *See In re Tarpley*, 4 B.R. 145, 147 (Bankr. M.D. Tenn. 1980). (“Thus, the bankruptcy court has no jurisdiction over abandoned property in the hands of the bankrupt. The court cannot exercise jurisdiction over disputes which involve neither the trustee nor property in actual or constructive possession of the bankruptcy court”). The Trustee abandoned the Property on July 23, 2023—five months before he originally filed his claims with the Receiver. Without an interest in the Property, the Trustee lacks standing to submit the claims or to assert liability based on purported damage involving the abandoned property.

III. The Trustee's claimed damages are unsupported and were caused by the Trustee's own conduct.

The Trustee's other claims are equally lacking in support. [ECF No. 1896 ¶ 6]. First, the Trustee cannot assert damages of \$605,000 for the value of a building he voluntarily abandoned. *See In re Tarpley*, 4 B.R. at 147. The Trustee no longer maintains an interest in the Property and, thus, has suffered no damages. Additionally, the Property is subject to two disputed priority mortgages (both of which are senior to the FAF mortgage), totaling approximately \$1.7 million. [Adversary Action, ECF No. 46]. These mortgages far exceed the purported value of the abandoned Property. [ECF No. 1896 ¶ 6]. Thus, FAF's junior mortgage caused no damage to the Trustee.

Even if the Trustee maintained an interest in the Property, the claimed amounts are meritless. The Trustee asserts \$547,500 in “statutory damages” based upon almost four years of *daily* penalties. [ECF No. 1896 ¶ 6]. This purportedly stems from Kentucky Revised Statutes,

Section 382.365, which allows property owners to recover daily fines if a lienholder fails to satisfy a paid-off mortgage. KRS § 382.365 (providing for escalating daily fines).

First, KRS § 382.365 is inapplicable because a debtor, or its interchangeable affiliates, did not pay FAF the outstanding monetary obligation. Second, the daily fine under KRS § 382.365 does not apply if the lienholder has “good cause” for not releasing the lien. CBSG and the other Receivership Entities dispute the Trustee’s position that the lien is invalid, which constitutes good cause sufficient to prevent the daily fine. Third, the Litigation Injunction prevents the Trustee from asserting damages caused by any “delay” by FAF. [ECF No. 141 ¶ 33]. The Trustee’s attempt to assert daily fines in the face of the Litigation Injunction undermines the purpose of the injunction. The injunction is intended to preserve Receivership Assets by, among other things, avoiding the need for the Receiver to expend fees on ancillary litigation. [ECF No. 141 ¶ 32]. To penalize the Receiver through a daily fine for adhering to this Court’s mandate defeats the very purpose of the injunction.

The Trustee’s calculation of \$155,258 in attorneys’ fees is similarly suspect. While the Trustee prepared and filed a complaint against FAF and other defendants, he never effectuated service on FAF. The Bankruptcy Court then stayed the case approximately five months after it began. Review of the Adversary Action docket shows activity against other defendants, but none against FAF. It is inconceivable that the Trustee incurred over \$155,000 in fees against FAF in a case that was stayed five months after filing, and for which service was never effected. *See Bldg. Serv. Loc. 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) (award of attorneys’ fees must be reasonable as determined under the “lodestar” approach). The Trustee’s claim amounts should be denied as the amounts are specious and improper.

Dated: May 21, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2024, 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

Exhibit “1”

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

IN RE: JAMES B. LAW)
)
) CASE: 19-32508
DEBTOR(S))
_____)

ORDER APPROVING ABANDONMENT OF PROPERTY

The Trustee having given notice to all interested parties of the trustee’s intention to abandon certain property specifically described in said notice (Doc. #146), no objection having been timely filed, and the Court being sufficiently advised,

IT IS HEREBY ORDERED that Michael E. Wheatley, Trustee, be, and he hereby is, authorized to abandon the “property” described as follows:

The 8,960 Sq. Ft. Industrial Building located at 1807 Button Court, LaGrange, Kentucky and, to the extent necessary, the Trustee abandons the Estate’s interest in VPM Holdings, LLC.”

IT IS FURTHER ORDERED that the entry of this Order shall be deemed to constitute the abandonment of said property by the Trustee.

Tendered by:
Michael E. Wheatley, Trustee
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Prospect, Kentucky 40059
(502) 744-6484