

**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.

SECURED CHEHEBAR INVESTORS'

**EXPEDITED MOTION TO BIFURCATE ISSUES PRESENTED IN RECEIVER'S
MOTION TO APPROVE DISTRIBUTION PLAN (ECF No. 2014), CONDUCT CASE
MANAGEMENT CONFERENCE, AND SET DISCOVERY AND FINAL HEARING
SCHEDULE AS TO CERTAIN CONTESTED ISSUES OF FACT**

GEMJ Chehebar GRAT, LLC, Albert Chehebar, Isaac Shehebar, Isaac Shehebar 2008 AIJJ Grantor Retained Annuity Trust, Michael Chehebar, Ezra Shehebar, Ezra Chehebar, Ezra Shehebar LLC, Cherie Chehebar, Josef Chehebar, Steven Chehebar, and Joyce Chehebar (collectively the "Secured Chehebar Investors" or "SCIs"), by and thorough undersigned counsel, move to bifurcate certain issues presented by the Receiver's Motion to Approve Distribution Plan (ECF No. 2014 (the "Motion")) and respectfully request this Honorable Court conduct a case management conference to consider an appropriate discovery and final hearing schedule as to certain issues of contested fact.

As set forth in the Certificate of Conferral below, the Receiver does not oppose the SCI's request for a case management conference, nor does the Receiver oppose the concept of bifurcation of certain issues that have been raised in his Motion.

In support of their motion, the SCIs state:

On August 23, 2024, the Receiver filed its Motion. Directly related to the SCIs, the Motion raises two distinct issues. The first issue surrounds whether the SCI's UCC-1 financing statements ("liens") are valid and enforceable. The second issue involves a complex question of law and fact – whether the SCIs were "insiders" or not, and what impact that determination should have on their liens and their place in the Receiver's distribution plan.

The first issue – lien validity – is one that is primarily a question of law. There are two sets of liens: the 2017 liens and the 2020 liens. As to the 2017 liens, the Receiver argues that they expired five years after they were recorded, and that they are no longer valid. The SCIs contest this position. The parties do not anticipate disputed issues of fact that would be material to resolution of the issue. As to the 2020 liens, the Receiver argues that they are not valid or enforceable because they were recorded after entry of the Initial Receivership Order (ECF No. 36), even though they were recorded prior to the Amended Receivership Order (ECF No. 141). The SCIs contest this position. Resolution of the 2020 lien issue is also one that involves a question primarily of law; the facts are mostly not in dispute (for example, the content of the two orders, and the date the 2020 liens were recorded). Investigation relating to one related issue (when notice of the Initial Receivership Order was received by the SCIs), is ongoing. Regardless, it is anticipated that the SCIs will be able to provide a position on this issue in the coming days.¹

¹ The Motion was filed on Friday, August 23, 2024. Undersigned counsel departed for Europe on Sunday, August 25, 2024, for one day of preparation and two days of depositions. En route, undersigned contracted COVID and began to become fully symptomatic flying back to the United States on August 29, 2024. Recovery days ensued and today, September 3, 2024, was the first day undersigned was able to work. As a result, it may be necessary to request a brief extension to respond to the Motion.

The second issue - whether the SCIs were “insiders” or not – presents a complex issue of law and fact. Here, additional time and discovery are required because many material issues of fact will be in dispute and they will need to be resolved upon a fulsome record before this Court. Anticipating that due process and discovery concerns would arise in relation to resolution of the question of “insider” status, the SCIs previously sought to intervene. This Court conducted a hearing on their motion on May 23, 2024. ECF No. 1935. In denying the SCI’s motion to intervene, this Court noted that SCIs could protect their interests “by litigating the issue of their purported priority lien interests within the context of the Receiver’s claims adjudication process as overseen and reviewed by the Court.” ECF No. 1937. The Court further explained that “the Court intends to hold an evidentiary hearing regarding the purported security interest at issue here-as is proper under Eleventh Circuit precedent. *See Sec. & Exch. Comm'n v. Torchia*, 922 F.3d 1307, 1312 (11th Cir. 2019)...”. *Id.* (citation in original). *Torchia* is important because that case teaches due process may require more in summary proceedings, such as discovery, and certainly the ability to present contested evidence, when issues of contested fact are to be decided by the trial court. *Id.*

In recognition of the impact that the asserted liens have in this case, as well as the contested issues of law and fact to be decided by this Court, the Receiver has sought to hold back \$36,513,666.61 “from the first interim distribution on account of a portion of the Chehebar Investors’ claims that allegedly have senior secured status” in relation to their 2017 liens. Mtn. at pp.60-61. The Receiver’s proposal accomplishes two important ends; both against the backdrop of cases such as *Sec. & Exch. Comm’n v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1341 (11th Cir. 2017) (also cited by this Court in ECF No. 1937), which recognize the priority of statutory liens

over assets held in a receivership. First, assuming the sum to be held back is adequate,² it protects the SCI's interest in the receivership property in the event distributions are made until a court makes a final determination whether their liens are valid and enforceable. Second, it will prevent a delay in the distribution of unencumbered assets to other claimants while the questions of the enforceability of the liens and the SCI's status (insider or not – and, to what effect), are resolved by the Court. Final resolution of these issues (which may involve an appeal no matter how they are resolved), will require time.

Resolution of the lien issues involve almost no contested facts and will mostly turn on questions of law. The “insider” issues are far more complicated and necessitate adjudication of contested issues of fact. The SCIs therefore propose that this Court bifurcate resolution of the two issues and address them separately, first disposing of the lien issues and second (because more time is required to protect the SCI's due process rights) the “insider” issue. Because the Receiver proposes adequate precaution be taken to protect the SCI's claimed secured interests in the property of the estate, the Court has been provided sufficient runway to protect the due process rights of the SCIs as they litigate the contested claims before this Court. This also ensures that distributions will not be delayed while the Court resolves the “insider” allegations in a bifurcated process, as requested by this motion.

The SCIs respectfully request this Court conduct a case management conference, on an expedited basis, to set a reasonable schedule for the following events:

² The SCIs are investigating the proper amount that should be held back and will take a position when they file their response to the Motion. The amount proposed by the Receiver appears to protect their 2017 liens. Depending upon their review of the Motion as it relates to other assertions of priority, the SCIs may take the position that a greater amount should be held back to protect their 2020 liens. Suffice to say for purposes of this pleading, the SCIs agree with the Receiver that some sum must be held back to protect their secured interest until their claims reach finality.

- 1) The parties (Receiver and SCIs) to meet and confer to:
 - a. determine what material facts they agree are not in dispute and what material facts are in dispute;
 - b. determine what discovery they can agree the SCIs should be permitted to engage in (if any) to protect the SCI's due process rights related to the Receiver's claim that they are "insiders";
 - c. identify any other issues that need to be resolved by the Court, which may require a schedule or briefing; and,
 - d. discuss a proposed schedule for discovery, briefing (if necessary), and final hearing.
- 2) Submission to the Court of either:
 - a. an agreed upon schedule addressing the issues in Number 1, *supra*;
 - b. their proposed schedule addressing the issues in Number 1, *supra*, and their position as to why it is appropriate.
- 3) Any other issues attendant to this motion.

I HEREBY CERTIFY that pursuant to the Local Rules I conferred with counsel for the Receiver concerning the relief requested herein. The Receiver does not oppose the SCI's request that this Court conduct a case management conference with the Receiver and SCIs. The Receiver does not in concept oppose the SCI's request for bifurcation of the issues so long as any such bifurcation does not result in a delay of distribution.

WHEREFORE, the SCIs respectfully request this Court conduct a case management conference on an expedited basis and bifurcate the issues identified in this motion.

Dated: September 3, 2024.

Respectfully submitted,

s/ Marshall Dore Louis

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**COMPLETE BUSINESS SOLUTIONS
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Defendants.

**[PROPOSED]
ORDER GRANTING MOTION FOR CASE MANAGEMENT CONFERENCE AND TO
BIFURCATE CERTAIN ISSUES**

THIS CAUSE comes before the Court upon the expedited motion of GEMJ Chehebar GRAT, LLC, Albert Chehebar, Isaac Shehebar, Isaac Shehebar 2008 AIJJ Grantor Retained Annuity Trust, Michael Chehebar, Ezra Shehebar, Ezra Chehebar, Ezra Shehebar LLC, Cherie Chehebar, Josef Chehebar, Steven Chehebar, and Joyce Chehebar (the “Chehebars”), to bifurcate certain issues presented to the Court in the Receiver’s Motion to Approve Distribution Plan (ECF No. 2014) and their request for a case management conference. Having considered the Chehebars’ Motion, and for good cause shown therein, it is hereby:

ORDERED AND ADJUDGED that Chehebars’ Motion is **GRANTED**.

The Court bifurcates resolution of the matters identified in the Chehebars' Motion.

The Court will conduct a case management conference on _____ to address the additional issues raised in the Chehebars' Motion.

DONE AND ORDERED in Miami, Florida, this ___ day of September 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies Furnished:
All Counsel of Record