UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION *Plaintiff*	§	
v.	§	Case No. 4:17-cv-00336-ALM
THURMAN P. BRYANT, III, and BRYANT UNITED CAPITAL FUNDING, INC. *Defendants*	§	
ARTHUR F. WAMMEL, WAMMEL GROUP, LLC, THURMAN P. BRYANT, JR., and CARLOS GOODSPEED a/k/a SEAN PHILLIPS d/b/a TOP AGENT ENTERTAINMENT d/b/a MR. TOP AGENT ENTERTAINMENT *Relief Defendants*	§	

DEFENDANT THURMAN P. BRYANT, III'S SUPPLEMENTAL RESPONSE IN OPPOSITION OF RECEIVER'S EMERGENCY MOTION FOR EXPEDITED ORDER AUTHORIZING LIQUIDATION OF CERTAIN BRYANT DEFENDANTS' RECEIVERSHIP ASSETS [DOCKET NO. 68]

COMES NOW, Defendant, THURMAN P. BRYANT, III ("BRYANT III"), who files this Supplemental Response in Opposition of Receiver's Emergency Motion for Expedited Order Authorizing Liquidation of Certain Bryant Defendants' Receivership Assets, and respectfully shows the Court as follows:

Argument

1. On August 10, 2017, the Receiver filed a Reply in Support of her motion for an expedited order authorizing her to liquidate certain assets purported to belong to the Receivership Estate. As a reminder, The Receiver was appointed without BRYANT III having a chance to defend his position or clarify his defenses to the claims made by Plaintiff. BRYANT III has repeatedly stated, and once again asserts herein, that there are no investor funds being held by any of the BRYANT III Receivership Defendants, including his own personal accounts. In addition to

his previous Opposition Docket no. 68 filed on August 04, 2017, BRYANT III would show that the Receiver continues to ignore certain details in her pursuit of permission to liquidate the listed assets.

2. Under the Order Appointing Receiver, the Receiver Jennifer R. Ecklund is charged with preserving the assets of the Receivership Estate ("Estate") and protecting the value of the Estate from irreparable harm. See Docket No. 17, *Order,* at 7(G), pg. 4. The Receiver's motion is an attempt to exceed the authority granted in the Receivership Order and to circumvent her duty to preserve the assets of the Estate and prevent their dissipation at a time when it is virtually impossible to maximize their value. Defendant opposes this motion on the grounds that the premature attempt to liquidate the Estate's assets constitutes a breach of the Receiver's fiduciary duty, is not in the best interests of the Estate, and should not occur until the case is resolved on its merits. Accordingly, the Receiver's motion should be denied.

3. Specifically, the Receiver intends to liquidate assets which do not actually belong to the Receivership Estate. These are personal assets in which BRYANT III's family members, who are not defendants in this matter, hold at least partial interest. Additionally, some of the assets proposed for liquidation hold sentimental value, and their loss would cause damage to BRYANT III's family members, who, again, are not defendants in this matter. Since the assets in question have not clearly been adjudicated to belong to the Receivership Estate, their liquidation at this point is both premature and beyond the scope of the Receiver's duties and abilities.

4. The Horse is the property of BRYANT III's daughter, who is not a defendant in this matter. It was given as a gift to her, and should not have been seized by the Receiver in the first place, as the Receivership Defendants hold no equitable ownership interest in it. As it is a living

being, its care and welfare are of great concern to its owner – BRYANT III's daughter, who is not a defendant in this matter – and its sale is improper and would cause her great harm, both financially in the loss of her asset, and emotionally in the loss of a cherished pet. BRYANT III and his family have offered numerous times to take the Horse back from the Receivership Estate, returning it to its rightful owner, and cover the cost of its care without a burden on the Receivership Estate. The Receiver has ignored these requests and refuses to return the Horse to its rightful owner, BRYANT III's daughter, who is not a defendant in this matter.

5. The Car also does not belong to the Receivership Estate. It belongs to THURMAN P. BRYANT, JR., who is not a Receivership Defendant. It is financed, with a lien from the financing company that currently exceeds the value of the vehicle at this point. It is not a part of the Receivership Estate, but even if it were adjudicated to be so, selling it right now would cause the Receivership Estate to be required to pay the bank more money than would be received for it. BRYANT, JR. continues to make note payments on this asset, which belongs to him, and has requested it be returned to him; the Receiver has ignored these requests and refuses to release the vehicle to BRYANT, JR., even though he is not a Receivership Defendant and his property is not subject to the Receiver's seizure authority. The Receiver took possession of this asset with no regard to the cost of its storage and maintenance, and is now facing the consequences of that decision. The vehicle should be released to its owner, BRYANT, JR., to whom it rightfully belongs. Releasing it would of course relieve the Receivership Estate of the expense of its storage and maintenance.

6. The Swing Set was obviously purchased for the benefit and enjoyment of the children in BRYANT III's family, and was purchased with family funds, not funds belonging to the Receivership Estate. The source of these funds, as previously addressed, was income from

BRYANT III and his family members, and these funds were never a part of or never belonged to BUCF or any activity or entity or person related to this lawsuit, other than that some of BRYANT III's income may be shown to have been made through certain business activities that were related to the investments made the basis of this lawsuit. What part and percentage of the family's funds were actually attributable to the investments made the basis of this lawsuit, as opposed to other business activities or sources of income, at the moment in the past when the Swing Set was purchased, are incalculable. In any case, only a small portion – if indeed any at all – of the Swing Set rightfully belongs to the Receivership Estate. There is no valid reason to sell it, since most of it should not belong to the Receivership in the first place, and since there is no associated cost of storage or maintenance being borne by the Receivership Estate for its upkeep while this case is pending. It is family property, just as any other piece of furniture or household goods belonging to the family of BRYANT III would be. It is not part of the Receivership Estate.

7. The Motorcycle is the property of BRYANT III, and as such is potentially subject to the receivership. This is not disputed. The primary issue BRYANT III has with the proposed sale of it at this point is that, to the best of his knowledge, the asset is worth less than the current balance remaining on the loan, and so the financing company would be due more than would be received from its sale. BRYANT III tried to sell it himself about a year ago but ceased the attempt once he calculated that its then-current sale value was $5,000 less than the then-current payoff amount due on its financing. Since it has not increased in value – it is not a collector's item or a particularly valuable or in-demand piece – then this lack of equity has surely not dissipated to the point where, in the current market, it could be sold for more than is owed today. As such, there is no benefit to be had to the Receivership Estate to sell the Motorcycle, and in fact its sale would cause the Estate to incur additional expenses to pay off the note on it. Additionally, as with the Swing Set, it would

be nearly impossible to precisely determine which percentage of BRYANT III's interest in the Motorcycle could be accurately attributed to the income he received from the investment business made the subject of this suit, if any, and if his income from those business activities should be adjudicated to render BRYANT III's assets liable to seizure at all.

A. Liquidation of the Estate is Not in the Best Interest of the Estate

7. The Receiver was appointed without BRYANT III having a chance to defend his position or clarify his defenses to the claims made by Plaintiff. BRYANT III has repeatedly stated, and once again asserts herein, that there are no investor funds being held by any of the BRYANT III Receivership Defendants, including his own personal accounts. All investor funds were invested and placed in the control of Wammel Group, and monthly distributions were made as committed and not held by the Receivership Defendants. All funds and assets that have been placed into the Receiver's control are personal assets of BRYANT III and of his family, who are not defendants herein, and are unrelated to the investment business made the subject of this suit.

8. Through seizure and freezing of various bank accounts and credit cards, this receivership has caused personal financial hardship on BRYANT III and on his family, who are not defendants herein, by making it difficult to meet personal financial obligations and maintain their household. In addition, this personal financial hardship has caused BRYANT III to be unable to retain professional counsel, as evident by his appearing in this matter pro se.

9. The existence of the receivership has harmed the business of the Receivership Defendants, and has irreparably damaged their reputations and their ongoing business, whether related to the matter at hand or not. Further, portions of the funds and assets currently held in receivership do not belong to or relate to the claims made against the Receivership Defendants by

the Plaintiff. The Receiver states in her Reply that part of her duty is to "dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working for the benefit of the creditors." There is no benefit to the Receivership Defendants' investors to have BRYANT III's personal and family funds and assets held in receivership, and no gain to be made by wrongfully liquidating assets which have not been adjudicated to belong to the Estate. This is the core of BRYANT III's argument against the expedited order to liquidate – the property proposed for liquidation simply does not belong to the Receivership Estate. The Receivership Defendants are no longer engaged in any sort of business which is directly connected to the investments made the basis of this lawsuit by the Plaintiff, and yet the Receiver relies on this principle of ensuring they do not continue "an enterprise that does not show evident signs of working for the benefit of the creditors" as the support for her seeking permission to liquidate assets which do not rightfully belong to the Receivership Estate.

10. In the specific case of the Car and the Motorcycle, the sale of these assets would cause the Receivership Estate to incur expenses rather than gain funds, because there are notes on both of these items which have payoff amounts greater than the items' values. The Car does not belong to the Receivership Estate, but even if it was adjudicated to be subject to the Receiver's control, its sale would not benefit the Estate.

11. Liquidating the listed assets – the swing set, the horse, the car, and the motorcycle – is wrongful, will not benefit the Estate, and should not be allowed at this time.

B. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits

12. The Receiver also argues that it is not premature to liquidate assets, even if those assets are wrongfully under her control and do not belong to the Estate of which she has been appointed receiver. A preliminary injunction preserves the status quo, prevents irreparable injury to the

parties – **all of the parties**, including the Receivership Defendants – and preserves the Court's ability to render a meaningful decision after a trial on the merits. See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975). If the Receiver is able to sell the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. In this case, such an event would actually cause damage to BRYANT III's family members, who hold at least partial interest in the assets in question, as they are non-parties and are not responsible for the actions of the Receivership Defendants. If the Receivership Defendants are victorious at a trial on the merits, that result will be diminished significantly if the Receiver is permitted to dispose of Estate assets prior to that time, especially those with particular sentimental or non-monetary value above and beyond their cash value. The Receiver should not be permitted to liquidate Estate assets without an adjudication on the merits of the underlying claims, and even more so in this case where interest in the assets is held by non-parties who would be damaged by their liquidation, both financially and emotionally. "It is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership." *SEC v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001). "Such drastic measures are not appropriate prior to the entry of final judgment. The [Movant should] renew its motion to encompass such relief if necessary in the future." *SEC v. Current Financial Services*, 783 F. Supp. 1441, 1445-46 (D.D.C. 1992).

13. The Receiver argues that the costs of maintenance and care for some of the assets is causing a burden on the Receivership Estate. BRYANT III and his family have offered repeatedly to take the Horse back and pay for its care, and BRYANT, JR. has asked for the return of his property, namely the Car, for which he would pay storage and maintenance costs. BRYANT III, BRYANT, JR., and their family have offered to remove the burden of the cost of care and

maintenance on these assets from the Receivership Estate, which is only right since these assets do not actually belong to the Receivership Estate in the first place.

C. The Receiver's Liquidation Request Exceeds the Scope of the Appointment Order and is a Breach of her Fiduciary Obligation to Preserve the Estate for All Claimants

14. The Receiver argues that it is not beyond the scope of the Appointment Order and is not a breach of her fiduciary obligation to preserve the estate, to liquidate the assets in question now rather than preserving them until the matter has been tried on the merits. BRYANT III would argue that such a move is in fact a blatant disregard for the fiduciary obligation to preserve the estate, and is also an abuse of the receiver's powers set forth in the Appointment Order. It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to preserve the property pending the court's final disposition of the suit. See Wright & Miller, *12 Fed. Prac. & Proc. Civ.* 2d §2981 (2005). A receiver has a duty to preserve the property for the benefits of the claimants, and that duty must be undertaken without bias to one side or the other. See *Boothe v. Clarke*, 58 U.S. 322, 331 (1854). The receiver is a fiduciary to the person who ultimately has rights in the property. See *Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988). Indeed, the Order Appointing Receiver entered in this matter explicitly instructs the Receiver on her fiduciary obligations, ordering her to "take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property." See Docket No. 17, *Order,* at 7(G), pg. 4.

15. The Receivership Defendants did not have large cash reserves at the moment of the institution of the receivership. In normal course of business, no funds were held by BUCF and all investments were transferred into accounts under the control of Wammel Group once received. Wammel Group then transferred earning returns back to BUCF, and distributions were made to

the investors at that point each month. Funds were not held by BUCF, above the normal sort of operating capital held by any such business used to pay its expenses. The same holds for BRYANT III – no funds were held in his personal accounts beyond income he or his family had earned, and most of this was intended to be used to pay their normal household expenses. This is the source of BRYANT III's family, who are not defendants in this matter, being strained by the seizure of his accounts; the money and accounts to be used for bills and household expenses are frozen and being managed by the Receiver, who does not direct any of it to cover the household's needs.

Conclusion

Based on the foregoing reasons, the Receiver's attempt to liquidate the Receivership Estate's asset contravenes the Order Appointing Receiver and constitutes a breach of her duty to preserve the Estate. Accordingly, BRYANT III and the Receivership Defendants respectfully request that the Court deny the Receiver's Emergency Motion for Expedited Order Authorizing Liquidation of Certain Bryant Defendants' Receivership Assets, and for such other and further relief to which they may show themselves entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this _14_ day of August, 2017, a true and correct copy of the above and foregoing has been forwarded to all parties via electronic mail to the address listed below.

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