

**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 PERRY ABBONIZIO’S RESPONSE IN OPPOSITION TO
RECEIVER’S MOTION TO EXPAND RECEIVERSHIP ESTATE**

Pursuant to the Court’s order dated November 2, 2020 [D.E. 361], Defendant Perry Abbonizio files this Response in Opposition to Receiver Ryan K. Stumphauzer’s Motion and Memorandum of Law to Expand Receivership Estate, which was filed on October 30, 2020 (the “Motion”) [D.E. 357]. For the reasons explained herein, there is no basis for expanding the receivership estate to include Mr. Abbonizio’s company, New Field Ventures, LLC (“New Field”),¹ and as the requested relief would be punitive and not remedial, the Court should deny the Motion as it relates to that company.

I. Introduction

Through its Motion, the Receiver seeks to expand the receivership estate to include several entities that are controlled by individual Defendants, claiming this expansion is “necessary and appropriate” with regard to those entities because they were “funded with commingled investor

¹ The Amended Complaint alleges that New Field is owned by Defendant Joseph Cole Barleta and Mr. Abbonizio. [D.E. 119 at ¶ 19, 20, 242]. However, those allegations are incorrect; the company is owned by Mr. Abbonizio.

proceeds.” *See* Mot. at 5. One of those entities is New Field, a company owned and controlled by Mr. Abbonizio. The Receiver claims that between 2017 and November 2019, New Field received approximately \$9.5 million from Par Funding. *See id.* at 9. Therefore, according to the Receiver, expanding the receivership to include New Field would be “consistent with the purpose of appointing a receiver, which is to avoid the further ‘diversion and waste’ of corporate assets” *Id.* at 10.

The Receiver is wrong. The Receiver’s stated purpose already is being served by the asset freeze that is in place against Mr. Abbonizio. Consistent with the scope of that asset freeze, which does not include his New Field bank account, Mr. Abbonizio is relying upon the limited funds in that account to pay certain taxes and other expenses. As the Receiver’s requested relief is not necessary and would not serve its stated purpose, which seemingly can be accomplished by other, less drastic means, its only impact would be punitive. The Court therefore should deny the Motion as it relates to New Field.

II. Argument

The Receiver argues that expanding the receivership estate to include New Field is necessary and appropriate because, as with several other entities identified in the Motion, New Field received commingled investor proceeds. However, New Field is merely the entity that received Par Funding’s payments to Mr. Abbonizio, and Mr. Abbonizio already is subject to an asset freeze based on an approximation of the total net profits he received from the company, which is the maximum possible scope of an asset freeze. Under these circumstances, expanding the receivership to include New Field would not help avoid “diversion and waste” of receivership assets, as the Receiver suggests, because it could not preserve any assets that are not already subject to the asset freeze, and because in any event New Field has little, if anything, to preserve.

Moreover, while expanding the receivership in this way would be futile for the Receiver, it would impose an unnecessary burden on Mr. Abbonizio.

On July 27, 2020, as later amended on August 13, 2020, the Court entered an order appointing the Receiver, finding the appointment was “necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants . . . and those of the Relief Defendant that (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; and/or (c) may otherwise be includable as assets of the estates of the Defendants” [D.E. 36, 141]. In furtherance of those purposes, in its order of appointment the Court authorized the Receiver to “assume and control the operation of the Receivership Entities,” manage and preserve the value of the receivership estate, and “take such other action as may be approved by this Court.” *See* D.E. 141 at ¶¶ 4–7.

The Receiver submits that expanding the receivership to include New Field is consistent with its purpose, noting that courts authorize a receiver to take possession of other entities upon a reasonable showing that those entities received proceeds from an unlawful scheme. However, “[a] motion to ‘expand’ the receivership estate is essentially a motion to appoint a receiver over additional entities.” *SEC v. Faulkner*, Case No. 16-01735-CIV, 2018 WL 4362729, *2 (N.D. Tex. Sept. 12, 2018). And receivership “is justified ‘only where there is a clear necessity to protect a party’s interest in property, legal and less drastic equitable remedies are inadequate, and the benefits of receivership outweigh the burdens on the affected parties.” *Id.* at *3 (internal quotation and citation omitted) (declining to expand receivership as to an entity subject to a defendant’s control, notwithstanding that the entity had received commingled investor funds from an allegedly fraudulent scheme, because the entity “has no assets to preserve for future disgorgement” and “the benefits of placing [the entity] in receivership are outweighed by appurtenant burdens,” including

the burden on an individual defendant who already was incurring substantial legal expenses to mount his defense).

Here, expanding the receivership to include New Field is neither necessary nor appropriate, as Mr. Abbonizio already is subject to an asset freeze by consent and previous Court order. [D.E. 171]. The Receiver emphasizes that New Field received approximately \$9.5 million from Par Funding. But that is not a recent revelation; it was alleged in the SEC's Amended Complaint and therefore was known before the asset freeze. D.E. 119 at ¶ 240. The Receiver has not made any suggestion that Mr. Abbonizio has, or is threatening to, dissipate assets that he already has committed to preserving, nor has the Receiver provided any other explanation for how expanding the receivership to include New Field would further its stated purpose of avoiding diversion and waste or would otherwise be in the interest of the receivership. If the Receiver's actual purpose is investigatory, then it would seem that other, less drastic and less burdensome means would be adequate (*e.g.*, requests for information).

Mr. Abbonizio created New Field for lawful tax purposes in 2017. Mr. Abbonizio does not dispute that the payments he received from Par Funding were deposited into his New Field account at Citizens Bank. Mr. Abbonizio has paid certain taxes and other expenses directly from this account, but otherwise has used the account as a mere pass-through, transferring his income to checking accounts that he shares with his wife. New Field does not have business operations and does not hold any investments. As of the date of this filing, its account is believed to have a balance of less than \$15,000.

On August 20, 2020, the Court entered an order granting preliminary injunction by consent as to Mr. Abbonizio. [D.E. 173, 181]. In consenting to the order, Mr. Abbonizio provided undertakings to refrain from selling, trading, liquidating, or encumbering certain accounts, real

estate, and other assets with values that were estimated as an approximation of the net profits he received from Par Funding. [D.E. 173-1]. This was the proper approach to measuring the scope of the asset freeze because it represents the maximum amount of any potential disgorgement order against Mr. Abbonizio. *See Liu v. SEC*, 140 S. Ct. 1936, 1942, 1946 (2020); *see also* D.E. 42 (ordering that asset freezes be “limited to the amount received from the securities fraud”). In full transparency, Mr. Abbonizio made the SEC aware of the New Field bank account and its approximate balance when communicating about which assets would be subject to the freeze and which assets would not.

Given that the asset freeze already accounts for the amounts Mr. Abbonizio received from Par Funding, and given that Mr. Abbonizio earned income during the same time period from sources *entirely separate from Par Funding* — including rental income and income from his interest in a New Jersey-based commercial real estate investment company — Mr. Abbonizio has a “legitimate ownership interest” in any assets in his possession that are not already subject to the freeze. *Cf. SEC v. Sun Capital, Inc.*, Case No. 09-CV-00229, 2009 WL 1362634, *1–3 (M.D. Fla. May 13, 2009) (denying receiver’s motion to expand powers over relief defendant because the relief defendant had a legitimate ownership interest in the funds at issue). This includes any funds that are in the New Field bank account, which is not subject to the freeze. Expanding the receivership to include New Field would raise the specter, unnecessarily, of Mr. Abbonizio later having to incur additional time and expense determining and potentially even litigating which funds in the Receiver’s control came from which sources.

The Receiver’s requested relief would serve as a burdensome and unnecessary expansion of the asset freeze by divesting Mr. Abbonizio of control of a company account that he makes use of at a time when his access to funds already has been severely restricted by his consent. If the

Receiver believes that New Field might possess information that somehow would further its understanding of receivership assets, then it would seem the Receiver would be equally well served by simply requesting that Mr. Abbonizio provide such information. At the very least there would be no harm in making such requests and evaluating the responses before seeking the drastic measure of taking control of the company.

III. Conclusion

In short, Mr. Abbonizio does not question that the Court has “broad powers to determine what relief is appropriate in an equity receivership.” *SEC v. Torchia*, Case No. 15-CIV-03904, 2016 WL 6212002, *3 (N.D. Ga. Oct. 25, 2016). But Mr. Abbonizio submits that in this instance the Receiver has not demonstrated why or how its requested relief is necessary or appropriate in furtherance of its stated purpose, especially considering the burden it would impose on Mr. Abbonizio, who already is subject to an asset freeze. *See SEC v. Philip A. Michael Secs., Inc.*, 1974 WL 416, *2 (S.D.N.Y. June 26, 1974) (“[T]he extraordinary remedies of injunctive relief and receivership should not be invoked where the only effect would be punitive, not remedial.”). For the foregoing reasons, the Receiver’s Motion is overreach as it relates to New Field Ventures, LLC, and should be denied as to that entity.

Date: November 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2020, a true and correct copy of the foregoing was served via the Court's CM.ECF System upon all counsel of record.

/s/ Jeffrey E. Marcus
Jeffrey E. Marcus, Esq.