17 Pages

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re: AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.	Case No. 19-2-01458-06 GR 14.1(d) APPENDIX TO RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENTS WITH PACIFIC PREMIER BANK AND RIVERVIEW BANK AND GRANT RELATED RELIEF DATE: August 18, 2023 TIME: 9:00 a.m. JUDGE: David E. Gregerson PLACE: Department No. 2

Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"), hereby submits the GR 14.1(d) appendix to the Receiver's Motion to Approve Settlement Agreements with Pacific Premier Bank and Riverview Bank and Grant Related Relief.

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Attached hereto as Exhibit A is the following unpublished opinion of the United States Court of Appeals, Fifth Circuit: *Securities and Exchange Commission v. Kaleta*, 530 F. App'x 360 (5th Cir. 2013).

Attached hereto as Exhibit B is the following unpublished opinion of the United States District Court for the Southern District of Mississippi: *Securities and Exchange Commission v. Adams*, No. 3:18-cv-252, 2021 WL 8016843 (S.D. Miss. Feb. 25, 2021).

Attached hereto as Exhibit C is the following unpublished opinion of the United States District Court for the District of Oregon: *S.E.C. v. Sunwest Management et al.*, Case No. 09-6056-HO (D. Or. May 24, 2011).

DATED this 30th day of June, 2023.

MILLER NASH LLP

/s/ John R. Knapp, Jr.
John R. Knapp, Jr., P.C., WSB No. 29343
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EXHIBIT A

530 Fed.Appx. 360
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial decisions
issued on or after Jan. 1, 2007. See also
U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5.
United States Court of Appeals, Fifth Circuit.

SECURITIES AND EXCHANGE
COMMISSION, Plaintiff
v.
Albert Fase KALETA, Defendant.
Ronald Ellisor; Lavonne Ellisor; Richard Kadlick;
Sailaja Uri Konduri; Robert Ficks; et al, Appellants
v.
Thomas L. Taylor, III, the receiver for Kaleta Capital
Management, Inc., BusinessRadio Network, L.P.,
doing business as BizRadio, doing business as
Daniel Frishberg Financial Services, Inc., doing
business as DFFS Capital Management Inc. and
all of the entities they own or control, Appellee.

No. 12–20633
|
Summary Calendar
|
June 19, 2013.

Synopsis

Background: In receivership proceeding, the United States District Court for the Southern District of Texas, 2012 WL 401069, Nancy F. Atlas, J., approved settlement among court-appointed receiver and third parties closely affiliated with the receivership entities. A subset of investors allegedly defrauded by the receivership entities in violation of the federal securities laws appealed.

Holdings: The Court of Appeals held that:

[1] district court had authority to enter bar order in securities fraud action enjoining investors from commencing or continuing any action against the associated third parties;

[2] Anti–Injunction Act did not preclude bar order as state court proceedings were not alleged to be pending; and

[3] district court did not abuse its discretion in denying motion to reconsider.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (3)

[1] Securities Regulation ⇐ Receivership

Federal district court overseeing receivership in equity in securities fraud action had authority to enter bar order enjoining investors from commencing or continuing any legal action against third parties closely affiliated with receivership entities in approving settlement among court-appointed receiver and those entities; bar order was needed to secure third parties' personal guarantees to pay receivership estate, the settlement expressly permitted investors to pursue their claims by participating in receiver's claims process, and investors continued to retain all other putative claims against third parties that did not arise from allegedly fraudulent notes underlying securities fraud action.

27 Cases that cite this headnote

[2] Courts ⇐ Restraining Particular Proceedings

Anti-Injunction Act did not apply to bar order issued by federal district court, which approved settlement among court-appointed receiver and third parties closely affiliated with receivership entities in securities fraud action, that enjoined investors from commencing or continuing any legal action against the third parties, where investors argued only that they wished to pursue litigation potentially in state court and did not

allege any state court proceedings were pending. 28 U.S.C.A. § 2283.

12 Cases that cite this headnote

[3] **Securities Regulation** ⇐ Receivership

Federal district court overseeing receivership in equity in securities fraud action did not abuse its discretion in denying motion to reconsider approval of settlement among court-appointed receiver and third parties closely affiliated with receivership entities that included bar order enjoining investors from commencing or continuing action against the third parties that arose from allegedly fraudulent notes, despite argument that court approved settlement based on allegedly false information regarding the third parties' financial condition.

24 Cases that cite this headnote

Attorneys and Law Firms

***361** Charles Thomas Schmidt, Troy Ted Tindal, Schmidt Law Firm, P.L.L.C., Houston, TX, for Appellants.

Thomas L. Taylor, III, The Receiver for Kaleta Capital Management, Inc., Houston, TX, pro se.

Daniel K. Hedges, Porter & Hedges, L.L.P., Houston, TX, for Appellee.

Appeal from the United States District Court for the Southern District of Texas, USDC No. 4:09–CV–3674.

Before REAVLEY, JOLLY, and DAVIS, Circuit Judges.

Opinion

PER CURIAM: *

This is an interlocutory appeal arising from a receivership proceeding. Appellants are a subset of investors who were allegedly defrauded by Receivership Entities [1] in violation of federal securities laws. Appellants challenge the district court's approval of a negotiated settlement between the court-appointed Receiver and ***362** third parties referred to collectively as the Wallace Bajjali Parties, who were closely affiliated with the Receivership Entities. [2] Moreover, Appellants challenge the court's entry of a bar order enjoining them and other investors from commencing or continuing any legal action against the Wallace Bajjali Parties that arises from the underlying fraud. We review a district court's actions in supervising an equity receivership for an abuse of discretion. *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir.1982). Similarly, we review a district court's actions in granting an injunction for an abuse of discretion. *Newby v. Enron Corp.*, 542 F.3d 463, 468 (5th Cir.2008). For the reasons that follow, we AFFIRM.

[1] Appellants make two contentions on appeal. First, Appellants argue that the district court did not have legal authority to enter its bar order. On the contrary, "the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *Safety Fin. Serv.*, 674 F.2d at 372–73 (citation and quotation marks omitted). These powers include the court's "inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir.1980) (footnote omitted). Such "ancillary relief" includes injunctions to stay proceedings by non-parties to the receivership. *See id.* at 1368–72 (affirming district court's order to stay all persons, including nonparties, from continuing with any proceedings against receivership entities); *SEC v. Stanford Int'l Bank Ltd.*, 424 Fed.Appx. 338, 340 (5th Cir.2011) ("It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions.").

Appellants argue that the cases cited by the district court in entering its bar order are distinguishable from the case at bar. However, because this is a case in *equity,* it is neither surprising nor dispositive that there is no case law directly controlling the district court's bar order. *See Gordon v. Dadante,* 336 Fed.Appx. 540, 549 (6th Cir.2009) ("[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate."). As the district court correctly remarked, "These case distinctions do not mandate a different outcome here. This Court, as any court of equity, considers legal precedent, including the types of stays or injunctions imposed

by other courts. However, receivership cases are highly fact-specific."

[2] We have reviewed the factors considered by the district court in entering the bar order, namely the necessity of the bar order for securing Messrs. Wallace's and Bajjali's personal guarantees to pay the Receivership Estate, and the fact that the settlement expressly permits Appellants and other investors to pursue their claims by "participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate." Further, contrary to Appellants' contentions, the bar order is not "of unlimited *363 duration and scope"; rather, the investors continue to retain all other putative claims against the Wallace Bajjali Parties that do not arise from the allegedly fraudulent notes that underlie this action. [3] We conclude that the district court's analysis was sound and thus the court did not abuse its discretion in entering the bar order. [4]

[3] Second, Appellants argue that the district court abused its discretion by approving the settlement based on allegedly false information regarding the Wallace Bajjali Parties' financial condition. Appellants concede on appeal "that the Receiver was not fully informed by the Wallace Bajjali Parties at the time of the original settlement deal, and that, therefore, the settlement should have been rejected at the time of the Motion for Reconsideration" filed by Appellants after the district court's approval of the settlement. We interpret Appellants' argument as a challenge to the district court's denial of Appellants' motion for reconsideration, rather than a challenge to the district court's initial approval of the settlement.

After Appellants filed their motion for reconsideration, updated evidence was presented by Appellants and the Wallace Bajjali Parties about the latter's development projects. As far as the record shows, the district court remained fully informed of the business activities and financial dealings of the Wallace Bajjali Parties and thoroughly considered both old and new evidence in arriving at its decision to deny Appellants' motion for reconsideration. As the district court stated, "the concerns expressed by the objectors are [not] meaningful grounds to re-trade the deal or to deny the approval" of the settlement. We find no abuse of discretion in the district court's conclusion that the equities warranted denial of Appellants' motion for reconsideration.

AFFIRMED.

All Citations

530 Fed.Appx. 360

Footnotes

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

1 As defined by the settlement agreement, the "Receivership Entities" are "all entities, now or hereafter subject to the Receivership Estate, including without limitation" Kaleta Capital Management, Inc.; Kaleta Capital Management, L.P.; BusinessRadio Network, L.P. d/b/a BizRadio; Daniel Frishberg Financial Services, Inc. d/b/a/ DFFS Capital Management, Inc.; "and all of the entities they own or control."

2 As defined by the settlement agreement, the "Wallace Bajjali Parties" are David Wallace, Costa Bajjali, and certain entities owned or affiliated with Messrs. Wallace and Bajjali, namely West Houston WB Realty Fund, L.P.; Wallace Bajjali Investment Fund II, L.P.; LFW Economic Opportunity Fund, L.P.; Spring Cypress Investments, L.P.; and Wallace Bajjali Development Partners, L.P.

Among other things, certain of the Wallace Bajjali Parties served as the agent for Appellants and other investors purchasing promissory notes from BizRadio.

3 In particular, the bar order applies only to "BusinessRadio Note Holders" who might seek to bring a legal action "against any of the Wallace Bajjali Parties arising out of, in connection with, or relating in any way to

the BusinessRadio Note Plan, the loans made to BusinessRadio or its related entities by the BusinessRadio Note Holders, and/or the notes issued by BusinessRadio or its related entities to the BusinessRadio Note Holders[.]"

4 Appellants make the additional, related argument that the bar order violated the Anti–Injunction Act. The Anti–Injunction Act prohibits federal courts from granting an injunction to stay proceedings in a state court, with certain exceptions. 28 U.S.C. § 2283. It is well established that the Act applies only to *pending* state court proceedings; the Act "does not preclude injunctions against a lawyer's filing of *prospective* state court actions." *Newby,* 302 F.3d at 301 (citing *Dombrowski v. Pfister,* 380 U.S. 479, 484 n. 2, 85 S.Ct. 1116, 1119 n. 2, 14 L.Ed.2d 22 (1965)); *B & A Pipeline Co. v. Dorney,* 904 F.2d 996, 1001–02 n. 15 (5th Cir.1990) ("There was no state court action pending in the instant matter at the time the district court issues its injunction. Therefore, the Anti–Injunction Act does not apply."). Here, Appellants state in their own brief that they "*wish to* pursue litigation against the Wallace Bajjali Parties, *potentially* in state court." (Emphasis added.) That is, Appellants have not argued that they have pursued any state court proceedings. They do mention in a footnote that they filed a state lawsuit on January 6, 2012, but that action was apparently non-suited at some point not specified in Appellants' briefs. Accordingly, the Anti–Injunction Act does not apply.

End of Document

EXHIBIT B

2021 WL 8016843
Only the Westlaw citation is currently available.
United States District Court, S.D. Mississippi, Northern Division,
Northern Division.

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,
v.
Arthur Lamar ADAMS and Madison Timber Properties, LLC, Defendants.

Case No. 3:18-cv-252
|
Signed 02/25/2021

Attorneys and Law Firms

Jennifer Case, Angela Givens Williams, U.S. Attorney's Office, Jackson, MS, Wm. Shawn Murnahan, Justin M. Delfino, Madison Graham Loomis, U.S. Securities and Exchange Commission - Atlanta Atlanta Regional Office, Atlanta, GA, for Plaintiff.

John M. Colette, John M. Colette & Associates, Jackson, MS, for Defendants.

ORDER APPROVING SETTLEMENT

Carlton W. Reeves, UNITED STATES DISTRICT JUDGE

***1** Before the Court is the Motion for Approval of Proposed Settlement with Butler Snow LLP; Butler Snow Advisory Services, LLC; and Matt Thornton (collectively the "Butler Snow Parties") filed by Alysson Mills, in her capacity as the court-appointed receiver (the "Receiver") for Arthur Lamar Adams ("Adams") and Madison Timber Properties, LLC ("Madison Timber").

The motion asks the Court to approve the Receiver's proposed settlement with the Butler Snow Parties. In exchange for the Receiver's and Receivership Estate's release of any claims against the Butler Snow Parties arising from the Butler Snow Parties' alleged relationship with Adams and Madison Timber and any role that the Butler Snow Parties may be alleged to have had in the Madison Timber Ponzi scheme (which the Butler Snow Parties deny) and a bar order, the Butler Snow Parties will make a payment of $9,500,000.00 to the Receivership Estate.

Most of the objections to this Order Approving Settlement [1] have been rendered moot by agreed changes to this Order's terms. The objections by those victims represented by attorney John Hawkins are overruled on the merits, however, as the Court finds that the proposed settlement is fair, equitable, reasonable, and in the best interests of the receivership estate and all of the victims of the Ponzi scheme. Accordingly,

After notice and hearing, and after having considered the filings and arguments of counsel, the Court **GRANTS** the motion.

BACKGROUND

The Receiver's complaint

On December 19, 2018, the Receiver filed a complaint against Butler Snow LLP; Butler Snow Advisory Services, LLC; Matt Thornton; Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Alexander Seawright, LLC; Brent Alexander; and Jon Seawright. The Receiver filed an amended complaint on November 22, 2019.

The Butler Snow Parties vigorously deny the allegations of the complaint and the amended complaint and that they have any liability to the Receiver or any other person arising out of their alleged relationship with Adams and Madison Timber. The Butler Snow Parties have further contended that the disputes arising in this litigation are subject to mandatory arbitration, an issue which is currently pending before the United States Court of Appeals for the Fifth Circuit.

The Receiver and the Butler Snow Parties nevertheless have engaged in good-faith negotiations that have resulted in the proposed settlement, summarized herein.

The proposed settlement with the Butler Snow Parties

Beginning last summer, the Receiver and the Butler Snow Parties engaged in a private mediation that included the exchange of various documents supporting their respective positions. After extensive months-long negotiations, the parties agreed that a payment of $9,500,000.00 will be made on the Butler Snow Parties' behalf to the Receivership Estate in exchange for the release of any claims against

the persons described in paragraph 5 of the Settlement Agreement and the bar order described in paragraph 4 of the Settlement Agreement **[Exhibit A to Doc. 221 ("Settlement Agreement")]**.

***2** The Receiver and the Butler Snow Parties have undertaken thoughtful negotiations and the Receiver believes that settlement with the Butler Snow Parties is in the Receivership Estate's best interest. If the Receiver were required to litigate her claims against the Butler Snow Parties to final judgment, she would spend considerable time and money litigating her claims and the Butler Snow Parties would spend considerable time and money defending against them, with neither party being guaranteed success.

A lawsuit's result is never guaranteed. A lawsuit can take a long time to litigate to final judgment, and often a final judgment is appealed. Settlement now avoids the likelihood of drawn-out litigation and the risk of adverse rulings. Settlement now also makes it possible for the Receiver to make a meaningful distribution for the benefit of Madison Timber's victims.

For these reasons, the Receiver recommends settlement with the Butler Snow Parties on the proposed terms now, and the Court accepts her recommendation.

In exchange for the Settlement Payment and any other value the Butler Snow Parties promise to give to the Receivership Estate, the Butler Snow Parties shall receive what is known as a "bar order" which shall bar any person or non-regulatory entity from asserting claims against the Butler Snow Parties and related persons arising out of, in connection with, or relating to Lamar Adams or Madison Timber. Those claims instead shall be "channeled" through the Receivership Estate. "Courts utilize bar orders if they are both necessary to effectuate a settlement and 'fair, equitable, reasonable, and in the best interest of the Receivership Estate.' " *S.E.C. v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *3 (N.D. Tex. Aug. 23, 2017) (quoting *S.E.C. v. Kaleta*, 530 Fed. App'x 360, 362 (5th Cir. 2013)). The Court finds that the bar order in this case is essential to the settlement and is an effective way to ensure maximum net recovery from the Butler Snow Parties that can be distributed equitably to Madison Timber's victims through the Receivership Estate.

The public's interest

The Court, mindful that victims of the Madison Timber Ponzi scheme have a substantial interest in the Receiver's claims against the Butler Snow Parties and the proposed resolution of them, allowed interested parties an opportunity to be heard before the proposed settlement was approved.

The Court entered an Order Setting Hearing, filed in the Court's public record for the case styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.). The Order Setting Hearing instructed the Receiver to provide via U.S. Mail the Order Setting Hearing, the proposed Settlement Agreement, the proposed Order Approving Settlement, and instructions for submitting comments or objections to all interested parties, as defined in the Settlement Agreement, and to publicize the same on her website and in any forthcoming Receiver's Report.

Victims or other interested parties who wished to submit comments or objections were advised to do so at least five days prior to the Court's hearing, either by submitting the comments or objections to the Court or to the Receiver, who submitted them to the Court. Victims or other interested parties who wished to address the proposed settlement at the hearing were given an opportunity to be heard.

The Court is satisfied and finds that the notice and hearing provided victims and interested parties a full and fair opportunity to be heard and gave the Court the benefit of their opinions as the Court assessed the proposed settlement's merits. The notice and hearing provided was efficient, adequate, and desirable under the circumstances, given the particular interests at stake, and satisfies the requirements of due process. [2]

ORDER

***3** After notice and hearing, and after having considered the filings and arguments of counsel, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable; and that a bar order is appropriate. The Settlement Agreement should be and is hereby **APPROVED**.

Accordingly, the Court hereby **ORDERS** as follows:

1. The terms used in this Order Approving Settlement that are defined in the Settlement Agreement between the Receiver and the Butler Snow Parties, unless expressly otherwise

defined herein, shall have the same meaning as in the Settlement Agreement.

2. This Court has "broad powers and wide discretion to determine the appropriate relief in an equity receivership," including the "inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws." *S.E.C. v. Kaleta*, 530 Fed. App'x 360, 362 (5th Cir. 2013) (*Kaleta I*) (quoting *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). These "ancillary relief" measures include "injunctions to stay proceedings by nonparties against the receivership" and "bar orders to secure settlements in receivership proceedings and to 'preserve the property placed in receivership pursuant to SEC actions.' " *S.E.C. v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *2 (N.D. Tex. Aug. 23, 2017) (quoting *Kaleta I*, 530 Fed. App'x at 362). *See also* *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 900 (5th Cir. 2019) ("By entering the bar orders, the district court recognized the reality that, given the finite resources at issue in this litigation, Stanford's investors must recover Ponzi-scheme losses through the receivership distribution process."); *see also* *id.* at 902 ("Again, the receivership solves a collective-action problem among the Stanford entities' defrauded investors, all suffering losses in the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of those assets.... It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership."); *see also* *S.E.C. v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) ("Courts have accordingly exercised their discretion to issue bar orders to prevent parties from initiating or continuing lawsuits that would dissipate receivership assets or otherwise interfere with the collection and distribution of the assets.").

3. This Court has jurisdiction over the subject matter of this action, and the Receiver is a proper party to seek entry of this Order Approving Settlement.

4. The Receiver has standing to assert all the claims asserted or that could have been asserted in this action both in her capacity as Receiver and as the holder of assignments executed by investors.

5. The notice[3] provided by this Court in the Order Setting Hearing and by the Receiver through U.S. Mail, her website, and any Receiver's Report was reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber Ponzi scheme, of the Settlement Agreement and the releases and bar order provided therein. The notice was also reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber Ponzi scheme, of their right to object to the Settlement Agreement and the releases and bar order provided therein and to appear at the hearing on the motion. The notice was adequate, sufficient, and the best notice practicable and met all applicable requirements of law. The Settlement Agreement's confidential treatment of the Notice Parties shall not constitute a basis for any objection to discovery in any related case regarding the identity of the Receiver's assignors or the terms of those assignments.

***4** 6. The Settlement Agreement was reached after a full investigation of the facts by the Receiver. The Settlement Agreement was negotiated, proposed, and entered into between the Receiver and the Butler Snow Parties in good faith and at arm's length. The parties were well-represented and competent to evaluate the strengths and weaknesses of all claims and defenses.

7. The proposed settlement provides substantial value to the Receivership Estate and will allow the Receiver to make a meaningful distribution to investors.

8. The bar order enjoining any person or non-regulatory entity[4] from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any claims or causes of action against any of the Butler Snow Parties, and/or their predecessors or successors, any of the current or former officers, directors, partners, employees, agents, independent consultants, representatives, insurers, accountants and attorneys, and any and all other person to or for whom the Butler Snow Parties might be liable or responsible including all such persons whether now or formerly employed or associated with any of the Butler Snow Parties, arising out of, in connection with, or relating in any way arising out of or relating to the Butler Snow Parties' alleged relationship with Adams or Madison Timber or any investment in the Madison Timber Ponzi scheme is necessary and appropriate ancillary

relief to this settlement. *See* *Kaleta I*, 530 Fed. App'x at 362.

9. The parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. The Court finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate, and in the best interests of all parties claiming an interest in or asserting any claim against the Butler Snow Parties or the Receivership Estate in any way relating to the Receivership. The Court further finds that a bar order is a necessary and essential component to achieve the Settlement Agreement and to ensure maximum recovery to the Receivership Estate.

11. The Settlement Agreement, the terms of which are fully set forth in the document itself, is hereby fully and finally approved. The parties are directed to implement and consummate the Settlement Agreement in accordance with its terms and with this Order Approving Settlement.

12. The Court hereby permanently bars, restrains, and enjoins any and all persons or non-regulatory entity (other than the entities identified in footnote 2 above) and their respective officers, directors, representatives, agents, and attorneys from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any claims or causes of action against any of the Butler Snow Parties, and/or their predecessors or successors, any of the current or former officers, directors, partners, employees, agents, independent consultants, representatives, insurers, accountants, and attorneys, and any and all other person to or for whom the Butler Snow Parties might be liable or responsible including all such persons whether now or formerly employed or associated with any of the Butler Snow Parties, arising out of, in connection with, or relating or in any way arising out of or relating to the Butler Snow Parties' alleged relationship with Adams and/or Madison Timber, or any investment in the Madison Timber Ponzi scheme. Such claims and causes of action are instead channeled into the "receivership distribution process." *Zacarias*, 945 F.3d at 900.

***5** 13. Nothing in this Order Approving Settlement or the Settlement Agreement and no aspect of the Settlement Agreement or negotiation thereof is or shall be construed to be an admission, concession, or any finding of the Court, either express or by implication under the principles of collateral estoppel, res judicata, and/or issue preclusion, of any violation of any statute or law, of any fault, liability, or wrongdoing, or of any infirmity in the claims or defenses of any party in any proceeding involving the Receiver or the Butler Snow Parties. For the avoidance of doubt, nothing in this Order Approving Settlement or the Settlement Agreement shall impair or affect the right of any person to assert that the Receiver lacks standing to assert certain types of claims in any action brought by the Receiver related to the Madison Timber Ponzi scheme; however, this clarification does not affect the scope, effect, or construction of the bar order set forth herein.

14. The Butler Snow Parties shall deliver or cause to be delivered the Settlement Payment in accordance with the terms of the Settlement Agreement.

15. Following her receipt of the Settlement Payment, the Receiver shall file a motion to dismiss with prejudice her claims against the Butler Snow Parties, with each party to bear its respective costs.

16. Without in any way affecting the finality of this Order Approving Settlement, the Court retains continuing and exclusive jurisdiction over the parties for the purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement Agreement, including, without limitation, the releases and bar order described in the Settlement Agreement and set forth in this Order.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Order Approving Settlement, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Order Approving Settlement shall be filed in the Court's public record and shall be served by counsel for the Receiver, via email, first class mail, or international delivery service on any person or entity that filed an objection to approval of the Settlement Agreement. On or after the Effective Date as defined in the Settlement Agreement, the Court will enter an Order substantially similar to this one in the case docketed as *Alysson Mills v. Butler Snow LLP, et al.*, No. 3:18-cv-866-CWR-FKB (S.D. Miss.), and that case will be dismissed with prejudice as to the Butler Snow Parties.

SO ORDERED, this the 25th day of February, 2021.

All Citations

Slip Copy, 2021 WL 8016843

Footnotes

1 Doc. 230 (Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.); Doc. 231 (Alexander Seawright, LLC and Brent Alexander); Doc. 232 (Jon Seawright); Doc. 233 (BankPlus and BankPlus Wealth Management); Doc. 235 (Mutual of Omaha); Doc. 237 (RiverHills Bank and Jud Watkins); Doc. 238 (John Hawkins on behalf of his clients).

2 The Court takes no position on whether notice or hearing is appropriate prior to the Court's approval of possible future settlement with other parties.

3 Due to the COVID-19 pandemic, the Court held the hearing via zoom. The public was allowed to attend. The notice of the hearing was posted on the Court's website along with instructions for members of the public to attend via zoom or telephonically, and members of the public were present.

4 To be clear, the proposed settlement does not affect the U.S. Attorney's Office, the F.B.I., the S.E.C., or the Mississippi Secretary of State, among other law enforcement bodies. Neither the Receiver nor the Court purports to recommend any settlement that would interfere with their separate work, if any.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiffs, v. SUNWEST MANAGEMENT, INC., CANYON CREEK DEVELOPMENT, INC., CANYON CREEK FINANCIAL LLC, and JON M. HARDER, Defendants, and DARRYL E. FISHER, J. WALLACE GUTZLER, KRISTIN HARDER, ENCORE INDEMNITY MANAGEMENT LLC, SENENET LEASING COMPANY, FUSE ADVERTISING, INC., KDA CONSTRUCTION, INC., CLYDE HAMSTREET, and CLYDE A. HAMSTREET & ASSOCIATES, LLC, Relief Defendants,	)	Civil No. 09-6056-HO ORDER

The Palmetto Bank moves for an order to show cause why the Court should not enter a contempt order or enjoin prosecution of a lawsuit filed in the Circuit Court of Oregon for Marion County by tenant in common investors who purchased interests in an assisted living facility known as The Highlands at Chestnut Hill. The action involves numerous LLC's who are collectively referred to as the Chestnut Hill Investors who sued the Palmetto Bank in Marion County Circuit Court on March 6, 2009, in Case No. 09C1260. Palmetto Bank asserts that The Chestnut Hill Investors have continued to prosecute the Marion County litigation even though they submitted claims and received distributions from the Receivership Estate for losses related to their investment in affiliates of Sunwest Management, Inc.

Under the Distribution Plan, a claimant is deemed to assign his or her rights against third parties arising from Sunwest investment losses to the Receiver upon accepting distributions from the Receivership Estate and the Receiver is the sole party authorized to pursue third party claims.

By releasing its deficiency claim, Palmetto Bank essentially contributed a significant portion of about $7.7 million to the pool of assets to be distributed. By taking distributions, the Chestnut Hill investors' securities claim in the Marion County case became solely the Receiver's to pursue. The Receiver chose to turn the property back to the lender and determined there was

no claim and decided not to assert one. The Distribution Plan forecloses the Chestnut Hill Investors from pursuing the Marion County case. The ability to resolve third party claims on a global basis, held by the Receiver, is not possible if such third parties face claims from investors as well.

This court can enforce its orders through civil contempt. See, e.g., Shillitani v. United States, 384 U.S. 364, 370 (1966). The Chestnut Hill investors are in violation of the court order approving the Distribution Plan. Accordingly, the court has the power to enjoin the Marian County litigation. In re Diet Drugs, 282 F.3d 220, 235 (3d Cir. 2002).

Palmetto Bank's motion (#1955) is granted and the Chestnut Hill Investors are found to be in civil contempt of the Court's Order adopting and implementing the Distribution Plan. The Chestnut Hill Investors may purge themselves of the contempt by dismissing, with prejudice, the action in Marion County. If the action is not dismissed within 14 days from the date of this order, the court will set a date for the Investors to appear before this court to face further sanctions.

DATED this 24th day of May, 2011.

Michael R. Hogan
United States District Judge