

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON, BARRY M. RYBICKI,
EQUIALT LLC, EQUIALT FUND, LLC,
EQUIALT FUND II, LLC, EQUIALT FUND III,
LLC, EA SIP, LLC,

Defendants.

128 E. DAVIS BLVD, LLC, 310 78TH AVE, LLC,
551 3D AVE S, LLC, 604 WEST AZEELE, LLC,
BLUE WATERS TI, LLC, 2101 W. CYPRES LLC,
2112 W. KENNEDY BLVD LLC, BNAZ, LLC, BR
SUPPORT SERVICES, LLC, CAPRI HAVEN,
LLC, EANY LLC, BUNGALOWS TI, LLC,
EQUIAL 519 3RD AVE S., LLC, MCDONALD
RECOVABLE LIVING TRUST, 5123 E.
BROADWAY AVE, LLC, SILVER SANDS TI,
LLC, TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.

**EXPEDITED CONSIDERATION
AND RULING REQUESTED**

CASE NO. 8:20-cv-00325-MSS-AEP

**DEFENDANTS' UNOPPOSED MOTION TO POSTPONE FEBRUARY 27, 2020
PRELIMINARY INJUNCTION HEARING UNTIL MAY 8, 2020, AND FOR
EXTENTION OF TIME TO PROVIDE SWORN ACCOUNTING**

Defendants Brian Davison and Barry M. Rybicki, by counsel, move the Court to postpone the February 27, 2020 preliminary injunction hearing until May 8, 2020, and to enlarge the time to file sworn accountings as follows:

1. The Court entered its Sealed Order Granting Emergency *Ex Parte* Motion for Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief [DE 10] ("Restraining Order") and its Sealed Order Granting Plaintiff's Emergency *Ex Parte* Motion for Appointment of Receiver and Memorandum of Law [DE 11] ("Receivership Order") on February 14, 2020.

2. The Restraining Order directed the defendants to show cause why a preliminary injunction should not be entered at a February 27, 2020 hearing, to begin at 1:30 p.m. That Order also directed the defendants to file sworn accountings within 7 days from the date on which they were served with it.

3. The Court-appointed receiver, Mr. Burton Wiand (“Receiver”), took possession and control over the entity-defendants’ assets, books, records and financial information on February 14, 2020. The Receivership Order, at paragraphs 28 and 29, directs the Receiver to report to the Court within 30 days following the end of the calendar quarter, or on or before April 30, 2020.

4. Messrs. Davison and Rybicki first learned of the plaintiff’s complaint, its *ex parte* motion for temporary injunctive relief and supporting materials and its *ex parte* motion to appoint a receiver, and the Court’s Orders on or about February 14, 2020. Although Messrs. Davison and Rybicki retained counsel during the following week, neither they nor their respective counsel have had sufficient time to analyze the plaintiff’s allegations and claims directed against them; investigate that facts and other information on which the plaintiff and its expert witness rely. Counsel must complete their analysis and investigation to prepare for a preliminary injunction hearing.

5. Messrs. Davison and Rybicki have not had access to financial, operational or other information for any of the entity-defendants, which is exclusively within the Receiver’s possession or control, since February 14, 2020. Messrs. Davison and Rybicki require access to that information to prepare for a preliminary injunction hearing.

6. The Receiver’s April 30, 2020 report to the Court will likely address the entity-defendants’ continued operations, resources and asset-valuations, and other issues which the plaintiff and defendants will likely contest during a preliminary injunction hearing.

7. In addition, due to the inability to access appropriate records, Defendants' have been unable to complete sworn accountings as required by the Restraining Order. Defendants are seeking to access certain records controlled by the Receiver and the SEC by mutual agreement.

8. For these reasons, Messrs. Davison and Rybicki respectfully request that the Court postpone the hearing on the plaintiff's request for preliminary injunctive relief until at least May 8, 2020, and provide up to and including March 10, 2020, to provide sworn accountings per the Restraining Order.

Local Rule 3.10(g) Certification

Counsel for Messrs. Davison and Rybicki conferred with counsel for the plaintiff and counsel for the Receiver in a good faith effort to resolve the issues raised by this motion. The plaintiff's and the Receiver's counsel, respectively, stated that the plaintiff and the Receiver do not oppose the relief that Messrs. Davison and Rybicki seek in this motion.

/s/ Stephen L. Cohen

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Counsel for Defendant Brian Davison

CERTIFICATE OF SERVICE

I certify that on February 25, 2020, I electronically filed the foregoing Defendants' Unopposed Motion to Postpone February 27, 2020 Preliminary Injunction Hearing and for Extension of Time to Provide Sworn Accounting via CM/ECF which will send an electronic notice to the following:

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