UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
Case No. 8:20-cv-00325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,
v.

BRIAN DAVISON, BARRY M. RYBICKI, EQUIALT LLC, EQUIALT FUND, LLC, EQUIALT FUND II, EQUIALT FUND III, 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. CYPRESS, LLC, 2112 W. KENNEDY BLVD, LLC, BNAZ, LLC, BR SUPPORT SERVICES, LLC, CAPRI HAVEN, LLC, EANY, LLC, BUNGALOWS TI, LLC, EQUIALT 519 3RD AVE S., LLC, MCDONALD REVOCABLE LIVING TRUST, 5123 E. BROADWAY AVE, LLC, SILVER SANDS TI, LLC, TB OLDEST HOUSE EST. 1842, LLC,

Relief Defendants.
_____/

RESPONSE TO APPLICATION REGARDING FEES INCURRED BY RECEIVER

We represent defendant Brian Davison ("Davison") in the above-captioned matter. We write to express significant concern over the amount of fees requested by the Receiver within the first month and a half of its appointment. It is remarkable that the Receiver appointed by the Court on February 14, 2020, has, as of the date of March 31, 2020 (or only six weeks into his appointment), incurred expenses over $600,000 for the Receivership estate. See Docket Entry 88, Ex. 14. That equates to more than $13,000 a day since his appointment, which will be ultimately

born by the investors. Moreover, although submitted on May 18, 2020, the application does not appear to contain even estimates of those fees and expenses incurred during April.

We respectfully submit that, given the large amount of costs incurred in such a short period of time – 46 days – the Receiver be required to submit a budget in advance and that an upper limit on costs to be incurred by the Receivership estate be established. At the very least, pursuant to paragraph 35 of the February 14, 2020 Order appointing the Receiver (Docket Entry 11), a holdback of 20% is appropriate, with its final disbursement to be determined at the end of the receivership.

It is concerning that the interests of the Receiver and its designees in getting paid appears to trump that of investors. Davison notes that, in it the initial phase of this action, Davison requested that the Receiver made timely payments to investors in the entities subject to the Receivership. The Receiver refused, and now submits this request that it and its designees obtain well over half a million dollars of investor funds, before investors see a dime.

Moreover, Davison has repeatedly offered his assistance to the Receiver in whatever fashion the Receiver thinks might help him administer the estate and maximize the assets available to investors. Up until the point that the Receiver took over these entities, no payment to investors had been missed. See Davison's Letter, Dated March 3, 2020 (attached hereto as Exhibit A). It is troubling that the Receiver is proposing such substantial to payments to parties other than investors.

Moreover, many of these requests seem facially questionable. Among these problematic expenses are included:

- thousands of dollars of expenses incurred before the Receivership was ordered by the Court (*see, e.g.*, Docket Entry 88-7, pp. 5-6);

- duplicating fees of approximately $.15/page (Docket Entry 88-5); and

- unspecified "other expenses" of several thousand dollars (Docket Entry 88-5).

Furthermore, it appears that Davison had already begun some of the work that is being billed, and that the Receiver has engaged in unnecessarily duplicative work. What is troubling is that much of this could have been avoided had the Receiver simply consulted Davison and asked for assistance. Regardless of what opinion the Receiver might have of Davison, there is certainly no harm in consulting him about the operations of the companies with which he was intimately involved, and about whose operations he is familiar. At the very least, this approach might have been able to save significant sums that would be better allocated towards a recovery for investors. Davison has always prioritized paying back investors, and has repeatedly offered to make himself available as a resource to see that goal accomplished.

Finally, this raises yet another concern, that this action might have been precipitously commenced. As the SEC conceded in the February 13, 2020 Hearing, the conclusion as to whether or not there was an ongoing fraud was not based on direct evidence but was "basically assumptive" (*see* Feb. 13, 2020 Transcript at 11). Yet rather than work with Mr. Davison to ensure that all legalities were followed and investors protected, the SEC commenced the case at bar without notice. Davison would have happily agreed to any interim measures – including the appointment of a monitor – in order to protect investors. Rather than go this route, the SEC chose to move via sealed application and get a Receiver appointed – one who has already incurred approximately $600,000 in costs in an extremely short time period.

Consequently, Davison respectfully requests that the Receiver be required to submit a budget, and that a cap on total expenses and fees be established. Finally, the Court should impose the 20% holdback contemplated in its initial Order.

/s/
Gerald D. Davis
GERALD D. DAVIS, ESQ.
Florida Bar No. 764698
gdavis@trenam.com
bshepard@trenam.com
ohoeppner@trenam.com
CHARLES M. HARRIS, JR., ESQ.
Florida Bar No. 967459
TRENAM, KEMKER, SCHARF, BARKIN, FRYE, O'NEILL & MULLIS, P.A.
200 Central Avenue, Suite 1600
St. Petersburg, FL 33701
Tel: (727) 896-7171
Attorneys for Defendant Brian Davison

/s/ Howard Fischer
GREGORY J. FLEESLER, ESQ.
New York Bar No. 2810745
gfleesler@mosessinger.com
HOWARD FISCHER, ESQ.
New York Bar No. 2644052
hfischer@mosessinger.com
MOSES & SINGER, LLP
405 Lexington Avenue
New York, NY 10174
Telephone: 212-554-7800
Attorneys for Defendant Brian Davison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed via the Court's CM/ECF system, which will send an electronic copy of the foregoing and a notice of filing same to all counsel of record, on this 20th day of May, 2020.

/s/ Gerald D. Davis
Attorney

EXHIBIT A

TRENAM LAW | 50 YEARS

Reply to
DIRECT DIAL: (727) 820-3950
EMAIL ADDRESS:
charris@trenam.com

March 3, 2020

VIA E-MAIL (bwiand@wiandlaw.com)
and U.S. MAIL
Burton Wiand, Esq.
Wiand Guerra King, P.A.
5505 W. Gray Street
Tampa, FL 33609-1007

RE: SEC v. Davison, et al., Case No. 8:20-cv-000325-T-35AEP, Middle District of Florida

Dear Burt:

Thanks for taking my call last night. As mentioned, we represent Brian Davison ("Mr. Davison"), defendant in the above-captioned matter. Please accept this letter as my renewed request that as the appointed Receiver that you ensure payments are made to investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC and EA SIP, LLC ("EA") (hereinafter, collectively the "Funds") as they come due.

On February 14, 2020, the Court entered an Order appointing you as a Receiver in this action [Docket Entry 11]. The operations of EA and the Funds was funded by a series of debentures entered into by approximately 1,100 investors. As you are aware, many of those debentures require payment of interest by March 5, 2020 (the "Payment Date").

Nonetheless, on information and belief based on Mr. Davison's prior access to the information regarding the Funds, it is believed that either there are moneys in hand or assets that can be made readily available to make those payments to investors that are due by the Payment Date. As of today, all prior interest payments on the debentures were paid when owed.

Of course, the fundamental justification for the appointment of a Receiver is the preservation of assets for the benefit of investors. The cases appointing a receiver justify that appointment by finding that is an imminent risk of loss, either of dissolution of the company or diversion of assets. The purpose of that appointment is therefore to prevent putting the interests of public investors in substantial jeopardy. *SEC v. RJ Allen*, 386 F. Supp. 866, 878 (S.D. Fla. 1974). *See also SEC v. Gulf Intercontinental Finance Corp.*, 223 F. Supp. 987, 996 (S.D. Fla. 1963) (appointment of receiver should be in best interests of public investors); *SEC v. First Financial Group of Texas*, 645 F.2d 429, 439 (5th Cir. 1981) (finding appointment of receiver was a

"necessary relief measure" to "protect the public welfare – and especially the interest of those who invested").

Mr. Davison has agreed to put off any final determination of the SEC's request for a preliminary injunction, and the Court has scheduled that hearing for May 13, 2020. Mr. Davison shares the concern of the Receiver and of the SEC that, in the interim, the interests of investors be protected. Mr. Davison believes that there are either sufficient funds on hand, or that sufficient funds can be made available, to make the payments owed on the Payment Date.

Mr. Davison is also happy to make himself available to consult with the Receiver to identify assets that can be used to meet the obligations due on the Payment Date. He would welcome the opportunity to meet with the Receiver to explain how the Funds were operated and managed.

For these reasons, we respectfully request that the Receiver make those payments owed on the Payment Date.

Sincerely,

Charles M. Harris, Jr.

CMH

cc: Katherine C. Donlon *(via e-mail: kdonlon@wianlaw.com and U.S. Mail)*
Alise M. Johnson, Esq. (*via e-mail: johnsonali@sec.gov*)