

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Case No. 8:20-cv-00325-MSS-AEP

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. 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, TP OLDEST HOUSE
EST. 1842, LLC.

Relief Defendants.

**NON-PARTY ROBERT G. MAR'S OPPOSITION TO
PAUL WASSGREN'S MOTION TO ENJOIN
PARALELL EQUIALT-RELATED ACTION**

Non-party Robert G. Mar respectfully seeks to make a limited appearance to oppose non-party Paul Wassgren's Motion to Enjoin Parallel EquiAlt-Related Action (Doc. 212).

Wassgren is attempting to enjoin the case of *Robert G. Mar v. Benjamin Charles Mohr, et al.*

filed in San Mateo County, California and recently removed to the United States District Court for the Northern District of California¹ (hereafter, the “Mar Action.”) This court should not enjoin the Mar Action because it does not violate this Court’s Receivership Order (Doc. 11, ¶ 17). The Mar Action will not disturb the assets or proceeds of the Receivership, it does not involve the Receiver, and it will not affect the property of the Corporate Defendants or Relief Defendants.

Mr. Mar respectfully asks this Court to refrain from staying one case—an earlier filed case—in favor of another. Mr. Mar brought suit on behalf of California residents who chose to sue California defendants for violations of California laws under theories that the Receiver has no right to assert. Allowing the Mar Action to proceed will not produce any hardship or inequity justifying a stay.

I. BACKGROUND

Robert G. Mar (“Mar”) invested part of his retirement savings in a real estate fund operated by EquiAlt, LLC. When he learned that EquiAlt was a Ponzi scheme, he sued the broker-dealer that sold him the securities, Benjamin Charles Mohr and his company, Ben Mohr, Inc. (the “Mohr Defendants.”) The original complaint, filed May 7, 2020, alleged causes of action for common law fraud, negligent misrepresentation, intentional misrepresentation, and violations of the California Securities Laws. The complaint alleged that the Mohr Defendants have primary liability as well as liability under theories of agency, conspiracy, and aiding and abetting. Mar sought certification of a class of California

¹ Case No. 20-cv-07719-EMC (N.D. Cal.)

residents who purchased EquiAlt securities through the Mohr Defendants (the “Mohr Class.”)

On September 10, 2020, Mar filed an amended complaint adding Paul Randall Wassgren (“Wassgren”) as a defendant. Wassgren provided legal services to EquiAlt, its funds, and its principals. The amended complaint asserts two causes of action against Wassgren: a violation of California Corporations Code section 25210 (sales of securities by unqualified brokers) and section 25110 (sale of unqualified securities) under theories of agency, conspiracy, and aiding and abetting. In addition to the Mohr Class, the amended complaint seeks certification of a class of all California residents who purchased EquiAlt securities in California between 2011 and 2019 (the “Wassgren Class.”)

On September 29, 2020, Wassgren answered the amended complaint. That same day, the Mohr Defendants filed a cross-complaint against Wassgren for indemnity and contribution. On November 2, 2020, Wassgren filed a notice of removal and on November 13, 2020, he filed a motion to transfer the case to the Middle District of Florida. Mar intends to file a motion to remand and an opposition to the motion to transfer.

II. ARGUMENT

A. THIS COURT SHOULD NOT ENJOIN THE MAR ACTION BECAUSE THE MAR ACTION DOES NOT VIOLATE THE RECEIVERSHIP ORDER.

On February 14, 2020, this Court issued an Order Granting Plaintiff’s Emergency Ex Parte Motion for Appointment of Receiver and Memorandum of Law. (Doc. 11) (the “Receivership Order.”) Paragraph 17 of the Receivership Order enjoins all persons, including investors, from: (1) disturbing the assets or proceeds of the receivership; (2) prosecuting any

actions or proceedings which involve the receiver; or (3) prosecuting any actions which affect the property of the Corporate Defendants and Relief Defendants. The Mar Action does not violate any of the three clauses of paragraph 17 of the Receivership Order, so Wassgren's motion to enjoin the Mar Action should be denied.

1. The Mar Action Will Not Disturb the Assets or Proceeds of the Receivership

The proposed class members in the Mar Action want their money back.² They allege that the Mohr Defendants and Wassgren are jointly and severally liable under theories of agency, aiding and abetting, and conspiracy.³ Under California law, the investors can get their money back from EquiAlt, LLC and its investment funds (the "Corporate Defendants"), they can get it from the Mohr Defendants, or they can get it from Wassgren. The Receivership Order prohibits the proposed class members from getting their money back from the Corporate Defendants because the assets of the Corporate Defendants' assets are Receivership assets. But the assets of the Mohr Defendants and Wassgren are not. If the assets of the Mohr Defendants and Wassgren are not Receivership assets, then the Mar Action does not disturb the assets or proceeds of the Receivership, so it does not violate the first clause of paragraph 17 of the Receivership Order.

² See Cal. Corp. Code §§ 25501.5 (damages for sale by unqualified broker-dealer) and 25503 (damages for sale of unqualified securities). See *Fragale v. Faulkner* (2003) 110 Cal.App.4th 229, 235–239 and *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240 regarding fraud damages in California. The proposed class also seeks punitive damages and attorney fees where applicable. Rescission is the statutory remedy for a violation of Cal. Corp. Code § 25210. (Cal. Corp. Code § 25501.5.) If the defendant is not capable of rescission, then the defendant is liable for the money required to make the plaintiff whole. *Moss v. Kroner*, 197 Cal.App.4th 860, 878–79 (2011).

³ See Cal. Corp. Code §§ 25504 and 25504.1. See also *Younan v. Equifax, Inc.*, 111 Cal.App.3d 498, 486 (1980).

Wassgren claims the Mohr Defendants’ assets are potentially receivership assets because the Receiver has the right to seek disgorgement of broker fees. Even assuming that’s true, the Mar Action is not laying claim to those broker fees. The Mar Action is laying claim to the consideration paid for the EquiAlt securities, plus other damages that do not include disgorgement of the broker fees. If the Receiver chooses to pursue those fees, his action would not foreclose the Mar Action especially where, like here, the investors allege that the Mohr Defendants and Wassgren have aided and abetted the Ponzi scheme. *Isaiah, et al. v. JPMorgan Chase Bank*, 960 F.3d 1296, 1307–08 (2020). “[A]ny claims for aiding and abetting the Ponzi scheme do not belong to the Receivership Entities; they belong to the defrauded investors, whom [the receiver] does not represent.” The Receiver has no right to seek the return of consideration paid by investors to Mohr and other broker-dealers on the theories alleged in the Mar Action, so those funds held by Mohr and Wassgren are not Receivership assets.

2. The Mar Action Does Not Involve the Receiver

The Mar Action does not involve the Receiver because it does not name as defendants the Corporate Defendants, the Relief Defendants, or the Receiver. It is Wassgren—not Mar—who is trying to involve the Receiver in the Mar Action. Wassgren argues that EquiAlt is a necessary and indispensable party under Rule 19 of the Federal Rules of Civil Procedure.⁴ Wassgren argues that EquiAlt is indispensable because the proposed class

⁴ See Non-Party Paul Wassgren’s Notice of Limited Appearance and Motion to Seek Clarification of the Court’s Order Appointing the Receiver (Doc. 211.) See also Defendant Paul Wassgren’s Notice of Removal to the United States District Court for the Northern District of California, Case No. 20-cv-07719 (N.D. Cal.) Doc. 1 at ¶¶ 17–18.

members in the Mar Action are seeking rescission. But rescission is not the exclusive remedy. Rescission is only one possible remedy under only one of the causes of action: the sale of securities by unqualified broker-dealers. *See* Cal. Corp. Code §§ 25210, 25501.5. Rescission is not the remedy for the other four causes of action alleged in the Mar Action.

Even under section 25210, EquiAlt is not an indispensable party. Where rescission is the statutory remedy, and the named defendants are not capable of rescission, then they are liable for the money required to make the plaintiff whole. *Moss v. Kroner*, 197 Cal.App.4th 860, 878–79 (2011). The Mohr Defendants and Wassgren are not capable of rescission because they are not parties to the contract for the sale of the EquiAlt securities. So when the time comes for the proposed class members to elect their remedy, they will elect to recover the amount of money required to make the investors whole: the consideration paid plus interest. *Ibid.* EquiAlt is not a necessary party because the Court overseeing the Mar Action can afford complete relief among the existing parties. Because EquiAlt, the Corporate Defendants, and the Receiver are not indispensable parties, the Mar Action does not involve the Receiver, so the Mar Action does not violate the second clause of paragraph 17 of the Receivership order.

3. The Mar Action Does Not Affect the Property of the Corporate Defendants or Relief Defendants

The Corporate Defendants, the Mohr Defendants, and Wassgren are jointly and severally liable for the harm suffered by the proposed class members in the Mar Action. *See* n. 2, *supra*. As discussed above, the assets of Mohr and Wassgren that would satisfy any

judgment are not property of the Corporate Defendants, so the Mar Action does not violate the third clause of paragraph 17 of the Receivership Order.

B. THIS COURT SHOULD NOT ENJOIN THE MAR ACTION BECAUSE WASSGREN'S INTEREST STAYING THE MAR ACTION DOES NOT OUTWEIGH THE INVESTORS' RIGHTS TO EXPEDITIOUSLY PURSUE THEIR CLAIMS

While trial court has the inherent authority to control its docket, including by enjoining other proceedings, the court's discretion is not without bounds and must be exercised within "reasonable limits," so as not to prejudice the rights of any party. *See Landis v. North American Co.*, 299 U.S. 248, 257 (1936). "A stay is an 'intrusion into the ordinary processes of administration and judicial review,' and accordingly 'is not matter of right.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009). A trial court abuses its discretion by imposing "a stay of indefinite duration in the absence of pressing need." *Landis*, 299 U.S. at 255. In order to evaluate pressing need, this Court should weigh competing interests and maintain an even balance. *Ibid*.

Wassgren's interests include eliminating duplicative efforts and avoiding the risk of inconsistent rulings. But the proposed class members in the Mar Action have an interest in the expedient resolution of the claims that they have a right to bring. Those class members, many of whom invested their retirement savings, should not be forced to wait to get their money back. They have a right to get their money back from secondarily liable parties like the Mohr Defendants and Wassgren, and they should not be forced to wait for the resolution of a nationwide class action that was filed subsequent to their action. Nor should they have to wait for the Receiver to liquidate hundreds of homes held by the

Corporate Defendants. On balance, the inconvenience to Wassgren is not a pressing need that justifies enjoining the Mar Action.

III. CONCLUSION

When it appointed the Receiver, this Court issued an order enjoining certain actions: those that disturb the assets of the Receivership, that involve the Receiver, or that affect the property of the Corporate Defendants. The Mar Action does none of those things, so Mar respectfully asks this court to deny Wassgren's motion to enjoin the Mar Action.

Dated: November 19, 2020

Respectfully submitted,

/s/ Donald J. Magilligan

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