

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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, TB OLDEST HOUSE
EST. 1842, LLC,

Relief Defendants.

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**RECEIVER’S MOTION FOR STAY AND RESPONSE TO NON-PARTY PAUL
WASSGREN’S “MOTION TO ENJOIN PARALLEL EQUIALT-RELATED
ACTION”**

Wiand Guerra King P.A. (“the Receiver”) files this Motion for Stay, and pursuant to Middle District of Florida Local Rule 3.01(b), responds to Non-Party Paul Wassgren’s (“Wassgren”) November 5, 2020 “Motion to Enjoin Parallel EquiAlt-Related Action” (“Wassgren’s Motion”). The Receiver requests the following relief:

- A Writ (Order) from this Court staying the case styled Robert G. Mar, et al. v. Benjamin Charles Morh, et al., Case No. 3:20-cv-07719-EMC, currently pending in the United States District Court for the Northern District of California, until further Order of this Court.¹

The Court has the authority to grant the relief requested by the Receiver to protect the exercise of its own jurisdiction pursuant to the Court's own Order dated February 14, 2020 (Dkt. 11); the Federal All Writs Act, 28 U.S.C. §1651; and principles of judicial comity.

OVERVIEW AND RELEVANT BACKGROUND

This Court is overseeing litigation commenced by the Securities and Exchange Commission (S.E.C.) in the wake of a Ponzi scheme generally known as "EquiAlt." Wassgren served as counsel to EquiAlt and he is currently a defendant in Mar, a putative class action brought by a former investor in one of the EquiAlt funds.

Wassgren is also a defendant in a separate action brought by the Receiver which has been fully authorized by this Court (Dkt. 121, 127); the Receiver's case against Wassgren is currently pending in California, Central District of California Case No. 2:20-cv-08849, and is styled Wiand et al. v. Wassgren et al.

Wassgren's Motion seeks to have this Court enjoin the Mar case, where the named plaintiff is an EquiAlt fund investor who seeks class action damages, arising out of the marketing and sale of EquiAlt securities (as set forth more fully in the Amended Complaint attached to Wassgren's Motion as Exhibit B). Whether Non-Party Wassgren is even properly

¹ Mar was originally filed in California state court; Wassgren removed it to Federal Court on November 4, 2020. Whether the Federal Court will remand Mar back to California state court is an open question; the time for the Mar plaintiffs to file a remand motion has not yet run.

before this Court, or has standing to make that request, is an open question. The Receiver, however, agrees with Wassgren on one point: Mar should be stayed. The Receiver therefore requests a writ (Order) to that effect, for the reasons set forth below.

LEGAL MEMORANDUM

I. THE COURT ANTICIPATED ENJOINING COMPETING CASES IN ITS ORDER APPOINTING THE RECEIVER.

When the Court appointed the Receiver on February 14, 2020 (Dkt. 11), the Court included the following language in its Order:

17. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from ... in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver....

The Mar case risks recovering and/or otherwise disturbing the assets or proceeds of the receivership, and it risks infringing on the Receiver's separate Court-authorized action against Wassgren. In fact, Wassgren himself is already seeking to interfere with the Court, by filing a separate "Motion to Seek Clarification of the Court's Order Appointing the Receiver", Dkt. 211.²

A writ (Order) staying Mar is not only necessary, but appropriate, as Mar is inextricably linked to the litigation before this Court. As recognized on page 3 of the Wassgren Motion, Mar asserts "many of the same causes of action" and seeks to "recover essentially the same damages for the benefit of the investors in EquiAlt securities." Wassgren also correctly points

² The Receiver will file a separate timely Response in Opposition to that other Wassgren Motion.

out that duplicative, piecemeal litigation in multiple fora “creates significant inefficiencies, risks inconsistent rulings, produces artificial complexities for discovery and motion practice, and serves no party’s interests.” *Id.*

Prosecution of Mar before conclusion of the case before this Court might potentially deprive the Receivership Estate of recovery rightfully belonging to the Estate (and by extension, EquiAlt’s creditors and investors).

Allowing Mar to proceed unimpeded would also handicap separate litigation commenced by the Receiver with this Court’s permission (Dkt. 121, 127). In an action involving this same Receiver, S.E.C. v. Nadel, 2009 WL 2868642, *4 (M.D. Fla. 2009), the Middle District of Florida granted the Receiver’s request to enjoin competing litigation. *See also Klay v. United Healgroup, Inc.*, 376 F.3d 1092, 1104 (11th Cir. 2004) (“Proceedings in other courts that involve the same facts . . . that could result in the issuance of an inconsistent judgment[] threaten the jurisdiction of the district court enough to warrant an injunction.”)

The Receiver, as allowed by this Court, has already commenced that litigation in California against Wassgren, and Wassgren’s current and former employers, DLA Piper and the Fox Rothschild law firms; Mar should not be permitted to risk an inconsistent judgment or otherwise threaten the jurisdiction of this Court.

II. THE COURT HAS THE AUTHORITY TO STAY MAR UNDER THE FEDERAL ALL WRITS ACT.

The Federal All Writs Act, codified at 28 U.S.C. §1651(a), provides:

- (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

This Court exists under Art. III, Sec. 1 of the United States Constitution, and was established by an Act of Congress (the Federal Judiciary Act of 1789). This Court has already asserted jurisdiction over this EquiAlt related action, and the All-Writs Act empowers the Court to issue writs necessary or appropriate to protect its jurisdiction, such as ordering a stay of Mar until further Order.

District Courts may enjoin competing actions under the All Writs Act, and also based on their own inherent power, where those actions threaten the Court's unfettered administration of a receivership. *See e.g., S.E.C. v. Credit Bancorp, Ltd.*, 93 F. Supp.2d 475 (S.D. N.Y. 2000).

As that case states:

[W]here a court has appointed a receiver and obtained jurisdiction over the receivership estate, as here, the power to stay competing actions falls within the court's inherent power to prevent interference with the administration of that estate. The power of a receivership court to prevent the commencement, prosecution, continuation, or enforcement of such actions has been recognized specifically in the context of securities fraud cases. *Id.* at 477 (citations omitted).

The rationale applied in the *Credit Bancorp* case is directly applicable here, and compels a stay of Mar.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Receiver respectfully requests a Writ (Order) denying the Wassgren Motion as moot, but staying the Mar litigation on behalf of the Receiver until further Order of this Court.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(g)

Counsel for the Receiver contacted counsel for Non-Party Wassgren and also counsel for the parties in the Mar case. Wassgren and Mohr support the relief sought by the Receiver and Mar opposes the relief sought by the Receiver.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of Court by using the Court's CM/ECF system, thereby serving this document on all attorneys of record in this case.

Dated: November 19, 2020

Respectfully submitted,

/s/ Katherine C. Donlon

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