

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

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

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, TB OLDEST HOUSE
EST. 1842, LLC,

Relief Defendants.

**MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF
MOTION TO COMPEL RECEIVER
TO BRING CLAIMS AGAINST MOVANTS IN THIS DISTRICT**

Pursuant to Local Rule 3.01(d), Non-Parties Fox Rothschild LLP, DLA Piper LLP (US), and Paul Wassgren (collectively, “Movants”), respectfully seek leave to file a reply, not to exceed ten pages, which they propose to file three days after receiving permission from the Court, in support of their Motion to Compel Receiver to Bring Claims Against Movants in This District (Doc. 263) (“Movants’ Motion to Compel”).

MEMORANDUM OF LEGAL AUTHORITY

Movants request a reply to the Receiver’s opposition (Doc. 268), and the Securities and Exchange Commission’s (“SEC”) response (Doc. 270), to Movants’ Motion to Compel in order (i) to explain how the Receiver’s opposition misconstrues the relief Movants seek and why Movants may be heard in this Court, (ii) to dispel any concerns the SEC has raised about Movants seeking formal intervention in their case, (iii) to respond to procedural arguments that are predicated upon a misreading of the relief sought, and (iv) to correct the record surrounding the timing of Movants’ Motion to Compel and the Receiver’s representations to the Court regarding the impact, on this case, of claims asserted in the *Gleinn* Action. Additional briefing on this matter will clarify the issues raised by Movants’ Motion to Compel and the relief sought.

Movants had anticipated that the Receiver would respond on the merits to explain why his conduct did not introduce unnecessary confusion in the litigation and set the stage for conflicting rulings and discovery procedures to the detriment of all parties. Instead, he avoided the merits altogether and devoted his response to raising unfounded procedural hurdles. The Receiver’s claims merit a reply.

The Receiver's misreading of Movants' Motion to Compel appears to have spilled over to the SEC's response. The SEC, which originally took no position on the motion, has now expressed concern that Movants seek formal intervention in the SEC's case for an improper purpose, which is not the case. Movants do not seek to assert private claims or to interfere in the SEC's prosecution of its case. Movants seek a limited appearance solely to address issues pertaining to the Receiver's decision to sue Movants in California. This Court is the only forum in which Movants can seek redress. This Court appointed the Receiver, this Court has continuing jurisdiction over the Receiver, and this Court can oversee the conduct of the Receiver.

The Receiver devotes 15 pages of his 19-page opposition to three procedural obstacles not addressed by Movants' Motion to Compel—Section 21 of the Securities Exchange Act of 1934, the Anti-Injunction Act, and judicial comity. Movants should have the opportunity to explain to the Court why these procedural obstacles do not exist. For example, Movants are not seeking to consolidate the Receiver's lawsuit against Movants with the SEC's lawsuit, or to participate in the SEC's lawsuit in contravention of Section 21 of the Exchange Act. Movants anticipate any suit by the Receiver against them would be a separate suit filed in this Court, but that this Court, by virtue of its supervising the other related actions, would be able to manage all of the litigation efficiently.

Movants also would like the opportunity to explain why the Anti-Injunction Act and considerations of judicial comity are irrelevant, again because the Receiver has misconstrued the relief Movants have sought by characterizing it as an injunction

against a state court. Finally, as to the standing issue, Movants would like the opportunity to show this Court that they have standing, and that the Court may consider the issues Movants raised *sua sponte*.

Movants have not yet had an opportunity to address these arguments and, accordingly, seek a reply in order to do so.

CONCLUSION

WHEREFORE, Movants respectfully request leave to file a consolidated reply, not to exceed ten pages, in support of their Motion to Compel.

LOCAL RULE 3.01(g) CERTIFICATION

Undersigned counsel for Movants conferred by email with counsel for the SEC and the Receiver. The SEC and Receiver oppose the request for leave to file a reply.

Dated: February 22, 2021

Respectfully submitted,

/s/ Simon A. Gaugush

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2021, 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.

/s/ Simon A. Gaugush
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