

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 OPPOSITION TO MOVANTS' MOTION FOR
LEAVE TO FILE REPLY**

Burton W. Wiand, the Court-appointed Receiver in this S.E.C. Enforcement Action, opposes the February 22, 2021 “Motion for Leave to File Reply in Support of Motion to Compel Receiver to Bring Claims Against Movants in This District” (Doc. 271) which was jointly filed by three non-parties: Fox Rothschild LLP, DLA Piper LLP (US), and attorney Paul Wassgren. Mr. Wassgren was previously an attorney at Fox Rothschild and then DLA Piper. In this Opposition, the Receiver will refer to all Movants collectively as the “Non-Parties.”

RELEVANT BACKGROUND FACTS

The Receiver has litigation pending against the Non-Parties in California. The Receiver first sued the Non-Parties in the United States District Court for the Central District of California. Following the Non-Parties’ arguments that the Central District lacked subject matter jurisdiction based on diversity, the Receiver sued the Non-Parties in California Superior (State) Court, and sought a voluntary dismissal of the California Federal Court action.

The Non-Parties did not agree to that dismissal, despite the California Federal Court’s lack of subject matter jurisdiction. Instead, the Non-Parties asked the California District Court to transfer the matter to this Florida Court. DLA Piper and Mr. Wassgren also sought an Order compelling arbitration.

All those issues were fully briefed in the Central District of California and they were pending when the Non-Parties, on February 5, 2021, filed in this Court a “Motion to Compel Receiver to Bring Claims Against Movants in This District”, Doc. 263. The Non-Parties requested two forms of relief: that this Court “compel the Receiver appointed by this Court to bring his claims relating to the Movants’ legal services in the Middle District of Florida”, and that the Court also compel the Receiver to “dismiss is duplicative California state court action.” *See* Doc. 263, pp. 2; 24.

The Receiver filed a timely Opposition to the Non-Parties’ Motion to Compel (Doc. 268), as did the S.E.C. (Doc. 270). On February 22, 2021, in response to the Receiver’s Opposition, the Non-Parties filed a “Motion for Leave to File Reply in Support of Motion to Compel Receiver to Bring Claims Against Movants in This District” (Doc. 271).

Two days after the Non-Parties’ Motion for Leave to File Reply was filed (on February 24, 2021), the California Federal Court issued an Order resolving, and directly related to, issues the Non-Parties have also raised in this Court. On February 25, 2021, the Receiver filed a copy of that California Federal Court Order

with this Court, Doc. 272. Later that same day, the Non-Parties filed the Motion for Leave to File Reply (Doc. 273) now at issue.

MEMORANDUM OPPOSING NON-PARTIES MOTION TO FILE REPLY

Middle District Local Rule 3.01(d) provides that parties to litigation have no reply as a matter of right. The relief the Non-Parties request is already an exception to the Court's standard operating procedures.

The Non-Parties' Motion for Leave to File Reply contends that they need additional briefing because: the Receiver "misconstrues the relief Movants seek" and Receiver's Opposition arguments "are predicated on a misreading of the relief sought"; that they wish to "dispel any concerns the SEC has raised"; and they want to "correct the record" about a separate plaintiff-investor lawsuit against them (the *Gleinn* case). *See* Doc. 271, p. 2. None of these arguments have merit. First, the Non-Parties could not have been clearer regarding their requested relief. The Non-Parties want to curtail the Receiver's ability to pursue California law claims in a California forum. Second, if the Non-Parties had truly wanted to respond to the S.E.C.'s response to their Motion to Compel, they should have sought a reply to the S.E.C.'s filing, Doc. 270; however, they did not. Third, the Receiver is not a

party to the *Gleinn* lawsuit, nor are the *Gleinn* plaintiffs parties to the litigation before this Court, so references to the *Gleinn* case are simply a diversion.

Further, the issues the Non-Parties have raised in this Court, in any event, have been considered and disposed of by the Central District of California's Order, which is before this Court as Doc. 272.

In its Order, the Central District of California granted the Receiver's request for a voluntary dismissal, rejected the Non-Parties' request for a transfer to this Court, and denied as moot the DLA Piper/Wassgren request for mandatory arbitration. While the entirety of the Central District of California's reasoning is available to this Court, it is summarized on page 3 of the Order as follows:

This action involves claims under California law, many California witnesses (and some neighboring state witnesses), legal work performed in this state, and hundreds of California investors (but only 32 Florida investors). Because of the connection between the claims and the state of California, the Receiver wishes to pursue his claims in California. The Receiver filed this action in federal court mistakenly believing subject matter jurisdiction existed, but once he realized this Court lacked subject matter jurisdiction, he promptly filed an identical action in state court and sought dismissal of this case. In short, the Receiver simply seeks to correct an error to secure venue in his preferred state.

CONCLUSION

The Receiver, as the Central District of California concluded, was at all times fully authorized to sue these Non-Parties in California, asserting claims under California law. The Receiver is charged with the responsibility of maximizing recovery to the Receivership and the defrauded investors. That is what he is attempting to do and the Court should not allow the Non-Parties to use this Court impede those legitimate efforts. Further, this Court should not allow the Non-Parties to enlist it as part of their defensive litigation strategy.

Dated: March 4, 2021

Respectfully submitted,

/s/ Katherine C. Donlon

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 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/ Katherine C. Donlon

Attorney