

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35AEP

BRIAN DAVISON;
BARRY RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC, et al.

Relief Defendants.

**MOTION TO ALLOW INVESTOR PLAINTIFFS TO ASSERT CLAIMS
AGAINST DEFENDANT BRIAN DAVISON OR ALTERNATIVELY
FOR A LIMITED AMENDMENT OF THE
RECEIVERSHIP ORDER**

Plaintiffs in *Richard Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT (the “Investor Plaintiffs”) respectfully move the Court to permit the Investor Plaintiffs to assert claims against Defendants Brian Davison (“Davison”) notwithstanding the Court’s order entered in the above-captioned action (Doc. 11) (the “Receivership Order”), pursuant to which Burton W. Wiand, as Receiver (the

“Receiver”) is charged with marshaling and preserving the assets of the Receivership Entities (the “Receivership Estate”). Investor Plaintiffs have conferred with the Receiver and understand that he has concluded doing so will not adversely affect the property of the Receivership Estate. In support thereof, Investor Plaintiffs state as follows:

1. Paragraph 17 of the Receivership Order provides that “all persons ... are enjoined ... from prosecuting any actions or proceeding which involve the Receiver or which affect the property of the Corporate Defendants and Relief Defendants” (the “Receivership Injunction”).

2. This Court’s power to enjoin the Investor Plaintiffs’ claims is derived from (1) the All Writs Act (28 U.S.C. § 1651) and (2) the inherent powers of an equity court to fashion relief. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 477 (S.D.N.Y. 2000) (observing “where 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” and “[t]he power of a receivership court to prevent the commencement, prosecution, continuation, or enforcement of such [competing] actions has been recognized specifically in the context of securities fraud cases”).

3. On February 26, 2020, certain Plaintiffs (collectively, the “Initial Investor Plaintiffs”) filed suit against Davison, Barry Rybicki, and others, in an action styled *Rubinstein, et al. v. EquiAlt, LLC, et al.*, Case No. 8:20-cv-448-WFJ-TGW (“Initial Investor Action”).

4. The Receiver took the position in the Initial Investor Action that the Receivership Injunction prohibited the Initial Investor Plaintiffs’ assertion of claims

against Davison, on the grounds that doing so could affect the property of the Receivership Estate.

5. To ensure compliance with the Receiver Injunction the Initial Investor Plaintiffs accordingly voluntarily dismissed their claims alleged against Davison in the Initial Investor Action.

6. On August 3, 2020, the Investor Plaintiffs filed their Amended Class Action Complaint in *Richard Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-VMC-CPT (the “Investor Action”), excluding without prejudice their claims against Davison asserted in the Initial Investor Complaint.

7. On August 5, 2021, the Court entered in the SEC Action a final judgment against Davison (Doc. 355) (“Davison Judgment”), resolving all claims of the Receiver against Davison.

8. The SEC settlement resolves the Receiver’s claims against Davison.

9. The Receiver has concluded that given the entry of the Davison Judgment the Receiver Injunction is no longer necessary to the Investor Plaintiffs’ claims against Davison, since those claims no longer involve the Receiver or otherwise affect the property of the Receivership Estate.

10. The Investor Plaintiffs intend to assert class claims on behalf of EquiAlt investors against Davison that are independent from any claims asserted or previously asserted against them by the SEC and the Receiver.

11. The Investor Plaintiffs intend that any amounts recovered in a new class action against Davison will be administered and distributed through the Receivership.

WHEREFORE, the Investor Plaintiffs respectfully request that the Court enter its order to allow Investor Plaintiffs to assert claims against Davison or, alternatively, to amend the Receivership Order solely to allow the assertion of claims by the Investor Plaintiffs against Davison and Rybicki.

LOCAL RULE 3.01(G) CERTIFICATION

Undersigned counsel for the Investor Plaintiffs has conferred with counsel for the Receiver, the SEC, Davison and Rybicki. The Receiver does not object to the relief sought by this motion. The SEC takes no position with respect to this motion. Davison objects to the assertion of claims by the Investor Plaintiffs against him.

RESPECTFULLY SUBMITTED this 16th day of December, 2021.

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