

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No.: 8:20-cv-325-MSS-MRM

BRIAN DAVISON, BARRY M.  
RYBICKI, EQUIALT LLC,  
EQUIALT FUND, LLC, EQUIALT  
FUND II, LLC, EQUIALT FUND  
III, LLC, EA SIP, LLC, 128 E.  
DAVIS BLVD, LLC, 310 78TH AVE,  
LLC, 551 3D AVE S, LLC, 604  
WEST AZEELE, LLC, 2101 W.  
CYPRESS, LLC, 2112 W.  
KENNEDY BLVD, LLC, 5123 E.  
BROADWAY AVE, LLC, BLUE  
WATERS TI, LLC, BNAZ, LLC, BR  
SUPPORT SERVICES, LLC,  
BUNGALOWS TI, LLC, CAPRI  
HAVEN, LLC, EA NY, LLC,  
EQUIALT 519 3RD AVE S., LLC,  
MCDONALD REVOCABLE  
LIVING TRUST, SILVER SANDS  
TI, LLC, TB OLDEST HOUSE EST.  
1842, LLC, STATE OF FLORIDA  
DBPR, DIVISION OF HOTELS  
AND RESTAURANTS, CHARLES  
FARANO and SCOTT STALLMO,

Defendants.

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**ORDER**

This matter comes before the Court *sua sponte*. Upon consideration of  
Plaintiff's Notice of Filing and Request for Entry of Proposed Agreed Order

Extending and Modifying Asset Freeze (“Motion to Extend and Modify Asset Freeze”) (Doc. 746), Moses & Singer LLP’s Notice of Charging Lien (Doc. 755), and the associated briefing (Docs. 754, 765, 794), the Undersigned finds that supplemental briefing is necessary prior to an evidentiary hearing. Specifically, supplemental briefing is required on two issues.

First, Moses & Singer LLP argues that “Mr. Davison may not properly question Moses & Singer’s fees in this proceeding, as Mr. Davison has contractually agreed to arbitrate any fee disputes in binding arbitration.” (Doc. 794 at 8). In support, Moses & Singer LLP cites to Mr. Davison’s Engagement Letter, which provides, in relevant part:

Except for any fee disputes subject to the New York State Fee Dispute Resolution Program, any other controversy, claim or dispute arising out of or relating to our engagement, our representation of clients, the services rendered, or fees and expenses charged or any other aspect of our attorney-client relationship (whether sounding in tort, contract or statutory law and whether legal or equitable), shall be resolved exclusively by binding arbitration in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction.

Please note that by agreeing to arbitration: you waive your right to a trial by jury or trial before a judge with respect to any controversy, claim or dispute subject to the arbitration clause; you become subject to arbitration rules that differ in significant respects from court rules (including as to timing, discovery, and potential costs and damages); and you may be liable for certain fees, costs and expenses in connection with the arbitration as provided in the rules of the American Arbitration Association or determined by the arbitrator.

(Doc. 795-1 at 13). The Court does not have the benefit of any briefing from Mr. Davison on this issue. Additionally, although the Notice of Charging Lien may affect the adjudication of the Motion to Extend and Modify Asset Freeze, the Court does not have any briefing from Plaintiff. Therefore, the relevant parties, including Plaintiff,<sup>1</sup> shall file supplemental briefing to address whether the Court may evaluate the reasonableness of the attorney's fees associated with the Notice of Charging Lien considering the arbitration provision cited above. The parties should also include in the supplemental briefing whether the Court would impliedly adjudicate the reasonableness of the fees if it recognized the validity of the charging lien.

Second, Mr. Davison's Engagement Letter also provides that his engagement with Moses & Singer LLP "and all aspects of [that] relationship shall be governed by the internal laws of the State of New York." (Doc. 795-1 at 13). But the Notice of Charging Lien asserts that "Moses & Singer LLP has the right to a charging lien under *both* Florida and New York law against the property or funds received or receivable by Defendant in this action." (Doc. 755 at 2 ¶ 4 (emphasis added)). Moses & Singer LLP's Response to Objection to Charging Lien argues only under Florida law. (Doc. 794 at 3 ("[T]he only issue properly before this Court is whether Moses & Singer is entitled to an attorney's lien on the proceeds of the settlement. Under Florida law, Moses & Singer is clearly entitled to such lien.")). The same is

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<sup>1</sup> If Plaintiff takes no position on the issues identified in this Order, it may, of course, file a supplemental brief simply stating that it takes no position.

true of Mr. Davison's Objection to Moses & Singer LLP Charging Lien. (Doc. 765 at 7 (citing Florida law)). The parties must address in their supplemental briefing what state's law governs both (1) the validity of the charging lien and (2) the applicability of the arbitration provision in the parties' engagement agreement.

To address these issues, Mr. Davison and Plaintiff shall file supplemental briefs of no more than ten (10) pages on or before March 9, 2023. Subsequently, Moses & Singer LLP shall file its supplemental brief of no more than ten (10) pages on or before March 16, 2023. The Court directs the Clerk of Court to reschedule the evidentiary hearing set for March 10, 2023 to March 23, 2023, to begin at 9:30 AM. The parties are advised that, upon reviewing the supplemental briefing, the Court may cancel or continue the rescheduled evidentiary hearing.

### **CONCLUSION**

Accordingly, the Court **ORDERS** as follows:

1. Mr. Davison and Plaintiff shall file supplemental briefs of no more than ten (10) pages on the issues identified in this Order on or before March 9, 2023;
2. Moses & Singer LLP shall file its supplemental brief of no more than ten (10) pages on the issues identified in this Order on or before March 16, 2023;
3. The Clerk of Court is directed to reschedule the evidentiary hearing currently set for March 10, 2023 to March 23, 2023, to begin at 9:30 AM.

**DONE** and **ORDERED** in Tampa, Florida on March 2, 2023.



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Mac R. McCoy  
United States Magistrate Judge

Copies furnished to:

Counsel of Record  
Unrepresented Parties